

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER CIRCUIT

A. D. 1992

Civil Suit No. 135 of 1991

BETWEEN:

DWIGHT WOODS

PLAINTIFF

AND

FRANZ ARCHIBALD

FIRST DEFENDANT

WINGROVE ARCHIBALD

SECOND DEFENDANT

Appearances: Mr. L. Grant of Veira & Grant for the Plaintiff
Messrs. Ferdinand & Kelsick of Kelsick, Wilkin &
Ferdinand for first and second Defendants

[October 28, 29, 1992; November 19, 1992]

J U D G M E N T

VELMA HYLTON, J

THE BACKGROUND

The plaintiff's claim against the first and second defendants arises out of an accident which occurred along the Frigate Bay to Basseterre Road in the Island of Saint Christopher on 17th November, 1990 between the hours of 10:00 and 11:00 p.m.

The plaintiff alleges that the accident caused total damage to Car P3122 which he had bought on 20th August, 1990 from Mr. Ezekiel Sutton by paying Mr. Sutton \$3,000 and taking over Sutton's loan at the Bank of Nova Scotia whereby he the plaintiff would pay a total of \$15,000.00 for the said car.

The plaintiff claims against the first and second defendants because he alleges that at the material time the first defendant was

the servant or agent of his father the second defendant.

THE EVIDENCE

The evidence of the plaintiff is that at or about 10:30 p.m. the 17th November, 1990 he was driving P3122 in a westerly direction from Frigate Bay to Basseterre driving on his left or correct side of the road at about 20 mph when on negotiating a curve in the Earles Morne area he saw the lights of a vehicle approaching very fast. He estimated his distance from the lights on first seeing them at 50 feet away but pointed out a distance agreed by Counsel on both sides to be approximately 50 yards. The lights of the car were swaying or swagging left to right and there was also another car travelling in the same direction and behind the swaying or swagging car. The plaintiff's evidence is further that he took his foot off the gas, that the swaying or swagging car was travelling at 45 - 50 mph - sliding towards his car and the car that was travelling behind the swaying or swagging car "passed" on the left thereof and continued straight whereafter the swaying, swagging car collided with his the plaintiff's car on the plaintiff's left or correct side of the road causing the plaintiff's said car to come to rest in a drain off its left or correct side of the road facing south. The plaintiff's evidence continues that his car having come to rest he tried to open his door but it was jammed. Then the first defendant Franz Archibald came "and was trying to help me out through my door too. He was there saying he was sorry then he ran around other end of car. He opened door and helped my girlfriend out. Her name is Annette Ferdinand. She was occupant of my car. He was also telling her he is sorry and so". The plaintiff's evidence is further that after the impact he discovered that the car that collided with his car and which it is agreed was driven by the first defendant "was facing back to Town (Basseterre)" and this car was on the southern or left side of the roadway as one travels from Frigate Bay to Basseterre. Miss Annette Ferdinand the plaintiff's girlfriend and passenger corroborated the plaintiff in some respects, she received injuries in the crash and asserts that after the collision the windscreen

of the plaintiff's car burst in her face and she did not see anything else. She asserts however that the first defendant assisted her in getting out of P3122 and said to her "I am sorry what happen to you".

The third witness Constable Dale Hughes visited the scene after a report was made by the first defendant (the plaintiff and Miss Ferdinand in the meantime having gone to the hospital). Constable Hughes took the first defendant to locate the second defendant before going to the scene.

The car driven by the first defendant was R1369 and the Constable asserts that upon seeing both cars he enquired and was told by the first defendant that P3122 and R1369 were involved in an accident and that he was driver of R1369. Later the plaintiff returned to the scene and identified himself as driver of P3122.

Constable Hughes recorded a number of measurements with the assistance of the drivers, he said, and he also recorded the explanation given to him by the plaintiff as to the cause of the accident. On the scene the Constable asked the first defendant for an explanation but he said he was in no condition to give an explanation and his father the second defendant on whom he was leaning agreed.

The positions of the cars as seen by the Constable were as related by the plaintiff and not disputed by the first defendant. The measurements taken after the Point of Impact was agreed by both plaintiff and first defendant according to the Constable were:

- (1) Width of road at Point of Impact 21 feet 4 inches.
 - (2) From Point of Impact to north of road 16 feet 3 inches.
 - (3) From rear of P3122 to left rear of R1369 - 3 feet 3 inches.
 - (4) From right rear wheel of R1369 to north side of road 15 feet 4 inches.
 - (5) Length of R1369 - 13 feet 6 inches.
- Width of R1369 - 5 feet 2 inches.
- Length of P3122 - 13 feet 2 inches.
- Width of P3122 - 4 feet 8 inches.

It was agreed that the road surface was dry, that on the north side there was a dirt verge and beyond that the level of the ground dropped to some six or so feet and there was some dirt or gravel on the road surface. Constable Hughes also testified that the first defendant pointed out that he ran some distance off the paved surface of the road on the north side for a distance of about 18 feet and said when he got back on road he went across the road diagonally.

The plaintiff and his witnesses were extensively cross-examined as were the first and second defendants.

The evidence of the first defendant was that on 17th November, 1990 he borrowed R1369 from his father the second defendant to go to Church he having obtained his Driving Licence just one (1) week before 17th November, 1990. At or about 10:40 p.m. he was still using car for his own purpose driving from Basseterre to Frigate Bay at about 30 mph. He saw glare of lights behind him and as the lights behind got closer he saw glare of lights in front. The lights in front were beyond a curve. Vehicle behind came up quickly travelling at 45 - 50 mph proceeded to overtake him and in doing so pulled close to R1369 forcing him the first defendant to pull further left. That car from behind passed on the right of R1369 then pulled suddenly in front of R1369. The first defendant said he "instinctively pulled right slammed my brakes - applied my brakes. I did that in order to avoid collision with car in front of me. Car pulled in approximately a foot to 2 feet in front of me". The first defendant testified further that his car turned around or turned so that its left side was now facing East (Frigate Bay) on his correct or left side of road. The first defendant continued his evidence as follows, "Vehicle with on coming glare now came around curve as my car had left side facing Frigate Bay. That vehicle just kept coming and collided with left side of car I was driving (R1369) turning my car completely around causing my car to now face west towards Town". The first defendant further said the front of plaintiff's car collided with the left side of his car and his car (R1369) ended up on the south side of the road facing Basseterre.

Under cross-examination the first defendant said immediately before the impact R1369 was diagonally across the north side of the road with the front of R1369 probably right on the imaginary centre line but after the impact it ended up on the south side of the road with its front towards Basseterre.

P.3122 was a write off and R1369 was also extensively damaged.

The second defendant supported the first defendant that R1369 was loaned by second to first defendant and that at the time of the impact the first defendant was going about his own business and was not performing any errand for the second defendant or acting on his behalf in any way.

FINDINGS OF FACTS

This evidence as to the loan of R1369 to the first defendant for his own purposes is totally uncontradicted and therefore the second defendant is not liable to the plaintiff for any damage he sustained. Hopkinson v. Lall 1 WJR 382 Judgment for the second Defendant with costs to be taxed or agreed.

How did R1369 come to be on the southern side of the roadway? On the first defendant's version he was overtaken dangerously by the third car, he pulled to his left thereby running off the edge of the road, then the third car pulled sharply in front of him at a distance of 1 to 2 feet whereupon he applied his brakes and swung right. This at a time when he knew that there was an oncoming car as he had previously seen the glare of the lights approaching and he knew the road to be busy (he having in his own words comforted Woods after the impact by telling him the road was busy and someone would be along soon). To continue the first defendant's own account, when his vehicle was at a virtual standstill with the front probably right in the imaginary white line he saw Woods' car about 25 yards away straddling the imaginary white line with its right front wheel about on par with his the first defendant's left front door. In answer to the question, "How did both cars end up on south of road" the first defendant

said "he turned my car around - the momentum of his car coming is going to turn my car".

The plaintiff's evidence on the other hand is that he was at all times travelling on his side of the road and the first defendant's car swayed or swagged or slid into his car so that the left side of the first defendant's car came in contact with the front of his car causing his car P3122 to run off the road completely ending up in the drain on the south side of the road.

With regard to the collision or impact between R1369 and P3122 whether one accepts the evidence of the plaintiff or that of the first defendant as to what side of the first defendant's car No. 3 passed it is clear beyond peradventure and I so find that the primary cause of the impact between R1369 and P3122 was the negligent driving of the first defendant.

I accept the plaintiff's evidence. Miss Ferdinand's evidence is not material to my findings.

I accept Constable Hughes' evidence as to the Point of Impact and the measurements.

Accordingly I find the first defendant 75% to blame for the collision (The driver of the car which overtook the first defendant I find to be 25% to blame for the collision.)

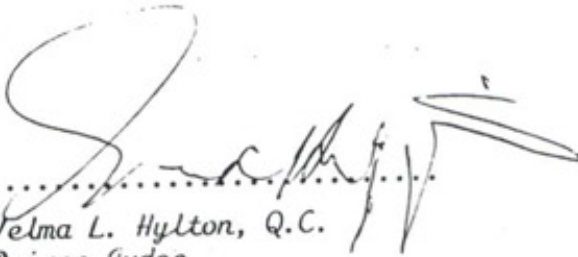
DAMAGES

The plaintiff should have mitigated his loss and sold the wreck for the offer of \$3,000.00. The plaintiff seemed unsure of the principal value of the car as opposed to the principal and interest of the loan he took over from Mr. Sutton hence I accept Mr. Huggins' preaccident valuation of \$12,000.00.

Judgment for the plaintiff in the sum of \$6,000.00 against the first defendant. The first defendant to pay the plaintiff's costs to be taxed or agreed.

Cases referred to in Addresses:

1. *Parkinson v. Liverpool Corpn.* 1950 1 AER 367.
2. *Russell v. Van Galen* 1985 36 WLR 144.
3. *Richley v. Faull* 1965 1 WLR 1454.
4. *Rambarran v. Gurrucharran* 1970 1 AER 749.
5. *Hewitt v. Bonvin* 1939 TLR 43.


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Velma L. Hylton, Q.C.
Puisne Judge