

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

GRENADA

CLAIM NO. GDAHCV2022/0445 formerly GDAHCV2019/0434

BETWEEN:

SYLVAN THOMAS

Claimant

and

[1] DESMOND COLLIER

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester for the Claimant

Mrs. Linda Dolland for the Defendant

2023: October 2, 30

JUDGMENT

[1] **ACTIE, J.:** This is a personal injury claim arising from a motor vehicle incident on 11th November 2018, at Point Salines in the Parish of St. George, Grenada.

Claimant's case

[2] By claim form and statement of claim filed on 23rd September 2019, the claimant pleaded that while walking at Point Salines on or about 11:00 p.m., he noticed a vehicle coming towards him and with no time to respond was struck by the said vehicle causing him to fall to the ground. He avers that he was run over by the vehicle and remained pinned under the vehicle for a few minutes after which the defendant came out of the vehicle, questioned the claimant to ascertain his identity then re-entered the vehicle and moved forward to release the claimant from under the vehicle. The defendant then drove off leaving the claimant

unattended with severe injuries to his body. The claimant was found approximately one hour later by security officers attached to the Grenada Airport's Authority. The claimant was taken by ambulance to the Accident and Emergency Department of the General Hospital where he was admitted and underwent surgery for the injuries suffered.

[3] The claimant contends that the accident was caused solely by the defendant's negligence particularized as follows:

- i. Driving without due care and attention.
- ii. Failing to keep any or any proper lookout.
- iii. Failing to indicate, signal or give proper indications
- iv. Failing to sound the horn in time or at all; or to indicate or to otherwise use appropriate signals so as to avoid the accident.
- v. Driving too fast in all the circumstances.
- vi. Failing to observe or heed the presence of the Claimant at Point Saline as a pedestrian.
- vii. Failing to take any or any - adequate care for the safety of the Claimant while driving;
- viii. Negligently or recklessly driving along the Point Saline Public Road;
- ix. Failing to stop in advance, to slow down, brake, steer, swerve, to properly manage or control the said vehicle, or to otherwise manoeuvre same.
- x. Failing to apply the brakes in time or at all so as to avoid the accident with the Claimant.
- xi. Failing to abide by the Highway code and other road traffic rules and conducts for driving along the road.

[4] The claimant also contends that the defendant was at all material time under a statutory duty under Sections 49 and 50 of the Motor Vehicles and Road Traffic Act Cap 201, to drive the said vehicle with due care and attention and not carelessly without reasonable regard for other persons using the road.

Defendant's case

- [5] The defendant denies the claimant's version of facts as pleaded. The defendant avers that sometime past mid-night, he, and his girlfriend were parked off and away from the public road on a grassy embankment area with concrete strips overlooking the Maurice Bishop International Airport which is commonly referred to as 'Lover's Lane'.
- [6] The defendant states that he saw what he believed to be a large animal crawling past on all-fours near his vehicle. He quickly turned on the vehicle lights and turned the vehicle towards the bushes to see the animal. Upon doing so, he heard shouting coming from outside of his vehicle to wit " *Oh God Oh God sorry I ent go do it again.*"
- [7] The defendant avers that he looked around and saw no one, and so proceeded to open his vehicle's driver door and saw the claimant under his vehicle. The claimant was shirtless but was wearing a black pants and black stocking cap or scarf with a tub of vaseline, a flashlight and a cell phone lying directly next to him.
- [8] The defendant avers that he moved his vehicle away from the claimant, who remained supine on the ground. The defendant avers that he informed the claimant that he would call the police but the claimant begged him not to do so, as the claimant promised that he would "never do it again" and that he "has a family." The defendant then left the claimant on the embankment.
- [9] The defendant denies that he was driving on the public road or on any road at the time of his interaction with the claimant or that the claimant was a pedestrian at the time of incident.
- [10] The defendant denies any liability at all or alternatively, to the extent that he is found to be liable that liability is to be reduced to the extent of the claimant's contributory negligence since the defendant:
- i. Obscured his presence from the Defendant by bending, crawling or otherwise moving near and or around the base of the Defendant's vehicle surreptitiously and in a manner that was not upright, so as not to be seen by the Defendant.

- ii. Negligently and or recklessly positioned himself at or near the wheels or base of the Defendant's vehicle, without regard for his safety in all the circumstances.
- iii. Outfitted himself in a manner so as to not to bring attention to his presence.
- iv. Lurked or otherwise prowled in the vicinity of parked cars containing couples.
- v. Failed to properly keep an outlook for the movement of the Defendant's vehicle.
- vi. Failed to keep proper or any distance away from the movement of the Defendant's vehicle.
- vii. Failed to bring his presence to the Defendant's attention in a timely manner,

Analysis

- [11] The defendant in his witness statement and at trial said that he looked in the right-side mirror and saw what looked to be a shiny figure crouched down on the ground, on the side of his vehicle almost near the rear right wheel. He said he immediately turned on the vehicle lights and saw the figure moved. The defendant states that he thought that the object moved or jumped into the bushes to the right of the vehicle, and so he reversed the vehicle and turned to shine the lights on the figure to see what it was. It was at that time he heard the exclamation "Oh God! Oh God! Don't kill me". The defendant states that he immediately stopped the vehicle, opened the vehicle door, leaned out and saw the claimant lying partially under the vehicle with his legs underneath the vehicle.
- [12] The defendant further stated that as he leaned out, the claimant grabbed him by his shirt, pulled him and refused to let him go. The defendant states that he had to tear his shirt to be released from the claimant in order to get back into vehicle and move it from being over the claimant. After moving the vehicle the defendant got out and observed the claimant, who was still on the ground. By then, persons from the vehicles parked in the vicinity were standing around the claimant. The defendant in his witness statement states that witnesses to the incident informed him that the claimant was well-known in the area as a "peeping-tom" into the

private interactions with persons who frequented 'Lover's Lane'. The defendant admits that he recognized the claimant with whom he had a previous encounter some months before this incident.

[13] Miss Deyon St. Paul, the sole witness for the defendant and who was with the defendant at the time of the incident said that she recognised the claimant as she had previously landed her foot on the claimant's chest when she stepped out of the vehicle at a different part of the Lover's Lane area.

[14] The claimant denies that he was lurking or prowling at the time of the incident. He states that he had been in the company of friends for a meeting and the friends had just left the area. The claimant. not call any of his friends as a witness.

Whether the defendant owed a duty of care and whether he breached that duty causing damages to the claimant

[15] It is the claimant's pleaded case that the extensive damages suffered were caused by the defendant's negligence. The defendant on the other hand denies liability or to the extent that he may be liable the issue of contributory negligence arises.

[16] There are six requirements to establish the tort of negligence namely (i) the existence in law of a duty of care situation i.e. one in which the law attaches liability to carelessness(ii) Careless behaviour by the defendant, i.e. that it failed to measure up to the standard and scope set by law: (iii) a causal connection between the defendant's careless conduct and the damage; (iv)Foreseeability that such conduct would have inflicted on the particular claimant the particular damage of which he complains. When the four requirements are satisfied, the defendant is liable in negligence then and only then do (v) the extent of the responsibility for the damage to be apportioned to the defendant where others are also held responsible; and (vi) the monetary estimate of that extent of damages.¹

¹ Clerk &Lindsell on Torts 16th Ed. Para 7-04

- [17] The duty of care in negligence is simply not a duty to act carelessly; it is a duty not to inflict damage carelessly². Whether there exists a duty a care is based on the totality of the evidence.
- [18] From all accounts, it appears that the claimant was known as a “peeping tom” in the “Lovers Lane” area. The defendant and his witness spoke of a previous encounter with the claimant in the same area. The court is of the view that the defendant was fully aware that the purported silhouette was that of the claimant and not an animal as he wants the court to believe.
- [19] Further, the defendant being aware that the claimant was trapped under the vehicle did not make any immediate attempt to remove the vehicle off the claimant. The defendant didn’t solicit assistance from the several persons within the immediate vicinity of the incident to lift the vehicle off the claimant neither did he call the emergency services for the claimant.
- [20] The defendant at the trial states that he tried to make the call to the hospital, only to realise that he didn't have credit on his phone. When asked by counsel, if he was aware that he could have dialled 911 even without having credit, he answered in the negative. However, the claimant contradicted himself in his pleaded claim where he states that the claimant asked that he did not make the call. The defendant further stated that he thought about taking the claimant to the hospital using his vehicle but was concerned for his and companion’s safety, as he wondered if the claimant had a knife on him and would try to harm them, as he seemed to be an immoral person.
- [21] The court is of the view that the defendant is not a truthful witness. The defendant was fully aware of the claimant’s presence near hos care. The defendant’s actions in turning on the car, swerving in the direction of the claimant and reversing over the claimant was a deliberate act

[22] This court in the case of **Marva Rogers etal v Henry Paryag etal** ³ citing the dicta of Rawlins J in Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills wherein it was stated, inter alia: “

“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 manoeuvre their vehicles in order to prevent and avoid accidents...”

[23] The defendant being aware of the claimant's presence was under a duty not to deliberately inflict damage in the manner disclosed in the factual evidence. The defendant had an obligation to avoid rather than inflict injuries on the claimant in the circumstances. The defendant in my estimation failed to measure up to the standard of care imposed by the law. The defendant's combined acts of carelessness resulted in the claimant's injuries. Accordingly, the court finds in favor of the claimant. The defendant breached the duty of care owed to the claimant resulting in damages.

Breach of Statutory Duty

[24] The claimant in the alternative avers that the defendant was in breach of the statutory duty imposed by Sections 49 and 50 of the **Motor Vehicle and Road Traffic Act**⁴.

[25] **Section 49** of the Act speaks to reckless driving and creates a liability for anyone who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road. **Section 50** requires drivers on a road to drive with due care and attention with reasonable consideration for other persons using the road,

³ CLAIM NO. GDAHCV2014/0178

⁴ **Cap 201.**

[26] The defendant contends that he was not driving on a public road, and neither was the claimant a pedestrian at the time of the incident.

[27] **The Motor Vehicle and Road Traffic Act** defines a road as “any street, road or open space to which the public are granted access and any bridge over which a road passes, and includes any privately owned street, road or open space to which the public are granted access either generally or conditionally”.

[28] It is the evidence that the “Lover’s Lane” area is an open unrestricted public space generally used by both motorists and pedestrians and would accordingly fall within the definition of a road under the Act.

[29] In **Bernadette Sampson v Samuel Charles & Anr**⁵ Ellis J states

“While a driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users, especially pedestrians, 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. A pedestrian, however, must also exercise reasonable care for his or her own safety. The care required of the pedestrian must be in proportion to the danger to be avoided and the consequences that might be reasonably anticipated.

[30] Counsel for the defendant states and I agree that the claimant being crouched on the ground in black clothing at that hour and hiding himself near the vehicles ought to have foreseen the risk of injury. The Act imposes a duty of care on drivers to protect pedestrians, however a corresponding duty is placed on pedestrians not to place themselves in harms way. The court is of the view that the claimant in the circumstances did not act in a responsible manner to be protected by the Act.

⁵GDAHCV2009/0552 Para 45

Contributory negligence

- [31] The defendant contends that if found liable then the claimant was contributorily negligent, and his apportionment of liability should be reduced by 70%.
- [32] Damages recoverable are usually reduced to such an extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage. The standard test "is that of a reasonable and prudent man"⁶.
- [33] in **Gul v McDonagh** ⁷ Nugee LJ held that " The primary question in any case where contributory negligence is in issue is whether the claimant took reasonable care for his or her own safety".
- [34] The test for contributory negligence is an objective one. The claimant is deemed to be contributory negligent where reasonably foreseeable specific risk to his safety should have been apparent to him.
- [35] Lord Denning in **Jones v Livox**⁸ said "just as actionable negligence requires foreseeability of harm to others, so contributory negligence requires foreseeability of harm to oneself. A person 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 hurting himself; and in his reckoning he must take into account the possibility of this being careless".
- [36] Counsel for the defendant states that the claimant is known to be "an accustomed peeping tom" and therefore should have foreseen the risk of harm to himself being around vehicles in the dark and engaging in wrongful activities as a nuisance to the privacy of other individuals.
- [37] The court agrees. The claimant's injuries would have been completely avoided had he not placed himself in the position and manner described by the defendant. The claimant at the age of 47 should have reasonably foreseen that placing

⁶ Clerk & Lindsell on Torts, Twenty Third Edition, at 7-157

⁷ [2021] EWCA Civ 1503

⁸ 1952 2 Q B 608

himself in the precarious position near vehicles late night and in dark clothing could have resulted in injuries should a vehicle suddenly moved or reversed. The claimant failed to act as a prudent and fair-minded mature individual in the circumstances of the case. Accordingly, the court accordingly apportions the claimant's contributory negligence at 40%.

Special Damages:

- [38] The claimant claims special damages in the sum of \$34,971.36. The defendant concedes the amounts as pleaded and the court so awards.

General Damages

- [39] Counsel for the attorney in filed submissions stated that in light of the injuries suffered by the claimant, a reasonable sum to award for general damages in the range of \$100,000.00 to \$150,000.00 for pain and suffering and loss of amenities.

- [40] An award for General Damages is guided by the well-known principles in **Cornilliac v St. Louis**⁹ namely (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the impact on the claimant's pecuniary prospects.

- [41] Evidence of the nature and extent of the injuries sustained by the claimant has been set out in the medical expert report of Dr Kester Dragon. The claimant after the incident was taken to the Accident and Emergency Department of the General Hospital where he was seen by the doctor on duty. The report states there was no loss of consciousness, but the claimant said he felt sudden and severe pain in his right thigh and right side of chest. He was unable to stand or walk. He was taken to the operating theatre on the same day where the exploration of a wound on the lateral aspect of his right thigh was conducted and open reduction and internal fixation with plate screws of a displaced fracture of the midshaft of the right femur was performed under general anaesthesia. The claimant remained on

⁹ (1965) 7 WIR. 491

the ward under endovenous antibiotics, and a chest tube was placed in his right pleural space for pneumothorax.

- [42] He developed an extensive post-operative wound infection with persistent secretion from the wound on the lateral aspect of his right thigh. By December 2018, the plate was displaced with loose screws, and he was returned to the Operating Theatre at the General Hospital for the plate and screws to be removed and a “Denham pin” was applied to the proximal tibia for skeletal traction. He continued to receive dressings postoperatively. Chest-rays revealed fractures of the 2nd, 5th and 7th ribs. He was released from Hospital, discharged against medical advice on March 14th, 2019. He thereafter pursued surgical intervention in Trinidad.
- [43] The claimant was reviewed on January 6th 2020, post-surgical operation in Trinidad. X-Rays showed an intra-medullary femoral nail, with satisfactory bone alignment. However, there were extensive areas of bone defect, with loose fragments and areas of radiolucency.
- [44] The claimant’s movements have been extremely restricted after the injury. He has difficulty completing relatively simple everyday activities like getting into his bathroom. He had to change jobs from landscaping to real estate and vehicle rental. His form of exercise had been playing basketball and occasionally football but he is now unable to do so. He ambulated with an obvious limp due to limb length discrepancy from shortening of five centimetres (5cm) on the right side.
- [45] The parties referred to several authorities in support of the assessment of damages. The claimant relied on the case of **Brentlie Charles aka Brently Charles v Marcus Corridon**¹⁰ which he alleges bears the most similarity to the case at bar, as both claimants suffered osteomyelitis and underwent several surgeries to repair the fracture and the recurring infection.

¹⁰ CLAIM NO. SVGHCV 2002/

- [46] The claimant in **Brentlie Charles** was 21 years old at the time of the accident sustained a broken leg and was admitted to hospital and remained unconscious for three (3) days. His injuries were detailed as head injury including a large laceration to the left leg with bony deformity. X-rays revealed compound fractures of the left tibia and fibula. The claimant underwent surgery for debridement of the compound fracture. Open reduction and plating of the tibia fracture. The claimant continued to suffer swellings, discharge and formation of a chronic ulcer of the left leg. X-Rays done in November 1999 showed osteomyelitic changes in the tibia with a diagnosis of chronic osteomyelitis secondary to infection.
- [47] The defendant referred to the case in **Ryan Richards v. Ryan Richards**¹¹ where the claimant suffered tremendous injuries to his left leg, left arm and shoulder, resulting in a permanent limp, deformity and shortening of the leg. The court in 2013 awarded the sum of \$80,000.00 for pain and suffering and \$60,000.00 for loss of amenities.
- [48] The court also considered the other authorities relied on by the claimant namely (i) **Marcel Fevrier v Bruno Canchan et al**¹² the 25-year-old female claimant was awarded EC\$150,000.00 for pain and suffering after having sustained a comminuted fracture of the right femur together with abrasions and superficial lacerations, right leg externally rotated, with tenderness and swelling around the fracture site and abrasion on the left foot.
- (ii) **In Lorena Lambert v Michael Seraphin**¹³ - the claimant suffered blunt head trauma and an open type 11 commuted fracture of the left distal 3rd femur with intra-articular extension. She was treated with skin traction and had open reduction and internal fixation of the left distal femur with a dynamic condylar screw. The claimant was awarded \$100,000.00 for pain and suffering and \$60,000.00 for loss of amenities.
- [49] The court accepts that the claimant suffered extensive injuries comparable and to some extent a little more severe than the injuries suffered in the authorities. The

¹¹ GDAHCV2010/0156

¹² SLUHCV1989/313

¹³ SLUHCV2015/0916

claimant was hospitalized for a period of approximately five (5) months. The claimant 's ability to work as a Landscaper and his ability to function in this trade has been severely diminished as he can no longer walk, sit, stand or drive a vehicle for extended periods.

[50] The court is of the view that the sum of \$150,000.00 for pain and suffering and loss of amenities claimed by the claimant is reasonable in the circumstances. sum.

Conclusion

[51] For the foregoing reasons, it is ordered and declared as follows:

- (i) Judgment is entered in favour of the claimant against the defendant.
- (ii) The defendant shall pay the claimant special damages in the sum of \$34,971.36 with interest at the rate of 3% from the date of filing the claim until judgment and at the rate of 6% from the date of judgment until payment in full.
- (iii) The defendant shall pay the claimant general damages for pain and suffering and loss of amenities in the sum of \$150,000.00 with interest at the rate of 6% for the date of judgement until payment in full.
- (iv) Prescribed Costs on the total sum pursuant to CPR 65 as amended.
- (v) The claimant is 40% contributory negligent and the total award shall be discounted accordingly.

Agnes Actie
High Court Judge

By the Court

Registrar