

THE EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SKBHCV2021/0079

BETWEEN:

CLIVE NIAS

CLAIMANT

and

VINGROVE VAUGHAN

DEFENDANT

Appearances:

Ms. Brittney Jeffers for the Claimant

Mrs. Natasha Grey-Brookes and Mr. Hasani McDonald for the Defendant

2022: December 1

2023: February 1

JUDGMENT

- [1] **WALLACE, J.** (Ag): On the 30th August 2020 at about 11:21 a.m. the claimant Clive Nias ("Mr. Nias") was travelling along Cayon Street, in the vicinity of Buckley's Site, when his Volkswagen motor car PB 904 collided in the side of a Toyota Hilux pick-up P 2641 owned and driven by the defendant Vingrove Vaughan ("Mr. Vaughan"). Mr. Nias claims that at the time of the accident Mr. Vaughan was traveling from a minor road onto a major road at a high rate of speed without stopping at the junction before exiting the minor road.
- [2] Mr. Vaughan's case is that upon approaching the junction, he looked left and right and saw no vehicle that would prevent him from immediately crossing over the road. Without coming to a complete stop, he made a judgment call. When he was almost across the road Mr. Nias collided with the right side of

his (Mr. Vaughan's) vehicle thereby causing injuries to both Mr. Vaughan and his passenger. Mr. Vaughan denied that he was negligent and avers that the collision was caused solely by Mr. Nias' negligent driving.

[3] By Claim Form filed on the 23rd April 2021, Mr. Nias claimed the following:

- (a) The sum of \$32,000.00 as net loss for PB 904
- (b) Legal fees for letter and service in the sum of \$470.00
- (c) Service fees in the sum of \$150.00
- (d) Legal Practitioner's fixed costs on issue \$1,000.00

Mr. Nias also claimed interest pursuant to Section 29 of the Eastern Caribbean Supreme Court Act No. 17 of 1975.

The Pleadings

[4] Mr. Nias averred in his statement of claim that at all material times Mr. Vaughan so negligently drove or managed his pick-up that it violently collided with PB904. He pleaded particulars of negligence by Mr. Vaughan to include failing to observe traffic rules by running a traffic stop, failing to keep any, or any adequate look out for Mr. Nias' motor vehicle, driving at a speed that was excessive in the circumstances and driving from a minor road onto a major road when it was unsafe to do so [and] without any regard to the traffic on the major road and failing to foresee the obvious possibility that exiting a junction on a highway without the road being clear would cause a collision.

[5] Mr. Nias pleaded that as a result of Mr. Vaughan's negligence he suffered loss and damage to his motor vehicle and incurred legal expenses.

[6] Mr. Vaughan's defence is essentially a denial of negligence on his part and asserts that it was Mr. Nias who was solely responsible for the collision or at least contributed to it by speeding.

The Evidence

[7] At the trial the witness statements of all witnesses were admitted into evidence and stood as their evidence in chief.

- [8] Mr. Nias gave evidence in support of his case. He stated that on the day in question he was traveling in his motor car on the island Main Road and while in the vicinity of the Caribbean Cinemas, he observed Mr. Vaughan traveling in a motor vehicle along the minor road in Lime Kiln. As he, Mr. Nias, approached the junction in Lime Kiln, he observed Mr. Vaughan suddenly exiting the junction without stopping. He blew his horn and “mashed” his brakes. However, he was unable to avoid the collision. He contacted the Police for assistance and Officer Bisette Bentley was dispatched to the scene of the accident. The parties gave their explanation of the accident to the officer and a Traffic Accident Report was then prepared. Under cross-examination, Mr. Nias agreed that he was about 100ft away in the Buckley’s area when he saw Mr. Vaughan’s vehicle coming up the Lime Kiln road and approaching the junction. He also stated that he expected that Mr. Vaughan would stop as he was driving onto a major road and he was on a minor road. He stated that he was driving between 25–30 m.p.h. He agreed that after the impact his vehicle rolled back.
- [9] Mr. Anthony Fraites was called on behalf of Mr. Nias. In his Witness Statement he stated that he is a mechanic and that in September of 2020 Mr. Nias visited his mechanic shop and requested an appraisal of his 2008 Volkswagen vehicle registration number PB 904. Based on his inspection, he prepared an estimate that was tendered into evidence. From the inspection he determined that PB 904 was a write-off based on the extensive structural damage with a pre-accidental value of \$36,000.00 and post-accidental value of \$4,000.00. In cross-examination Mr. Fraites stated that he had about 17 years’ experience as a certified mechanic and had certifications in inspection and valuation of vehicles. However, the first time he carried out work on PB 904 was in September 2020 when he did the estimate of repairs (“the Estimate”) and so he could not speak to the exact condition of the vehicle before the accident. He agreed that a 2008 vehicle would have depreciated. Mr. Fraites agreed that no list of replacement parts and their costs was provided in the Estimate. Although he agreed with counsel for Mr. Vaughan that generally a vehicle is considered as a write-off when the cost of repairs and salvage value exceeds the value of the vehicle, he indicated that this is not the only reason for writing-off a vehicle. A vehicle could also be written- off based on the portion of the vehicle that was damaged. Mr. Fraites admitted that he did not state in the Estimate that the vehicle was written-off because of structural damages. However, the write-off of Mr. Nias’ vehicle was because the structural damage outweighed the repair value. In his opinion, even with repairs, the vehicle would be structurally unsound and “not be road worthy”.

- [10] Mr. Vaughan gave evidence on his own behalf. He called no witnesses. He stated in his Witness Statement that he was driving his vehicle coming from Lime Kiln on the road from the abattoir. He had a passenger in the vehicle – one Elroy Belle. When he got close to the junction by Cayon Street, he recognised that there was another vehicle on the other side of the road where the cinema is located. The vehicle was at the stop. As he got closer to the stop, he looked left and right and the road was clear, so he continued straight to cross over without coming to a complete stop. While he was crossing over, he felt the impact on the right hand side of the vehicle and observed that Mr. Nias’ vehicle had collided into his vehicle. Mr. Nias’ vehicle was nowhere in sight when he made the attempt to cross the road. He stated that “when coming up the road, I looked left and right and did not see anything. I continued over the road and heard Bam! When the vehicles collided, it turned my vehicle down the road as if I was going down by the Brewery.” There was extensive damage to his vehicle and the collision could have been avoided if Mr. Nias was travelling at a lesser speed and stopped to allow him to cross the road. In cross-examination Mr. Vaughan admitted that he did not come to a complete stop when coming up to the Lime Kiln road because having observed that the road was clear, he proceeded to cross the road.

The Issues

- [11] To my mind there are two issues for the Court to determine. (1) Whether the accident was caused solely by the negligence of Mr. Vaughan and (2) If so, how much is Mr. Nias entitled to as an award of damages.

Submissions

- [12] Learned counsel for the claimant Ms. Jeffers submitted that the evidence of Mr. Nias was that he was driving between 25-30 miles per hour. He emphatically denied speeding under cross-examination. The burden rests on Mr. Vaughan to prove that Mr. Nias was traveling at excessive speed. He must prove, on a balance of probabilities, that the speed Mr. Nias was travelling was excessive and resulted in the collision. Moreover, speeding does not necessarily amount to negligence. Learned counsel referred the court to the case of **Quinn v Scott**¹. Mr. Vaughan has failed to discharge his burden of proving that Mr. Nias was traveling at any particular speed that was excessive and that caused the collision. In fact, Ms. Jeffers further submitted, Mr. Vaughan admitted in his evidence that he made a judgment

¹ [1965] 2 AER p 588

decision and proceed from a junction without completely stopping and thereby failed to adhere to the road traffic rules to give way to oncoming traffic.

- [13] On the issue of quantum of damages, Ms. Jeffers submitted that the true measure of damage in cases of this nature must be the difference in the value of the motor vehicle, pre and post-accident and not the replacement value, and any consequential loss claimed as a result of the collision. She urged the court to accept the evidence of Mr. Fraites that the vehicle could never be returned to the pre-accident state with repairs and that it was indeed a write-off. The court was also invited to consider the cases of **Alphonso v Doedat Ramnath**² and **Fenton Aguste v Francis Neptune**³ in relation to the rate of interest on damages awarded and the applicable date from which interest should run respectively.
- [14] Learned counsel for Mr. Vaughan, Mrs. Grey-Brookes, submitted that based on the evidence the only reasonable inference to be drawn is that the accident was as a result of Mr. Nias' speeding or he would have been able to see Mr. Vaughan's vehicle exiting the junction, "pull brakes and ably avoid the collision". Mrs. Grey-Brooks submitted that in the alternative, if the court finds that the collision could not have been avoided then the extent of the damage would be less than observed in the police report if Mr. Nias was not speeding. She urged the court to find that it was not Mr. Vaughan's failure to completely stop that caused the accident but Mr. Nias' speeding and lack of vigilance that caused the collision. The court was referred to **Cheryl Edwards Administrator for the Estate of Janique Lewis v Ethel Mills**⁴ and **Page v Richard and Doper**⁵.
- [15] On the issue of the estimate of repairs, learned counsel for Mr. Vaughan submitted that given that some "pertinent information was missing" from the Estimate which contained bald assertions and therefore does not satisfy the burden which Mr. Nias is required to prove. Consequently, only nominal damages should be awarded. The cases of **Vincent Jones v Kevin Gervais**⁶ and **Kevin Rodney Charles v Devon Pierre**⁷ were relied on by counsel for the propositions that a claimant should consider whether it would be more economical to purchase a similar vehicle on the open market where the costs

² (1997) 56 WIR 183

³ Civil Appeal No. 6 of 1996 St Lucia

⁴ No. 186/1998 ANVHC

⁵ T&T HCA No 2656 of 1998 paragraph 4

⁶ CV2012-025333 (Trinidad and Tobago)

⁷ GDAHCV20160155

of repairing is substantial and also that the Estimate (i.e. the damage assessment report) ought to contain the pre-accident value in order to ascertain whether it would have been prudent to declare the motor vehicle a write-off and then proceed to award the damages based on the value of the vehicle at the time.

The Law & Analysis

[16] Sections 79(1) and (2) of the Vehicles and Road Traffic Act, Cap. 15:06 of the Laws of Saint Christopher and Nevis ("the Act") state as follows:-

- (1) "It shall be the duty of persons using the road to acquaint themselves with and observe the directions contained in the highway code.
- (2) A failure on the part of any person to observe any provision of the highway code shall not of itself render that person liable to criminal proceedings under this Act, but such failure may in any such proceedings be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings."

[17] The Highway Code Rules 126, 146, 154 state as follows:

126. Stopping Distances. Drive at a speed that will allow you to stop well within the distance you can see to be clear. You should

- leave enough space between you and the vehicle in front so that you can pull up safely if it suddenly slows down or stops. The safe rule is never to get closer than the overall stopping distance (see Typical Stopping Distances diagram, shown below),
- allow at least a two-second gap between you and the vehicle in front on roads carrying faster-moving traffic and in tunnels where visibility is reduced. The gap should be at least doubled on wet roads and increased still further on icy roads,
- remember, large vehicles and motorcycles need a greater distance to stop. If driving a large vehicle in a tunnel, you should allow a four-second gap between you and the vehicle in front.

...

146. Adapt your driving to the appropriate type and condition of road you are on. In particular,

- Do not treat speed limits as a target. It is often not appropriate or safe to drive at the maximum speed limit,
- Take the road and traffic conditions into account. Be prepared for unexpected or difficult situations, for example, the road being blocked beyond a blind bend. Be prepared to adjust your speed as a precaution,
- Where there are junctions, be prepared for road users emerging,
- In side roads and country lanes look out for unmarked junctions where nobody has priority,

- Be prepared to stop at traffic control systems, road works, pedestrian crossings or traffic lights as necessary,
- Try to anticipate what pedestrians and cyclists might do. If pedestrians, particularly children, are looking the other way, they may step out into the road without seeing you.

...

154. Take extra care on country roads and reduce your speed at approaches to bends, which can be sharper than they appear, and at junctions and turnings, which may be partially hidden. Be prepared for pedestrians, horse riders, cyclists, slow-moving farm vehicles or mud on the road surface. Make sure you can stop within the distance you can see to be clear. You should also reduce your speed where country roads enter villages...

[18] Regulations 50 and 51 of the Act provides:-

50. The roads set out in Schedule 4 to these Regulations are hereby declared "Principal Roads".

51. Where two roads intersect **the driver of a vehicle of any description before turning into or crossing a principal road shall bring the vehicle to a full stop** and on turning into or crossing the principal road shall not drive such vehicle so as to obstruct any traffic on such principal road and shall comply with such directions as may be contained in these Regulations or displayed on or near such principal road or intersecting road. (Emphasis added).

[19] It should be noted that Cayon Street is listed in Schedule 4 as a Principal Road.

[20] The law imposes a general duty on road users to exercise care while traveling on roads and a special duty on drivers. In **Cheryl Edwards**⁸, Rawlins J as he then was, stated the duty of a driver in the following terms:

"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 vehicles in order to prevent and avoid accidents. They are expected to use and observe proper signals, signals must be 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 times 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 Supra, Note 4

[21] Similarly, in **Page v Richard and Doper**⁹, Rowlatt J stated the duty of care to be exercised by a driver as follows:

“It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animal or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of seeing, as, for example, a fog, he must go slower in consequence. In a case like this, where a man is stuck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look-out the probability is that the accident would never have happened.”

[22] Mr. Nias’ evidence is that he was driving between 25-30 miles per hour on Cayon Street, a major road. He denied speeding. When asked by counsel to comment on whether the accident could have been avoided if he was not speeding, Mr. Nias in *viva voce* evidence states that he could not avoid the accident as when he saw Mr. Vaughan’s vehicle exiting from the junction, he applied his brakes and blew his horn but just could not avoid the collision. Under cross-examination he stated that he was about 100 ft away in the Buckley’s area (by Carib Brewery) when he saw Mr. Vaughan’s vehicle coming up the Lime Kiln road and approaching the junction. It was suggested to him that given that distance, if he was travelling at 25-30 MPH, he would have been able to avoid the collision. The court has been asked to draw a reasonable inference from this evidence that the accident was caused by Mr. Nias’ speeding.

[23] In my view it is for Mr. Vaughan to prove, on a balance of probabilities, that it was Mr. Nias’ excessive speed that caused the collision and not his (Mr. Vaughan’s) failure to come to a stop at the junction before exiting the minor road onto the major road. This is an issue of fact which I resolve in favour of Mr. Nias, based on the evidence adduced, and on a balance of probabilities, having regard to all the circumstances of the case.

[24] After considering the witness statements in the case and after hearing and observing the oral testimony of the witnesses, I am satisfied that Mr. Nias has made out his case of liability on a balance of probabilities.

⁹ Supra Note 5

[25] The evidence as I accept it, is this, that Mr. Vaughan was traveling from a minor road onto a major road and without stopping at the junction before exiting the minor road. There is no dispute that Mr. Vaughan did not stop before exiting the junction. The accident occurred on Cayon Street, a major road junction. Mr. Nias was in fact traveling on Cayon Street when the collision occurred. Mr. Vaughan said when he came out of the junction onto the major road, it was clear, save for one vehicle that came to a stop. He made a judgment call and proceeded. Mr. Vaughan owed a duty of care to Mr. Nias as a fellow road user. This duty included a duty to come to a stop when approaching or at a road junction, approach the junction with caution, particularly where the motor vehicle is traversing from a minor road into a major road. In my view, his judgment was exercised in a negligent manner as he was exiting a minor road onto a major road and failed to stop. As a driver on the road he had a duty to exercise care generally while driving and to be even more careful when approaching and leaving junctions. I find Mr. Vaughan to be derelict in his duty when he did not stop before proceeding into the major road.

[26] Having said this, the question remains as to whether Mr. Vaughan is fully liable. His pleadings, as well as his evidence is that, at a minimum, Mr. Nias contributed to the collision by speeding. Speed is a traffic offence and not necessarily an indication of negligence. I agree with learned counsel for Mr. Nias that speed *per se* is not evidence of negligence. One has to look at the particular conditions at the time. Mr. Nias indicated that he was traveling at a moderate speed of 25–30 miles per hour. There is no evidence from Mr. Vaughan as to the speed he surmised that Mr. Nias was traveling at. Counsel on behalf of Mr. Vaughan contended that if the accident occurred as Mr. Nias described it, then the damage to Mr. Vaughan's vehicle would have been more towards the immediate front and not towards the rear end as observed by the police officer in the Accident Report. The court is invited to form the view that Mr. Nias must have been speeding for this to happen.

[27] This raises the issue of contributory negligence. Neither counsel specifically dealt with this in their submissions. However, the legal principle applicable is that the party who asserts contributory negligence against a claimant has the burden of specifically pleading it and proving it on a balance of probabilities. Such defendant must prove (1) the fault and (2) the causative effect of the fault. The burden rests on Mr. Vaughan to prove that Mr. Nias was traveling at excessive speed and this is

what caused the accident or contributed to it. Unfortunately, it is my considered view, and I so find, that he has failed to discharge this burden.

- [28] Mr. Vaughan had a duty to ensure that it was safe to begin and then continue his maneuver across the major road from a minor one. While I would agree that a reasonable driver must be prepared for the fact that others may not exercise reasonable care and skill in their conduct on the road, and it will not absolve a claimant of liability for contributory negligence merely to say that he was driving on a major road and that the defendant driving on a minor road had an obligation to yield, I do not have credible evidence to conclude that Mr. Nias was speeding and that contributed to the collision.
- [29] Therefore, I am satisfied that Mr. Vaughan was solely responsible for the accident and Mr. Nias is entitled to judgment.
- [30] Mr. Nias presents receipt for legal fees for letter and service in the sum of \$470.00. He also claims the sum of \$150.00 for service. There is no dispute on this sum.
- [31] He also claims the sum of \$32,000.00 as damages for the motor vehicle PB 904 which had a pre-accident value of \$36,000.00, post-accident value of \$4,000.00, as stated in the Estimate and confirmed by Mr. Fraites. Mr. Vaughan has challenged this value. He provides no findings of what vehicles of that nature would cost. He argues that only nominal damages should be awarded.
- [32] Mr. Fraites' evidence is that while it is customary in some instances to have a list of the cost of repairs, where there is structural damage to the extent that he observed, the vehicle could not be returned to its pre-accident state even with repairs. Therefore, in his opinion, the vehicle would not have been road worthy even with repairs and therefore had to be written-off. He explained further that to determine the pre-accident value, he used the VIN number to do an online search for vehicle of similar year, make and model to determine the current pre-accident value. While he had seen the vehicle before, he could not say with 100 percent accuracy as to the value before the accident.

[33] I find Mr. Fraites to be a credible witness. I am satisfied that, based on the evidence presented that Mr. Nias' vehicle was substantially damaged beyond repair. However, given that Mr. Fraites could not establish, with precision, the state of repairs, I am minded to discount the amount claimed by Mr. Nias by 7.5%. I would therefore award the sum of \$29,600.00 for the loss of his vehicle.

Conclusion

[34] In the circumstances the court's order is therefore as follows:

- i. Judgment is entered for the Claimant.
- ii. The Defendant shall pay the Claimant the sum of \$ \$29,600.00 as net loss for PB904.
- iii. The Defendant shall pay the Claimant the sum of \$ 470.00 for Legal Fees and Service.
- iv. The Defendant shall pay the Claimant the sum of \$150.00 for Service fees.
- v. The Defendant will pay interest at the statutory rate from the date of judgment until the judgment debt is paid in full;
- vi. The Defendant shall pay the Claimant's prescribed costs in accordance with CPR Part 65.

Yvette Wallace
High Court Judge

By the Court

Registrar