

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2016/0128

BETWEEN:

[1]DESHAWN JAMES

Claimant

-and-

**[1]TEON JOSEPH
[2]ERDINE NATHANIEL**

Defendants

CONSOLIDATED WITH:

CLAIM NO: ANUHCv2016/0282

BETWEEN:

[1]SPECIAL SECURITY SERVICES

Claimant

-and-

**[1] TEON JOSEPH
[2] ERDINE NATHANIEL**

Defendants

Appearances:

Ms. Kivinee Knight Edwards appearing with Ms. Elizabeth Laviscount for the Claimant

Ms. Nelleen Rogers-Murdock for the Claimant

Ms. Latoya Letlow for the Defendant

2022: March 1st & 2nd

2023: February 1st

February 6th (Written submissions)

February 10th

ORAL JUDGMENT

- [1] **ROBERTSON, J.:** These are consolidated proceedings. This matter concerns a vehicle collision which took place on 17th March 2013 at approximately 2 am. on the Diamond Estate Road in the vicinity of Diamond Farm.
- [2] This Court has determined that the first Defendant handled the vehicle negligently resulting in the accident and that the first Defendant is liable for losses resulting therefrom.

Overview.

- [3] In these consolidated proceedings Deshawn James, Wilbur Purcell, the managing director of Special Securities Services, gave evidence on behalf of the Claimants. The Claimants' cases were further supported by the evidence of Desmond Walters. The police officers who reported to the scene of the accident, Corporal Ian Michael, and Corporal Donnie Lewis also provided evidence. The Defendants gave evidence in defence of their case and called Jermell Thomas to support their defence.
- [4] The first Defendant's counter claim issued against Deshawn James was withdrawn by notice filed on 18th July 2016. The Claimant, Special Securities Services, by notice discontinued its action against second defendant, Erdine Nathaniel.
- [5] The Court in these proceedings is required to determine whether the first Defendant was negligent and that such negligence resulted in the accident on the day in question and/or whether Deshawn James is liable in contributory negligence. The Court is also required to determine the liability of the second Defendant.

The Law, Analysis and Finding of the Court.

- [6] The provisions of Schedule 2 of the Vehicle and Road Traffic Act Cap 460 of the Laws of Antigua and Barbuda indicate that the speed limit on the road on which the accident occurred is 40 miles per hour.

- [7] The duty owed by road users to other road users was expressed in the often quoted case of ***Cheryl Edwards Administratrix of the Estate of Janique Lewis v Etnel Mills***¹:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected *inter alia* to determine what other users of the road are doing. They are expected to manoeuvre their vehicle in order to prevent and avoid accidents. They are expected to use and observe proper signals, signals must be kept clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at time 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”

- [8] In the circumstances of this case Deshawn James, the Claimant, indicates that he was at approximately 2 a.m. on March 17, 2013, driving a motor bus C9366 (14 seater) from south to north along Diamond Estate Road in the vicinity of Blackout Cultural Park when he noticed a light heading in his direction. The road has a deep curve which bends to the Claimant’s left. The evidence of this witness is that, Teon Joseph, the first Defendant, approached the bend in the road at an accelerated speed and on the Claimant’s side of the road and that the first Defendant collided with the Claimant. The Claimant indicated that on seeing the head lights of the first Defendant’s vehicle the Claimant slowed the vehicle that he was driving and pulled his vehicle closer to the left side of the road.

- [9] The Claimant is employed by Special Securities Services as a night driver and had a passenger in his vehicle at the time of the collision.

- [10] The case for the Defendants is that the first Defendant was on his way home between the hours of 12 mid-night and 2:00am and was driving vehicle registered as A215. The vehicle is owned by the second Defendant. The evidence of the first Defendant is that he was driving at about 40 to 45 mph from West to East and when he was driving around the corner of ‘Dam road’ he saw the vehicle being driven by the Claimant in the middle of the road and with only the left headlight working. The first Defendant indicated that the vehicle driven by the Claimant was being driven at an accelerated

¹ ANUHCv1998/0168.

speed and that the first Defendant was unable to take any evasive action to avoid the collision. The first Defendant indicated that he borrowed the vehicle from the second Defendant for the purpose of transporting the first Defendant to a basketball game.

[11] At the time of the accident both the Claimant and the first Defendant indicated that they would have been driving after a long day at their respective activities.

[12] As a result of the collision both drivers were injured, and the Jaws of Life had to be used to remove the drivers from their respective vehicles. Once the drivers were removed from their vehicles, they were taken to the Mount St. John's Medical Centre where they were admitted for medical attention. The passenger in the Claimant's vehicle was also taken to Mount St. John's Medical Centre.

[13] It was not until May 9, 2013, that Deshawn James and Teon Joseph returned to the scene of the accident to provide the investigating officer, Corporal Ian Michael, with their respective statements about what occurred on the morning in question and to provide information on how the accident occurred. As would be expected the parties provided the investigating officer with differing versions of the accident and the point of impact.

[14] On the morning of March 17, 2013, when the accident was reported to the police Corporal Ian Michael and Corporal Donnie Lewis, police officers, were dispatched to the scene of the accident. When the officers arrived on the scene both drivers were still trapped in their respective vehicles. After the drivers were removed from their vehicles with the assistance of the Jaws of Life and taken by ambulance for medical attention Corporal Donnie Lewis took pictures of the accident scene. Corporal Ian Michael took measurements, which measurements were used in these proceedings. The pictures taken by Corporal Lewis were not available for these proceedings as the photographs were not printed after being uploaded to a computer at the Police Headquarters. Additionally, the evidence of Corporal Donnie Lewis is that the computer to which the photographs were uploaded became corrupted through a malfunction of the equipment thereby making all the photographs irretrievable.

[15] The measurements taken by Corporal Ian Michael and given in his evidence in chief are indicated here under.

- (1) Metal pole – reference point 1
- (2) Wooden pole- reference point 2
- (3) Width of road 21 feet
- (4) Distance between vehicles 24 feet
- (5) Distance between reference points 65.5 feet
- (6) Reference point 1 to the right front wheel of bus or claimant's vehicle 52.7 feet
- (7) Reference point 1 to the right rear wheel of bus or claimant's vehicle 54.7 feet
- (8) Reference point 2 to the right, front wheel of bus or claimant's vehicle 33.3 feet
- (9) Reference point 2 to the right, rear wheel of bus or claimant's vehicle 44.4 feet
- (10) Reference point 2 to right front wheel of jeep or defendant's vehicle 1.1 feet
- (11) Reference point 1 to the right front wheel of jeep or defendant's vehicle 67.5 feet

[16] It is noted that some of these measurements differ from the measurements given when the Court conducted a *locus in quo*. The measurements using reference point 2 are indicated hereunder. At the *locus*:

- (1) **Reference Points.** Corporal Michael identified the reference points 1 and 2. These reference points were located on the side of the road that the Defendant's vehicle was being driven.² The distance measured between the reference points when measured at the *locus* was 62 feet and 4 inches. The difference in the measurement being 3.1 feet from that given in the examination in chief.
- (2) **The Width of the Road.** The width of the road was confirmed to be 21 feet.
- (3) **The location of the vehicles after the accident.** The Claimant's vehicle was on the Claimant's side of the road in the area near to or approaching a deep left curve in the road. The Defendant's vehicle was located on the grass verge on the Defendant's side of the road in the vicinity of reference point 2. The Claimant's vehicle was facing north (towards St. John's) and the Defendant's vehicle was slanted and off the road. The measurement between the distance of the Defendant's vehicle and the edge of the road was 4 feet 7 inches. The distance between reference point 2 and the right front wheel of the Claimant's

² At the second *locus* reference point 1 no longer existed. Reference point 1 was identified on at the first *locus*.

vehicle was 32 feet³. This is a difference of 1.3 feet in the measurement given by Corporal Michael in his examination in chief.

- (4) The distance between the spot where the Claimant's vehicle was located and the edge of the road closest to reference point 2 was 17 feet.
- (5) Reference point 2 to right front wheel of jeep or Defendant's vehicle 1.5 feet a difference of 0.3 from what was indicated in the evidence in chief.
- (6) The width of the Claimant's and the Defendant's vehicle was 5 feet 8 inches.

[17] At the conclusion of the investigation Corporal Ian Michael preferred a charge against the first Defendant pursuant to section 56(1) of the Vehicle and Road Traffic Act, CAP 460 for careless driving. The charge was on September 12, 2013, dismissed by a Magistrate for want of prosecution.

[18] It is unfortunate that other officer, Corporal Lewis, who reported to the scene of the accident did not take measurements as his measurements would have further assisted the Court in this matter. This is particularly important since the photographs which were taken of the placement of the vehicles after the collision were not available to the Court.

The Finding of the Court.

[19] In this case the deliberations of the Court would have been benefited from an accident reconstructionist to assist with the likely pre-impact positions of the vehicles. Moreso, since the parties were taken to the hospital after the accident and the parties did not return to the scene to give their respective statements to the police until almost 2 months after the accident. Additionally, the part of the road where the accident occurred lends itself to varied conclusions depending on the speed that the vehicles were moving, the placement of the vehicles on the road and the likely trajectory of the vehicles after impact.

[20] At the *locus* the Claimant and the first Defendant indicated where their respective vehicles were located when they observed the other vehicle and the point of impact. Given the fact that the evidence on the point of impact, when the parties saw the other vehicles and where the vehicles

³ Reference point 1 to the Claimant's vehicle 61.1 feet.

were positioned are likely to be self-serving the Court has placed much importance on the measurements taken by the Corporal Michael. Thus, if significant discrepancies are found in the measurements taken by Corporal Michael the outcome of the case is likely to be affected.

[21] The Court is primarily concerned with the placement of the vehicles. On the matter of the reference point 1 a discrepancy is seen with the measurements given by Corporal Michael on the distance between reference points 1 and 2 and with the measurement taken on the *locus*. In this Court's view this variation is not considered to be as material as the placement of the vehicles after impact in relation an identified reference point.

[22] A second discrepancy in the measurements given in the examination in chief with that given at the *locus* is the distance between reference point 2 and the right front wheel of the Claimant's vehicle. During evidence in chief the officer indicated that this distance was 33.3 feet and at the *locus* it was 32 feet. This is a difference (reduction) of 1.3 feet. This is not viewed as a significant difference in the context of the width of the road (21 feet), the width of the Claimant's vehicle and the likely placement of the Claimant's vehicle on the road.

[23] A third discrepancy in the measurements given in the examination in chief was the distance between the reference point 2 to the right front wheel of jeep or Defendant's vehicle. This was indicated to be 1.1 feet in the examination in chief but at the *locus* it was indicated to be 1.5 feet. The difference being 0.3 feet (an increase) from what was indicated in the evidence in chief. The difference in this measurement is not viewed as significant since it does not significantly alter the resting position of the Defendant's vehicle. At the *locus* the officer indicated that the Defendant's vehicle was slanted to the left of the reference point 2.

[24] In considering the matter of liability the Court must also note other matters such as the specific part or curve in the road where the accident occurred, the admitted speed that the vehicles were travelling, the time of the day, the visibility, the roadworthiness of the vehicles and the conditions of the road.

[25] This Court has also considered the damage to the vehicles. It was noted that there was damage to the front of both vehicles. As it relates to the vehicle being driven by the first Defendant it appears

that while the entire front of the vehicle was damaged the front right sustained most of the impact. The evidence of the Corporal Michael is that the entire front of the Claimant's vehicle was damaged. This Court also considers that Claimant's vehicle, a 14-seater bus with a passenger is likely to be a heavier vehicle than the Defendant's vehicle, a Toyota Rav-4, and therefore the impact of the collision is less likely to cause the Claimant's vehicle travelling in a forward motion to be pushed a long/significant distance from the point of impact. In this case the placement of the Claimant's vehicle after the accident was to the extreme left of the Claimant's side of the road. This suggests that the Claimant was less likely to have been in the middle of the road as the Defendant suggests.

[26] This Court has further considered the evidence of the first Defendant that his speed was approximately between 40 to 45 mph which speed was were in excess of the speed limit. A driver along that part of the road would have been expected to reduce the speed of the vehicle when the driver approached such a bend as where the accident occurred.

[27] This Court accepts on a balance of probabilities that the first Defendant is liable for the accident.

Vicarious liability.

[28] In road accident collisions the matter of vicarious liability can only be considered after the Court makes a finding on the driver's liability. The Court having found the first Defendant to be liable the Court considers the matter of the liability of the Second Defendant. The Court in **Phillip Eric Bacon Stephanie Gilbert (Qua Administrators of the Estate of Quinton Garrathy, deceased) v Stephen King and another** noted that:

"The law is as stated by Lord Donovan in the Privy Council decision of Rambarran v Gurrucharran. The following applicable principles can be distilled:

- (1) The law puts a special responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern.
- (2) The onus of proof of agency rests on the party who alleges it.

- (3) Ultimately the question of service or agency is always one of fact.
- (4) An inference may be drawn from ownership that the driver was the servant or agent of the owner. This inference may be drawn in the absence of all other evidence bearing on the issue, or if such other evidence as there is fails to counterbalance it.
- (5) The fact of driving with the consent of the owner does not of itself establish service or agency;
- (6) It must be established by the plaintiff if he is to make the owner liable that the driver was driving the car as the servant or agent of the owner and not merely for the driver's own benefit, in his own interest, and on his own concerns."

[29] In the circumstances of this case the second Defendant, Erdine Nathaniel, gave evidence that the vehicle was being driven by the first Defendant with the second Defendant's consent. The second Defendant however disputes that the first Defendant was an agent for the Second Defendant. The position of the Second Defendant is that the first Defendant was not acting as an agent for the Second Defendant was not challenged by the counsel for the Claimant during cross-examination. Additionally, the accepted evidence of the first Defendant is that he was on his own errand to attend a basketball game. Accordingly, this Court accepts the submission of the Counsel for the Defendants that the Claimant, Deshawn James has not been proven to be liable vicariously.

Contributory Negligence

[30] In order for the defence of contributory negligence to be established the Defendant must prove that the Claimant failed to take reasonable care of himself and in this failure to take care the injured party contributed to the accident.

[31] The question before this Court is whether the Claimant failed to take reasonable account for his own safety and thereby contributed to the accident and the damage and injury which thereby resulted. In the circumstances of this case the Claimant was approaching a deep left-leaning curve in the road. The Claimant would have been expected to approach the bend with much caution and to have stayed as close as possible to the left of the road. There is no evidence that the Claimant was driving at an

accelerated speed. The allegation that the Claimant was driving a faulty vehicle has not, on a balance of probabilities, been proven. The Court having accepted the evidence that the vehicles of the Special Securities Services are checked regularly, and that the Claimant's vehicle would have been checked 24 hours prior to the accident. Additionally, the allegation by the Defendant that the vehicle was in the middle of the road has not, on a balance of probability, been proven by the Defendant particularly in light of the location of the Claimant's vehicle after the collision. There is therefore no basis for the Court to determine that the Claimant was contributory negligent.

[32] Accordingly, this Court has determined that:

- (1) The first Defendant is liable in negligence.
- (2) The first Defendant is liable for damages and loss arising from the accident.
- (3) The damages payable by the first Defendant to Special Security Services is \$24,560.00.
- (4) The damages payable to the Claimant, Deshawn James, is referred to a Master in Chambers.
- (5) The first Defendant is liable to pay prescribed costs in these proceedings.

Marissa Robertson
High Court Judge

By The Court

Registrar