

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

GRENADA

CLAIM NO. GDAHCV2014/0539

BETWEEN:

ALLYSON AMECHI

Claimant

and

[1] **THE COMMISSIONER OF POLICE**
[2] **SGT. MAC DONALD #650**
[3] **JOSEPH GREAVES**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Sabrita Khan Ramdhani for the Claimant

Mr. Adeybayo Olowu of the Attorney General's Chambers for the First
Defendant

Ms. Karen Samuel for the Second Defendant

2023: June 20; 27; 29.

RULING

- [1] **ACTIE, J.:** This case involves the determination of liability for a motor vehicular accident on 4th July 2014 along the Grand Anse Road, St. George's involving a motor vehicle owned and driven by the claimant and a vehicle driven by the second defendant and owned by the third named defendant. No appearance was made on behalf of the third defendant who was deceased by the date of the commencement of this action. Counsel for the claimant at the trial sought leave to discontinue the claim against the third named defendant.
- [2] The claimant avers that about 1:15 pm, she was driving her vehicle registration number P3677 and was in the process of exiting the PKF driveway in the Grand Anse area heading in the direction of town, St. George's. The claimant contends

that vehicles stopped on both sides of the main road to allow her to exit the PKF driveway. As the claimant's vehicle was at the entrance and partially onto the main road, the second defendant driving motor vehicle registration number T7236 overtook a motor vehicle which had stopped on the right to allow her to exit the driveway thereby causing damage to the claimant's vehicle.

- [3] The claimant in a claim form filed on 27th November 2014 alleges that the accident was caused by the negligence of the second defendant, a sergeant of police, acting in the course of his employment.
- [4] The claimant contends that the second defendant was negligent in: failing to pay attention to other vehicles which had stopped on both sides of the road; driving without due care and attention; failing to keep any or at all a proper look out; overtaking when it was unsafe to do so; driving too fast in all of the circumstances; failing to slow down; failure to apply brakes on time or at all so as to avoid the collision; failure to steer and or control the vehicle so as to avoid the collision; driving too recklessly; and driving carelessly.

First Defendant's Case

- [5] The Commissioner of Police denies that the claimant was acting in the course of his employment or under his direction or control at the time of the alleged accident and avers that:
 - (1) He has no control over and has never used the third defendant's vehicle;
 - (2) Neither he nor any of his agents or servants instructed the second defendant to drive or control the vehicle for any reason at all;
 - (3) He has no knowledge of the second defendant driving the motor vehicle with the permission of the third defendant; and
 - (4) He has no knowledge of any accident occurring at the time nor between the claimant and the second defendant.

Second Defendant's Case

- [6] The second defendant denies that he was acting in the course of his employment as a police officer. He avers that the collision was caused solely by the claimant's negligence.
- [7] The second defendant in his witness statement filed on 29th July 2016 and in examination in chief states that he was driving along the Grand Anse main road heading in the direction of the Sugar Mill roundabout when he noticed the claimant's vehicle coming down the PKF driveway. He said the claimant's vehicle appeared to be stationary. He said he felt an impact to the rear of his vehicle, and then he realised that he had been hit by the claimant's vehicle as she attempted to emerge from the PKF driveway. He states that the claimant exited the PKF driveway without any indicator signalling that she wanted him to stop. He further contends that there was no vehicle ahead of him as alleged by the claimant.

Legal Analysis

Whether the Second Defendant was Negligent in Driving Motor Vehicle Registration Number T7236

- [8] Drivers of motor vehicles are under a duty to exercise due care on the road¹, and to drive with a degree of skill and care to be expected of a competent and experienced driver².
- [9] **Regulation 26 (7)(a) of the Motor Vehicles and Road Traffic Regulations of the Motor Vehicles and Road Traffic Act CAP 201.** This regulation stipulates that:

“26. Every driver of a motor vehicle shall comply with the following rules –

...

¹ ANUHCv2013/0206 Clarence Martin et al v Edris George

² Nettleship v Weston (1971) 3 All ER

7(a) He or she shall, when approaching turnings and cross roads or coming from any private road or place to any public road slow down and make the appropriate traffic signal...”

- [10] It has been held that there is a greater burden on a driver exiting from a minor road to a major road to ensure it is safe to do so, than a person driving on the main road³. Drivers are expected to determine what other users of the road are doing, and to manoeuvre their vehicles in order to prevent and avoid accidents⁴.
- [11] The court accepts that the claimant in exiting the PKF driveway onto the main road was under a duty to exercise extreme caution to ensure that the main road was clear. However, the fact that someone is exiting from a minor road does not always mean that he or she is liable for the accident. The court must take all the relevant factors into consideration.
- [12] This accident took place at 1:15 pm, on a road sufficiently straight for visibility to be good for all involved. A vehicle exiting the PKF driveway is able to observe traffic emerging from the direction of St. George’s town, and vice versa.
- [13] It is the claimant’s evidence in her witness statement and in examination in chief that she waited for some time since there was traffic travelling in both directions. Eventually vehicles on the left and right side stopped to allow her to exit onto the main Grand Anse Road.
- [14] It is also the claimant’s pleaded case and evidence in chief that the second defendant overtook the stationary vehicle to her right resulting in the accident. The evidence of the claimant was corroborated by her mother who was a passenger at the time.
- [15] The court did a site visit of the locus in quo on 20th June 2023 and is of the view that the claimant’s version of facts is more credible. The second defendant demonstrated the spot where the vehicle on the left stopped which corroborates the claimant’s evidence that a vehicle stopped to allow her to exit. Placing the vehicle to the left side at the exact location where the second defendant identified

³ SLUHCV2007/0119 Barbara Mc Quilkin v Sylvester Devaux & Anr

⁴ ANUHCV2013/0206 Clarence Martin et al v Edris George

would have given the second defendant sufficient space to overtake the stationary vehicle to the right of the claimant's vehicle. The evidence thus supports the claimant's evidence of the damage to the left front side of her vehicle as the claimant would have already been on the road turning right towards town. The right front side of the claimant's vehicle would have been shielded by the stationary vehicle on the right side.

[16] The claimant states that the second defendant after the accident did not stop close to her vehicle or at the point of impact but stopped some distance away. He then reversed and stopped a little distance away from her vehicle. The second defendant denied that he reversed after the accident, however in his witness statement filed on 29th July 2018, he states that after the accident occurred, he stopped the vehicle a little further ahead to prevent blockage of the traffic. The second defendant's evidence again corroborates the claimant's statement that the second defendant did not stop his vehicle at the point of impact.

[17] Further the claimant's action in contemporaneously reporting the accident to the Central Police Station supports her evidence that the accident was caused by the second defendant. The second defendant as a police officer failed to report the accident. He stated that as a police officer he is the first judge at the scene of the accident and therefore did not see the need to call the police.

[18] The court rejects the second defendant's contention, as he could not be a judge in his own cause which is a clear breach of the rule of law. He as a police officer, like any other citizen, was under an obligation to remain at point of impact and to call the police to take the necessary measurements and statements from the parties and witnesses. The court taking all the evidence in the round accepts that the claimant has satisfied her case on a balance of probability against the second defendant.

Damages

[19] The claimant contends that as a result of the damage sustained, she had to engage the services of an auto mechanic to effect the repairs to her said vehicle,

and to replace the damaged parts. The claimant pleaded special damages and general damages. The claimant has abandoned the claim for general damages.

Special Damages

[20] The particulars of the special damage are particularized as: (i) parts: \$8,783.47 (USD\$3,232.90); (ii) headlamps: \$4,905.87 (USD \$1,805.69); (iii) customs Brokerage, Government of Grenada Duties and Taxes \$3,683.51; (iv) costs of repairs \$1,131.50; (v) costs of estimates \$100.00; (vi) loss of use of vehicle for 21 days x \$200.00 (\$4,200.00).

[21] The claimant in support presented an estimate for the repairs from Pegs Auto Services dated 4/7 listing the replacement parts as left head lamp, front bumper, left fog lamp, left fog lamp bezel, left fog lamp washer and pump, licence plate holder, front bumper impact sensor, grille, left bumper bkt and licence plate, with an estimate of labour cost of \$1,131.50 and an estimate time of 13.5 hours. The estimate costs a non-refundable sum of \$100.00.

[22] The court reviewed the documents appended and notes the invoice for the parts dated the 8th July 2014 shipped to Sun Motors, Point Salines, Granada, FL 33169 (473) 444 5777. The court also notes that the first twelve items on the invoice are not listed in the Pegs Auto Services' report.

[23] Secondly, the claimant also provided a cash sales invoice from Guy Salmon Land Rover for 2 headlamps at \$752.00 each. The said invoice is dated 18th June 2014 which predates the accident on 4th July 2014. Secondly, the Pegs Auto Services' report provided for one left headlamp, whereas the invoice is for two headlamps.

[24] The claimant presented a receipt from Customs Brokerage Specialist dated 18th July 2014 for services provided on for "1 ctn stc Land Rover M/V Parts Amerijet 17th July 2014" totalling \$3,683.61.

[25] The court notes that Pegs Auto Services' report expressly states that the estimate did not include the costs of the parts and it was necessary for the claimants to

have sourced the parts to enable the repairs. The claimant in her pleaded case states that she had to import the parts to affect the necessary repairs.

- [26] It is trite law that special damages must be pleaded, particularized and proved. Ms. Samuel, counsel for the second defendant, challenges the total sum claimed and relies on the court of appeal decision in **Dolette Cyr Bartholomew and Shem Pierre (In their capacity as administrators in the estate of Peter Oscar Bartholomew, deceased) v Kenton Hazzard et al**⁵, where Baptise JA stated:

“The law on special damages is well settled. Special damages must be pleaded and proved with proper particularity.”

- [27] The Court of Appeal reiterated that an invoice, unlike a receipt, is not proof of payment; it is only an acknowledgement of a debt. The court also cited with approval the decision in **Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited**⁶, where it was accepted that neither an invoice which does not bear the words ‘paid’ thereon nor a proforma invoice which is a commitment to purchase, were a receipt or proof of payment.

- [28] The court notes that the invoices, although not stamped paid, referred to a purchase order and date shipped. Also, it is settled law where damage is proved but not the amount, the court will make a nominal award which is not out of scale⁷.

- [29] The method and sufficiency of proof of special damage must depend on the circumstances of the case. The court accepts the evidence of the damage to the claimant’s vehicle and the need for the repairs and accordingly awards nominal sums as follows:

- (a) Cost of parts from items from the 13th item of the invoice dated 8th July 2014 in the sum of \$4,614.73 (equivalent to USD \$1,698.53);
- (b) Replacement of one headlamp using the estimate cost of \$2,043.10 (equivalent to USD \$752.37) in invoice dated 18th June 2014;

⁵ GDAHCV2021/0020

⁶ Civil Appeal No. 178 of 2005

⁷ CA 162 of 1995 Uris Grant v Motilal Moonan

- (c) Cost of repairs in the sum of \$1,131.50;
- (d) Pegs Auto Services estimate costs in the sum of \$100.00;
- (e) Customs brokerage is reduced to a nominal sum of \$2,000.00, taking into account that the court does not accept that all the parts listed and shipped formed part of the Pegs Auto Services list;
- (f) Loss of use: the claimant seeks loss of use for twenty-one days @ \$200.00 a day. There is no evidence before the court that the vehicle was immobilized as a result of the accident. The Pegs Auto Services' report stated that the repairs would be completed in 13.5 Hours. Accordingly, the sum of \$400.00 is allowed for loss of use for 2 days.

[30] In summary, the total sum of special damages is \$10,289.33 with interest at the rate of 6% per annum from judgment until payment in full with prescribed costs in the sum of \$1,543.39

The First defendant

[31] The claimant alleges that the Commissioner of Police is the principal of the second defendant as he directs and controls and is responsible for the police in their actions in their course of duties.

[32] It is trite law that any action against crown must be instituted against the Attorney General⁸. A person travelling on the highway will be acting in the course of his employment if, and only if, he is at the material time going about his employer's business, that is, if he is doing what he was employed to do or something reasonably incidental thereto. Determining whether or not he was so engaged at the material time requires a fact sensitive approach⁹.

[33] The claimant asserts that the second defendant at the time of the accident was acting during the course of his employment. However, it is the claimant's pleaded case that the second defendant was driving a private vehicle with the consent of

⁸ Section 14 of Crown Proceedings Act

⁹ GDAHCVAP2013/0016 Francis James v National Insurance Board

the third defendant. The Commissioner of Police on 25th September 2015 applied to be removed as a party to the proceedings which could have been disposed at a very early stage of the proceedings had the claimant conceded the point.

[34] Mr. Olowu for the Attorney General asserts that it is settled law that Police officers are not servants or agents of the Commissioner of Police, neither is the Commissioner of Police the employer of the police officers and relies on the cases of Jewel **Thornhill v Attorney General**¹⁰ and **Ramson v Barker**¹¹.

[35] The court is of the view that the claimant has not provided any evidence to prove that the second defendant was acting during the course of his employment although attired as a police officer at the time of the accident. The claimant by her own pleadings states that the vehicle driven by the second defendant was owned by the third defendant, a private individual. The claimant has failed to prove that the Commissioner of Police sanctioned any acts committed by the second defendant at the time of the accident and accordingly the claim against the Commissioner of Police stands dismissed.

[36] In relation to costs, Mr. Olowu claims the sum of \$5,000.00 considering the conduct of the claimant in adding the Commissioner of Police as a party without any evidence to support that the second defendant was acting in the course of his duty. The court notes the claimant's pre-action letter to the Commissioner of Police dated 24th July 2014 seeking legal costs in the sum of \$3,000.00. The court also takes into consideration that a non-existing claim for no value up to trial would engage prescribed costs in the sum of \$7,500.00 pursuant to **CPR 65.5 (2)(b)**. Accordingly, the court is of the view that the costs in the sum of \$5,000.00 to the first named defendant is reasonable in the circumstances.

ORDER

[37] In summary, it is ordered and directed as follows:

¹⁰ [2015] ECSCJ No 77

¹¹ (1982) 33 WIR 183

- (i) Judgment is entered in favour of the claimant against the second named defendant.
- (ii) The claim against the first named defendant, Commissioner of Police, stands dismissed with costs in the sum of \$5,000.00.
- (iii) The second named defendant shall pay the claimant special damages in the sum of \$10,289.33 with interest at the rate of 6% per annum from the date of judgment until payment in full together with Prescribed Costs in the sum of \$1,543.39.

Agnes Actie
High Court Judge

By the Court

Registrar