

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

GRENADA

CLAIM NO. GDAHCV2020/0267

BETWEEN:

RONALD CHARLES

Claimant

and

**[1] RODRICK GRIFFITH
[2] MESHACH WILLIAMS**

Defendant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Ms. Sheriba Lewis for the Claimant

Ms. Skeeta Chitan, Mr. Ricardo Sylvester and Mr. Kadeem Strachan for the Defendants

2023: June 15;
October 5.

JUDGMENT

[1] **GLASGOW, J.:** On the 10th day of September 2019, the claimant, Mr. Ronald Charles (Mr. Charles) was driving a pink 1995 Toyota Corolla registration number P7746 along the St. Paul's Main Road, St. George's. At the time he was employed as a physical education instructor and swim, track and field coach at the Alpha Junior School (Alpha) located in Mt. Parnassus, St. George's. In order to leave the St. Paul's Main Road to get to Alpha, Mr. Charles would have to leave the right lane in which he was driving, make a right turn across the left lane then enter into a minor road that leads into the Mt. Parnassus area (the junction). It is a manoeuvre that he performed most days to get to Alpha. On the day in question, he performed the same manoeuvre

but at some point in executing the turn, there was a collision with a 2018 Toyota Hiace bus. The bus, bearing registration number HAP200 was driven by the second defendant, Meshach Williams (Mr. Williams). The bus was owned by the first defendant, Roderick Griffith (Mr. Griffith). Mr. Charles and Mr. Williams contest how the collision occurred. Mr. Charles filed this action against the defendants in which he claims that Mr. Williams drove in such a way to cause the collision. He says in his claim that Mr. Griffith is vicariously liable as owner of the bus. The defendants filed a defence in which they deny that they are liable as claimed. They counterclaimed and alleged that Mr. Charles is solely responsible for the accident. Both sides seek damages, interests and costs.

Mr. Charles' version

- [2] Mr. Charles' case is that on the day in question he approached the junction situated on his right-hand side. Before attempting to cross into the minor road leading to Mt. Parnassus, he slowed down and checked the road for oncoming traffic. He noticed a white vehicle reversing from the car park of a supermarket known as "Bread Supermarket which was about eighty (80) feet away from the junction on the right side of the road in my direction of travel. I did not observe any other oncoming traffic from the other side of the road."¹
- [3] Mr. Charles states he put on his right indicator then proceeded to enter the Mt. Parnassus junction on his right-hand side. He observed that there was a build-up of traffic on his side of the road which he surmises was caused by a number of factors. He explains that he entered the junction slowly since the entrance to the junction is narrowed by an electric pole located in the middle of the road. Of note in this case is his evidence that he followed another vehicle(s) entering into the junction at the time. Upon reaching about halfway into the junction he heard a vehicle blowing its horn and then he felt the impact to the left side of his vehicle. The impact caused his vehicle to spin and then come to a stop. The rest of his case recites what transpired after Mr. Griffith's vehicle impacted his vehicle. He then claims losses for damage to his vehicle, injuries, interests and costs. At trial, Mr. Charles sought to press the fact that Mr. Griffith was charged for the offence of driving without due care and attention and that he was convicted of the same by a magistrate.

¹ Mr. Charles witness statement filed on 30th September 2021 at para. 7

Mr. Williams's version

[4] Mr. Williams recalls that on the day in question he was driving the Toyota Hiace bus as a hired driver on behalf of Mr. Griffith, the owner. He was driving the bus on the way to the parish of St. David's which is the route that he uses daily to ply his trade as a bus driver. He was thus travelling in the opposite direction to Mr. Charles. He notes that the road ahead of him on that day was clear of traffic. He was driving at about 30 mph. As he approached Bread's Supermarket, (located on the left-hand side in his direction of travel) he noticed a car attempting to reverse out of the supermarket's parking lot onto the St. Paul's Main Road directly into his path of travel. As the back portion of the car was about to enter his path of travel, he sounded his horn. The car halted its manoeuvre into the main road and drove back into the Bread Supermarket's parking lot.

[5] Mr. Charles' testimony is that when the reversing car returned to the parking lot, there was still no traffic in the lane ahead of him. He did observe a line of traffic in the lane opposite to him heading in the other direction. Traffic was moving slowly. As he drove past Bread Supermarket, a car suddenly pulled out from the line of traffic on the opposite side and turned into the junction leading into Mt. Parnassus. The car thus turned into his lane of traffic. It did so without warning. In his witness statement he explains that even if the driver of the car had indicated that he intended to turn into the junction, the driver could not perform the manoeuvre at the moment that he did since "it was clearly unsafe to do so as the manoeuvre involved the car travelling from the right side of the road and across the road into the Mt. Parnassus main road."² Mr. Williams claims for the damage to his vehicle, loss of use, interests and costs.

The trial, discussion and findings

Liability

[6] I have formed the view that notwithstanding the spirited and strenuous arguments on both sides, the claimant, Mr. Charles is wholly responsible for the collision. I start with the accepted principle that the driver who wishes to perform a legal, but unusual or possibly dangerous manoeuvre is tasked with the greater burden of proceeding in a careful manner.³ In this case I do not find that Mr. Charles discharged that burden for several reasons.

² Mr. Williams' witness statement filed on 28th October 2021

³ James A.L Bristol v Margaret Blackburn GDAHCV 2005/0144 and Margaret Blackburn v James A.L Bristol GDAHCVAP 2012/0019

[7] Firstly, it is beyond trite that Mr. Charles was tasked with ensuring that it was safe to turn before he performed the manoeuvre of crossing from his lane of traffic into the opposite lane. Incredibly he accepts that at the time he was following another or other vehicles that were turning in to the same junction. My assessment is that he was duty bound to ensure that the lane on his left was clear of all traffic before making the turn and not just to follow other vehicles ahead of him. I do not accept that he acted in the appropriate manner. Both drivers accept that the road in both directions at that juncture was not of such a nature that it wholly obscured observation in either direction. More particularly, the evidence suggests to me that if Mr. Charles had stopped, waited and observed the traffic in the other direction for a sufficient period, he would have undoubtedly seen the oncoming vehicle driven by Mr. Williams. His testimony indicates that he signalled before turning into the junction, but this was not sufficient in my view. He was duty bound to ensure that there was no oncoming traffic in the opposite lane or that the traffic in the oncoming lane was at a safe enough distance away from him before he attempted to turn into the opposite lane. Mr. Charles testified that he checked but did not observe other vehicles in the opposite lane. The evidence (more particularly the evidence given by Mr. Wendell Charles) does not suggest that Mr. Charles discharged that duty at all or in an adequate fashion.

[8] Secondly along with the foregoing finding and even more incredibly, Mr. Charles produced a witness, Wendell Charles whose testimony suggests even more graphically, in my view, the lack of care exercised by Mr. Charles in this case. Mr. Wendell Charles was parked in the parking lot of Bread's Supermarket close to the junction in question on the side of the road on which Mr. Williams was driving. Mr. Wendell Charles attempted to perform a dangerous manoeuvre by reversing out of the supermarket's parking lot into the lane in which Mr. Williams was driving. For all intents and purposes, he therefore caused an obstruction in Mr. William's path of driving. Mr. Williams then blew his horn to alert him, and he returned to the parking lot. Mr. Charles accepts that he saw Mr. Wendell Charles' car reversing into the road, but he did not see the bus driven by Mr. Williams. This testimony graphically depicts the negligent conduct since it was Mr. Charles' duty to ensure that there was no traffic beyond the reversing car before he attempted to cross a lane of traffic into another lane. His evidence suggests to me that he took Mr. Wendell Charles' reversing into the road to indicate that perhaps there was no other traffic in the left lane or that it was safe for him to cross into his left lane and enter the junction. As fate would have it, his assumption that it was safe to turn into the junction turned out to be grossly incorrect since there was traffic beyond the reversing car which caused the reversing car to hastily abort its own callous action and return to the parking lot of Bread's Supermarket. There can be no stronger

evidence of the patent lack of care with which Mr. Charles conducted himself on the day in question. Again, he was duty bound to ensure that the left lane was clear of traffic or if there was traffic in his left lane that the traffic was at a sufficiently safe distance away from him to allow for his vehicle to cross from the right lane into the left lane then into the junction.

- [9] Thirdly, it is argued by Mr. Charles that Mr. Williams was obviously driving very fast on the day in question. I do not find that this fact has been borne out by the evidence. I agree that there appears to be considerable damage to both vehicles. Mr. Williams accepts that he was driving at about 30 mph. This is no insignificant amount of speed. The police did not record any sign of skidding or tire impressions which, while not dispositive of speeding, assists this court in its view that Mr. Williams may not have been proceeding at an excessive speed. The evidence suggests that as Mr. Williams was driving along his way, as he got close to Bread's Supermarket, he was confronted by a vehicle reversing from the supermarket's parking lot into his path. In order to avoid colliding with the reversing car, he blew his horn loudly and the car returned to the supermarket's parking lot. As he passed the car, he was confronted by Mr. Charles' car which was already turning into the junction. He took evasive measures, but the two vehicles collided. The evidence suggests that there is not a great distance between Bread's supermarket and the junction in question. Further I would add that was opined by Mitchell J in **Paula Charles v St. Claire Lewis**⁴, speed alone is not determinative of negligence. I will adopt his Lordship's reasoning to the effect that –

“The fact that the driver who is driving in his own lane is exceeding the speed limit is not conclusive of negligence on his part if he should collide with another vehicle...the fact of his driving in excess of the speed limit in his own lane in the highway cannot be used to minimize the duty of the user of another lane in the highway to ensure that he does not carelessly cross into and obstruct the former's right of the way” (emphasis ours).

- [10] The court is required to assess all the facts to determine where liability falls. I have found that Mr. Williams was not proceeding at an excessive rate of speed. However even if it was the case that Mr. Williams was proceeding with some considerable speed, I would still say that the primary responsibility for this collision must be borne by Mr. Charles. His evidently wanton lack of due care and attention is demonstrated by his failure to discharge the heavier burden of ensuring that there was no oncoming traffic in the opposite lane or that any oncoming traffic was at a safe distance away from him before he made a turn into an opposite lane.

⁴ SVGHCV2000/0139 at para. 8

Damages

[11] As matters rest therefore, Mr. Charles has not succeeded on his claim. Mr. Charles has been found liable for the collision and as such the defendants are successful on their counterclaim. The defendants ask the court to award special damages of \$16,438.92 being the cost of repairs to the bus and \$1500.00 for the loss of use of the bus for 10 days. All are agreed that special damages must be both pleaded and proved⁵. The defendants accept that they have produced quotes and invoices for repairs but have not provided any receipts to prove that any of the quoted costs have been paid. The point is made in **Dolette Cyr Bartholomew v Hazzard et al**⁶ following on from **Grant v Motilal Moonan Ltd**⁷ that an invoice may not generally suffice as proof that an expense was incurred. The court in **Dolette Cyr Bartholomew**, however, accepted that in circumstances where it is proven that the expense was incurred and the quoted sum for such services was not challenged by the defending party, the court may accept the sum quoted on the invoice as a loss to be compensated. The court also accepted the principle that in any event, where special damages is not proved the court may award nominal damages where it is satisfied that the loss was incurred⁸. Counsel for the claimant, Ms. Lewis, takes great issue with the fact that no receipts for payments were produced in this case. Counsel also asks the court to accept that the invoices do not state whether the listed replacement parts were new or used parts. The defendants, counsel says, should not be compensated with new parts for a used vehicle. If therefore the court accepts the invoices, they should be discounted by 50 percent.

[12] It is apparent that the defendants have not produced payment receipts for the loss claimed. However, consistent with the view expressed in **Motilal Moonan Ltd** and **Dolette Cyr Bartholomew**, this court is satisfied that the claim for loss is not out scale with the extent of the loss undisputedly incurred by the defendants. Ms. Lewis for the defendants, beyond asserting that the defendants should not be credited with new parts for a used vehicle, has not presented any basis for the court to find that the quote was indeed for new parts. The defendants are therefore awarded the sum of \$16, 438.92 in damages for repair to the Toyota Hiace bus.

⁵ Grant v Motilal Moonan Ltd (1998) 43 WIR 372

⁶ GDAHCV2021/0020

⁷ Supra, note 5

⁸ Grant v Motilal Moonan Ltd (1998) 43 WIR 372

[13] With respect to loss of use, at paragraph 32 of the closing submissions the defendants indicate that they do not challenge the sum of \$1,500.00 claimed by the defendants under this head of loss. The defendants are awarded the sum of \$1,500.00 as special damages for loss of use.

Conclusion

[14] Mr. Charles' claim is dismissed. The defendants have succeeded on their counterclaim and are awarded relief as follows –

- (1) Costs of repair to vehicle -\$16,438.92;
- (2) Loss of use - \$1,500.00;
- (3) Costs – \$3,000.00
- (4) Interest in the amount of 6% percent per annum is awarded on the total judgment debt from the date of this judgment until payment in full.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar