

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2018/0340

BETWEEN:

SEETA MATTIE BAIJNAUTH

Claimant

And

**VERANDAH RESORTS LIMITED
Doing business as THE VERANDAH RESORT & SPA**

Defendant

Appearances:

Mr. Trevor Kendall for the Claimant

Mr. Satcha Kissoon appearing with Ms. Joia Reece for the Defendant

2022: May 31st
December 16th
2023: February 23rd

JUDGMENT

- [1] **ROBERTSON, J.:** The Claimant sustained personal injuries while she was a guest at the Resort and Spa owned by the Defendant when the brakes of a golf cart assigned to transport persons on the premises of the hotel was disengaged and struck the Claimant. The Claimant alleges negligence on the part of the Defendant and the Defendant's staff and seeks damages (special and general). The Defendant has defended this claim and affirms that the sole cause of the accident was the action taken by a child and further states that the Claimant's son and/or daughter in law failed to adequately supervise the child.

- [2] This Court has determined that the Defendant was in breach of the duty owed to the Claimant as a guest of the Resort and Spa and that injuries and damages were reasonably foreseeable. The Defendant is therefore liable in damages.

Relevant Background

- [3] On or about July 18, 2015, the Claimant, and her family arrived and registered as guests at the Defendant's resort with the intention that they would spend a five-day vacation in Antigua. The Claimant was accompanied by her son, the son's wife and the two minor children, 4 and 2 years old, of the Claimant's son and his wife. Once the Claimant and her family were assigned rooms, they boarded one of the transportation carts/golf carts which was intended to take them to their assigned accommodation. The Claimant stated that she was seated in one of the front seats with some members of her family. The cart was operated by Mr Owen Anderson a member of staff and driver at the Defendant's resort.
- [4] The Claimant contends when the cart arrived at the assigned accommodation the family exited the cart. The Claimant also exited the cart, walked to the front of the cart and was generally observing the resort when she was hit from behind by the rolling cart. The Claimant was pinned under the cart. The Claimant contends that she sustained traumatic personal injuries and severe pain as a result of the incident. The Claimant was immediately transported to the Mount St. John Medical Centre via ambulance and thereafter she returned to the United States of America for further medical treatment. The Claimant described in her evidence her process of recovery.
- [5] The Defendant's evidence is that the Claimant's four-year-old grandson engaged the cart causing injury to the Claimant. Specifically, the Defendant contends that whilst the driver/porter was in the process of unloading the bags from the rear of the parked cart the Claimant's 4-year-old grandson entered the golf cart, got into the driver's seat, and released the park brake of the cart which depressed the accelerator causing the cart to be in motion. The cart rolled down the incline and struck the Claimant.

OWEN ANDERSON

- [6] The Court permitted the evidence of Owen Anderson, deceased, to be read into evidence.
- [7] Mr. Anderson was employed at the Defendant's Hotel for approximately fifteen (15) years. Throughout the period of employment Mr Owen Anderson was engaged to drive a range of vehicles including backhoes, different types of trucks, forklifts, and golf carts.
- [8] Mr. Anderson stated that on the July 18, 2015, he arrived at his place of employment for his usual shift which ran from 3 pm to 11 pm. His duties included transporting guests and their luggage from the lobby to their rooms and from the rooms to the lobby with golf cart. Mr. Anderson indicated that he conducted his routine checks on the cart, specifically he made enquires whether there were any matters regarding the operation of the carts which required his attention and he also conducted routine inspection of the cart. Mr. Anderson also indicated he checked the brakes to determine if it was working optimally and checked the oil and the water volumes.
- [9] When Mr. Anderson indicated that before he transported the Claimant and her family he had to their accommodation he transported four other families. Mr. Anderson stated that he noticed the Claimant's family comprised of five persons. The Claimant, two other adults, male and female, and two minor children. Mr. Anderson stated that he also noticed that the father held the hand of the older of the two minor children while the younger of the two children was held by the mother in her arms. Mr. Anderson further indicated that during the golf cart ride, the father was sitting with the older child between his legs next to the driver's seat and his arms seemed to be firmly wrapped around him and stayed in that position until they arrived at their rooms.
- [10] The cart being used to transport the Claimant and her family had three rows of seats. The Claimant and the Claimant's daughter in law and the younger child were in one of the rows behind the driver's seat row.
- [11] Upon arriving at the rooms of the Claimant and her family, Mr. Anderson stated that he parked the golf cart by engaging the footbrake and he removed the keys from the ignition of the cart. The golf cart was a left-hand drive, and the rooms were to the left of the golf cart.

- [12] Mr. Anderson stated that the journey from the waiting area in the lobby to the rooms was between three to five minutes and that the distance between the parked golf cart to the front door was approximately 16 feet. He stated that there was a short flight of stairs to the assigned rooms. Mr. Anderson indicated that he had taken the first bag up the steps and placed it by the door to the room as the doors were still closed. He stated that after putting down the first bag he heard noises behind him and turned around and saw the older son in the driver's seat of the golf cart with the golf cart running away and the father of the child going after the cart. Immediately he joined the chase after the cart and ran towards the front of the cart to stop the cart. Mr. Anderson indicated that he knew the keys were out of the ignition and was of the view that the cart would have moved was if the child was able to release the footbrake.
- [13] Mr Anderson and the Claimant's son were running after the cart Mr. Anderson and the Claimant's son proceeded to brace the cart from the front until the cart came to a stop. The cart stopped almost immediately. Mr. Anderson indicated that at that time he heard the Claimant's son say to the minor: "What are you doing? What are you doing?"
- [14] However, before Mr. Anderson and the Claimant's son were able to stop the cart the cart make contact with the Claimant and the Claimant was pinned under the cart. Two other employees assisted Mr. Anderson and the Claimant's son to lift the cart off Claimant who remained pinned under the cart. The ambulance was called, and the Claimant was taken for medical attention.
- [15] Mr. Anderson indicated that sometime later he overheard the Claimant's son speaking to his wife and indicating that the minor should not have gone onto the cart.
- [16] Mr. Anderson explained that when the cart is switched off the foot brake will disengage once the gas pedal is pressed. If the cart was on a flat area the cart would not have moved but the cart was parked on a slight incline. Mr. Anderson further explained that if the cart was started with the keys, then Mr. Anderson and the Claimant's son would not have been able to stop the cart from moving.

The Law and the Findings of the Court on Liability

[17] Negligence as a tort arises when there is a failure to exercise that care which the circumstance of the situation demands. Where there is a duty of care owed, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen may cause harm to another¹. There must be a duty owed, breach of that duty and foreseeable damage arising from that breach. The burden rests on the Claimant to show that the defendant's negligence caused the harm to the Claimant.

[18] In the circumstances of this case the Defendant was operating a resort and spa. The Defendant uses golf carts to transport their guest around the resort. There is no doubt that the Defendant owed a duty to guests as well as the staff of the defendant in the manner and operation of the carts. The statement of Mr. Owen Anderson which was read into evidence is that he is aware that once the gas pedal is pressed even if the engine is switched off the foot break will be disengaged. The pleaded case is that once the park brake is released and the accelerator is depressed the golf cart would be in motion. These peculiarities in the operation of the cart are known to the Defendant but not necessarily known to the guest who would be driven in the cart. It is also noted that there are no restrictions prohibiting guests from entering the front row of the driver or from exiting through the driver's seat after the driver has disembarked. A guest may opt to exit from the driver side and in doing so accidentally press the gas pedal causing the cart to go into motion. It is for these reasons that a duty is undoubtedly owed.

[19] In the circumstances of this case the cart was parked on an incline and after the driver left the cart the cart went into motion and collided with the Claimant. The driver did not see what occurred to cause the cart to go into motion. The driver saw the child in the cart and made an assumption. It is noted that while the driver is reported to have heard an interaction between the Claimant's son and the Claimant's grandson and between the Claimant's son and his wife this has very little evidential value.

¹ Halsbury's Laws of England; Tort (Volume 97A (2021)); 2. General Tortious Liabilities; (3) Negligence: 96. Negligence in general.

Contributory Negligence

[20] Contributory negligence requires the 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 reasonably prudent person, he might hurt himself.² The standard of care is objective. In the circumstances of this case there is no evidence that the Claimant was exercising supervisory control on the minor. The evidence of the Claimant and the Defendant is that the children were being supervised by their parents. When the Claimant alighted from the golf cart the Claimant did not assume responsibility of the minor children. The evidence is that the Claimant proceeded to the front of the cart and was looking around while the children were with their respective parents.

[21] Additionally, it is noted that while the Defendant raises the negligence of the Claimant's son and/or daughter these persons are not parties to these proceedings. Further, the Defendant has not issued a counterclaim.

[22] As a result of the foregoing this Court has determined that the Defendant is liable in negligence. At the last hearing this Court made an order that the trial be bifurcated. This Court therefore also orders that the damages are to be assessed by a Master in Chambers.

Ruling on Evidence

[23] The matter arose for the Court's consideration whether the Claimant ought to be allowed to amplify her evidence and whether the Claimant ought to be permitted to admit evidence which was included in the agreed list of documents.

Amplification of Witness Summary

[24] The Claimant has in these proceedings file a witness summary. Witness summaries are governed by CPR 29.6(3). CPR 29.6(3) provides that:

“A witness summary is a summary of the -

(a) Evidence, so far as is known, which would otherwise be included in a witness statement;

(b) Matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known”.

² Halsbury's Laws of England/Negligence (Volume 78 (2018))/5. Apportionment of Liability/ (1) Contributory Negligence/78. Standard of care in contributory negligence.

- [25] The effect of these provisions to require the party filing a witness summary to provide as much information as it possible so that that the opposing party is aware of the nature of the evidence that the opposing party is required to meet.
- [26] In the circumstances of this case the Counsel for the Claimant filed a witness summary with the following certificate attached, "Seeta Mattie Baijnauth owing to the COVID 19 measures and restrictions in State where she resides in the USA and the disruption to communications and ordinary life was not able to complete review with Counsel and arrange to return a signed copy of the formal witness statement intended to be filed herein on her behalf. The above is a summary of the statement provided to Counsel in an unsigned electronic communication that she wished to have included in her Witness Statement. We will therefore at the trial seek the permission of the Court to amplify the account herein given."
- [27] CPR 29.9 makes provisions for amplification. CPR 29.9 provides that:
"29.9 A witness giving oral evidence may with the permission of the court-
(a) Amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify:
(b) Give evidence in relation to new matters which have arisen since the witness statement was served on the other parties: or
(c) Comment on evidence given by other witnesses."
- [28] Whether the Court ought to allow amplification is a question of fact arising from what is before the Court in the witness statement and whether the matter seeking to be amplified can properly fall into one of the above categories. The Claimant refers to the fact that she is retired and the fact that the accident, among other things, "took away her job". The Claimant also referred to her employment in the following ways:
(a) Paragraph 18: "I had good credit, because of me not working and cannot pay my bills, I lost that".
(b) Paragraph 19: "I used to depend on my job to take care of myself but now I cannot work due to my injuries. This accident has left me traumatized for the rest of my life and a huge loss of income".
(c) Paragraph 20: I used to make at least US\$35,000.00 annually..."
- [29] In such circumstances the Claimant is permitted to amplify her evidence on the matter of her employment. The matter for amplification by the Claimant on her medical condition is dependent on the specific matter seeking to be amplified however it is noted that the substance of the Claimant's injuries have been described in paragraphs 9 to 16 and 19 of the Claimant's witness summary.

Whether the Claimant ought to be permitted to admit into evidence documents to which reference was no made in the Witness Summons

- [30] The Counsel for the Defendant contends that the Claimant ought not to be permitted to enter evidence documents for which no reference was made in the witness statement or witness summary.
- [31] CPR 29.5 (1) (g) provides that the witness statement must sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify

the document. The question for the Court in this matter is if the document is not identified does that prevent the witness from making reference to the document. In this Court's view the answer to that question depends on the likely prejudice to the opposing parties. Where, as in this case, the document is within the list of agreed documents and there has been no notice filed in accordance with CPR 28.18 there is little likelihood of prejudice if the Court were to permit a party to enter the agreed document since the parties have expressed their position with respect to the document. Thereafter parties are free to address the Court on how the documents ought to be considered by the Court and the weight to be attributed to the documents which have been entered into evidence.

[32] It Is Ordered that:

- (a) The Defendant is liable in negligence.
- (b) Damages are to be assessed by a Master in Chambers

**Marissa Robertson
High Court Judge**

By the Court

Registrar