

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2021/0086

ZIMRON DASOUZA

Claimant

And

KEYON JACOBS

DLANDO TONEY

Defendants

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mr. Ronald Marks of Counsel for the Applicant

Mrs. Zhing Horne-Edwards for the Defendants

2024: June 21

July 19

September 20

JUDGEMENT

- [1] **THOM J (Ag):** On 6th February 2020, there was a motor vehicle collision on the San Souci public road between the minibus driven by the claimant and a grey car driven by the first defendant and owned by the second defendant. Both vehicles were damaged as a result of the accident.

- [2] The claimant instituted these proceedings alleging that the collision was caused as a result of the negligence of the first defendant and the second defendant was vicariously liable for the actions of the first defendant who acted as his servant or agent. He claims among other things special damages of \$18,892.41, general damages, interest and costs.
- [3] The defendants filed a defense and a counterclaim in which they denied the accident was due to the negligence of the first defendant but alleged it was caused solely by the claimant. In their counterclaim they claim among other things special damages of \$32, 130.00, interest and costs.

ISSUES

- [4] (1) Whether the accident was caused by negligence of the first defendant, and or whether the claimant was contributory negligent.
- (2) If the accident was caused by the negligence of the first defendant, whether the second defendant was vicariously liable for the damage caused to the first defendant's minibus.

EVIDENCE

- [5] The claimant and the defendants gave sworn testimony. Neither party called any witnesses.

ZIMRON DE SOUZA

- [6] In his witness summary, Mr. De Souza stated that on the day of the accident at about 5:20pm he was driving his minibus towards Colonaire when he saw a grey car which was parked at the side of the road suddenly and without warning drove into the path of his vehicle without any sufficient warning and caused the collision. He outlined in detail the special damages and exhibited several receipts. He also claimed loss of earnings of \$10,080.00 for a period of 21 days.
- [7] Under cross-examination he testified that he has been a minibus driver for over 16 years. He drives the Georgetown/Kingstown route. While he agrees that the minibus business is very competitive, he reiterated that he drives his own minibus and he normally makes five (5) trips per day and on occasion three or four trips. He normally ends work at 6pm. He was on his last trip to Georgetown when the accident occurred. He agreed that there is a bend in the road before the area where the collision occurred. He was travelling at about 30-50mph. He was on his left-hand side of the road when the accident occurred and the vehicles slid over to the right hand side of the road. He left the scene after the police took measurements from the point of impact to the other side of the road. He did not see Dlando Toney at the scene of the accident on the day of the accident.

- [8] On being re-examined by Mr. Marks, the claimant testified that his minibus was manufactured in Japan and the speedometer measures speed in kilometers. When he testified under-cross-examination that he was driving at 40-50mph, he meant 40-50kph.

Keyon Jacobs

- [9] The first defendant in his witness summary stated that he is a self-employed farmer. Around 3rd February 2020 he rented motor vehicle R696 from Dlando Toney the owner of the vehicle.
- [10] On 6th February the day of the accident he was driving the vehicle towards Kingstown. He stopped in San Souci and parked the vehicle outside a shop where he went to purchase something to eat. At around 5pm, he was leaving for his home in San Souci. To do so he was required to drive across the right lane of the road to the left lane. He ensured both sides of the road were clear before making the turn. He was in the right lane of the road when the claimant's vehicle collided with the car and forced it into the gutter on the left side of the road. He observed the vehicle was extensively damaged.
- [11] At the trial he testified that paragraph 5 of his summary was not what occurred. He testified that he had already occupied the left-hand side of the lane where the accident occurred. He was on his left side of the road when Mr. De Souza's vehicle pushed his vehicle into the gutter.
- [12] Under cross-examination he testified that his brother owns the shop. He was getting something to eat. It was not a birthday party. He was parked facing Georgetown. He turned the vehicle to his left. The path was clear before he moved to his right. The vehicle was now facing towards Kingstown when the front of the minibus van collided with the car by the right door. He was in his lane when the collision occurred.

Dlando Toney

- [13] Mr. Toney is a Police Officer. In his witness statement he stated that he is the owner of a car rental business called "Top Class Rental" and the registered owner of motor vehicle R6963 which is used in the rental business. He rented the vehicle to Keyon Jacobs on 3rd February 2020 at a daily rate of \$130.00.
- [14] On 6th February 2020, he was informed by Keyon Jacobs that the vehicle was in a motor vehicle accident. He went to the scene and took several pictures. His vehicle was extensively damaged. He incurred expense because of the accident totaling \$30,000.
- [15] Under cross-examination he testified that the vehicle is insured as a rental vehicle. The damage was to the right fender and bumper. He accepted that he was sued by one Mr. Baptiste who was a passenger in the claimant's van.

- [16] In view of the evidence in relation to the liability of the second defendant, I will deal with the liability of the second defendant.

Vicarious liability

- [17] The claimant in his claim alleged that the second defendant was vicariously liable for the negligence of Keyon Jacobs. Learned counsel contended that the evidence does not support a finding of vicarious liability. The evidence shows Keyon Jacobs was driving the vehicle because of a rental agreement. It was a customer-owner relationship. In the circumstances the second defendant was not vicariously liable. Learned counsel referred to the Privy Council decision in **Rambarran v Gurrucharran (1970) 15 WIR**. Mr. Marks conceded. I agree with the submission of Mrs. Horne Edwards. The issue is one of fact. The evidence of a rental arrangement was uncontradicted. Even if there was familial relationship, as was suggested, that in itself is not sufficient to establish vicarious liability. This was also the situation in **Rambarran v Gurrucharran** where a son who had his father's general permission to use his father's car was involved in a motor vehicle accident while driving his father's (the appellant) car and which resulted in damage and loss to the respondent. It was an accepted fact that although the son of the owner was not driving the car as the owner's agent or servant or for some purpose of the appellant. The Privy Council approved the principles derived from the decision of the Court of Appeal in **Hewitt v Bonvin (1940) 1KB 188** as follows:

- " (1) The onus of proof of agency rests on the party who alleges it.
- (2) An inference can be drawn from ownership that the driver was the servant or agent of the owner, or in other words, that this fact is some evidence fit to go to a jury. This inference may be drawn in the absence of all other evidence bearing on the issue, or if such other evidence as there is fails to counterclaim it.
- (3) It must be established by the plaintiff, if he is to make the owner liable, that the driver was driving the car as the servant or agent of the owner and not merely for the driver's own benefit and on his own concerns."

- [18] The claimant having conceded that the claim against the 2nd defendant should be dismissed at the stage of closing submissions, the second defendant is entitled to his full costs.

SUBMISSIONSON NEGLIGENCE

- [19] Learned Counsel Mr. Marks submits that the driver of a motor vehicle has a duty to exercise due care when driving on the road.
- [20] This duty was summarized by Rawlins J (as he then was) in **Cheryl Edwards Administrator for the Estate of Jenique Lewis v Ethel Mills** No.168 ANVHC as follows:

"Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected to maneuver their vehicle in order 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 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 look out so as to determine whether it is safe to proceed or to 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."

- [21] Mr. Marks further submitted that the first defendant made no mention in his evidence that the claimant was driving at an excessive speed.

- [22] The second defendant was not present when the accident occurred and therefore could not testify about the speed at which Zimron Da Souza was driving. The Court should accept Zimron Da Souza's testimony that he was driving at 40-50kph when the accident occurred. In any event, speed alone is not conclusive evidence of negligence. There was no evidence of the conditions that made the speed dangerous. Rather, the evidence showed that the first defendant made a dangerous maneuver when he attempted to make a U turn.

- [23] Mrs. Home-Edwards also relied on the decision in **Cheryl Edwards** and submitted that at common law all road users have a duty to exercise care and skill when using the road.

- [24] Learned Counsel acknowledged that excessive speed on its own is not necessarily evidence of negligence. However, in certain circumstances it is conclusive of negligence. Learned Counsel urged the court to accept the evidence of the claimant under cross-examination that he was driving at 40-50mph and to also accept the first defendant's evidence that he had completed the turn and was on the left side of the road facing Kingstown when the accident occurred. This is supported by the measurement of the Police report.

- [25] Learned Counsel further urged the Court to accept the evidence of the second defendant that on the day of the accident, the Claimant told him that he was speeding and if he had remained on his side, his van would have overturned. Based on the evidence Learned Counsel urged the court to find that the claimant's negligent driving caused the accident.

Discussion

- [26] Having seen and heard the witnesses and having reviewed the witness statements and the oral testimony, I do not find Keyon Jacobs to be a credible witness. His evidence was not consistent. When he spoke to the Police immediately after the accident he told the police that he was parked on the left side of the road facing Colonaire, opposite Letteen's shop. He was about to move off and turn into the road leading to Diamond Village when motor vehicle H 3149 collided with his motor vehicle pushing it into the drain.

- [27] Paragraphs 3-5 of his witness summary states:

"3. On the 6th day of February 2020, I was driving R6963 towards the direction of Kingstown. When I got to the area of San Souci, I parked the said vehicle outside a

shop located on the right-hand side of the road. I then exited the vehicle and entered the shop to purchase something to eat.

4. Around 5:00pm that same day I returned to the area where R 6963 was across the right lane of the road and onto the left lane. I therefore ensured both sides of the road were clear before carefully driving R 6963 across the road onto the left lane leading towards Kingstown.

5. I was already occupying the right lane of the road when Zimron Da Souza, the driver of motor vehicle bearing registration number H 3149, drove the said vehicle into R 6963, forcing R 6963 into the gutter which is located on the left side of the road."

- [28] At the trial Keyon Jacobs stated that the statement in paragraph 5 of his witness summary is not accurate. The correct sequence is that he drove from the right side of the road facing Kingstown to the left side of the road facing Kingstown. It was when he was already on the left side of the road that the accident occurred.
- [29] I do not believe his testimony at trial. On the day of the accident when he was still at the scene, the sequence was fresh in his mind. I believe he told the police exactly what occurred. His statement to the Police and his witness summary in particular paragraph 5 is consistent.
- [30] I also believe the testimony of the claimant. His testimony was not contradicted under cross-examination. I believe Keyon Jacobs was in the process of crossing from the right side of the road facing Kingstown to the left side. He was seeking to conduct this maneuver in an area of the road where there was a bend in the road. While the measurement in the Police shows the point of impact on the right side of the road, I prefer the evidence of both the Keyon Jacobs and Zimron De Souza on the day of the incident at the scene when the Police visited the scene and which was recorded by the Police. Both drivers were very clear that the accident occurred on the left side of the road facing Colonaire which is the same as the right side of the road facing Kingstown.
- [31] Further the accident occurred around 5:30pm, a time when most persons who reside on the windward side of St. Vincent would be returning home from work in the capital Kingstown, and consequently the public road would have a lot of vehicular traffic.
- [32] It is not disputed that the speed limit in the area where the accident occurred is 30mph. The first defendant did not give any evidence in relation to the speed at which the claimant was driving. The second defendant was not present when the accident occurred. The only evidence of the speed at which the claimant was driving is the evidence of the claimant. Under cross-examination he testified he was driving at 40-50mph. Under re-examination he clarified that his speedometer is in kilometres, and he was driving at 40-50 kilometres per hour. I accept his explanation. A vast majority of the vehicles in St Vincent have speedometers in kilometres.

- [33] Having carefully examined all of the evidence including the Police Report and the photographs, I am satisfied that the accident occurred in the manner in which both the claimant and the first defendant described it to the Police at the scene of the accident. The defendant was attempting to go from one side of the road to the other side. He was still on the right side when the collision occurred. I find the first defendant to be solely responsible for the accident. Consequently, the counterclaim of the defendants cannot succeed.

Damages

- [34] The claimant claimed damages in the sum of \$18,892.41. The claimant in addition to his oral testimony provided several receipts of the expenses incurred. I also accept his evidence in relation to his loss of earnings for a period of twenty-one days which I find to be a reasonable period to effect repairs to his vehicle.

Conclusion

- [35] For the reasons given above, I find the claimant's claim against the 1st defendant succeeds. The 1st defendant is liable to the claimant in damages. The claim against the second defendant is dismissed. The counterclaim is also dismissed.

Order

- [36] It is hereby ordered;
- (1) The claim against the 2nd defendant is dismissed. The parties agreed that the claimant shall pay the defendant's costs in the sum of EC\$7,500.00.
 - (2) Judgment is entered for the claimant against the 1st defendant.
 - (3) The 1st defendant shall pay the claimant damages in the sum of EC\$18,892.41 with interest at a rate of 6% per annum from the date of this judgment until payment.
 - (4) The counterclaim brought by the 1st and 2nd defendants is dismissed. The parties agreed that, the 1st and 2nd named Defendant will pay the sum of \$15,000 in cost to the claimant in relation to the claim and counterclaim.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar