

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
(CIVIL)**

**SAINT LUCIA**

**Claim No. SLUHCV2009/0494**

**BETWEEN:**

**WAYNE STEWART  
STEWART AND ASSOCIATES**

Claimants

**And**

**RICHARD GIRAUDY**

Defendant

**Appearances:**

Mr. Bofa Mc Namara for the Claimant  
Mr. Dexter Theodore for the Defendant

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**2010 July 14 August 30**  
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**JUDGEMENT**

- [1] **REDHEAD J (AG):** On the 4th November 2007 the number one Claimant, Mr. Stewart, was driving a motor car registration number PD9084 owned by the second named defendant from north towards Castries.
- [2] In the motor car with Mr. Stewart were two of his friends. In his witness statement, he says that he was driving at about 35 to 40 miles per hour. As he

passed the entrance to Sandals Halcyon, he had positioned the vehicle into the right lane of the Gros Islet highway.

[3] At about 7:50 p.m. upon passing the entrance of Sandals Halcyon, he had a clear (view) line of the Sunny Acres/Gablewoods Mall exit from the highway. As he approached the said exit, he noted motor vehicle registration number 82 was positioned in the exit. He continued to drive in the right south bound lane to Castries. The defendant came over to the exit into the highway. In doing so he defendant crossed over the left south bound lane and into the right south bound lane in which he was driving. The defendant caused the vehicle that he was driving to collide into his vehicle. The first named claimant alleges that he, the defendant, caused that collision which forced his, the claimant's vehicle in the concrete median.

[4] Mr. Stewart claims that as a result of the collision the vehicle that he was driving suffered damage to the front bonnet, left head light and indicator, left front fender and front bumper, left rear fender and bumper, right front tyres and rim, right front bumper and fender.

[5] The first named Claimant says that after the collision, he stopped his vehicle. The police were summoned to the scene. Police Constable Chicot arrived on the scene of the accident. He took and recorded measurements. PC Chicot produced a traffic report on 22nd January 2008. In that report PC Chicot stated: "it has been established that motor car registration number 82 driven by Ricardo Giraudy travelling out on Sunny Acres junction injudiciously emerged from the minor road onto the major road and caused the accident"

[6] The first named Claimant says that he took the motor vehicle for repairs. At trial it was as agreed by both counsel that the value of the Claimant's claim in respect to the repairs is fifteen thousand five hundred and sixty-five dollars and twenty-nine cents (\$15565.29) with interest at 3% from 4th November. 2007.

[7] The defendant Ricardo Giraudy in his witness statement says that he lives at Sunny Acres. He uses the Castries/Gros Islet highway everyday. On Sunday 4th November he was driving his motor car registration number 82. He approached the Sunny Acres exit near to Sandals Halcyon Hotel. He came to a halt at the junction. It is not permissible to turn right at that junction. It was his intention to turn left into the outer lane. He says that he ensured that it was safe to do so and waited for a vehicle travelling from the direction of Gros Islet in that same lane. After the vehicle passed, there were no other vehicles coming in that lane. Mr. Giraudy says that in the westward lane there was a vehicle approaching from Gros Islet direction and it was some distance away, near the bus stop. He emerged carefully into the eastern most (left) lane.

[8] The defendant states that he had travelled a short distance and was opposite the bus stop alongside the Gablewoods the vehicle that he had seen travelling in the inner (right) lane, left its lane and came into contact with the right side of his vehicle.

[9] The defendant asserts that when his vehicle was struck in the outer (left) lane he had never strayed at anytime into the inner lane. Mr. Giraudy states that after his vehicle was struck the other vehicle by passed his vehicle, veered into his lane in front of him travelled for a distance and then came to a stop in front of him. He says that after the collision he got out of his vehicle. He observed an impact impression on the median that separates north bound from south bound traffic.

[10] Mr. Giraudy states that his vehicle sustained the following damage:

Right rear fender, right rear door, right front door, right running board, right front mirror and right front fender were damaged.

[11] The defendant says that the measurement taken by the police of the distance at which he first saw the other vehicle was not correct. He alleges that the first named Claimant told the officer in his presence that he first saw him (the defendant) when he was near the Sandals bus stop. The officer's assistant put

down the tape at Sunny Acres junction and the investigating officer proceeded to walk towards sandals bus stop. Before he got there, the first named Claimant changed his mind and told the officer to stop and the distance was then measured at 101 feet. The Defendant alleges that the true distance from the junction to the Sandals bus stop is about 120 feet. He also says that he objected when the officer measured the distance from the junction to the Sandals bus stop.

[12] Finally the Defendant received an estimate of the cost of repairs to this vehicle At trial it was agreed by both Counsel that the value of the Defendant's claim in this regard is \$7765 with interest at 3% from 4th November 2007. I now refer to the measurements given by PC Chicot.

[13] Width of road at point of impact number one (as pointed out by the Claimant) 18 feet, 10 inches. Width of road at point of impact (as pointed out by the Defendant) 18 feet 10 inches. Point of impact to left side of road facing south 7 feet 11 inches (as pointed out by the Claimant).

[14] Point of impact to the left side of road facing south (as pointed out by the Defendant) 10 feet 7 inches.

Distance driver of motor car 82 first saw the other vehicle 120 feet.

Distance driver of PD 9084 first saw other vehicle 101 feet.

Width of left lane 11 feet

Width of right lane 9 feet 7 inches

[15] Both counsel for the Claimant and the Defendant, particularly Mr. Theodore placed great emphasis on the measurements.

[16] Mr. Theodore argues forcefully that having regard to the measurement it is obvious that the accident occurred in the left lane in which the defendant was travelling at the time of the accident and consequently, he argues that the

Claimant would have crossed over into the Defendant's lane thereby causing the accident. At first sight this seems very impressive argument by learned counsel for the defendant.

[17] But on a mathematical calculation, width of left lane could not be 11 feet and right lane 9 feet 7 inches if the width of road is 18 ft. Both defendant and Claimant when they indicated the point of impact, although differed as to where it occurred, both measured 18 feet. The measurements of left lane and right when added give a figure of 20 feet 7 inches. If the correct width of the road is 18 feet which I have accepted, it means that that the measurement of the left lane is overstated by about 2 feet 7 inches. Mr. Theodore, argues that if the left lane was 11 feet and the point of impact facing south was 10 feet 7 inches as pointed out by the Claimant, then it was clear that Claimant's vehicle was on the left lane in which the defendant was travelling.

[18] Mr. Mc Namara learned counsel for the Claimant argues that if the width of the road is 18 feet then the left lane could not be 11 feet and if the excess is deducted from the 11 feet then it means that the accident could not have occurred in left lane. I yield to that argument. However, that is by no means the end of this matter.

[19] On the night in question, 4th November 2007, the defendant says that it was a Saturday whereas the Claimant says it was a Sunday. It does not matter as both have agreed that the traffic on the road at the time was light and that the road was dry.

[20] I find as a fact that the defendant exited the Sunny Acres junction, drove for a short distance before the collision occurred. This view is supported by the fact that if the collision had occurred when the defendant was exiting the Sunny Acres junction, then the Claimant would have struck the defendant's car at or about the right angle position and that the resulting damage to the defendant's vehicle would have been greater, instead the damages sustained by both vehicles suggest

a rubbing against the sides of both vehicles, except when the claimant's vehicle struck the median.

[21] In my judgment the defendant is principally to be blamed for the accident. In that he has admitted that he had seen the Claimant's vehicle approaching at a distance of about 120 feet away. Yet he decided to emerge from the Sunny Acres exit unto the highway. He ought to have contemplated that it was quite possible for the Claimant to switch from one lane to the other, having regard to the paucity of the traffic on the road at the time. It would have been prudent therefore, for the defendant to have waited until the Claimant had passed the junction, before emerging unto the Gros-Islet highway. In that regard, in my judgment, the defendant was negligent.

[22] In my judgment the Claimant is also negligent in that he told the police officer that he had first seen the defendant's vehicle from some 101 feet away.

[23] Mr. Stewart says in cross-examinations: that he realized that the defendant had stopped at the junction. He was in front of Sandals by the bus stop. He said that when the Defendant started to move he was at the junction of Gablewoods exit. He was about ½ to one car length away from the junction when he (the defendant) started to move. The claimant says at that point he slowed down to about 35 to 40 mph before that he was driving at about 45 mph.

[24] Mr. Stewart says that the defendant came over unto the left lane. The defendant swung right into his (the claimant's) lane. The defendant came straight across and straightened up in his, the claimant's lane. I have difficulty in accepting this version as to how the accident occurred. Because if the accident had occurred in the manner described by the Claimant there would have been damage to the left side of the defendant's vehicle.

[25] The claimant says that he was driving his motor car on the right lane, it is therefore difficult to appreciate how the defendant could drive right into the claimants lane, straightened up in the claimant's lane and the defendant's vehicle

sustained damages to the right bearing in mind immediately on the right of the claimant's car is the median. The question therefore how is it possible for the defendant's vehicle to sustain all the damages on the right side? In my opinion that question is logically unanswerable.

[26] In my judgment the claimant is also negligent. He could have avoided the accident. He saw the defendant emerging from the exit some distance away. He says he was about one car length away he did not stop only slowed down. In my opinion he was unable to stop because of the speed at which he was travelling.

*“whilst there is no duty generally to foresee that another will be negligent there are instances even so where a prudent man is to take precautions by anticipating the negligence of others, especially where experience commonly has shown such negligence to be likely or where resulting damage can be minimized”<sup>1</sup>*

[27] It is commonly known that drivers or motorists would emerge, perhaps carelessly, from minor roads into major roads and prudent drivers should always anticipate that and take the necessary precautions to guard against such eventualities.

[28] In this regard and in my judgment I place blame for the accident 25% on the Claimant and 75% on the Defendant. Therefore the damages will be relation to that blame that is 75% of the sum claimed by the Claimant and 25% of the sum claimed by the defendant.

[29] There will therefore be judgment for the Claimant in the sum of nine thousand, one hundred and seventy-four dollars (\$9,174.00) interest at the rate of 3% per annum from 4th November 2007 to 4th July 2010 is seven hundred and fifty-one dollars and fifty-eight cents (\$751.58).

[30] Total (\$9925.58)

<sup>1</sup>See Charlesworth on negligence six edition paragraph 1217

[31] Judgment for the defendant in the sum of (\$1941.25) interest at the rate of 3% per annum from 4th November 2007 to 4th July 2010 \$145.57

[32] Total (\$2,086.82)

[33] Cost to the claimant in the sum of \$2,500.00.



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**Albert Redhead**  
**HIGH COURT JUDGE (AG)**