

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2020/0390

BETWEEN:

PAULA THOMAS

CLAIMANT

AND

JAVAN AKEZ

DEFENDANT

APPEARANCES:

Mr. Kendrickson Kentish KC of counsel for the Claimant
Mr. Vere Bird III of counsel for the Defendant

2025: May 13;
June 10

DECISION

- [1] **DRYSDALE, J.:** This is a claim for damages resulting from a motor vehicular accident between the parties on 22nd August 2018.

THE PLEADINGS

The Statement of Claim

- [2] The Claimant, alleges on August 22, 2018, she was traveling southbound on Newfield Main Road. She alleges that shortly after passing the former Methodist Manse, the Defendant, driving at excessive speed in the opposite direction (northbound), failed to stay on his side of the road. This led to a collision where

the Defendant's vehicle struck the passenger side of the vehicle, pushing it off the road. The Claimant asserts the collision was solely due to the Defendant's negligence.

- [3] The Claimant attributes the Defendant's negligence to several factors: failing to drive with due care and attention, driving at an excessive speed, failing to stop, swerve, or control the vehicle to avoid the collision, and overall failing to drive in a responsible manner.
- [4] The Claimant asserts that she sustained personal and property damages due to the accident. She claims that immediately after the accident, she was transported to Mount St. John Hospital for examination, which included an MRI and various lab tests, and remained overnight for observation. Her injuries specifically include a thumb injury, necessitating several months of physiotherapy. Medical diagnosis indicates she will experience a lifelong physical impairment to her left thumb. The Claimant has provided particulars of her personal injuries and special damages, alleging the latter to amount to \$97,111.25.

The Defence

- [5] The Defendant filed a Defence on 5th January 2020 denying liability and asserting that the entirety of the accident was because of the negligence of the Claimant.
- [6] The Defendant's version of events attributes the accident entirely to the Claimant veering onto his side of the road. He denies speeding and asserts he was driving responsibly, with due care, and maintaining his lane.

The Reply

- [7] The Claimant filed a reply simply denying the Defendant's assertions and joining issue with the Defendant's defence.

THE EVIDENCE

- [8] The resolution of this case will depend entirely on the evidence presented by the parties themselves, as no independent witnesses testified regarding the crucial issue of liability. While the Defendant initially filed a

witness statement for his passenger Natasha Lewis, she did not attend trial and her witness statement was struck out.

- [9] An expert in the person of Dr. Singh was appointed and provided an expert report concerning the Claimant's physical injuries. However as the trial not bifurcated to separate liability from damages, the court will first prioritize assessing the testimony and evidence presented by the Claimant and Defendant regarding how the accident occurred. The expert report on damages will only be considered after this initial assessment of liability has been made and a determination reached.

The Claimant

- [10] The Claimant, a Counsellor at Cross Roads Rehabilitation Centre, deposed that on August 22, 2018, around 4:37 p.m., she was driving her Toyota Yaris northbound on Newfield Main Road after work when she was involved in a motor vehicle accident with the Defendant. She stated that after cresting a slight hill, she observed a vehicle approaching her. The Defendant's car was traveling at an estimated speed of 80 to 90 miles per hour, drifted into her lane, and collided forcefully with her vehicle.
- [11] Immediately following the collision, she experienced intermittent loss of consciousness and disorientation. She was transported to Mount St. John Medical Centre, admitted overnight, and underwent various diagnostic tests. The next day, she was discharged and transferred to Woods Medical Clinic. Her injuries rendered her immobile, leading to a three-month medical leave. Her vehicle was so extensively damaged that it was deemed to be a constructive loss.
- [12] The Defendant was charged in the Magistrate's Court and found guilty of reckless driving. The Claimant reiterates that the Defendant is the sole cause of the accident due to his reckless driving and disregard for other road users.
- [13] During cross-examination, the Claimant stated she visited the accident scene a few weeks later, and confirmed that it was raining that day. At the scene, she provided the investigating officer with an additional statement about how the accident occurred.

- [14] She admitted observing that the road was already marked upon arrival, though she did not know who made the marks. While inside the police vehicle, she pointed out the accident location without exiting. She admitted that none of the measurements recorded in the police report were taken that day.
- [15] When asked if she was tired or sleepy after work, she denied it. The Claimant maintained she is a slow driver, asserting she was only traveling between 30-40 miles per hour on the tough, windy road. When pressed on how she determined the Defendant's speed was 80-90 miles per hour, she insisted it was because he was speeding.

The Defendant

- [16] The Defendant testified that he owned a Toyota Mark X, registration number A-47081. On Wednesday, August 22, 2018, he was driving north to south on Newfield Main Road with a passenger he had picked up to go to Half Moon Bay for food. The Defendant denied driving fast. He stated that after rounding a bend, he saw the Claimant's vehicle approaching him in his lane. He attempted to pull his vehicle further to the left, then heard a loud "bam" as the vehicles collided. The Defendant recalls nothing from that point onward. He awoke in the hospital to find his family and girlfriend, who then informed him he'd been in an accident.
- [17] A week after the incident, on August 30, 2018, the Defendant recounts visiting the accident scene alongside the investigating officer and the Claimant. Upon arrival, he saw the road already marked with paint, which was presented as the point of impact. While in the investigator's vehicle due to rain, he was told about these marks, but he never agreed these marks represented the actual point of impact.
- [18] Under cross-examination, the Defendant stated he picked up his passenger at Lyons Estate and was driving about 40 miles per hour. He conceded that the Claimant's vehicle was pushed off the road by the accident, but he disputed the assertion that this couldn't happen if he were truly driving at 40 miles per hour. He testified that upon seeing the Claimant's vehicle, he reacted by pulling gently to the left, explaining it was not a sharp pull as there was no space on his side of the road. He denied driving on the wrong side of the road.
- [19] The Defendant admitted that he has been driving for 15 years. However he was unable to definitely state the speed limit for that area instead explaining that there were no signs designating the speed limit. He vehemently denied that he was speeding at the time of the accident.

- [20] The Defendant acknowledged visiting the accident scene later with both the investigating officer and the Claimant, confirming it was raining heavily during that visit. While he provided a statement to the officer, he disputed having pointed out his vehicle's final resting place, asserting instead that the police officer informed him of its position. However, he ultimately accepted the location where his vehicle stopped, as indicated by the police officer.
- [21] Regarding the accident itself, the Defendant stated it occurred in the afternoon. He maintained he had a clear view of the road, with no other cars present, no rain, and no obstructions.
- [22] During re-examination, the Defendant clarified that he never pointed out the point of impact to the investigating officer.

THE ISSUES

- [23] The issues for consideration are as follows:
- a. Was the accident caused by the defendant's negligence?
 - b. Whether the Claimant is entitled to damages and if so the measure of such damages?

ANALYSIS AND THE LAW

Was the accident caused by the Defendant's negligence?

- [24] The Claimant's action is grounded in negligence. To succeed in this tort claim, the Claimant must demonstrate to the Court that the established legal elements of negligence are present. These core components of a claim in negligence are a duty of care owed by the Defendant to the Claimant, a breach of that duty by the Defendant and that the Defendant's breach caused the harm suffered by the Claimant. Lord Atkin laid the groundwork for this very principle in the seminal case of **Donoghue v Stevenson**¹, by enunciating the following:

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer

¹ [1932] AC 562

seems to be — persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

- [25] The Claimant attributes the accident to the Defendant's speeding, alleging that he drifted into her lane and collided with her vehicle. During a site visit after evidence concluded, the Claimant initially identified the accident area as significantly different from the Defendant's. She later conceded the accident occurred further down the road than she first remembered, frankly admitting her memory was foggy after seven years. While the parties didn't agree on the precise point of impact, they did concur on the general area of the collision.
- [26] While a police report was provided, the lack of an investigating officer's witness statement severely undermines its credibility and conclusion of the Defendant being at fault. The report's accuracy is challenged further by the absence of joint measurements taken at the scene, and the fact that parties could only indicate the accident location from inside a police vehicle due to heavy rain upon their return. Compounding this, both parties were hospitalized immediately post-accident, resulting in their statements being non-contemporaneous with the accident or any measurements taken at the time. This very issue was addressed by this court in **Paul v Thomas**², which commented on the reliance on a disputed police report without police evidence, stating:

“A police report is an administrative document and not a legal finding and its findings are not definitive of proof of liability. Therefore, without the accompanying witness statement of the officer who prepared it or the officer being summoned to testify, the report cannot be relied on as a *fait accompli* in determining the cause of the accident. This is because, in the absence of direct testimony, the report remains an untested piece of evidence that lacks the safeguards of cross examination and judicial scrutiny. Without the officer's testimony there is no opportunity to clarify ambiguities, assess the basis of conclusions or determine whether the report was influenced by incomplete or incorrect information...

... Without a witness statement, the report, at best, remains uncorroborated and cannot, on its own, establish the accident's true cause”

² ANUHCv2022/0494

[27] Counsel for the Claimant, perhaps in recognition of the inherent difficulties in this case, and while affirming that the burden of proof remains with the Claimant, draws upon the precedent set in **Ng Chun Pui and Ng Wang King v Lee Chuen Tat and another**³. This case provides that the court may, on a balance of probabilities, infer that the defendant failed to exercise due care. Griffiths L.J. expressed this principle as follows:

“The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant might have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred.

it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established.”

[28] To persuade the court that liability rests squarely with the Defendant, the Claimant highlights several key points challenging his competence and conduct. Despite having ten years of driving experience, the Defendant claimed ignorance of the speed limit in an area he resided in and traversed daily. The Claimant argues that the Defendant's alleged unawareness is not merely an oversight but indicative of a reckless disregard for road regulations and a deliberate choice not to know the speed limit, which is expected of any responsible driver, let alone an experienced one. Furthermore, the Claimant highlights that visibility was good, giving the Defendant ample time to stop. That the final resting place of the Claimant's vehicle, clearly demonstrates the powerful impact of a rapidly moving vehicle. The Claimant concludes that the extent of the impact damage could only be attributed to the Defendant's speeding. I shall address each of these arguments sequentially to determine if an inference of causation can be made.

[29] The claim that the Defendant's ignorance of the speed limit is indicative of recklessness is unpersuasive. Recklessness, in legal terms, denotes a deliberate or conscious indifference to an obvious risk to the safety of others. Although not knowing the speed limit is a breach of regulatory compliance as driver is expected

³ [1988] UKPC 7

to know and obey such rules, it is not automatically proof of a reckless mind-set. A distinction must be drawn between a negligent oversight, which this might be, and a wilful, dangerous disregard for safety, which is what true recklessness entails.

- [30] Visibility is just one of many factors influencing a driver's ability to react appropriately. For example, even with a clear line of sight, a driver might still be unable to stop if they simply lacked the necessary time or distance to react effectively to a developing situation. This becomes particularly relevant given the unreliability of the police report in this case, the lack of any independent and or expert evidence and the lack of agreement between the parties on the precise point of impact, making it difficult to definitively assess the available reaction time and distance.
- [31] The Claimant's argument that her vehicle was pushed several feet off the road is conclusive proof of excessive speed is not convincing. Upon inspecting the accident site, it became clear that the Claimant was traveling down a slight incline at the time of the collision. Furthermore, the terrain to the immediate left of her vehicle, where it ultimately came to rest, also sloped downhill. The car's substantial displacement from the road could be significantly attributed to the downward slope. Following the initial impact, gravity would have accelerated the vehicle's movement downhill rather than speed alone.
- [32] Finally, the proposition that the extent of damage to the vehicle directly proves the Defendant was speeding is inherently flawed. Inferring excessive speed solely from a vehicle being declared a write-off would require a direct evidentiary link between the resulting damage and the velocity of the vehicles, a link absent in this proceeding. Crucially, the court has been presented with no expert evidence detailing vehicle dynamics, no video footage capturing the incident, and the police report's findings are inherently questionable.
- [33] A vehicle is deemed a "write-off" when its repair costs outweigh its monetary value, not necessarily when it sustains damage from a high-speed collision. Given that the vehicle in question was a four-year-old Toyota Yaris, a complete loss can easily occur even from impacts at moderate speeds, contingent on the specific geometry and point of contact of the collision. As such, the severity of damage is not a dependable indicator of vehicle speed in the absence of more concrete, corroborating evidence. To draw an inference of speeding, the court would require independent proof, whether direct observational evidence or expert forensic analysis that supports such a conclusion. The mere fact that the car was written off fails to meet this evidentiary standard. Moreover, it is a recognized engineering principle that contemporary vehicles are designed to crumple and deform to absorb collision energy, meaning substantial visible damage and

subsequent high repair costs can occur even from impacts at relatively low speeds, leading to them being declared total losses.

- [34] Based on the foregoing analysis, it is clear that the Claimant has failed to discharge her burden of proving, on a balance of probabilities, that the Defendant was responsible for the accident. Consequently, her claim for negligence must fail. As the issue of damages was contingent upon a successful outcome on liability, the claim for damages similarly cannot succeed.

ORDER

- [35] In light of the foregoing, it is hereby ordered as follows:
- 1) That the Claim Form and Statement of Claim are hereby dismissed
 - 2) The Claimant shall pay the Defendant Prescribed Costs in accordance with CPR 65.5

Jan Drysdale
High Court Judge

By The Court



Registrar