

SAINT LUCIA

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

SLUHCv2002/0407

BETWEEN:

(1) LAWRENCE ELEUTHERE
(2) DENZIL ELEUTHERE

Claimants

and

LINDA ESNARD

Defendant

Appearances:

Mr. Mark Maragh for the Claimants

Mrs. Petra Jeffrey-Nelson for the Defendant.

2003: July 15
July 17

JUDGMENT

1. HARIPRASHAD-CHARLES J: In this action, Lawrence and Denzil Eleuthere claim damages against Linda Esnard arising out of a motor vehicular accident which occurred on 28th June 2000 about 16.40 hours along the John Compton Highway in the vicinity of Renwick & Company at Vide Bouteille. Ms. Esnard was driving her white Nissan Sunny car in a northward direction along the Highway. As she approached Renwick & Co. she indicated her intention to turn right into the company's car park. To get to the car park, she has to cross two lanes of the highway. This is normally difficult and risky as there are no road signs or traffic lights to assist drivers. She had already cleared the first lane and the front of her vehicle was off the pitch surface of the road when her vehicle was struck by a Toyota Ceres motorcar driven by Denzil Eleuthere which was coming in the opposite direction heading towards Castries.

2. The area where the accident occurred is a three-lane highway and is relatively busy especially at that hour of the day. Traffic in the lane going north was bumper to bumper. Ms. Esnard was in that lane. The two other lanes take traffic to the city of Castries. Traffic was relatively light in those lanes. Mr. Eleuthere was driving in the left outer lane heading in the direction of Castries. The car he was driving is owned by his father, Lawrence Eleuthere and himself but is exclusively used by him.
3. On 25th April 2002, the Eleutheres instituted these proceedings claiming special damages of nearly \$14,000.00. Ms. Esnard then counterclaimed for \$3,050.00 and alleged negligence on the part of Mr. Eleuthere. Ms. Esnard denied negligence and she pleaded that the collision was caused by or contributed by the negligence of Mr. Eleuthere who, among other things was driving too fast in the circumstances and failed to see her in sufficient time to avoid colliding with her.
4. Both vehicles were seriously damaged but repairable. The repairs to Mr. Eleuthere's vehicle were a little over \$10,000.00 in materials and labour and the parts which had to be replaced included left and right head lamps, left and right park lamps, front bumper, bonnet, radiator fan assembly, A.C. fan assembly, left and right fog lamps, left front fender, left front chassis and radiator panel. The repairs to Ms. Esnard's vehicle were \$2,050.00 in materials and labour. There was damage to the left passenger door (front and back), left side running board and right front fender. Damage to the left front door was extensive and the door had to be replaced.
5. The drivers gave opposing evidence of how the accident happened. Mr. Eleuthere alleged that he was driving in the left outer lane going in the direction of Castries. He was traveling at 40 k.p.h. and heading home. His sister, Donna was with him. As he approached the vicinity of Renwick & Company, after passing American Drywall, he noticed a white Nissan Sunny at a halt on the road. He saw the vehicle indicating to turn right so he slowed down. Then suddenly, the vehicle moved into his path attempting to enter the car park of Renwick & Company. Mr. Eleuthere testified that he immediately applied brakes and pulled to the left to avoid a collision. In his attempt to do so, his tyres skidded in the gravel near the edge of the road and collided with Ms. Esnard's vehicle.

6. Ms. Esnard said that she was driving her vehicle north bound in the vicinity of Renwick & Co. On board the vehicle was her 9 years old daughter. She was pregnant at the time of the accident so she took all precautionary measures before she crossed. She stopped in her lane and indicated that she was turning right and verified that there were no oncoming vehicle before she turned into Renwick & Company car park. She turned and Mr. Eleuthere collided with her. She said that her vehicle had already cleared the first lane and the front was off the pitched surface of the road in Renwick's parking area when she felt the impact. Her vehicle ended up in a metal sign in Renwick's compound.
7. The police were called to the scene of the accident and arrived 20 minutes later. P.C. 48 Callistus Charlemagne was the investigating officer and he took measurements in the presence of both parties. He also obtained oral statements from each driver as to how the accident occurred. What they said to Officer Charlemagne is not substantially at variance with their evidence in this court. There is one notable exception. Ms. Esnard told the police "she was turning right, the road appeared to be clear." In this court, she said " I stopped on my left and proper side, indicated my intention to turn right and verified there was no oncoming vehicle before I turned into the Renwick & Company car park."
8. Officer Charlemagne was called as an independent witness. In my opinion, he was forthright, honest and convincing. Neither Counsel cross-examined the officer. His evidence is therefore uncontroverted. He said that both parties agreed to the point of impact which was 4 feet 8 inches off the main road in the driveway leading to the Company. A visit to the locus in quo proved immeasurably helpful. There was no difficulty in establishing the point of impact. It was so obvious that the back of Ms. Esnard's vehicle was in Mr. Eleuthere's lane. It was with little wonder that Ms. Esnard was subsequently prosecuted by the police for the offence of careless driving which is still pending in the Magistrate Court.
9. This is a civil action for negligence wherein the standard of proof is based upon a balance of probabilities. Examining the facts as a whole, I am more attracted to Mr. Eleuthere's testimony which is substantially more plausible than that of Ms. Esnard. It is manifestly clear that Ms. Esnard made an injudicious right turn at a time when it was dangerous to do so and she drove

in a careless manner having regard to the amount of traffic which was on the road on the day. She found herself in Mr. Eleuthere's lane. He attempted to veer left in order to prevent the collision. In doing so, he skidded on some gravel and the collision occurred..

10. I therefore find that Ms. Esnard was negligent on the day in question. In her defence and counterclaim, Ms. Esnard pleaded contributory negligence. In her particulars of negligence, she alleged, among other things, that Mr. Eleuthere drove too fast in the circumstances and that he failed to accord precedence to her car which was already partly off the pitched surface of the road.

11. It is axiomatic that where a claimant is suing a defendant for damages, the first question to be determined is whether the claimant has established liability against the defendant, that is, that he was negligent and that the negligence caused or materially contributed to the damage. The next step, of course, once liability has been established, it is to assess what is the total of the damage that the claimant has suffered as a result of the established negligence. It is only after these two decisions have been made that the next question arises, namely, whether the defendant has established that the claimant by his own negligence, contributed to the damage which he suffered.

12. In his particulars of special damage, Mr. Eleuthere claims for parts, labour and materials, police report, survey report, insurance policy excess and loss of use for 14 days at \$120.00 per day. Mr. Eleuthere was unable to prove the insurance policy excess and it was agreed that loss of use be calculated for 14 days at \$100.00 per day. Therefore, Mr. Eleuthere is entitled to the following unless it is proven that he contributed to the accident.

Parts	\$8,852.00
Labour & Materials	\$2,500.00
Police Report	\$ 200.00
Survey Report	\$ 150.00
<u>Loss of use @ \$100.00 per day for 14 days</u>	<u>\$ 1,400.00</u>
<u>TOTAL</u>	<u>\$13,102.00</u>

13. Ms. Nelson appearing for Ms. Esnard submitted that Mr. Eleuthere is contributory negligent in that he was speeding on the afternoon in question and as a result, he was unable to stop or

slow down or veer right to prevent the accident. The only evidence of speed was given by Mr. Eleuthere himself. He testified that he was traveling at 40 k.p.h. which is authorized by law. Then, there is the evidence of a brake impression of 48 feet. Without more, the brake impression does not lead me to any conclusion, much less to find speed. In any event, even if Mr. Eleuthere was speeding, that in itself cannot ground civil liability. In *Barna v Hudes Merchandising Corporation* (1962) *Crim LR 321, CA*, it was held that to exceed the speed limit, though an offence, was not in itself negligence imposing civil liability.

14. Mrs. Nelson next submitted that Mr. Eleuthere did not take any defensive action in order to avoid the accident. According to her, Mr. Eleuthere could have veered right instead of left. I have considerable sympathy with this submission. There can be no doubt that Ms. Esnard was the creator of her own great misfortune. It was she who set in motion the whole train of events, by carelessly and unnecessarily hurrying onto a busy road at a time when it was unsafe to do so because of approaching traffic. In contrast, Mr. Eleuthere, as a result of Ms. Esnard's negligence, found himself confronted by a quite unexpected emergency. In *Simpson v Peat* (1952) *1 All ER 447*, Lord Goddard, CJ at p. 449 said:

“ Suppose a driver is confronted with a sudden emergency through no fault of his own. In an endeavour to avert a collision he swerves to his right – it is shown that had he swerved to the left the accident would not have happened. That is being wise after the event, and if the driver was, in fact, exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another, and, perhaps, more highly skilled driver would have acted differently.”

15. Similarly, in *Brandon v Osbourne, Garrett & Co.* (1924) *1KB 548*, it was held that where a person is placed in danger by the wrongful act of the defendant, that person is not negligent if he exercises such care as may reasonably be expected of him in the difficult position in which he is so placed. He is not to blame if he does not do quite the right thing in the circumstances.
16. Normally, a claimant would be held to have been contributory negligent if he contributed to the accident. In this case, however, Mr. Eleuthere was placed in danger by the wrongful act of Ms. Esnard. In the agony of the moment, he sought to brace himself by veering left. Had he veered right, there might have been no accident as traffic was light in the right lane. But the law says

that Mr. Eleuthere ought not to be held to be contributory negligent if by misfortune, Ms. Esnard's vehicle was damaged, once the situation of peril had in the first place been created by her negligence.

17. In my judgment, I find that Ms. Esnard was negligent on the day in question and is solely responsible for the accident. There will be judgment for Mr. Eleuthere for \$13,102.00 inclusive of interest at the rate of 6% from 25th April 2002 to the date of payment and costs as agreed of \$3,000.00. The counterclaim is dismissed.

INDRA HARIPRASHAD-CHARLES
High Court Judge