

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

GRENADA

CLAIM NO. GDAHCV2023/0395 (previously GDAHCV2021/0053)

BETWEEN:

DIKID JOSEPH

Claimant

and

**[1] JAWORSKI TOUSSAINT
[2] GRENADA ELECTRICITY SERVICES LIMITED**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester for the Claimant

Ms. Linda Dolland and Ms. Sephorah Khan for the Defendants

2023: November 14;
December 20

JUDGMENT

[1] **ACTIE, J.:** This claim is for the determination of liability for damage resulting from a motor vehicular accident which occurred on 18th September 2019 on the Morne Fendue public road.

Facts

[2] The claimant is the registered owner and driver of Isuzu truck bearing registration number TAD21. The first defendant was the driver and employee of the second defendant who is the registered owner of truck bearing registration number SL273 (hereafter referred to as “the Grenlec truck”).

- [3] The claimant avers that at about 4:00 pm on 18th September 2019 he was driving along the Morne Fendue public road when he noticed the Grenlec truck being driven by the first defendant approaching at great speed towards him, in the middle of the road. The claimant contends that the first defendant was travelling in the claimant's lane of traffic to avoid pulling down the telephone lines which were in the first defendant's lane of traffic.
- [4] The claimant states that the accident was caused solely by the negligent driving of the first defendant as servant and/or agent of the second defendant. The claimant states that the first defendant attempted to avoid the collision by swerving away from the truck, however the front of the Grenlec truck was veering toward a bridge and telephone pole. To avoid colliding with the bridge and telephone pole, the claimant contends that the first defendant swerved the Grenlec truck away from same and collided with the front portion or cabin of the claimant's truck.
- [5] The claimant states that the collision and damage were caused solely by the first defendant's negligent driving as servant and/or agent of the second defendant. The particulars of negligence as pleaded by the claimant are as follows:
- (1) Driving without due care and attention;
 - (2) Failing to take any and/or adequate care for the safety of the said truck;
 - (3) Negligently and/or recklessly driving the Grenlec truck on the public road;
 - (4) Failing to stop in advance, slow down, brake, steer, swerve, properly manage or control the said vehicle, or to otherwise manoeuvre the Grenlec truck so as to avoid the said accident;
 - (5) Failing to exercise proper driving skill, care and obedience to the traffic rules, so that the collision could have been avoided;
 - (6) Driving too fast in the circumstances; and
 - (7) Exposing the said truck and/or any pedestrians and motorists to unnecessary risk of damage and injury of which the first defendant knew or ought to have known.

- [6] The claimant claims general damages for negligence and/or breach of statutory duty pursuant to sections 49 and 50 of the Motor Vehicles and Road Traffic Act CAP 201, special damages in the sum of \$80,026.00, interest, and costs.

The defendant's case

- [7] The first defendant admits that the accident occurred at approximately 4:45pm during the course of employment with the second defendant. The defendants assert that the first defendant was driving at a speed of approximately 19mph, that it was raining, and that due to the size and height of the Grenlec truck, the first defendant proceeded with care along the Morne Fendue main road and was periodically sounding the horn of the Grenlec truck.
- [8] It is not denied that the first defendant was avoiding third party cable wires, though it is denied that the first defendant was driving in the claimant's left lane, or otherwise negligently as alleged or at all. The defendants state that notwithstanding the warnings of the first defendant, the first defendant observed the claimant rapidly proceeding towards the direction and path of the Grenlec truck. In an effort to steer clear of the claimant's on-coming vehicle, the defendants state that the first defendant manoeuvred even further into the left lane and partially off the road.
- [9] The defendants aver that the claimant's failure to hear the loud and repeated sounding of the horn of the Grenlec truck was due to his own negligence or omission and was not as a consequence of any failing on the part of the defendants.
- [10] The defendants aver that the front of the Grenlec truck had already passed the claimant and it had almost come to a complete stop when the claimant's vehicle collided into the side of the Grenlec truck in the left lane of the road.
- [11] The defendants deny the claimant's allegations of negligence, and aver that to the extent that they may be liable for any loss or damage suffered by the claimant, such loss or damage is lessened and diminished by the claimant's contributory negligence. The defendants counterclaim negligence on the part of the claimant, the particulars of which are as follows:

- (1) Driving at an excessive speed in the circumstances;
- (2) Failing to keep proper or any lookout for the first defendant or any other driver on the public road;
- (3) Failing adequately or at all to observe or heed the warning of the first defendant and or the presence of the Grenlec truck;
- (4) Failing to give any or any adequate warning of the claimant's approach;
- (5) Failing to remain, travel and/or manoeuvre in the claimant's lane;
- (6) Driving into the first defendant's lane;
- (7) Failing to apply brakes, stop or slow down in a timely fashion or at all in the circumstances in order to avoid colliding into the Grenlec truck;
- (8) Failing to steer, control or properly manoeuvre or manage the claimant's vehicle in order to avoid colliding into the Grenlec truck;
- (9) Negligently driving and/or conducting the claimant's vehicle without due care and attention and/or without reasonable consideration for the first defendant on the Morne Fendue public road;
- (10) Failing to otherwise avoid colliding into the Grenlec truck.

[12] The defendants counterclaim for general damages for negligence and/or breach of statutory duty; special damages loss and damage to the right side of the Grenlec truck, being the muffler housing, right foot stand, cabin and right rear; interest and costs, inter alia.

Legal Analysis

Whether the First Defendant was Negligent in Driving Motor Vehicle Registration Number SL273

[13] In **Clarence Martin et al v Edris George**¹ Lanns J (Ag.), relied on dicta of Rawlins J in *Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills*² wherein it was stated, inter alia:

¹ ANUHCv2013/0206

² Claim No. 168 of 1998

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected... to determine what other users of the road are doing. They are expected to maneuver their vehicles in order to prevent and avoid accidents. They are expected to use and observe proper signals... 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.”

[14] Drivers are under a further duty to drive with a degree of skill and care to be expected of a competent and experienced driver³, and, as indicated in the case of **Bernadette Sampson v Samuel Charles & Anr**⁴, are expected to take proper care not to cause damage to other road users, and should keep a proper lookout, observe traffic rules and signals, and avoid excessive speed.

[15] In the Motor Vehicle Accident Report, the statement given by the first defendant is as follows:

"I was travelling from Mt. Fendue onto River Sallee, St. Patrick. It was raining at the time and upon approaching the corner, I saw the truck and I sound my horn and try to pull up to my side and both vehicle collided after the front of my vehicle past. I then stop and check the driver. Based on the lower wire, I was driving in the centre of the road coming up and I was sounding my horn from the centre of the road coming up until we collided"

[16] Therein, the first defendant admits to have been driving in the centre of the road because of the lower wire. The first defendant further states that he tried to pull up to his side of the road, given the claimant's oncoming truck.

[17] Counsel for the defendants relies on **Regulation 26** of the **Motor Vehicle and Road Traffic Regulations**, wherein **Regulation 26(5)(a)** and **(b)** states:

“(a) He or she shall keep the motor vehicle on the left of the road unless prevented by some sufficient cause.

(b) When meeting, or being overtaken by other vehicles, he or she shall keep as close as possible to the left or near side of the road.”

³ *Nettleship v Weston* (1971) 3 All ER

⁴ GDAHCV2009/0552

[18] **Regulation 26** does not, nevertheless, abdicate the duty of the first defendant as driver, taking proper care not to cause damage. Based on the fact that the first defendant admittedly was initially driving beyond his left and proper side of the road, he was under a duty to ensure that same was safe to do in the circumstances of restricted visibility due to heavy rains, an approaching corner in the road and the likelihood of oncoming traffic.

[19] The court therefore finds that the first defendant, breached his duty as driver of a motor vehicle. It was not safe, in the circumstances, for the first defendant to have proceeded in the centre of the Morne Fendue public road, and said breach caused the damage sustained by the claimant's vehicle.

[20] The court notes that the first defendant's evidence that he saw the claimant's vehicle approaching at great speed. The vehicle is a left-hand drive vehicle, and it is the defendants' witness who was on the passenger side on the right of the defendants' vehicle who said that he saw the claimant's vehicle. The defendants in their counterclaim argue that the claimant's failure to give any or any adequate warning of the claimant's approach or failure to failing to remain, travel and/or manoeuvre in the claimant's lane cannot be sustained as it is the evidence that the vehicle was in the middle of the road in an effort to avoid hanging overhead wires.

Whether the claimant was contributorily negligent

[21] The defendants plead contributory negligence of the claimant at fifty per cent (50%). Gilbert Kodilinye in **Commonwealth Caribbean Tort Law**⁵ states that:

“Contributory negligence is basically carelessness on the part of the plaintiff which combines with the defendant's negligence or breach of duty in bringing about the plaintiff's damage. In many cases, the plaintiff's negligence will have been a contributing cause of the accident which led to the damage...”

⁵ Kodilinye G, *Commonwealth Caribbean Tort Law*, 4th ed, (Routledge 2003), p. 63

The author goes on to state:

“Contributory negligence does not involve any breach of duty owed by the plaintiff to the defendant, for it does not necessarily connote activity fraught with undue risk to others, but rather failure on the part of the person injured to take reasonable care of himself in his own interests.”

[22] Floyd Best, witness for the defendant, states that on 18th September 2019, the GPS System on the Grenlec truck generated a report of the data collected, and reflected a maximum speed of 23 mph. It is the evidence therefore, and the court accepts, that at the point of impact the first defendant was not speeding but was in the centre of the road on day which the parties describe as torrential rain.

[23] In addition, evidence of witness Uriel Elahie is that the first defendant was sounding the horn of the Grenlec truck while manoeuvring the truck around the corner on the Morne Fendue road. The court also accepts this evidence.

[24] The court further notes that the Motor Vehicle Accident Report indicates that both the left front and the left rear wheels of the Grenlec truck were off road at the point of impact. Moreover, the report directs that the Grenlec truck was further from the right of the road than the claimant’s truck was from the right of the road.

[25] The authors of **Halsbury’s Laws of England**⁶ state the following:

“The duty of the driver of a vehicle may not be satisfied merely by creating a warning noise, and in an emergency, where either the driver or the foot-passenger must alter his course to avoid collision, the driver does not escape liability if he cannot show that he has tried to pull up or to one side.”⁷

[26] In the extant case, the first defendant did not just merely create a warning noise in his navigating of the Morne Fendue road, but had to suddenly pull left to get back on his proper side of the road. First, the court finds that the defendant’s action in driving in the middle of the road while approaching corner was a dangerous move especially in light of the evidence of torrential rains which would have impaired visibility and muffled the sounds of the horns to a certain extent. The first defendant was under a duty to drive with utmost care especially having

⁶ 3rd edn, volume 28

⁷ Halsbury’s Laws of England, 3rd edn, volume 28, para 68

regard to the weather conditions and manoeuvring in the middle of the road to avoid the hanging wires. An ideal approach as is customary on the roads here was to have had a smaller vehicle ahead of the Grenlec truck to alert motorists of the upcoming vehicle having regard to the length and height of the vehicle on the narrow roads.

[27] However, the court takes note of the claimant's evidence where he stated that he noticed the Grenlec truck approaching as he himself was approaching the corner in the Morne Fendue road, and that he further acknowledged that it was raining heavily with wipers difficult to move. At trial, the claimant indicated that his radio was on at the time of the accident, and that he did not hear the warning sounds of the first defendant.

[28] The court therefore finds that the claimant was also under a duty to apply brakes, stop or slow down in a timely fashion or at all in the circumstances in order to avoid colliding into the Grenlec truck. However, the court cannot ignore the fact that the defendants' vehicle was driving in the middle of the road in a corner on a very rainy day when visibility would have been severely impaired. In the circumstances the court finds the claimant contributory negligent at 20% in the commission of the accident.

Damages

[29] In written submissions, counsel for the claimant concedes that the claimant's claim for damages is \$78,900.00 as opposed to the \$80,026.00 which is pleaded.

Loss of Use

[30] In pleadings, the claimant states that as he is a self-employed truck driver by occupation, and that he has been deprived of the use of the said truck for the purpose of his business on a daily basis. The claimant states that the truck is an income bearing chattel and earns approximately \$400.00 per day.

[31] Blenman J (as she then was) in **Tropical Builders v Gloria Thomas**⁸ had this to say on 'loss of use':

"It is the law that the owner of a motor car that is damaged, or as in the case at bar, is a write off 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 the motor car."

[32] It is the evidence that to date, the claimant's vehicle has not been repaired, totalling 1554 days to date. The principle as it relates to mitigation of losses is clear. In **International Motors Limited v Ronnie Thomas**⁹ it was held that:

"The law is that a person bringing a claim for damages should act reasonably in seeking to mitigate the damages. Even though you have a good, solid claim against a defendant, the law expects you to behave in a reasonable and responsible manner to ensure that the damages suffered or incurred are not greater than they reasonably ought to be. The law will not allow you to recover loss that could and should have been avoided"

[33] The claimant states that he is aware of his obligation to mitigate his losses and claims loss of use in the sum of \$36,000.00 being 90 days at \$400.00 per day. The claimant was able to produce receipts for the months of June, July and August 2019, however said receipts are illegible and do not assist the court.

[34] The defendants do not accept the sum of \$400.00 per day for loss of use as advanced by the claimant. Counsel for the defendants notes that for the month of July 2019, the sums of \$750.00, \$3,200.00 and \$400.00 are put into evidence by the Claimant. Using a rate of 20 working days in a month the daily rate for the loss of use of the vehicle is approximately \$217.50 per day.

[35] The court agrees with the defendants as the claimant has not demonstrated he would have earned an average daily rate of \$400.00 in a given month. The claimant's evidence of three trips for one month, July 2019, does not satisfy the court that he would have been engaged so as to make \$8,000.00 (based on \$400.00 per day earnings) a month, when his evidence in the month of July 2019 would have been \$4,350.00.

⁸ ANUHCv228/2004

⁹ Civil Appeal No. 7 of 2002

- [36] The court thus finds the rate for loss of use to be \$217.50 per day is reasonable in the circumstances.
- [37] The defendants aver that this period of 90 days ought to be lessened the defendants submits that the period ought to be 49 days having regard to the date of the accident and the estimate on 29th October 2019.
- [38] The court does not find the period of 90 days for loss of use to be unreasonable having regard to the evidence of John Francis, mechanic who produced the estimate in support of the sum claimed. He said he was engaged by the claimant in the month of September 2019, when the claimant called him and informed him of the accident.
- [39] Consequently, the court finds the rate of \$217.50 for the period of 90 days for loss of use to be appropriate in the circumstances of this case making a total of \$19,575.00.

Costs of Repair

- [40] Witness for the claimant, John Francis, indicated that he prepared an estimate of the cost to replace the cab and produced an invoice for the service. The estimate was in the sum of \$42,000.00, being \$39,500.00 to replace the cab, and the sum of \$2,500.00 for labour. John Francis further states that the claimant paid him for the cost of the estimate which was the sum of \$250.00.
- [41] Counsel for the defendant contends that there is no supporting report to indicate that the damage warrants the replacement of the cab, as opposed to its repair. However, the defendants did not provide any evidence to prove the contrary. It is the evidence of John Francis that in his assessment of the damages, that the replacement of the entire cab would be best option to bring the truck to its pre-accident position having regard to the extent of the damage and it being the main structure of the truck.

[42] The court accepts this evidence of John Francis and allows the cost of repair to be \$42,000.00 plus the sum of \$250.00 for the cost of the estimate making a sum to total of \$42,250.00 under this head.

Conclusion

[43] It is therefore ordered and declared as follows:

- (1) Judgment is entered in favour of the claimant against the defendants with twenty percent (20%) contributory negligence apportionment to the claimant.
- (2) The defendants shall pay the claimant special damages in the total sum \$61,825.00 comprising of loss of use in the sum of \$19,575.00 and the cost of repairs in the sum of \$42,250.00.
- (3) Interest at the rate of three percent (3%) per annum from the date of filing the claim until judgment and at the rate of six percent (6%) from judgment until payment in full.
- (4) The defendants shall pay the claimant Prescribed Costs on the total sum.

Agnes Actie
High Court Judge

By the Court

Registrar