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SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 63 OF 2004

BETWEEN:

O'NEIL GEORGE

Claimant

and

GERMAINE BAYNES

Defendant

Appearances:

Mr. Samuel Commissiong for the Claimant.

Mr. Joseph Delves for the Defendant

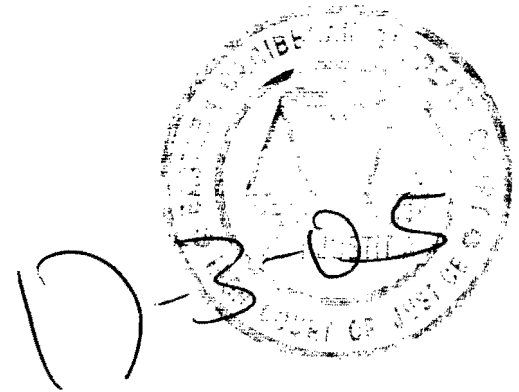
2005: February 8th

2005: March 17th

JUDGMENT

[1] **Bruce-Lyle, J:** On the 7th day of October 2002 at about 2:30 p.m. the claimant O'neil George was travelling through Calliaqua towards Kingstown and then on to Campden Park his ultimate destination. He was to begin work at 3:00 p.m. that afternoon. Before getting to Campden Park his intention was to deliver a set of keys to his wife at the Inland Revenue Office in Kingstown.

[2] The defendant Germaine Baynes at the time the claimant was passing through Calliaqua was reversing out of the open space near the basketball court directly opposite the Calliaqua Police Station. The open space is usually used as a



parking lot for persons attending court upstairs the Calliaqua Police Station or conducting business with the various business establishments in the general vicinity. Germaine Baynes said she reversed across the road and into the northern lane of the road which one would use to drive in the direction of Ratho Mill and Prospect; this would be in the opposite direction to where the claimant was driving from.

[3] In the process of this reversing manoeuvre and the claimant driving past the Police station there was a collision of both vehicles. The claimant said the defendant reversed into his path; he therefore applied his brakes and his vehicle begun sliding. He said notwithstanding the sliding of his vehicle he was able to control his car to the right, where he said there was space to pass.

[4] The defendants case is that while it is true that she had reversed out of the parking lot of the basketball court and out into the main road, she had already straightened out her vehicle and was proceeding towards prospect when the claimant struck her at the Eastern end of the Police Station building. She stated that it was the claimants great speed which was the sole cause of the accident and that after the accident the claimant accepted responsibility for the accident, offered to pay for the damage to the defendants vehicle by instalments, but then subsequently retracted.

[5] The claimant denied accepting responsibility for the accident and making any offers to pay for the damage and insisted that notwithstanding his driving at 50

mph in that area and at that point in time, he was able to control his vehicle, and puts the blame for the accident completely at the defendants doorstep.

- [6] It was agreed by both learned counsel in this matter and the Court, that this trial would involve the issue of liability only, with assessment of damages and costs to be determined by the Learned Master, if any..

ISSUES

- [7] To my mind there are two issues for the Court to determine.
- (1) The duty of care on the part of the driver of a motor vehicle on a public road in St. Vincent and the Grenadines when exiting from a minor road into a major road; or when driving from a place which is not a road into a public road; and
 - (2) The issue of speed as an element of negligence in a motor vehicle accident. Speed, as is generally known, is a traffic offence but not necessarily an element of negligence in a running down action.
- [8] Regulation 26(5)(g) of the Motor Vehicles and Road Traffic Act, Cap. 355 of the Laws of St. Vincent and the Grenadines states as follows:-:"He shall not cross a road or turn on a road or proceed from one road into another road, or drive from a place which is not a road, unless he can do so without obstructing any traffic on the road, and for this purpose he shall be held to be obstructing other traffic if he causes the risk of an accident thereto".

[9] Regulation 26(5)(i) states:- "When turning from one road into another road to the right, he shall drive around the point of intersection of the two roads and shall keep as close as possible to the left side of the road" and Regulation 26 (7)(a) states – "He shall when approaching turnings and cross roads or away from one private road or place to any public road, slow down and make the appropriate traffic signal".

[10] According to Regulation 26(5)(b) a driver is warned not to drive from a minor road or a place which is not a road into a road unless he can do so without obstructing any traffic on the road and for this purpose he shall be held to be obstructing other traffic if he causes the risk of an accident. Was the defendant in breach of this regulation when she reversed across the main road from the parking lot into the northern lane? The defendant owed a duty of care to all motorists on the main road when she was exiting from the parking lot to ensure that it was safe to do so. The defendant in her evidence stated that she had reversed out of the parking lot of the basketball court and out into the main road; she had already straightened out her vehicle and was already proceeding toward Prospect when the collision occurred. The claimant states otherwise, and posits that the collision occurred as the defendant was backing out of the parking lot.

[11] This is an issue of fact which I resolve in favour of the defendant having regard to the preponderance of the evidence adduced, and on a balance of probabilities having regard to all the circumstances of the case. The evidence as I accept it, is this, that the defendant was parked toward the western side of the basketball

court. This was supported by the defendant's witness Simon Crooke. This means that she would have entered the road way towards the western end of the Police Station. The defendant being a driver with about 20 years of experience, and having regard to commonsense and reasonable driving would be expected to reverse straight out of the parking position or even slant her car westward toward Kingstown rather than eastward.

[12] There is no dispute that the accident occurred just at the eastern edge of the Police Station and the defendant having entered the road at the Western edge of the Station, would have meant that the defendant did in fact travel along the main road when the collision occurred. The defendant said when she reversed onto the main road, the road was clear and nothing obstructed her view of the left side of the parking lot which would include the bus stop on the right hand side of the road (or the southern lane) and John Dougan's Shop, (on the northern lane). I disagree with the submissions from Learned Counsel for the claimant when he says the defendant's view of these aforementioned areas would have been blocked. It is my contention that even when parked in the parking lot, one has a clear view of the bus stop and John Dougan's Shop, if one is in a right hand drive vehicle as the defendant. I believe the defendant and her witness when they say the road was clear when the defendant reversed into the main road.

[13] I do not hold that there were any material contradictions in the evidence presented by the defendant and her witness, and hold that the defendant exercised the

requisite duty of care in the circumstances referred to above in this judgment, to all motorists using the road.

[14] I now turn to the second issue of speed. Speed is a traffic offence and not necessarily an indication of negligence. I agree with Learned Counsel for the claimant that the decided cases show that speed per se is not evidence of negligence; and that driving in breach of the speed limit when the road is clear need not be treated as negligent. Counsel for the claimant in support of the above proposition relied on the cases of *Quinn v. Scott* (1965) 2All. E.R 888; *Barna v. Hudes Merchandising Corp.* (1962) Crim. L.R. 321 C.A 106 Sol. Jo. 194; *Hurlock v. Inglis* (1963) 107 Sol. Jo. 1023; *Linda Black v Finishing and Furnishing H.C.A.* SVG. 516 of 2002 and Civil Appeal No. 10 of 2004. While I agree with the learning in all these cases which support the proposition with relation to speed as mentioned earlier, I do not think these cases are relevant in any way to the circumstances of this case.

[15] In this instant case, the claimant said that he was travelling through Calliaqua at about 50 mph at 2:30 p.m. on the day in question. He was in the southern lane heading for Campden Park. He says the road was clear, that is, there were no obstacles in his lane. 50 ft. from the exit of the parking lot, he says he saw the defendant reversing from the parking lot with most of her vehicle in his lane with the front of it over the centre line. He said he knew he could not stop and therefore tried to avoid a collision by swerving right i.e. into the northern lane. As

he did so, he further said the defendant simultaneously moved further into the northern lane and both vehicles collided.

[16] But then that is not all. The claimant admitted in his evidence that he was on his way to Campden Park to start his 3:00 p.m. shift, though at 2:30 p.m. he was still in Calliaqua and still had to pass through the built up and densely populated areas of Villa, Arnos Vale, Sion Hill, Kingstown, New Montrose, Lowmans and Campden Park before he could get to work. In addition he had to make a stop at his wife's workplace at the Inland Revenue Department to deliver a key. The Inland Revenue Department is in the heart of Kingstown and located in a very busy area. I also take judicial notice of the fact that Calliaqua is a busy town, has a Primary School not far from the main road, a Police Station which accommodates the court house upstairs and a playing field; coupled with the fact that it was 2:30 p.m.

[17] I would therefore agree with Learned Counsel for the defendant that the claimant was asking for trouble in motoring through this area at the speed of 50 mph. in a small Suzuki jeep for that matter. And therein lies the answer to the accident. Whilst I agree that speed perse is not indicative of negligence, I would say that in this instant case the speed of 50 mph which the claimant was travelling at in the circumstances noted earlier graduated to negligence on the part of the claimant. To my mind it is inconceivable for anyone to be driving in that area of St. Vincent at 50 mph for the reasons stated earlier.

[18] Flowing from this speed, the claimant could not bring his vehicle safely to a stop thereby losing control of it causing it to slide into the defendants vehicle. The claimant himself admitted that had he been travelling at a slower or more moderate speed he would have been able to go to his left and go around the defendants vehicle. It is my view that clearly the claimant was flying in his vehicle and thereby driving dangerously, leading to the accident. I cannot in any way hold the defendant to have been partly responsible for the collision. She did what any reasonable and prudent driver would have done in the circumstances. I believe her version of events, when she says she had already straightened out her vehicle on the northern lane when the collision occurred.

[19] This brings me to the whole issue of credibility. The claimant admitted calling the defendant at her home after the accident, but suggested that he did not tell her that the accident occurred as he was going to work and was late; that he had just gotten married and that he had to drop of keys for his wife before he went to work. If these matters were not raised with the defendant by the claimant, how did the defendant know of these matters, all of which the claimant admitted to in his cross-examination.

[20] This again leads me not to believe the claimant when he again said he did not tell the defendant that he was wrong and would pay monthly; and that he lost control of his vehicle; and that a bush shed was blocking his view; and that a CWSA compressor was in his way.

[21] Coupled with this I find the claimants answers about whether he was wrong very Riveting as against himself. To my mind he literally nailed himself to the post with that very confusing explanation. In one vein he says he felt he was wrong to be travelling at the speed of 50 mph in that area, but in the next vein he was not wrong for causing the accident. He then said it was this that prompted him to suggest to the defendant that each party bear its own cost of repairing their vehicles. I agree with Learned Counsel for the defendant that the real reason the claimant felt he was wrong was because he knew he was wrong entirely for the accident since –

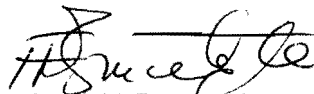
- (1) He was driving too fast in the circumstances;
- (2) He could not bring his car safely to a stop;
- (3) He lost control of his car which slid into the defendants vehicle and most importantly;
- (4) That he would have been able to avoid the accident had he been travelling at a more moderate speed.

[22] There is no rebuttal of the defendants evidence that the claimant did not sound his horn or give any warning to the defendant of his approach thereby cementing my view of the negligent driving of the claimant.

CONCLUSION

[23] Having said all that I have said above in this judgment I hold the defendant to be not liable for the accident. I do not find her to even be liable in part for this accident. I completely reject the claimants claim and dismiss it accordingly and

hold him to be totally liable for the accident. Judgement is hereby entered for the defendant on her counterclaim with damages and costs to be assessed.



Frederick V. Bruce-Lyle
High Court Judge