

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2021/0097

BETWEEN:

NATHANIEL PHILLIP

Claimant

And

LESLIE ELLIS

Defendant

Appearances:

Ms. Siobhan A. Leandro with Ms. Wattisa Rose for the Claimant
Ms. Judith Dublin for the Defendant

2024: January 23rd;
February 9th

JUDGMENT

[1] **WILLIAMS, J.:** The Claimant Mr. Nathaniel Phillip alleges that on the morning of 22nd October 2019 he was walking along Tindale Road, St. John's when he was struck by a motor vehicle bearing registration number A47467 driven by the Defendant Mr. Leslie Ellis. The Claimant alleges that he suffered personal injuries as a result.

[2] The Claimant by Claim Form filed on 2nd March 2021 commenced proceedings against Mr. Ellis seeking the following:

1. Special damages of \$1,724.00
2. General damages
3. Interest
4. Court Fees

5. Costs
6. Further or other relief

[3] In his Statement of Claim Mr. Phillip alleges that on 22nd October 2019 he was walking from South to North on the Eastern Side of Tindale Road when a Subaru Motor Jeep driven by the Defendant and travelling in the same direction proceeded onto that road when it was not safe to do so and struck him. Mr. Phillip alleges that he was struck to his knees and stomach by the motor vehicle.¹

[4] Mr. Phillip pleads the following particulars of negligence:

1. Failing to keep any proper lookout whilst driving;
2. Talking on phone whilst driving;
3. Driving without due care and attention;
4. Driving too fast in the circumstances;
5. Failing to observe or heed the presence of the Claimant;
6. Failing to see the Claimant in sufficient time to avoid colliding with him;
7. Failing to steer, manage or control the motor vehicle or to apply his brakes adequately or at all so as to avoid contact with the Claimant;
8. Failing in all circumstances to take any or adequate regard or care for the safety of the Claimant;
9. Failing to give any or adequate warning of his approach;
10. Failing to stop, slow down or swerve in any other way so as to control the motor vehicle and avoid the collision;
11. Colliding with the Claimant.

[5] The Claimant who was 71 years old at the time of the accident pleads that he suffered the following injuries:

- a. Blunt trauma to abdomen and hip;
- b. Chronic left basal ganglionic capsular infarct;
- c. Multi-level degenerative disc disease;

¹ Statement of Claim Paragraph 3

- d. Intervertebral disc space narrowing at C3/4, C4/5, C5/6 and C6/7;
- e. Cervical spondylosis.

[6] Medical reports of Dr. P. Goodwin (radiologist) dated 22nd October 2019 and Dr. K.K. Singh, MBBS, MS (ortho), FICS dated September 1st 2020 are attached to the Statement of Claim.

[7] The Defendant filed a Defence on 26th March 2021 denying negligence and essentially alleges that the Claimant unlawfully ran into his vehicle. The Defence claims that Mr. Phillip placed his hands on the vehicle's bonnet as if to steady himself but fell onto the ground on the eastern side of Tindale Road. Mr. Ellis also denies holding a cell phone at the time as his vehicle was equipped with a Bluetooth system which would make holding a cell phone unnecessary. The rest of the Defence denies the Statement of Claim and puts the Claimant to strict proof of his injuries.

Trial

[8] At the commencement of trial, counsel for both parties agreed to proceed on the issue of liability only. The trial proceeded in the absence of the Defendant who is now resident in Guyana. An application had been made on his behalf pursuant to CPR Rule 29.3 for him to give evidence via video-link. However, this request was denied as it was not made sufficiently in advance of trial to allow for the necessary arrangements to be made.

[9] Only the Claimant and his witness Ms. Christophine Hughes gave evidence at trial. They both having filed witness statements on 7th February 2022. Another of the Claimant's witnesses Mr. Sestus France did not appear at trial.

The Claimant

[10] The Claimant's witness statement filed on 7th February 2022 was admitted as his evidence-in-chief. The Claimant is an elderly gentleman who is now about 75 years old. It was observed that he walked with a limp and needed assistance from the

court staff. He had some difficulty hearing and some questions had to be further explained to him in order for him to understand. However, he appeared to have a clear recollection of the accident.

[11] In summary the Claimant states that on 22nd October 2019 he was walking along Nut Grove Main Road towards Tindale Road. Having made sure it was safe to do so, he crossed onto Tindale Road.² He continues, "I heard the sound of an oncoming vehicle from behind me and immediately turned around to face the vehicle but because of its close proximity, all I could manage to do was to place my hands on the vehicle's bonnet in the hopes of steadying myself and reducing the vehicle's impact." He further states that now facing the vehicle he was struck in his knees and stomach and due to the vehicle's impact fell to the ground. The Claimant alleges that he tried to get up but fell back down in pain. He also states that a young woman came to his aid and called for an ambulance.³

[12] The Claimant was taken by ambulance to the then named Mount St. John's Medical Centre. There he underwent a CT Scan. He was discharged from hospital later that night and was prescribed medication for the resulting pain. He later visited the offices of Dr. K.K. Singh and a medical report was prepared. Mr. Phillip complains that since the accident he is in constant pain and can no longer stand or walk for long periods of time.

[13] The Claimant was cross-examined extensively by counsel for the Defendant. It was put to him on several instances that he was at least partly to blame for the accident. In particular it was put to him that his back was to the traffic. The Claimant admitted this but countered that the driver was on his cell phone and failed to see him in time. It was also put to him that he fell back after touching the bonnet of the car which was very hot. The Claimant retorted that the bonnet was warm not hot. Learned counsel also put it to the Claimant that he himself was distracted and walked into

² Claimant's Witness Statement paragraph 2

³ Claimant's Witness Statement paragraph 4,5 and 6

the vehicle which was at a standstill. The Claimant was adamant that the accident was caused by the Defendant who was on his cell phone at the time.

[14] Under re-examination the Claimant was asked if he understood what the word “standstill” meant. Although he claimed that he understood the term, it was clear that he didn’t.

Christophine Hughes

[15] Christophine Hughes who at time of the accident was a cleaner at the V.C. Bird International Airport gave evidence on behalf of the Claimant. In her witness statement she stated that on 22nd October 2019 she was standing at the bus stop on the western side of the Nut Grove Main Road. Whilst standing there she observed an elderly man make his way across (from Nut Grove Main Road) to Tindale Road.

[16] According to her just as the elderly man proceeded to walk along the eastern side of Tindale Road, a black jeep turned the corner and hit the elderly man. The impact caused the elderly man to be thrown to the ground.

[17] She ran across the road and immediately called an ambulance. The police and ambulance arrived on the scene and the emergency technicians transported the elderly man to the hospital. She says that she now knows the elderly man to be the Claimant and the driver of the black jeep to be the Defendant.

[18] Under cross-examination it was put to the witness that the Claimant may have fallen after touching the hot bonnet of the Defendant’s vehicle. It was further put to her that the Defendant’s vehicle had been stationary at the time. The witness conceded that the bonnet of the Defendant’s vehicle could have been hot but maintained that it was the impact of the vehicle which caused the Claimant to fall.

[19] Both parties decided against filing any closing submissions since they had both filed Skeleton Arguments in July 2022.

Issues

[20] The issues to be determined are as follows:

1. Whether the accident occurred through the negligence of the Defendant?
2. Whether any loss or damage suffered by the Claimant was as a result of the Defendant's negligence?
3. Whether the Claimant was contributorily negligent?

Law

[21] The Claimant's claim is in negligence. The elements of this tort are well-settled and are as follows:

1. A duty of care owed by the Defendant to the Claimant;
2. A breach of that duty by the Defendant; and
3. Damage suffered by the Claimant arising from that breach.

[22] The burden of proof in a claim for damages for negligence rests primarily on the Claimant, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the defendant to the claimant, some breach of that duty, and an injury to the claimant between which and the breach of duty a causal connection must be established.⁴

[23] A driver owes a duty of care to other users of the road. In **Cheryl Edwards Administratrix of the Estate of Janique Lewis v Ethel Mills**⁵ Rawlins J stated:

"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 are expected to manoeuvre their vehicle in order to prevent and avoid accidents. They are expected to use and observe proper signals,

⁴ Halsbury's Laws of England (Vol 78 at paragraph 62)

⁵ Claim No. ANUHCv1998/0168 decided 28th November 2002

signals must be kept 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 time 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.”

[24] In considering whether the duty of care has been breached the court will take into account whether or not a reasonable person in the Defendant’s position would have acted as the Defendant did.⁶

[25] In terms of pedestrians in **Denseha Bartholomew v. Lionel Walcott**⁷ (relied on by the Defendant) Justice Price-Findlay quoted with approval the following excerpt from Halsbury’s 4th Edition at paragraph 658:

“Persons on foot have a right to be on the highway and are entitled to the exercise of reasonable care on the part of the persons driving vehicles on it, but they must take reasonable care of themselves and may be answerable if they occasion accidents to vehicles, the amount of care reasonably to be required of them depends on the usual and actual state of traffic, and whether or not the foot passenger is at an approved indicated pedestrian crossing.”

Analysis/Findings

Duty of Care and Causation

[26] Firstly, I note that although the Defendant filed a witness statement he did not attend trial. Thus, there is no evidence to contradict the Claimant’s version of events. Despite this counsel for the Defendant comprehensively cross-examined the Claimant and the only other witness Ms. Hughes and adequately put the Defendant’s case to them.

⁶ Ronald Greenaway v. Charles Edwards Claim No. ANUHCv2005/0212 decided 16th December 2008

⁷ Claim No. GDAHCv2010/0198 decided 4th July 2012

[27] The starting point is to have regard to the location of the accident. Nut Grove Main Road runs south to north and terminates at a T-junction with Valley Road. Tindale Road is on the opposite side of Valley Road almost directly opposite Nut Grove Main Road (if travelling in a northerly direction) and also runs south to north and from its intersection with Valley Road. It is not controverted that the Defendant drove from Nut Grove Main Road, then across Valley Road and proceeded north onto Tindale Road where the accident occurred.

[28] The Claimant and his eyewitness Ms. Hughes describe the Claimant as taking almost the identical route as the Defendant. Which means he also proceeded on foot from Nut Grove Main Road across Valley Road and onto Tindale Road. Under cross-examination Ms. Hughes stated that she viewed the accident from a bus stop which is located near the junction of Tindale Road and Valley Road.

[29] The accident took place at around 8:00 a.m. meaning that the area could not have been dark. There is also no evidence that the Claimant stepped out onto Tindale Road from behind any obstruction such as a parked vehicle or a building. Thus, the Defendant should have had a clear view of Tindale Road and the Claimant.

[30] The Claimant testifies that he heard a vehicle coming from behind him. He then turned around and was almost immediately struck by the Defendant's vehicle. I make no findings as to the speed that the Defendant was driving as none of the witnesses made any observations as to speed. The Claimant for his part states that he only saw the vehicle when he turned around just before it struck him.

[31] I also believe that the Claimant had his back to the traffic coming from the direction of Nut Grove Main Road that morning. Thus, he would not have been able to see the Defendant's vehicle coming towards him until the last moment when he turned around. The Defendant makes an issue of the Claimant walking with his back to traffic. However, even if this is accepted this does not relieve the Defendant from

his duty as a driver to keep a proper lookout for pedestrians especially those who would be in his direct line of sight.

[32] I also believe the Claimant when he states that the Defendant was using a cell phone. The Claimant has maintained this assertion even under rigorous cross-examination. I have taken into account that at the moment of impact the Claimant was facing the Defendant directly and even for a split second would have been able to see if the Defendant was using cell phone. On a balance of probabilities and in the absence of evidence to the contrary I believe that the Defendant was using a cell phone whilst driving.

[33] I cannot accept that the Claimant's injuries were caused by him falling over after touching the hot bonnet of the defendant's vehicle. I accept that the Claimant touched the vehicle bonnet in a futile attempt to minimize the impact. Thus it is more likely than not that he was struck by the vehicle rather than simply falling over after touching the bonnet.

[34] On the whole I find that the Defendant failed in his duty as a driver to keep a proper lookout for pedestrians when he drove onto Tindale Road. In daylight conditions and in the absence of obstructions the Defendant should have been able to stop in time to avoid striking the Claimant. Accordingly, the Defendant has breached the duty of care owed to the Claimant as outlined in **Cheryl Edwards Administratrix of the Estate of Janique Lewis v Ethel Mills**.

Injuries Suffered

[35] As indicated at paragraphs 5 and 6 above the Claimant alleged that he suffered injuries as a result of the accident. The relevant medical reports have been annexed to the Statement of Claim in compliance with CPR Rule 8.9(3).

[36] However, as previously noted the Defendant in his Defence made no admission as to the medical reports and simply put the Claimant to strict proof of his injuries. CPR

Rule 10.6 requires the Defendant to either expressly admit the medical reports or dispute them.

[37] In the absence of any evidence to the contrary I am satisfied that the Claimant suffered injuries as a result of the accident. I therefore find that the Defendant is liable in negligence for any injuries suffered by the Claimant resulting from the accident of 22nd October 2019.

[38] However, since this trial has proceeded only on the issue of liability the nature and extent of the injuries will not be examined in depth at this stage. Further no medical practitioners gave evidence at trial. As outlined by the Privy Council in **Bergan v. Evans**⁸ the Claimant is still required to deploy the medical reports as expert evidence pursuant to CPR Rule 32.6. This however can be done at the assessment of damages stage of the proceedings.

Contributory Negligence

[39] The Defendant in Skeleton Arguments argues that the Claimant was contributory negligent. However, contributory negligence was not pleaded in the Defendant's Defence. The Court of Appeal has ruled in **Margaret Blackburn v. James Bristol**⁹ that contributory negligence must be specifically pleaded in order to be relied upon. Accordingly, there is no basis for the court to consider the issue of contributory negligence.

ORDER

[40] The court therefore orders as follows:

1. Judgment is entered for the Claimant.
2. The Defendant is to pay the Claimant damages to be assessed and directions will be forthwith issued for the conduct of such assessment.
3. Prescribed Costs to the Claimant to be calculated on any damages awarded.

⁸ [2019] UKPC 33 at paragraph 33

⁹ GDAHCVAP2012/0019 decided 12th October 2015 (unreported) at paragraph 28

Rene Williams
High Court Judge

By The Court

Registrar