

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2022/0494

BETWEEN

HELEN PAUL AS REPRESENTATIVE OF THE ESTATE OF KELLY PAUL

CLAIMANT

and

ERICA THOMAS

DEFENDANT

APPEARANCES:

Ms. Kivinee Knight-Edwards and Dericia Browne for the Claimant

Mr. Justin L Simon K.C. for the Defendant

2024: November 25;

2025: February 20.

DECISION

- [1] **DRYSDALE, J.:** The matter before the court involves a motor vehicle accident in which both parties have filed claims, each alleging that the other's negligence was the proximate cause of the collision.

BACKGROUND

- [2] The Claimant commenced these proceedings on July 3, 2017, seeking to recover damages in the amount of \$53,342.24, together with interest and costs, for property damage sustained as a result of a motor vehicle collision with the Defendant.

- [3] While the Claimant initially secured a judgment in default, that judgment was subsequently vacated on grounds of irregularity. The Defendant thereafter filed a defence and counterclaim on July 3, 2019 denying liability for the accident and claiming damages to her vehicle in the amount of \$12,180.00.

The Pleadings

The Claim

- [4] The Claimant's claim avers that on March 10, 2017, Helen Paul, the deceased Claimant's wife and now representative of his estate, was operating a motor truck, registered as C 3254, in a northerly direction along Seaton's Main Road. At the same time, the Defendant, owner of motor vehicle A46506, was driving in a southerly direction on the same road.
- [5] That upon reaching the vicinity of the Saint Stephens Anglican Church the Defendant suddenly and without warning swerved to her right and entered the Claimant's lane thereby causing the collision. The Claimant asserted that the collision resulted in substantial damage to the right front wheel and associated components, as well as to the vehicle's interior due to the deployment of the airbags. Consequently, the Claimant claimed damages for the repair to the vehicle in the sum of \$53,324.24 plus interest and costs as compensation.

The Defence and Counterclaim

- [6] The Defendant denies any liability for the accident and contends that the Claimant's negligence was the sole cause. Specifically, the Defendant asserts that after the Claimant executed a turn onto Seaton's Main Road in the vicinity of St. Stephen's Anglican Church, she swerved to the right, resulting in a collision between the right front wheel of her vehicle and the right side of the Defendant's car. This impact, the Defendant claims, caused her vehicle to be propelled towards a gutter on the left side.
- [7] Subsequent to the collision, she executed a sharp manoeuvre to the right to avoid impact with the gutter, ultimately coming to rest behind the pickup truck on the east side of the road.
- [8] The Defendant further asserts that the Claimant's vehicle contained two occupants, inclusive of the driver. Following the collision, one individual exited the vehicle and proceeded to offer assistance.
- [9] The Defendant repeats the same averments as part of her counterclaim asserting that the Claimant was the sole cause of the collision.

The Reply and Defence to Counterclaim

- [10] The Claimant wholly denies the defence except for admitting that there were two persons in her vehicle, the other passenger being her son.

[11] The Claimant denies any negligence on her part and further denies that her actions either caused or contributed to the subject collision. The Claimant asserts that at all material times she was operating her vehicle within the speed limit and maintaining a proper lookout. She specifically denies swerving into the path of the Defendant's vehicle.

[12] The Claimant also denied the Defendant's particulars of negligence and damages and puts the Defendant to strict proof thereof.

The Evidence

[13] The parties filed witness statements and were afforded the opportunity to cross-examine each other's witnesses during the trial. The Claimant submitted two witness summaries, while the Defendant relied solely on her own testimony. An expert was duly appointed in this matter, furnished a report, and thereafter underwent examination. A summary of the evidence adduced by both parties is presented below.

The Claimant

[14] Helen Paul, testified that she is a cook and owner of a food service business. She is also wife of the deceased and representative of his estate. She deposed that she was driving vehicle C 3254 on Seaton's Main Road near St. Stephen's Anglican Church when it collided with the Defendant's vehicle. Her son, Jamie, was also in the truck.

[15] They were proceeding eastward on Glanville's Main Road and subsequently turned onto Seaton's Main Road, traveling in a northerly direction. While passing the Anglican Church, she observed motor vehicle A46506 approaching from the opposite direction (north to south) at a high rate of speed. She then witnessed the vehicle swerve, resulting in a collision with her vehicle.

[16] At the time of the collision, the vehicle was positioned on its correct side of the roadway. The impact of the collision resulted in the fracture of the axle, rendering the vehicle inoperable and causing it to come to rest at the point of impact. The broken axle also caused a rut in the road surface. Following measurements taken by law enforcement, the vehicle was transported to Charles Auto Body Repairs, where an estimate for repairs in the amount of \$53,342.24 was obtained. The pre-accident value of the vehicle was stated to be \$54,625.00.

[17] The vehicle was covered only by third-party insurance and remained inoperable for two years due to a lack of funds for repairs. This necessitated a weekly rental of a replacement vehicle from Thursday to Sunday, costing \$150.00, to maintain their business.

- [18] Under cross-examination, the witness admitted the vehicle she drove was left-hand drive and that the road had no bumps or potholes.
- [19] The witness testified that after turning onto Seaton's Main Road near the Anglican Church, she saw the Defendant speeding, describing her as "flying over the hill." She stated the Defendant then swerved and hit her vehicle. She denied swerving herself. During further cross-examination, the witness acknowledged that her signed police statement omitted any mention of the Defendant's excessive speed or the swerving manoeuvre, despite having had the opportunity to review the statement prior to signing.
- [20] Following the collision, the airbags deployed, and her son exited the vehicle. She then overheard a conversation between her son and the Defendant, wherein the Defendant inquired as to whether he was the driver of the vehicle. Her son responded in the negative, further noting that the vehicle was a left-hand drive model.
- [21] The witness stated that she saw a mark left on the road by the broken axle. She also observed a blown tire and damage to the right side of the Defendant's vehicle after the accident.

Jamie Paul

- [22] The witness testified that, on the date of the accident, he and his mother, Helen Paul, were traveling in a northerly direction along Seaton's Road, route to their residence. He observed the Defendant's vehicle approaching from the opposite direction at a high rate of speed. As a result, his mother reduced their vehicle's speed and moved it partially off the travelled portion of the road. However, the Defendant's vehicle swerved from its lane and collided with their vehicle, resulting in damage to the front quarter panel and the deployment of the airbags. This impact rendered their vehicle inoperable at the point of collision.
- [23] Following the collision, the Defendant's vehicle proceeded past their disabled vehicle and came to rest some distance beyond. Police officers arrived at the scene, took statements from those involved, and he also observed them conducting measurements.
- [24] During cross-examination, the witness acknowledged that he was 17 years of age at the time of the incident. He also confirmed that the vehicle in question was a left-hand drive model, which would position the driver closer to the edge of the road.
- [25] The witness denied speaking to the Defendant after the collision, stating the Defendant approached him, assuming he was driving. He told her he wasn't, explaining it was a left-hand drive vehicle. He further stated that he was initially unable to exit the vehicle due to the damage sustained in the collision but subsequently managed to force the door open. He confirmed that there was no damage to the driver's side of their vehicle, which allowed his mother to exit without difficulty.

The Defendant's Evidence

- [26] The Defendant testified that, on Friday, March 10, 2017, at approximately 7:19 p.m., she was driving south on Seaton's Main Road in her Toyota Fielder, registered as 46506. As she approached a slight incline in the vicinity of the Anglican Church, she observed a pickup truck approaching from the opposite direction. She continued driving, and upon reaching a deep gutter east of the Church, the Claimant's vehicle swerved to the right, causing her to swerve toward the edge of the higher gutter. In an attempt to avoid driving into the gutter, she swerved to the right, which resulted in her vehicle ending up behind the pickup truck. After regaining control, she steered her vehicle back to the left side of the road.
- [27] After stopping, she exited her vehicle to inspect the damage. She found a burst right front tire, a detached mirror shell, and dents to the right front fender and door. She was able to reattach the mirror shell.
- [28] Thereafter, she was approached by the Claimant's son, who inquired whether she was aware that their vehicle was a left-hand drive model. She questioned the relevance of this information to the accident. She then contacted her husband and the police. Upon their arrival, both parties provided statements regarding the incident and indicated their respective beliefs as to the point of impact. Subsequently, a wrecker was summoned, and her vehicle was towed to her home.
- [29] During cross-examination, the Defendant acknowledged that she had obtained her driver's license approximately six months prior to the accident. She denied any prior involvement in motor vehicle accidents, but admitted to a minor collision with a tree, which resulted in damage to her left side mirror. The Defendant's claim of no prior accidents was challenged with a repair estimate dated a year before the collision. She explained the date was an error and confirmed no accidents in 2016.
- [30] The Defendant acknowledged that both parties had an equal right of way on the 16-foot road, thus each was entitled to utilize 8 feet. She denied that the collision occurred two feet into the Claimant's lane. The Defendant further acknowledged that the distance between the vehicles after they came to a stop was 51 feet. She denied that excessive speed was the reason for the length of time it took her to stop her vehicle.
- [31] She acknowledged the presence of a deep gutter on the left side of the road and that she observed the Claimant move slightly to the left immediately prior to the collision. However, upon being presented with her prior statement to law enforcement, she confirmed that this was indeed the accurate sequence of events.

The Expert

- [32] Stanlie Matthew, an expert, submitted a report assessing the damage to the Claimant's vehicle. The expert's short report determined that the spindle of the Claimant's vehicle was broken in the collision between the parties. The report further noted that, due to a lack of proper maintenance, the parts listed in the repair estimate were worn and in need of replacement. The broken spindle also caused the driveshaft and other suspension components to become dislodged.
- [33] During his examination, the expert confirmed his extensive experience repairing vehicles, including trucks, as a mechanic for 52 years. The expert witness then confirmed that he performed a physical inspection of the damaged vehicle and created photographic documentation of the damage. His observations included damage to the front right bumper, the deployment of the vehicle's airbags, as well as damage to the driveshaft and the steering components.
- [34] When questioned about the cause of the spindle breaking, the expert advice that if the vehicle's left wheel were to leave the paved surface of the road, even momentarily, any subsequent impact on the right side of the vehicle would likely result in damage or breakage.
- [35] When questioned on the likely positioning of the wheel for the damage to have occurred to the Claimant's vehicle the expert stated that in the event of an impact where the wheel was positioned beneath the fender, damage would likely extend to the chassis or wheel box. Conversely, if the wheel was turned outward toward oncoming traffic, the impact would likely result in the wheel fracturing, being forced rearward, detaching, and causing damage to the rear fender, potentially also affecting the rear door.
- [36] The expert confirmed that it is possible for the wheel to detach upon impact with an obstacle, such as a pothole, and that the same outcome could occur if the wheel were to collide with an oncoming vehicle and that this would cause much damage.
- [37] The expert noted the road where the accident occurred was narrower than standard, measuring about 16 feet wide and had a drop off on the left side of the road leading into Seaton's.
- [38] At the end of the trial the court visited the locus with the witnesses and the attending police officer though not called as a witness was present. The court allowed the parties to give a visual representation of how the collision occurred and took notes.

The Issues

- [39] The issues before the court are as follows:
- i. Who is responsible for the collision

- ii. What is the measure of damages that the innocent party is entitled to

Discussion and Disposition

Issue 1 – Who is responsible for the collision?

[40] The parties have each filed claims against the other, mutually attributing fault for the accident. The resolution of this matter hinges on an analysis of the evidence, which will be considered in conjunction with applicable legal principles to determine the prevailing claim.

[41] The duty of care owed by drivers to other road users is broad and demanding, requiring more than simply operating a vehicle. It mandates active engagement in anticipating and mitigating potential hazards. Justice Rawlins (as he then was) articulated this duty in **Cheryl Edwards, Administrator of the Estate of Janique Lewis v. Ethel Mills (No. 186/1998)**, stating:

"Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They must manoeuvre their vehicles to prevent and avoid accidents. They are expected to use and observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper lookout to determine whether it is safe to proceed or overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road."

[42] Before delving into an examination of the evidence, it is important for the court to comment on the lack of a witness statement or summons of the police officer who authored the police accident report and the attempt to simply rely on the report. 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. This is particularly crucial in this case, as the report states the Defendant swerved right to avoid a pothole and, in doing so, collided with the Claimant's vehicle. However, the Claimant testified under oath that no potholes existed. This discrepancy highlights the critical need for proper scrutiny of the report. Without a witness statement, the report, at best, remains uncorroborated and cannot, on its own, establish the accident's true cause.

- [43] The Claimant's account of the accident presents significant inconsistencies between her police statement and her witness summary, filed five years later. In her police statement, she states that on March 10, 2017, at 7:15 pm, she was driving north on Seaton's Main Road near St. Stephen's Anglican Church when she heard a loud crash and her airbags deployed. However, her witness summary alleges that she observed the Defendant speeding towards her, saw the Defendant's vehicle swerve, and then the collision occurred. Regardless of whether the Defendant was speeding (a matter not being decided at this point), these inconsistencies raise questions about the Claimant's awareness of the road conditions and whether she was exercising due care and attention at the time of the accident.
- [44] Furthermore, the fact that the Claimant's pleadings and evidence regarding the damage to her vehicle are inconsistent presents some challenge as to how she alleges the accident occurred. The Claimant's pleadings mention damage to the front right wheel and components (including the axle). In her evidence she clarifies that the axle, (of her right wheel) broke immediately upon impact, rendering her vehicle inoperable. She maintains that she did not swerve or take any evasive action, implying her wheels remained aligned with her vehicle. This directly contradicts the photographic evidence showing the right wheel misaligned and angled outward. Additionally, the expert's testimony suggested that for the damage to the wheel of the Claimant's vehicle to have occurred the wheel would have had to have been outside the fender. The expert explained that in the event of an impact where the wheel was positioned beneath the fender, damage would likely extend to the chassis or wheel well. Conversely, if the wheel was turned outward, angled toward oncoming traffic, the impact would likely result in the wheel fracturing, being forced rearward, detaching, and causing damage to the rear fender, potentially also affecting the rear door. Therefore, the nature of the damage to the Claimant's vehicle is indicative of the right wheel not being in alignment with the vehicle but being turned towards the right.
- [45] The Claimant's account of the incident states that her left tire was on the grassy shoulder while her right tire remained on the paved portion of the road. The expert's examination corroborated the presence of a drop-off on the left side of the road as it descends into Seaton's, which would correspond to the left side of the Claimant's vehicle. This observation is consistent with evidence presented during a site visit (locus), where parties pointed out that the road has since been raised. The Court observed that this alteration resulted in the road surface becoming level with the previously higher grassy shoulder, and also concealed the former gutter on the right-hand side. Given these changes, it's logical to conclude that at the time of the incident, for the Claimant's left tire to have been on the grassy shoulder, she would have had to navigate her vehicle over the drop-off that existed then. The Claimant would then have been acutely aware that her vehicle was not properly positioned on the road. A prudent driver would likely perceive the alteration in traction between the paved road surface and the adjacent grassy shoulder. Furthermore, recognizing the traversal of a drop-off, which would have resulted in an uneven vehicle position, corrective action to fully return the vehicle to the paved surface would be reasonably expected.
- [46] The Claimant's operation of a left-hand drive vehicle on a narrow road introduces another element of potential misjudgement. Drivers of left-hand drive vehicles in right-hand traffic situations may find it more

challenging to accurately gauge the vehicle's position on the right-hand side, particularly on narrow roadways. This could have contributed to the Claimant inadvertently drifting over the centre of the road particularly at night when visibility is reduced. Finally, the observation that her right tire was angled towards the paved road surface strongly indicates that the Claimant was in the process of initiating a turn. This action, combined with the other factors, raises questions about the Claimant's account of the moments leading up to the collision and her level of control over the vehicle.

- [47] The Defendant's testimony regarding the circumstances of the collision raises several concerns. Her assertion that her extended stopping distance was attributable not to excessive speed but rather to a desire to clear the roadway for other vehicles is unpersuasive. The evidence suggests that the Defendant had ample opportunity to bring her vehicle to a stop well before it ultimately came to rest. It is far more probable, given the available evidence that the Defendant's vehicle collided with the Claimant's truck at a considerable rate of speed. This forceful impact is the likely cause of the simultaneous deployment of both airbags within the Claimant's truck. The fact that both airbags deployed in the Claimant's truck, a vehicle demonstrably larger and more substantial than the Defendant's car, further underscores the severity of the impact and lends credence to the theory of a high-speed collision. Following the collision, the Defendant likely required a period of time to regain control of her vehicle, which further explains the extended stopping distance. The significant damage sustained by the Claimant's truck, coupled with the airbag deployment, suggests a forceful impact, which is inconsistent with the Defendant's claim of moderate speed.
- [48] Having carefully considered the presented facts and evidence, I have reached the considered opinion that both the Claimant and the Defendant bear responsibility for the accident. The Claimant's contribution to the accident stems from her position in the middle of the road, which likely impeded the Defendant's ability to safely manoeuvre her vehicle. This positioning suggests a lack of due care on the Claimant's part, as drivers are expected to maintain a proper lane position. Simultaneously, the Defendant's excessive speed contributed significantly to the collision. Driving at an unsafe speed reduced her reaction time and ability to avoid the collision, even with the Claimant's improper positioning. Therefore, I find that both parties' actions were contributing factors to the accident, making them equally at fault.

Damages

- [49] Having determined the issue of liability, I will now proceed to perform an assessment of the damages sustained by each party involved in this matter.
- [50] Although the Claimant's witness statements make reference to losses incurred due to the loss of use of the vehicle, the Claimant's formal legal pleadings submitted to the court are limited solely to claims for property damage. The Claimant has specified the amount of these property damages as totalling \$53,342.24. It is a fundamental legal principle that a Claimant is bound by his/her pleadings. Statements

in witness statements that are not included in the claim form and are unsupported by evidence are inadmissible and will not be considered by the court.

[51] The Claimant's vehicle has been deemed a constructive total loss. This determination is based on the significant repair costs of \$53,342.24, compounded by the limited availability of necessary parts on the island. The vehicle's pre-accident value has been established at \$54,625.00 with a present value of \$6,000.00. Consequently, the Claimant's loss is calculated by subtracting the salvage value of the vehicle from its pre-accident value making the Claimant's vehicle loss the sum \$48,625.00. Given the equal liability the Defendant is responsible for 50% of this amount equating to the sum of \$24,312.50.

[52] While the Claimant's vehicle was a constructive total loss, the Defendant's vehicle sustained less damage, with repairs costing \$4,730.00. Since liability has been apportioned equally between the parties, the Claimant is responsible for 50% of the Defendant's repair costs, amounting to \$2,365.00. Given that the Claimant's damages were greater than the Defendant's, the Defendant's net liability is calculated by subtracting the Defendant's liability from the Claimant's liability, resulting in a sum of \$21,947.50.

Order

- [53] The court therefore orders as follows:
- i. Judgment is entered for the Claimant in the sum of \$21,947.50.
 - ii. The Claimant is awarded prescribed costs on the adjudged sum
 - iii. Interest.

Jan Drysdale

High Court Judge

By The Court



Registrar