

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

NEVHCV2021/0192

BETWEEN:

ANALDO BROWNE

v

**KEITH LAWRENCE
SUSAN LAWRENCE**

And

ROUDGE CADOGAN

Appearances:

Ms. Midge Morton and Mr. Errol Williams for the Claimant
Mrs. Kimberly Hanley-Bello for the Defendant
Mr. Patrice Nisbett for the Ancillary Defendant

2023: November 2, 6, 24
2024: April 5

JUDGMENT

[1] Thompson, Jr. J: The Claimant's claim succeeds for the following reasons and to the following extent.

[2] It is trite law that the burden lay on the Claimant to prove on a balance of probabilities that the defendant's driving fell below the requisite legal standard. Where they differ is on the application of that test to this case. The following facts are not disputed by the parties.

Agreed Facts:

[3] In the early hours of the morning of September 18, 2021, there were two collisions in quick succession on the main road that runs parallel to the fairways on holes 5 and 6 of the Four Seasons golf course in Nevis.

- [4] In the first collision, a pink and black Toyota Altezza motor car bearing registration number PA-3159 (“the pink car”) was traveling west, in the vicinity of Belmont Gardens when it collided with a column on the right side of the road. The pink car was being driven by Mr. Browne, the Claimant, in these proceedings.
- [5] A Mr. Roudge Cadogan was on the road near the pink car at the time of the collision. Mr. Cadogan was the driver of a white bus bearing registration number HA-498 (“the white bus”) and parked his bus, with the lights on, parallel to where the pink car had come rest, with both vehicles facing the direction of traffic traveling in the opposite direction.
- [6] Shortly after Mr. Cadogan had come out of his bus to render assistance to the Claimant, a red motor jeep bearing registration number PB-4563 (“the red jeep”) driven by Mr. Lawrence (the Defendant and Mrs. Lawrence as passenger) collided with the pink car which in turn allegedly collided with the white bus.
- [7] Everyone agreed that the Claimant’s vehicle was stationary at the time of the alleged collision with the Defendant’s vehicle. Everyone also agreed that neither the pink car nor the white bus had on their hazard lights. Both the pink car and red jeep were written off.
- [8] So much for the agreed facts.

The case for Mr. Browne

- [9] Mr. Browne’s case is that shortly before the collision he was heading west in the vicinity of Belmont Gardens, heading to Newcastle when he lost control of the pink car and collided into a control column on the left side of the road. Mr. Cadogan who was following closely on Mr. Browne’s heels, avoided colliding with the pink car and came to a stop. Mr. Cadogan came out of the white bus and went to check on Mr. Browne who was still seated in the pink car. Mr. Browne confirmed that he was fine and according to him, he tried to get out of the pink car by exiting through the left passenger side window of the pink car.
- [10] It was Mr. Browne’s case that while he was exiting his car, the red jeep, which was traveling in the opposite direction, collided with the pink car and caused his right leg to be pinned against the white bus. That resulted in a crushing injury to Mr. Browne’s hip and thigh which is the thrust of his claim for damages for pain and suffering and loss of amenities.
- [11] The foregoing is a succinct summary of Mr. Browne’s case at trial.

The case for Mr. Lawrence

[12] Mr. Lawrence's case is that he was driving the red jeep at about 30-35 mph when he rounded the first corner after the entrance to the Four Seasons Resort. As he came around that gentle bend in the road he saw the lights of a vehicle in the distance. He presumed that the vehicle was in motion but as he continued to drive, he realized that the vehicle was not in motion.

[13] According to him, that vehicle's bright lights were on, and those bright lights made it difficult for him to see. As a result, he slowed his speed. Shortly thereafter he saw the pink car in the road and pressed his brakes to avoid colliding with it. It was his evidence that his vehicle skidded and then collided into the pink car. After the collision he saw a person that he now knows was Mr. Browne emerge from the rear side of the side of the vehicle and limp to the side of the road complaining of pain.

[14] Mr. Lawrence and Mrs. Lawrence gave evidence at trial and were of the view that Mr. Lawrence drove in the way that a reasonable road user would have done. In their view, Mr. Browne was at fault for having caused the collision and they had filed a counter claim seeking damages against Mr. Browne and Mr. Cadogan as ancillary defendant.

[15] In support of their position, the Lawrence's called Mr. Vaughn Anslyn as their witness of fact. According to Mr. Anslyn he had a ring side view of the entire accident since shortly before the accident himself, Mr. Cadogan and Mr. Browne were all driving quickly out of Charlestown on the main road on the western side of the Nevis and heading in a westerly direction.

[16] Mr. Anslyn frankly conceded that he was driving quickly and thus Mr. Browne and Mr. Cadogan were travelling faster than him. It was Mr. Anslyn's evidence that initially the white bus was in front of the pink car but that the pink car overtook the white bus and then collided with the column or column and spun around in the road. It was his evidence that 5 seconds after this first collision, the red jeep came along and collided into the pink car.

The Medical Evidence

[17] In support of his claim, Mr. Browne called Dr. Tyrone Gill. Dr. Gill's evidence was to the effect that he treated Mr. Browne for his injuries. Those injuries were a fractured hip and a crushing injury to Mr. Browne's right thigh. In answer to this Court's query, Dr. Gill confirmed that Mr. Browne's injuries were consistent with a direct application of force to Mr. Browne's thigh and hip.

[18] Dr. Gill's evidence was that the Claimant had sustained a comminuted fracture which was consistent with crushing type injury. It was Dr. Gill's medical opinion that while anything was possible it was unlikely that the Claimant would have sustained a comminuted and crushing type fracture if the impact of the collision was via collision #1.

[19] Finally, in answer to a question from this court, Dr. Gill was of the view that direct, blunt force trauma caused the Claimant's injury to his right thigh. A transfer injury of the kind suggested by counsel for the defendant would have reduction in force. In this Court's view, it was more likely than not that the Claimant's injuries were caused via collision #2. In Dr. Gill's opinion, a transfer type injury is unlikely to have caused the grossly inflamed right thigh and right hip fracture of the kind sustained by the Claimant.

[20] Additionally, counsel for the Lawrence's did not instruct her own expert to assist the court on whether Mr. Browne's injuries were caused as alleged. This challenge was drawn to counsel's attention at pre-trial review and counsel assured the court that her cross examination of Dr Gill was her method for resolving this issue.

[21] The fact that counsel for the Defendant's opted for this method of assailing the Claimant's case was to her client's manifest disadvantage. There was no expert medical evidence on the Defendant's case to explain or account for the proven fact of Mr. Browne's injuries. Without a competing medical counternarrative, the Defendant's task of attacking Mr. Browne and Dr. Gill's account of how the injuries were caused was difficult.

Court's Findings

[22] This Court decamped to the locus for the purpose of taking the evidence of Mr. Browne, Mr. Cadogan and Mr. and Mrs. Lawrence. The minor discomfort occasioned by taking the evidence at the locus was outweighed by the significant perspective and clarity afforded to the court by contextualizing the evidence of the parties with the benefit of the locus. At the close of the taking of evidence (chief and cross examination) the court invited the parties to position their vehicles as they were at the time of the respective collisions. This exercise was extremely useful to the court and obviated the need for the cumbersome references to the police measurements which are routinely presented in court untethered from the case that the court must ultimately decide.

[23] As a starting point, this court is satisfied that both Mr. Browne and Mr. Cadogan were economical with the truth on the circumstances of Mr. Browne's initial collision with the column. Neither of them offered any explanation for how Mr. Browne managed to lose control of the pink car. Vehicles do not ordinarily suffer from a loss of control. In absence of any mechanical fault, motor vehicles go where they are directed by the humans controlling them.

[24] Their economy with the truth is to be contrasted with the evidence of Vaughn Anslyn that all three of them were driving quickly and that in his view, Mr. Browne and Mr. Cadogan were racing each other since the pink car overtook the white bus. Mr. Anslyn's evidence as to the initial collision with the column is accepted by this court, especially since neither Mr. Browne nor Mr. Cadogan had anything insightful to say about how this first collision with the concrete column occurred. So much for collision #1.

[25] Insofar as collision #2, this court is satisfied that Mr. Browne has discharged the burden of proving on a balance of probabilities that Mr. Lawrence's driving fell below the standard of the reasonable road user. In this Court's view, Mr. Lawrence's evidence of his driving when allied to the road conditions confirms that he failed to exercise the requisite degree of care that the circumstances demanded.

[26] In cross examination of Mr. Lawrence, by Ms. Morton, for Mr. Browne, Mr. Lawrence said 'I drove as usual. I didn't drive slower to compensate for the fact of the rain'. The effect of that evidence was that he drove as he usually would and did not drive slower to compensate for the wet conditions that morning. In re-examination, Mr. Lawrence confirmed that he was 10-15 feet away from Mr. Browne's car when he first saw the vehicle. Mr. Lawrence accepts that he was four telephone poles away from the white bus when he first saw the lights of that bus.

[27] Even without the benefit of the precise distance between that point and the point of impact with the pink car, this court was well equipped to take cognizance of the fact that this distance spanned several hundred feet. It would have been helpful to this court if any party to these proceedings had precisely measured these varying points with a view to calculating the rate of speed and resulting reaction time since these are mathematical and thus objective matters.

[28] All the same, this court is well equipped to find that Mr. Lawrence failed to drive at a speed that was safe in all the circumstances. Proceeding at the speed limit on a wet road on a dark night is not wise. This Court does not accept Mr. Lawrence's evidence that the road was not well lit but even if the court were to find that the road was not well lit this could not assist Mr. Lawrence since it would underscore the need for him to proceed far more cautiously than would be the case in dry, day-time conditions.

[29] None of the parties saw it fit to specifically adduce any photographs of the lighting conditions at the time of the accident. The visit to the locus confirmed that there were several electrical poles with lights on them (indeed the poles were used as reference points by the parties in the course of their evidence). There was no evidence that some or all of these electrical lights were not functioning on the night of the accident and thus contributing to the lighting conditions in the area. Additionally, this court accepts Mr. Cadogan's unchallenged evidence that the area was well lit in view of its proximity to the Four Seasons Resort.

[30] More importantly, the evidence confirms that Mr. Lawrence was driving too fast for the conditions that evening. Once it became apparent to him that the lights on Mr. Cadogan's bus were stationary it was incumbent on him to slow down and assess what perils, if any, lay ahead. The fact that his vehicle skidded and then collided into Mr. Browne's vehicle suggest that he was unable to safely stop in the prevailing conditions.

[31] The inescapable inference to be drawn is that Mr. Lawrence was traveling too quickly to be able to safely stop. Both Mr. and Mrs. Lawrence stated in their evidence that once he saw the headlights of Mr. Cadogan's bus he slowed his speed to 15-20 mph. In fact, Mrs. Lawrence's evidence was that her husband was 'particularly crawling'. This evidence is at odds with the unchallenged evidence of Vaughn Anslyn, the Defendant's own witness that Mr. Lawrence's jeep was traveling at about 20 to 30 mph at the time of the 2nd collision. This court found Mr. Anslyn to be a forthright and compelling witness. If the Lawrence's were crawling at 15 to 20 mph, then Mr. Anslyn would have said so. In this court's view, the Lawrence's were not 'particularly crawling' nor were they traveling 'very fast' as alleged by Mr. Browne. Mr. Anslyn's assessment of around 20-30 mph when placed alongside Mr. Lawrence's evidence that he was traveling at 30-35 mph is instructive.

[32] Finally, Mr. Lawrence's evidence at the locus suggests that he was no more than 10-15 feet away from Mr. Browne's vehicle when he first saw it. This evidence begs the question of why if he saw the vehicle he was unable to avoid the collision. In this Court's view, the inescapable inference is that he was driving too quickly, if as he says, he only saw the vehicle when it was 10-15 feet away from him. Mr. Lawrence is thus liable in negligence for the loss and damage sustained by Mr. Browne.

[33] It is not lost on this court that the estimate from Liburd's Auto Repairs dated November 19, 2021, details extensive damage to the right side of the pink car. It is startling that there are no details in that estimate of any damage to the left side of the pink car. If as the Claimant says, the front and left side of his vehicle impacted with the column in the first collision then there should have been some details of damage to the left side [see paragraph 5 of his witness statement] of the Claimant's vehicle. The inescapable inference is that the Claimant's vehicle had sustained damage to its right side in the 1st collision and not on its left side as the Claimant averred.

[34] Therefore, if the impact of the first collision was to the right side of the pink car, then the Defendant's argument that the Claimant had sustained all his injuries in the first collision and that the Defendant was not at fault for the Claimant's injuries required serious consideration. If this argument was to succeed, this court was required to rigorously consider the medical evidence.

[35] Dr. Gill's evidence confirmed that Mr. Browne had sustained a crushing injury. Counsel for the Lawrence's sought to argue that Mr. Browne's witness statement was somehow different from his oral testimony but at paragraph 7 of his witness statement Mr. Browne confirmed that his thigh got crushed because of his being between his vehicle and Mr. Cadogan's bus at the time of the second collision. There was no inconsistency in Mr. Browne's evidence on this issue and the medical evidence of Dr. Gill confirmed that the injuries sustained by the Claimant was consistent with a crushing type of injury.

[36] Counsel for the Lawrence's was unable to score any points in cross-examination of Dr. Gill. Dr. Gill's answer in cross examination that 'anything is possible' could not allow this court to reasonably infer that Mr. Browne had fractured his hip in the 1st collision. In cross examination by Mrs. Hanley-Bello,

Dr. Gill testified that if Mr. Browne's fractured hip was sustained in the 1st collision, he may not have sustained the comminuted or compound fracture of the kind that the doctor saw and treated him for.

[37] In Dr. Gill's professional opinion Mr. Browne's injuries to his hip and thigh were consistent with having been caused in the 2nd collision. In answer to a question from this court, Dr. Gill confirmed that direct blunt trauma would have caused the Claimant's injuries and that if the Claimant had sustained a transfer injury that would have resulted in a reduction in the force, and thus less than the force which caused the blunt trauma injury that he saw and treated the Claimant for.

[38] In this court's view, Dr. Gill's evidence that a transfer injury, that is to say, one where Mr. Browne's thigh and hip impacted with the door of his car in the first collision would have reduced the forces impacting Mr. Browne. Therefore, it was more likely than not that direct, blunt trauma had caused Mr. Browne's injuries to his hip and thigh, and these were consistent with the crushing injuries, more consistent with the 2nd collision and not the first collision.

[39] The issue of whether the Claimant was wearing his seatbelt at the time of the first collision and any impact that the wearing of a seatbelt might have had on the Claimant's injuries was not put Dr. Gill. The case for the Lawrence's, bereft of any real challenge to the medical evidence meant that the defendants were unable to properly join issue with the claimant on the medical evidence. Therefore, Mrs. Hanley-Bello's forceful closing submissions did not have the substratum of fact necessary for the arguments she sought to press on this court. Attractive theories about how Mr. Browne may have sustained his injuries are no substitute for arguments built on facts or medical science. Ultimately, a civil court only needs to be persuaded on a balance of probabilities and it is this standard that has informed this Court's findings in this matter.

[40] The fact that Mr. Anslyn did not see Mr. Browne between the car and the bus is readily explained by the fact that he was behind the white bus and pink car and thus would have lost sight of the vehicles for a moment as he rounded the corner by Belmont (immediately before the accident). Additionally, this court is satisfied that Mr. Anslyn's attention may have been drawn to the impending collision and not whether a person was in the 12-inch space between the white bus and the pink car.. In this court's view, this is consistent with the evidence at trial that Mr. Browne's thigh was essentially crushed between the two vehicles. The fact that Mr. Anslyn did not see Mr. Browne is not fatal to Mr. Browne's case.

[41] Ultimately, the question for this court is the extent to which the first collision with the column had any bearing on the second collision. The 'but for' test essentially requires a court to assess whether 'but for' Mr. Lawrence's alleged negligent driving Mr. Browne would have sustained any loss or damage.

[42] Ellis J (as she then was) in the case of BVIHCV2019/0201 - Boychie Fahie v British Virgin Islands Health Services Authority succinctly expressed the relevant principles on the ambit of the 'but for' test in the following terms:

The Claimant has to prove that the Defendant's negligence caused the damage in fact and in law. In most cases where a claimant is attempting to prove as a "matter of fact" that a defendant caused the loss or damage, a simple "but for" test is normally used. The question for the Court is: would the Deceased have suffered the injury but for the Defendant's negligence?

If yes, the defendant is not liable. If no, the defendant is liable. However, in proving causation, the English courts have on occasion applied a different test than the "but for" test. Where there exists two or more causes which operate concurrently, it may be factually impossible to determine which one was the cause. This becomes problematic because the claimant bears the burden of establishing which one was the cause on a balance of probabilities. In order to circumvent the strict approach, the courts have developed the 'material contribution' test. In Bonnington Castings Ltd v Wardlaw the House of Lords held that the claimant does not have to prove that the defendant's breach of duty was the sole or even the main cause of damage, provided he can demonstrate that it made a material contribution to the damage.

[43] Applying these tests to the instant case, the Claimant would not have sustained these injuries but for the Defendant's failure to drive with sufficient regard for the road conditions. Put another way, had the Defendant drove in a reasonable manner the 2nd collision is unlikely to have occurred and there would be no scope for any argument about whether any injuries had been caused in 2 separate collisions. Out of an abundance of caution, this court has considered the 'material contribution' test and the Defendant's breach of duty materially contributed to the Claimant's injuries. These findings are without prejudice to this court's subsequent findings on contributory negligence.

[44] Mr. Williams argued that the damage caused was inconsistent with a low impact collision of the kind argued for by the Defendant. In Mr. Williams' view, the collision was medium to high impact. This court does not dare to presume to know to what extent damage could be explained by the speed of the vehicles. The fact that the vehicles were written off, does not without more assist this court. In this court's view, the impact of the collision are matters for scientific expertise which this court is ill prepared to make findings on. If either party was of the view that the impact of the collision assisted their positions, then it behooved them to retain and instruct the relevant experts for this purpose.

[45] Mr. Williams for Mr. Browne alluded to the issue of causation and submitted that Mr. Lawrence's driving, if proven to be negligent, materially contributed to the loss and damage sustained by Mr. Browne. Mrs. Hanley-Bello for Mr. Lawrence sought to argue that without Mr. Browne's negligent driving and resultant collision with the column his vehicle would not have been in the road where Mr. Lawrence collided with it.

Inevitable Accident

[46] During argument before it this court drew the attention of all counsel to the principle of ‘inevitable accident’ and the cases discussing same since to this court’s mind Mr. Anslyn’s evidence as to the time between the first and second collisions suggested that ‘inevitable accident’ might apply.

[47] The law on inevitable accident can be gleaned from the following Victorian era decisions. See The Virgil (1843) 2 Wm Rob 201 at 205; See the Juliet Erskine (1849) 6 Notes of Cases 633 at 634; See the Europa (1850) 14 Jur 627 at 628; See the Thomas Powell v The Cuba (1866) 14 LT 603; See The Uhla (1868) 19 LT 89 at 90.

[48] The reasoning of the Court in The Europa(1850) 14 Jur 627 at 628 is set out below and neatly summarizes the position:

“What is an inevitable accident? Inevitable accident, in the absolute and strict sense of the term, very seldom takes place. “Inevitable” must be considered as a relative term, and must be construed not absolutely, but reasonably, with regard to the circumstances of each particular case. In the strict sense of the term, there are very few cases of collision that can be said to be inevitable, for it is almost always possible, the bare possibility considered, to avoid such an occurrence. It was possible in this case, by going at a slower pace, or lying to during the fog. But the import of the words “inevitable accident”, in my view, is this: where a man is pursuing his lawful avocation in a lawful manner, and something occurs which no ordinary skill or caution could prevent, and, as the consequence of that occurrence, an accident takes place.”

[49] In this Court’s view, this argument may have availed Mr. Lawrence if he were traveling at a reasonable speed and with due regard for the existing road conditions. In view of this court’s previous findings there is no scope for any argument that the 2nd collision was an inevitable accident. Therefore, the effect of the foregoing findings means that Mr. Lawrence’s counterclaim against Mr. Browne must fail.

Contributory Negligence

[50] This Court is satisfied that Mr. Browne contributed to the injuries that he sustained. For reasons that have been previously outlined, Mr. Browne has not indicated how his car came to be facing oncoming traffic, at night with no lights on. Bald assertions that he lost control of his vehicle without more do not assist him and confirm that he was speeding. It is significant that there was no challenge to Mr. Anslyn’s witness statement at paragraph 9 of his witness statement that Mr. Browne saw him (Anslyn) some months after the accident and said, ‘don’t tell anybody we (meaning Browne and Cadogan) were racing’. This evidence is to be measured against Mr. Cadogan’s evidence at trial that he was not racing the Claimant that night.

[51] Lord Denning’s concise statement of the law on contributory negligence in Froom v Butcher [1975] 3 WLR 379 is hornbook law and is pithily set out below:

“Contributory negligence is a man’s carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself: see Jones v. Livox Quarries Ltd. [1952] 2 Q.B. 608”

[52] By parity of the same reasoning, this court is satisfied that Mr. Browne was careless in looking after his own safety particularly since he failed to foresee that if he did not act as a reasonable and prudent man, he may be hurt himself. It seems to this court that racing at night on wet roads is the antithesis of acting as a reasonably prudent man and that by negligently (there is no other explanation for the collision) colliding into the concrete column he materially contributed to the dangerous position that he found himself in. In Froom v Butcher the failure to wear a seatbelt meant that the claimant was contributorily negligent in the sum of 25% for injuries that would have been avoided by wearing a seatbelt and 15% for those which would have been less severe if a seatbelt had been worn.

[53] A 40 % finding of contributory negligence on the part of Mr. Browne is fair for the following reasons. Firstly, this court is satisfied that the disabled condition of Mr. Browne’s vehicle was wholly due to his own default in negligently losing control of his own vehicle. Secondly, the dangerous situation created by Mr. Browne’s negligence is far more serious than that occasioned by the failure to wear a seatbelt, especially since Mr. Browne’s vehicle was on the wrong side of the road and thus in Mr. Lawrence’s path of travel. Had Mr. Lawrence been traveling at say, 40 mph or more this matter may have involved far more serious injuries.

[54] Thirdly, the reasoning of Lord Denning in Hill-Venning v Beszant [1950] 2 All E.R. 1151 that “The presence of an unlighted vehicle on a road is prima facie evidence of negligence on the part of the driver and it is for him to explain how it came to be unlighted and why he could not move it out of the way or give warning to oncoming traffic” is instructive. Even making allowances for the factual distinction between that case and the present case, a 1/3 finding of contributory negligence where an unlighted and broken-down vehicle was on the highway suggests that a 40% finding of contributory negligence is not unreasonable where the presence of the unlit vehicle is not because of any mechanical defect but wholly due to the negligent driving of Mr. Browne. This court’s findings on this issue are fortified by Mr. Nisbett’s submission for Mr. Cadogan that if there was to be any apportionment of contributory negligence no more than 25% should attach to Mr. Browne.

[55] Therefore, any damages payable by the Lawrences to Mr. Browne must be reduced by 40 % to take account of the foregoing findings.

What of Mr. Cadogan?

[56] Mr. Cadogan was added to these proceedings as the ancillary defendant, largely it seems because the Lawrence’s were of the view that Mr. Cadogan’s high beams were on which meant that they were momentarily unable to see and thus unable to see Mr. Browne’s vehicle until it was too late.

[57] Despite Mr. Cadogan's protestations to the contrary, this court is satisfied that Mr. Cadogan and Mr. Browne were racing that night. This court cannot shut its eyes to the fact that Mr. Browne was not racing the clock alone but was also racing Mr. Cadogan's bus. Without that race, there would have been no first collision and no need for Mr. Cadogan's bus to be parked facing oncoming traffic with its lights on.

[58] The photographs appended to Mr. Anslyn's witness statement show the lights on Mr. Cadogan's bus immediately after the 2nd collision. The court was not the beneficiary of any expert evidence on what the photographs meant and must thus resolve for itself whether Mr. Cadogan's high beams or 'brights' were on or off at the material time.

[59] Mr. Cadogan says his 'brights' were not on and indicated that the entire light panel was not illuminated in Mr. Anslyn's photographs which meant (according to him) that his brights were not on. Mr. Cadogan helpfully added that he did not drive with his brights on as he always drives on low beam.

[60] On the other hand, Mr. Anslyn maintained that Mr. Cadogan's 'brights' were on and maintained that this was consistent with the pictures appended to his witness statement. It was his evidence that Mr. Cadogan's brights would have had a blinding effect on any oncoming traffic.

[61] This court has not found this an easy question to resolve. The issue of Mr. Cadogan's brights are only relevant as Mr. Lawrence's vehicle got closer to Mr. Browne's vehicle. Therefore, its deleterious effect would only kick in as the vehicle came closer.

[62] Firstly, this court is satisfied that the issue of the brights is a red herring. Mr. Cadogan's lights (as are those of all vehicles) are for the purpose of illuminating the road during a journey. The lights on vehicles are not meant to be static (whether on high beam or not) since they may hamper the ability of other road users to see the road if the vehicle remains static. Mr. Cadogan accepts that his lights were on. This would have only made a dangerous situation (i.e. an unlit vehicle, parked on the road) more dangerous. The fact of brights would have only compounded the disadvantage faced by Mr. Lawrence, even without prejudice to this court's findings about Mr. Lawrence's negligent driving.

[63] These facts also must be balanced by the fact that the time between the first and second collisions was short so that this court does not criticize Mr. Cadogan for not having the presence of mind to immediately dim his lights and turn on his hazard lights. The relevant legal standard is that of men not of angels. All the same, the fact that Mr. Cadogan played a role in the first collision weighs heavily on this court. Mr. Anslyn's evidence that Browne and Cadogan overtook each other confirms that Mr. Cadogan's driving contributed to Mr. Browne's negligent driving. In other words, Mr. Browne was not racing by himself on a wet road and thus for all the foregoing reasons, Mr. Cadogan is liable to pay 5% of Mr. Browne's damages, such damages to be assessed in accordance with Part 16 of the Civil Procedure Rules.

[64] Mr. Browne and Mr. Cadogan are thus entitled to their prescribed costs of these proceedings against the 1st Defendant and the Defendant's counterclaim is dismissed. This court notes in passing that the Claimant filed these proceedings against both Mr. and Mrs. Lawrence. There was no real argument advanced before this court by Mr. Browne in relation to Mrs. Lawrence. The veiled suggestion that she was somehow at fault for allowing Mr. Lawrence to drive and failed to keep a proper lookout were not urged on this court in any real manner. Therefore, the Claimant's claim against Mrs. Lawrence is dismissed.

[65] In this court's view, Mrs. Lawrence no doubt had to retain and instruct counsel to represent her interests in this matter. For this reason, the parties are ordered to file and exchange submissions within 7 days of this judgment on the appropriate costs order to be made in respect of Mrs. Lawrence.

[66] This court had indicated to the parties that its judgment should be ready by December 2023, if not January 2024 but this court had not foreseen that two unrelated events would restrict its ability to deliver on this promise. Firstly, this court was required (without complaint) to take up the master's list for this term and secondly, this court broke with tradition and kept the November Assizes open until March 2024.

[67] The Assizes were kept open for the purpose of completing 2 criminal trials and case managing other criminal matters thus ensuring that the criminal business of the court proceeded with some expedition, and it is the fact of these combined challenges delayed this court's ability to deliver its judgment before today's date.

Patrick Thompson Jr.

Resident High Court Judge

By The Court

Registrar