

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0195

BETWEEN:

ASHTON GRIFFITH

Claimant

and

HAZEL ANN PURCELL

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Gerissa Rodney for the Claimant

Mr. Benjamin Hood for the Defendant

2024: October 8th; 10th

ORAL DECISION

- [1] **ACTIE, J.:** This case involves the determination of liability for a motor vehicular accident on 21st April 2021 along the St. Paul's Main Road.

Claimant's Case

- [2] By amended claim form filed on 15th July 2022, the claimant claims damages to his motor vehicle and damages for personal injury caused by the negligent driving of the defendant.
- [3] The claimant avers that he was driving his vehicle bearing registration number PV255 along the St. Paul's Main Road when the defendant negligently drove her motor vehicle bearing registration number PP428 and collided with the claimant's vehicle.

- [4] The particulars of negligence of the defendant as claimed are:
- (1) Driving on the wrong side of the road;
 - (2) Driving at a speed which was excessive in the circumstances;
 - (3) Failing to keep any or any proper look-out, or to have any or any sufficient regard for other traffic on the road.
 - (4) Failure to stop, to slow down, to swerve or in any other way so to manage or control the motor vehicle as to avoid collision.
- [5] The claimant's vehicle suffered damage to the two right doors, back bumper, right front and back fender, left back fender and back door.

Defendant's Case

- [6] The defendant denies the claimant's version of events. The defendant avers that she was driving from work at about 7:30 pm heading in the direction of the St. Paul's Police Station at approximately 25 miles per hour on the left side of the road. The defendant said that she saw the claimant's vehicle's light at the corner before the St. Paul's police station coming towards her at a very fast pace, then noticed the claimant's vehicle lose control, swing to the defendant's side and collide with the vehicle right wheel. The defendant avers that the claimant's vehicle hooked the wheel of her vehicle and continued to spin off out of control.
- [7] The defendant counterclaims that the accident was due to the claimant's negligence and particularize the claimant's negligence as: driving too fast in the circumstances; driving on the wrong side of the road at the time of the collision; failing to keep a proper look out; and failing to stop, slow down, to swerve or in any way to manage to avoid the collision.
- [8] The defendant contends in the alternative that the negligence of the claimant contributed to the collision. The defendant avers that she sustained loss and damage to the vehicle in the amount of \$22,446.39.
- [9] The damage to the defendant's vehicle was to the front bumper lower and upper, front bumper brackets; right fender, fender guard, clips and MLDG; right control

arm, right spindle and bearing; right shock and right shock M/T; steering rack; engine cross member; cross member bolt; and right apron.

Legal Analysis

Whether the accident was caused by the negligence of the claimant or the defendant

- [10] To establish negligence, a claimant has to prove the existence of a duty of care, that the defendant breached that duty, and that the claimant suffered injury, loss or damage as a result of the said breach.
- [11] All road users owe a duty of care to fellow road users to drive with the degree of skill and care to be expected of a competent and experienced driver¹. In the case of **Bernadette Sampson v Samuel Charles & Anr**², Ellis J stated the following:
- “A driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users including other drivers, cyclists and pedestrians. In order to fulfil this duty he should keep a proper lookout, observe traffic rules and signals and avoid excessive speed.”³
- [12] The claimant states that at the time of the accident, he noticed the defendant’s vehicle approaching from the opposite direction, driving on the wrong side of the road. The claimant states that in order to avoid a head on collision, he pulled his vehicle to the left of the road, but there was still impact with the defendant’s vehicle causing damage to the two right doors and right front fender. The claimant avers that due to the impact, his vehicle began to spin and hit a wall, causing damage to the left back fender and left back door.
- [13] The defendant avers that at the time of the accident, she saw a light coming towards her at a very fast pace, then noticed the claimant’s vehicle lost control, swing to her side of the road and collide with the right wheel of her vehicle.
- [14] The court is of the view that the evidence and the extent of the damage to the right front side of the defendant’s vehicle supports the claimant’s version of facts.

¹ Nettleship v Weston (1971) 3 All ER

² GDAHCV2009/0552

³ Para 44

The impartial evidence before the court suggests that the defendant was driving on the wrong side of the road. The Accident Report by Police Constable Neron Glasson dated 21st April 2021 placed the position of the defendant's vehicle closer to the right of the road rather than to the left of the road. The defendant's vehicle's right front wheel and right rear wheel are noted to be 5 feet 5 inches, and 5 feet respectively away from the right of the road. This is compared to the defendant's vehicle's left front wheel and left rear wheel being 6 feet 8 inches and 6 feet three inches respectively away from the left of the road.

[15] Ms. Jacintha Stephen, witness for the claimant states that the claimant manoeuvred his vehicle towards the left of the road to avoid the accident. The defendant on the other hand did not present any additional evidence on the occurrence of the accident besides her own testimony.

[16] In **Clarence Martin et al v Edris George**⁴ Lanns J (Ag.), relied on dicta of Rawlins J in Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills⁵ wherein it was stated with respect to drivers of motor vehicles. Drivers are expected to manoeuvre their vehicles in order to prevent and avoid accidents⁶.

[17] The defendant admitted at trial that she did not attempt to stop, apply brakes or swerve the vehicle in any way to avoid the collision. Additionally, the defendant gave conflicting evidence at trial of the events leading to the accident. The defendant in pleadings states that she was driving from work, however during cross examination she stated that she was off from work, and on another occasion stated that she was driving from a friend's house.

[18] The court having heard the evidence of the parties finds that the claimant has proved his case against the defendant.

[19] Counsel for the defendant, in closing submissions, argued that the claimant was contributorily negligent due to an alleged inebriation. Counsel stated that the claimant came from a funeral's happy hour, and that it was the claimant's

⁴ ANUHCv2013/0206

⁵ Claim No. 168 of 1998

⁶ ANUHCv2013/0206 Clarence Martin et al v Edris George

evidence by way of medical report that he would drink occasionally. The allegation of the claimant operating a vehicle under the influence of alcohol was not raised in the defendant's pleadings. It is the law that contributory negligence should be specifically pleaded⁷, however there are no particulars of contributory negligence as alluded by the defendant.

- [20] In any event, the court takes into consideration that both parties failed to take evasive action. The claimant states that he did not apply brakes or attempt to slow down, although he noticed the defendant's vehicle driving within his lane of traffic. In the circumstances, the court finds that the claimant was also negligent to the proportion of 10%.

Special Damages

- [21] It is settled law that special damages must be specifically pleaded and proved. The claimant's particulars of special damages claimed are:

- | | |
|--|-------------|
| (1) Cost of medical report | \$150.00 |
| (2) Cost of x-rays | 80.00 |
| (3) Cost of physician visits | 300.00 |
| (4) Loss of earnings for two months | 6,000.00 |
| (5) Cost of replacement of parts and repairs | \$7,925.00; |

- [22] However, the claimant presented a receipt from Osbert Bishop for auto body repair in the sum of \$3,900.00, as well as a receipt from Denis Thomas for repair for mechanical damage in the sum of \$4,125.00 and a receipt for a medical report in the sum of \$100.00. Accordingly, the court awards the sum of \$8,125.00 in special damages.

Loss of Earnings

- [23] The claimant claims \$6,000.00 for loss of earnings. The claimant does not provide the court with any evidence in support of his assertions of his earnings or his occupation. Nevertheless, it is the evidence of Dr. Byron Calliste that the claimant suffered a minor injury which would have resolved within six weeks.

⁷ GDAHCVAP2012/0019 Margaret Blackburn v James Bristol

- [24] There is a lack of evidence on which an award of loss of earnings is supported. The claimant further fails to provide an indication as to how long he was unable to earn. However, given the evidence of Dr. Calliste, and considering the minor nature of the claimant's injury, the court will award the claimant a nominal sum of \$500.00.

Loss of Use

- [25] In **Tropical Builders v Gloria Thomas**⁸, Blenman J. (as she then was) addressing the issue of loss of use held:

"It is the law that the owner of a motor car that is damaged... is entitled to recover for being deprived of its use during the period that he was without a motor car. The general principle is that the court seeks to compensate the claimant for the use which, but for the wrong, he would have had of the motor car."

- [26] The claimant in pleadings claimed \$375.00 for total loss of use of his vehicle for four days however he claims the sum of \$3,000.00 for loss of use for one month in his witness statement. It is an elementary rule of pleadings that a party is bound by his pleadings unless he is allowed to amend them⁹. A party's attempt to amend pleadings through a witness statement is untenable. The court is of the view that the sum of \$375.00 pleaded as loss of use for four days is reasonable and accordingly grants the claimant same.

General Damages

- [27] The principles which govern awards for personal injuries are laid down in **Cornilliac v St. Louis**¹⁰ and **Wells v Wells**¹¹ are well known.

- [28] The claimant's injuries are particularized in a medical report of Dr. Byron Calliste when the doctor examined the claimant on 11th May 2021. It was observed that the claimant suffered a soft tissue injury to his chest wall, with tenderness in right and left lower chest wall. Dr. Calliste in an updated medical report dated 18th

⁸ ANUHCv228/2004

⁹ Yorkshire Provident Life Assurance Co. v Gilbert and Rivington (1895) 2 QB 148, 152 CA

¹⁰ 7 WIR 491

¹¹ [1998] 3 All ER 481

August 2023, noted that the physical examination of the claimant was unremarkable.

[29] Although the claimant complained in evidence of noticing blood while spitting and coughing this is not supported in the evidence of the medical expert. Moreover, Dr. Calliste in cross examination at trial states that the injuries suffered by the claimant would not have been so serious as to cause the coughing or spitting of blood.

[30] Counsel for the claimant suggests authorities which refer to neck and spinal injuries. These authorities are not helpful, as the neck and spinal injuries in the cases relied on were notably more serious injuries than the claimant's chest injury.

[31] In **Rosabel Chambers et al v Gooding**¹², the claimant sustained soft tissue injuries and a laceration as a result of the negligence of the defendant. There was no permanent defect, no loss of amenities or impairment of pecuniary prospects. She was awarded \$6,000.00.

[32] The circumstances of this case demonstrate minimal injury suffered by the claimant, from which he has fully recovered. There has been no permanent defect, no loss of amenities or impairment of pecuniary prospects. Counsel for the defendant suggests an award \$5,000.00 as general damages, however the court is of the view that an award in the sum of \$6000.00 in keeping with the award in the **Gooding's** case is an appropriate sum.

Conclusion

[33] In the above circumstances, it is ordered as follows:

- (i) The defendant's defence and counterclaim are dismissed, and judgment is entered in favour of the claimant.
- (ii) The defendant is found to be liable for 90% of the damage caused to the claimant.

¹² St. Vincent and the Grenadines Suit No. 113 of 1991 (delivered 30th March 1998)

- (iii) The defendant shall pay the claimant special damages in the sum of \$8100 ($\$8,125.00 + \$500.00 + \$375.00 = 9000 - 900 = \8100) with interest at the rate of 3% per annum from the date of the accident until judgment and at the rate of 6% from the date of judgment until payment in full.
- (iv) The defendant shall pay the claimant general damages for pain and suffering in the sum of \$5400.00 ($6,000.00 - 600 = 5400.00$) with interest at the rate of 6 % per annum from the date of judgment until payment in full.
- (v) The defendant shall pay the claimant prescribed costs in the sum of \$2700.00 on the claim and the sum of \$4489.27 on the counterclaim making a total sum of \$7189.27 to be paid within sixty (60) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar