

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2022/0491

BETWEEN:

[1] AVAGAY CUMMINGS (Attorney for Christine Evans)
[2] CHAFRAY CHAFRAL BRIDGEN (Personal Representative of Estate of
Lashauna Bridgen deceased)
Claimants

AND

[1] DIONDRE SAMUEL
Defendant

Appearances:

Mrs. Ruth Ann Richards- Simpson of Salomon and Simpson for the Claimants
Mr. Wendel Alexander for the Defendant

2025: July 24; 25;
August 18; 22; (Submissions)
October 20th

JUDGMENT

[1] **BYER, J.:** A quiet January morning in 2022, when most of the world was still asleep, changed the lives of a family for ever with the death of Lashauna Bridgen (the Deceased).

BACKGROUND:

[2] At around 5 am on the morning of January 2022, the deceased was transported to the Friar's Hill road by her then romantic partner, Camaly Bird for her to commence work as a security guard at a premises along the Friar's Hill road (the road).

- [3] In the vicinity of Jasmine Court, the deceased alighted from the vehicle on the left hand side of the road going towards town. The deceased proceeded to cross the road using the pedestrian crossing to cross the road a few feet away from a bus shed¹
- [4] While the deceased was in the process of crossing the said road, the defendant driving a motor vehicle A2982, in the opposite direction towards work at West Indies Oil, collided with the deceased.
- [5] As a result of her injuries, the deceased passed away that same day.
- [6] The claimants therefore, bringing this claim on behalf of the estate of the deceased claimed the distilled following relief in negligence against the defendant in that:
- a. he drove while under the influence of marijuana
 - b. he drove above the speed limit for the area
 - c. he drove in a manner totally disregarding the existence of a pedestrian crossing
 - d. he drove without due and attention and concern for road users at that hour of the morning
 - e. he failed to keep any proper lookout for the ordinary users of the road and in particular the deceased
 - f. he failed to take any steps or sufficient steps to apply his brakes or otherwise maneuver to avoid the collision
 - g. he failed to take any defensive driving steps when faced with a blinding beam of another vehicle
 - h. he drove a vehicle with tinted windows which diminished his awareness and sensitivity to the pedestrian conditions
 - i. He failed to adequate care for the safety of the deceased.
- [7] The Defendant denied the accident was his fault. He pleaded in the alternative that the deceased caused or contributed to the collision and the resulting injuries and death.
- [8] Indeed in the Amended defence of the defendant, filed on the 26th January 2023 the defendant purported to include a counterclaim seeking damages from the estate of the deceased to his vehicle

¹ This assertion was disputed in cross examination and the court will consider this more in depth shortly in the body of this judgment

resulting from the collision. At the trial of the matter on the 24th July 2025, the defendant quite rightfully in the opinion of this court, withdrew the counterclaim.

[9] However the pleadings of the defendant, he stated that while on his way to work, he encountered a vehicle with its bright beam on and from the back of the vehicle from which the deceased emerged. Being dressed in dark clothes, the defendant pleaded that the deceased then crossed the road and walked into the path of his oncoming vehicle as he was traversing the road well under the speed limit ascribed to the same. He therefore denied all the particulars of negligence and denied the claim in its entirety...

[10] In this court's mind the issues in this case were therefore simple and twofold:

- 1) Whether the Defendant was liable for the accident, or in the alternative
- 2) Whether the deceased caused or contributed to the accident, and if so, what percentage of blame should or could be attributed to her.

ISSUE #1 – Whether the Defendant was liable for the accident?

[11] The evidence in this trial was provided by three witnesses for the claimant and the defendant.

[12] Of the three witnesses for the claimant two were proffered as experts(the police officer and the doctor who attended the deceased the day at the hospital) and the third Camaly Bird, was the former romantic partner of the deceased who had transported the deceased to the area where he saw her severely injured. I will therefore deal with the evidence of the two experts and then deal with the evidence of the third and then the evidence of the defendant.

Evidence of Leon Alves – Police officer

[13] Corporal Alves was the police officer who was responsible for the investigation after the accident.

[14] In his introduction to the court, he told the court that he had been attached to the traffic department for approximately ten years and that investigating accidents was part and parcel of his duties being attached to that department. It must be noted at this juncture that although Corporal Alves was presented as an expert and was appointed as one on the 20th July 2023 but attached to the report the court did not have sight of any qualifications or training that qualified him as an expert in accident management or determinations.

- [15] Be that as it may, Corporal Alves in his examination in chief, indicated the steps taken in his investigation of the matter. He told the court that when he arrive on the scene, what he did and the extent of his investigation in which he came to the conclusion that the defendant had not been paying sufficient attention to the road. That there were no skid marks on the road which indicated a lack of the application of sudden braking by the defendant and that ultimately that the defendant had failed to drive prudently.
- [16] On cross examination this witness reiterated that he had undertaken several courses of limited duration in accident management and accident investigation. He also told the court that he was aware of the calculations that can be carried out to determine speed of a vehicle as opposed to stopping distance and how much time is needed to stop in certain circumstances. He told the court that if a driver is confronted by the bright lights of another oncoming vehicle, different drivers may react differently by either stopping and pulling over or continuing to drive. He also told the court that the measurements in the presence of the accused but he did not take any measurements from skid marks as he saw none when he inspected the scene.
- [17] The defendant has submitted to this court that the evidence of this witness is of limited assistance and should in fact be disregarded in its entirety. This court is not of this opinion. It however does accept that the information conveyed by this witness is of some limited assistance in relation to the identification of the thoroughness of the investigation but I do accept the following on a balance of probabilities from his evidence. However inexperienced this officer may have been, and this court does not find that he was in any event that 1) he found no skid marks which are an indication of the vehicle trying to stop suddenly, 2) that the list of measurements showed from the point of impact shown to him by the defendant that the deceased came to rest some 105 feet away from it. 3) that list of measurements were not disputed in trial and it was clear to the court that the point of impact took place closer to the opposite side of the road from where the deceased had alighted from the vehicle, indeed it was clear that the deceased would have had a mere 8 feet more to traverse to have reached the other side of the road before impact was made.

Evidence of Dr. Subbiah Radhakrishnan

- [18] Dr. Radhakrishnan evidence (the Doctor) was limited to what he saw when the deceased presented at the emergency room after the accident.

- [19] The doctor told the court the injuries he noted on the deceased and the efforts that were made at the hospital to save her life. He documented for the court that the deceased had suffered multiple external injuries and that she died of internal bleeding, hypovolemia and shock.
- [20] However this witness also quite clearly told the court that he did not know about vehicle speed and accident as he was not an expert in that regard and could not give any information about the correlation between high velocity accident and the types of injury that he saw on the deceased.
- [21] On cross examination, this witness maintained that he could not give any definitive answer as to whether the injuries suffered by the deceased were in keeping with a vehicle going at high speed. He however did in answer to court tell the court, that any human being coming into contact with a machine he would expect those injuries.
- [22] I therefore accept that this evidence was of limited assistance to the court on the determination of liability that this court has made in the instant circumstances. However I do say that there can be no doubt that the deceased came into contact with a vehicle and the only vehicle that she came into contact with was that of the defendant.

Evidence of Camaly Bird

- [23] Mr. Bird's evidence focused on what transpired up to the time that the deceased was struck by the defendant's vehicle. From his evidence in chief it was clear that at the time he transported the deceased to her place of work, it was still quite dark and that she wore long black pants and a black polo shirt.
- [24] In the evidence in chief of this witness he also told the court that he had borrowed a vehicle to transport the deceased and that the headlights could not work on dim. The only setting was bright or high beam. When he stopped on Friar's Hill road he stopped on the left hand side of the road facing in the direction of town, opposite to the entrance to the place of work that she was to work that day. He further told the court in his evidence in chief that he dropped her close to a bus shed and a pedestrian crossing that was a "few feet away from the corner where I stopped".
- [25] Mr. Bird further told the court that when the deceased exited the car, he saw no traffic and the deceased used the pedestrian crossing to cross the road as he saw the white stripes in his rear view mirror. As he drove off, he saw the deceased continue to cross the road and he looked for a place

to turn. While he looked for the appropriate place to turn around he said he heard a vehicle coming in the opposite direction which passed him at a high rate of speed and indeed the vehicle he was driving moved from side to side as it passed him.

[26] Once the vehicle had passed him, he then heard a noise and when he turned around the vehicle he saw a vehicle some way away still driving. It was when the vehicle turned around and came back in his direction he then saw the deceased lying in the road.

[27] On cross examination his statement that he gave the police the day of the accident was put to him as to inconsistencies as there was no mention of bus shed or that the deceased had been using the pedestrian crossing and it was this discrepancy in the evidence that the defendant has made heavy weather about and submitted that this destroyed his credibility and should not be relied on. However when he was asked about the discrepancy under vigorous cross examination, he clearly told the court that there was a lot of evidence that he was processing at the time when he gave that statement that he could not grasp all of it as his girlfriend had just died.

[28] Further on cross examination he admitted that the headlights on the vehicle he was driving could not dim manually and that may have prevented him seeing the vehicle coming in the opposite direction. He however did maintain that he saw the deceased having crossed at least three quarters of the road after he had dropped her.

[29] Contrary to the contention of the defendant, I did not find that this witness was not a witness of truth. I found on a balance of probabilities that having lost his girlfriend that any information in the days following the accident would have been less than fulsome at the time and therefore having now mentioned for the first time in a witness statement filed a year later, that the deceased used a pedestrian crossing does not demolish his credibility to make his evidence totally discredited.

[30] Rather this court accepts that having admitted his failings as to where he dropped the deceased (on the opposite side of the road) and that he could not dim his lights, his version of events of what transpired, are in this court's mind, wholly acceptable and believable. Thus, I also accept his evidence, that the defendant's car passed him at a fast speed and that he in fact felt the displacement of air around his vehicle when the vehicle passed as this is borne out by the lack of skid marks in the road.

Defendant's evidence

- [31] The defendant's evidence on examination in chief was contained in fifteen paragraphs.
- [32] The defendant told this court the deceased was 95% across the road when he saw her and that she tried to go back in the direction she had come from when she saw him. That he tried to steer away and that she ran back into the car. He did not say he stopped at that point but that he turned around and then called the emergency services.
- [33] He told the court that he had been driving at 20 mph and that that morning the road was dark, cold and dry with no street lights in the area.
- [34] What must be noted is that nowhere in his evidence did he say the following 1. That the deceased as wearing dark clothing that he could not see her,² 2. That the lights of the other car had blinded him until he was one car length from the deceased³ 3. That he disagreed with the measurements of the police or the extent of such disagreement.⁴ 4. That the defendant took sufficient defensive measures to avoid a collision with the deceased.
- [35] Under lengthy and vigorous cross examination he admitted the following 1. That he knew that in an area where there are bus sheds and pedestrian crossings he should drive slowly and look out for pedestrians 2. That he knew that when he was driving a tinted vehicle along a route where there are pedestrians on a dark morning that he would have to be more careful. 3. That he had smoked marijuana that morning before he left home but he would not say he was impaired 4. That he had a vehicle with a powerful engine and that when he saw the deceased she was crossing the road and that when he saw her she was one car length away from her and that she threw up her hands and looked frightened, 5. That he did not see any other vehicle coming in the opposite direction with the high beam on 6. That he applied brakes after he hit her and had turned around the car and come back to see what happened.

Court's Analysis and Considerations

Issue #1: Whether the Defendant was liable for the accident

² Paragraph 4 of the defence filed 26/1/2023

³ Paragraph 5 of the defence filed 26/1/2023

⁴ Paragraph 12 of the defence filed 26/1/2023

- [36] In addressing its mind to whether the Defendant on the evidence given is solely liable for the accident, it is necessary for this Court to consider as a first consideration to clearly state what behavior amounts to negligence to make an individual liable in law. What is clear in that regard therefore is that not every act of carelessness or negligence is actionable?⁵
- [37] As was explained by Lord Wright in the case of Lochgelly Iron and Coal Co Ltd. v. McMullan⁶ *“in strict legal analysis ‘negligence’ means more than heedless or careless conduct, whether in omission or commission, it properly connotes concepts of **duty, breach and damage** thereby suffered by the person to whom the duty was owing.”*(My emphasis)
- [38] This concept was further distilled by the writers of the text Clerk and Lindsell on Tort⁷ who clearly indicated that a Claimant must prove the following:
- 1) The existence in law of a duty of care; 2) Careless behavior by the Defendant; 3) A causal connection between the Defendant’s careless conduct and the damage; 4) Foreseeability that such conduct would have inflicted on the particular Claimant the particular damage he complains (once (1) to (4) are satisfied, the Defendant is liable in negligence and only then will the next two factors arise); 5) The extent of the responsibility for the damage to be apportioned to the Defendant where others are also held responsible and 6) The monetary estimate of the extent of damage.
- [39] At the further pretrial review conducted by this court before the trial of the matter, the court determined that the court would only be dealing with the issue of liability and hence numbers one (1) to five (5) above are to be determined by this Court.
- [40] There is no doubt in this Court’s mind that the Defendant owed a duty of care to the deceased as a fellow road user. It was the duty of the Defendant to drive his vehicle in such a way so as to not cause injury or damage to other road users, those designated as his “neighbors”.
- [41] The question however, must be, whether he breached such duty.

⁵ Commonwealth Caribbean Tort Gilbert Kodilyne Page 63

⁶ [1934] AC 1 p25

⁷ 18th ed. page 219.

- [42] In considering the totality of the evidence from all parties and in particular the failure of the defendant to have led any evidence on the particulars pleaded in his defence which in this court's mind were the crux of his defence (the dark clothing, the bright lights, the running into the path of the oncoming vehicle) , I accept that on the balance of probabilities that the Defendant had failed to observe the road ahead, failed to keep a proper look out and heed the presence of the deceased in sufficient time to avoid the collision.
- [43] The Defendant admitted he saw the deceased, he said on cross examination that he saw the deceased one car length away. However he also said on cross examination that he saw her as crossed from behind a vehicle. He then also said that when he saw her, she was some 95% crossed the road. What is clear in this court's mind is that the defendant saw the deceased. He saw her on the road crossing and took no action to slow his speed or evade her by trying to pass around her especially when he said there was no traffic or any other vehicle on the road that he had to avoid. I accept that the Defendant was not paying sufficient attention to the road and to those who may have been using it at that time and as such, this inattentiveness resulted in the Defendant being unable to successfully avoid the collision completely.
- [44] As was said in the case of **Page v Richards and Draper**⁸ referred to with acceptance by the court in the case of **Gailius Mathurin and anr v Andrew Paul**⁹ “ it seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment and he is bound to go no faster than will permit if his stopping or **deflecting his course** at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of seeing as for example a fog {a tint} he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look out or if he was keeping the best possible lookout then he was going too fast for the look out to be kept. I really do not see how it can be said that there is no negligence in running intoa man”
- [45] I therefore find that the defendant was negligent in all the circumstances and that the claimants have made out the particulars of negligence. However the defendant has raised the plea of contributory

⁸ 1920 149 LT 263

⁹ SLUHCV2002/0867 at paragraph 29

negligence and this court must consider whether this has any bearing on the finding of negligence made by this court.

[46] Therefore, the second issue must be now addressed.

Issue #2 – Whether the deceased caused or contributed to the accident and what percentage of blame should be attracted to him?

[47] The test to be applied with regard to making a finding of contributory negligence was succinctly stated in the case of **Melvina Frett-Henry v. Tortola Concrete Limited et al**¹⁰ where the Court of Appeal ruled that the primary questions that a Court must ask itself are two-fold. Those are whether the deceased on a balance of probabilities established: i) foreseen harm to themselves and ii) acted as a reasonable prudent person for her or his own safety and guarded themselves against the negligence of the defendant.

[48] Thus contributory negligence does not depend on a breach of duty to the defendant but on a lack of care by the deceased for their own safety¹¹.

[49] On a balance of probabilities, I accept that in the instant case, the deceased had commenced her egress across the road, that having reached more than half way across the road that she was confronted with a vehicle coming at her seemingly out of nowhere, as I accept that at the time that the deceased alighted from the vehicle that there was no other vehicle in the vicinity of the vehicle of Mr. Bird.

[50] Having been confronted with that car, that she may have attempted some evasive action, especially if the car driven by the defendant was only one car length away to the point where the defendant could see the fear on the face of the deceased. In trying to move out of the way of the defendant's vehicle it is pure speculation that the deceased "ran into the path of the defendant's vehicle".

[51] The dearth of details in the examination in chief and the evidence elicited on cross examination in this regard did not assist the court on this point. Neither the defendant give any evidence at all as to the dark clothes being worn that could not see the deceased, that there was any egress of the deceased into the path of the defendant, that she appeared suddenly from the back of the SUV that

¹⁰ Open Court

¹¹ **Alphonso & Ors v Deodat Ramnath** 56 WIR 183 at 188 per Singh JA

was parked on the side of road or that the deceased acted in any way that was unsafe as pleaded as the basis for the contributory negligence by the defendant.

[52] The court therefore finds on a balance of probabilities that the defendant has not proved that there was any act that amounted to contributory negligence on the part of the deceased and refuse to make such any such finding.

[53] **The order of the court is therefore as follows:**

1. The claim for the claimants is granted in its entirety
2. Damages are to be assessed by a Master of the High Court upon application of the Claimants to be filed within 21 days of today's date with leave to the Defendant to file a response 14 days thereafter.
3. The Master of the High Court will therefore list the same for case management
4. Costs to claimants on their successful claim to be determined on the application for assessment of damages.

Nicola Byer
High Court Judge

By the Court

Registrar