

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV 2019/0054

BETWEEN

STEVIKA RODNEY

CLAIMANT

AND

SIMMONE FENTON

1ST DEFENDANT

AND

JOSEPHINE SEMPER

2ND DEFENDANT

APPEARANCES

Ms Marcell Watts for Ms Rodney.

Ms Chivone Gerald for Ms Fenton.

Mr Jean Kelsick for Ms Semper.

2022 DECEMBER 15

JUDGMENT

Concerning a four-car shunt

- 1 **Morley J:** On 30.04.18, at about 08.00, there was a road collision involving four cars near Look Out on Montserrat. There was contact between white Suzuki jeep R125 and black Toyota Alex M3413; also between the black Alex and black Toyota Rav 4 M3095; and also between the black Rav and blue Toyota Rav 4 M1969. The cars were all in a line. What caused this?

- 2 There has been a trial on 06-07.12.22. Various parties, suing each other, want money for their damaged cars and injury.
- a. Simone Fenton was driving the blue Rav and wants \$11250ec for car damage, plus \$1687.60ec in prescribed costs, making a total of \$12937.60ec.
 - b. Josephine Semper was driving the black Rav and wants \$10000ec for whiplash, \$10338ec for car damage and \$12200ec for replacement hire, plus costs of \$4880.70ec, making a total of 37418.70ec.
 - c. Stevika Rodney owns the black Alex, which was being driven by her mother Ausdell Johnson, with her in it, and wants \$17911.20ec for car damage, plus \$2686.68ec in costs, making a total \$20597.88ec.
 - d. The white jeep, being a rental, was being driven by Alyssa Ponteen who has not been party to the proceedings and makes no claim.
- 3 During trial, I have heard evidence from Johnson, Rodney, Fenton and Semper¹, plus from PC Leon Edwards who offered photos of the scene, Dr Franklyn Perkins who testified to Semper suffering whiplash, and from Cameron Yearwood, an independent witness who saw how the collision happened.
- 4 Having reviewed the evidence it is clear beyond any doubt at all how this event occurred. It has been wholly obvious. It was caused by Fenton driving negligently. And it puzzles this court there has been a trial at the behest of her insurer, named Massy. The case involves relatively little money for an insurer, the collision cause is plain, litigation had to be filed by Rodney on 14.10.19, has taken 3 years to come on, 4.5 years from the event, no one has had any payout, even interim, the litigation involving three sets of lawyers, having gone through mediation and the Master's court, then requiring two days' trial listing at the High Court. Obiter, I surmise this case would have settled in the UK, as the cost of the litigation could not be justified over the claim size; moreover, a different insurer ought to have spotted how hopeless the situation was for Fenton.
- 5 Having seen the evidence, I find as a fact, not merely on balance, but I am sure, the following occurred:

¹ ¹ The parties will be referred to by their surnames for ease of reading, and no disrespect is intended by not writing out each time full titles, or names, or the legalese of whether claimant or first defendant or second defendant.

- a. The cars were moving in a line, with Ponteen driving the white Jeep in front, then behind was Johnson driving the black Alex, then behind was Semper driving the black Rav, then behind was Fenton driving the blue Rav.
- b. There has been suggestion made by Counsel Gerald Rodney was driving, but I am satisfied, having heard from both Rodney and Johnson, it was Johnson.
- c. There is a bend in the road, which the cars made their way around.
- d. Yearwood was coming in the opposite direction in his Digicel company car M1351.
- e. Yearwood and Ponteen were expecting to see each other on the road so that Yearwood could collect a package from her.
- f. Spotting each other, Ponteen slowed, and stopped, indicating to the left as pulling over, to talk with her friend Yearwood.
- g. Johnson stopped, and indicated to overtake Ponteen.
- h. Semper stopped about 10ft behind Johnson.
- i. Fenton was with her son aged 6 in the front seat not in a seatbelt. She turned the corner and was not paying attention, and drove straight into the back of Semper without braking in time.
- j. This caused Semper's black Rav to be pushed forward into the back of Johnson's black Alex, which caused Johnson's black Alex to be pushed forward into and then scraping alongside Ponteen's white Susuki.
- k. Fenton's inattention caused a single shunt of her into Semper into Johnson into Ponteen.

6 Fenton's explanation for the accident was the white Jeep had stopped suddenly, which led to the black Alex driving into it in a failed sudden overtake, while the black Rav 4 separately hit the Alex, and then reversed into Fenton who was braking. Per my note:

The collision was never caused by me, in my view, based on the pics, and what was said, the white jeep stopped suddenly, the black Alex was trying to escape, but in trying to overtake the jeep the Alex collided with the jeep, this forced Semper to stop suddenly [in the black rav4], so in trying to avoid the Alex, she collided with the left of the Alex, at that point, she was trying to avoid the Alex, and then she started reversing. I was coming along while she was reversing, that is when the collision occurred, I was driving forward, I was braking, she hit me while I was braking. There were three separate collisions – Alex hit jeep, black Rav4 hit Alex, black Rav4 reversed into me.

7 There are five reasons I can be so completely clear Fenton caused the collision and her version is distinctly wrong.

- a. Rodney, Johnson and Semper say so, and only Fenton disagrees, so that the preponderance of evidence of those involved makes them probably right.
- b. There is a reliable independent witness, Yearwood:
 - i. In his police statement of 09.05.18, soon after the event, he had said:

I saw the black Rav4 stop directly behind the rental jeep. There was another vehicle behind the black car, which was a black Rav4. I saw a blue Rav4 travelling at about 15-20mph, then I heard a creaking sound as if someone hit the brakes...I observed the blue Rav4 hitting into the back of the black Rav4, pushing it forward, as the black Rav4 went forward it hit into the rear of the black car which caused the black car to push forward also...I saw the black car trying to pull to the right of the road, however she hit the side of the rental jeep which was pushed forward also.
 - ii. In court he said, per my note:

...everyone was at standstill, except the blue Rav4, coming, in my opinion she was not paying attention, it as a river-shake, pushing the cars forward....I did see how the accident happened... I saw the collision happen. The accident was caused by the blue Rav4, she was not paying attention, that caused the accident to occur. After the white jeep had stopped, with its indicator, and Rodney's car stopped, and the black Rav4 stopped, then blue Rav4 was still coming at a speed, then when she realised everyone had stopped, it was a bit too late, she tried to stop but there was a continuous collision then going forward.
- c. Fenton's version is inherently improbable, as it suggests there were three separate collisions all coincidentally at the same time: first, Alex on Jeep which had stopped suddenly; second, black Rav4 on Alex which had stopped suddenly; third, black Rav4 on blue Rav4 by implausibly then reversing into it; three collisions being collectively obviously less likely than a single shunt caused by Fenton.
- d. Fenton's evidence lacked further credibility as follows:
 - i. Her explanation for the collision was she said something she had worked out in August 2018, ex post facto, after gathering materials and pictures, and returning to the scene, rather than was what was evidence at the time, so that her version is later constructed as supposition, rather than based on observation at the time.
 - ii. It was put by Counsel she had said to Semper she had been in a rush to work, denied, saying instead there had been no conversation at the scene as to what happened, which did not ring true at all, particularly as her son had been in the front seat and she could as human nature be expected to have talked with

everyone to establish what had happened; though alternatively, if true she had said nought, this would add to the appearance she was culpable and keeping quiet.

- iii. In denying she had said she had been rushing to work, she offered an elaborate explanation that although the accident occurred around 08.00, which is from when she is supposed to be at work as a civil servant statistician, nevertheless 08.00 was not start time, which was more usually 08.15, as one was only deemed late after 08.15, though others were in for 08.00, the effect of which was to suggest she was flannelling about being late and in a rush.
 - iv. Fenton said she had tried to steer to avoid collision with the reversing Semper, but from the photos, her wheels are straight, showing this not true.
 - v. It was clear from Fenton her son's father, Phillip Chambers, who was the owner of the blue Rav4, had been upset with her on learning of the damage wrought, and would have been more so if she was wholly responsible for the collision, this court noting the insurance was only for third parties, meaning Fenton had understandable reason to embellish a version which exonerated her, blamed others, and set in train a claim by her to recover from Semper sizeable money for the substantial damage to Chambers' car, or she would be otherwise in trouble with him.
- e. Finally, there was incontrovertible evidence at the scene from the photos produced by PC Edwards she had driven into Semper and not the other way round:
- i. First, because the debris from her broken front lights had all been thrown forward of her bonnet, consistent with her forward momentum being stopped on impact, rather than thrown behind her bonnet consistent with Semper reversing into her; and
 - ii. Second, there are no tyre marks on the road behind her wheels to show sharp braking, meaning she braked too late, if at all.
 - iii. Finally, when shown these photos by the Judge it appeared Fenton, becoming quiet and reflective, at that point accepted in evidence the glass debris shows the forward motion of her car into the back of Semper.

8 The case for Fenton causing the accident is unarguable. Moreover, there is a police report explaining it by a traffic accident investigator Andrew Sandiford dated 14.11.18, pointing out

the common-sense features captured in para 7e above crying out from the photos. On 21.09.20, Counsel Watts sought to file it in evidence, but strangely it was withdrawn on 26.11.20, after opposition from Counsel Gerald, predictably, yet seen by this judge as part of the file. Counsel Gerald understandably has sought to recuse this judge for having seen the report who then drew counsels' attention to the starkness of the debris and absence of tyre marks, irrespective of what the witnesses might say, and evident in the exhibited photos. Counsel Kelsick and Watts have argued I can continue, as I am capable of keeping an open mind, while I have at least helped counsel to focus on common-sense features in the evidence which will need addressing.

- 9 A curious feature of the case is Fenton was charged with careless driving, (oddly Semper too), but the charges were dropped, without formal explanation offered at trial, though it was pointed out Fenton's brother is a traffic police officer with influence at the Magistrate's Court.
- 10 However, the wider question here is, given just how obvious it is Fenton caused the collision, it is extraordinary this case did not settle. Insurers are expected to pay out, it is their *raison d'être*; those damaged by Fenton ought to have had the money to fix their cars long ago. Counsel Gerald has been frank in saying she has never discussed the police report with Massy: she should have done. Though a junior with exceptionally bright prospects, much encouraged by this court, it is timely to remind that the role of counsel is to weigh a case and advise on its prospects, not slavishly to follow the hopes or dictates of a party, because an advocate is not a 'hired gun'. The word counsel means advisor, to the court and to the party, and is not merely a mouthpiece. The court is left with the uneasy feeling this has been pointless litigation with an inevitable outcome, weighing para 7 above, which should have been predicted long ago, begging either the insurer has not properly weighed this case, or calculatedly has delayed payout, perhaps hoping the case might just fizzle away.
- 11 Counsel Gerald has helpfully made it plain on the record Massy stand by Fenton and will now meet the monies which will hereafter be ordered.
- 12 There is no law to consider. Negligence by Fenton is established on the facts. There are no issues of contributory negligence. Everyone else had stopped, Fenton then drove into Semper, causing a chain of collisions. It is no answer to suggest stopping had been sudden, if it was, as all cars must be prepared for an emergency stop by the car in front; moreover,

the evidence does not show an emergency stop, but instead ordinary stopping while Fenton was simply not paying attention coming around a corner.

- 13 I am satisfied that all the monies sought by each Rodney and Semper for the cost of repairs and hiring a car should be fully met by Fenton's insurers, accepting no points realistically arise concerning mitigation of loss, which would only here be penny-pinching, such that I find as a fact these costs have all been set out persuasively.
- 14 Moreover, having heard from Semper and Dr Perkins, I am satisfied she suffered whiplash, still does, predictable from a full rear impact, and will award as sought the full \$10000ec.
- 15 Concerning costs, there shall be the award as sought of prescribed costs, unless there is to be argument on calculating costs differently. This court notes the lawyers have made copious filings during these overlong proceedings, with closing submissions alone filed on 12.12.22 running in combination to 52 pages, notwithstanding how obviously Fenton caused the collision, despite the heroic efforts of Counsel Gerald. Given the insurer has invited such lawyerly scholarship, this court wonders whether the costs sought as prescribed costs fairly reflect the legal work this hopeless causation case has generated, and invites submissions on fairer calculation, claimable from Massy.
- 16 If not, then it follows, the outcome of this case is:
 - a. Simmone Fenton, through her insurer Massy, shall within 28 days pay to Josephine Semper \$37418.70ec, with interest as appropriate to be calculated.
 - b. Simmone Fenton, through her insurer Massy, shall within 28 days pay to Stevika Rodney \$20597.88ec, with interest as appropriate to be calculated.
- 17 I propose to monitor the outcome of this case to learn what Massy will do, and it will next be listed in my court for oversight on 20.01.23.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

15 December 2022