

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

GRENADA

CLAIM NO. GDAHCV2020/0100

BETWEEN:

ANN-MARIE C. BAPTISTE

Claimant

and

SEPTIMUS THOMAS

Defendant/Ancillary Claimant

LONDA HYACINTH BERNARD

Ancillary Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester for the Claimant

Mrs. Naeisha John-Diarra for the Defendant/Ancillary Claimant

Ms. Rae Thomas for the Ancillary Defendant

2022: July 5, 7

RULING

- [1] **ACTIE, J.:** This is a claim concerning a motor vehicular accident which occurred on La Poterie public road on 19th March 2015 resulting in personal injury to the claimant and damage to the defendant/ancillary claimant's vehicle.

Claimant's case

- [2] It is the claimant's claim that she was a paying passenger on an omnibus owned and driven by the defendant/ancillary claimant. The claimant avers that defendant/ancillary claimant attempted to drive into the La Poterie public road, when a Toyota Rav4 owned and driven by the ancillary defendant collided with

the left side of the bus. The impact of which resulted in the claimant receiving injury to her left arm which was partially resting on the frame of the bus, close to the window.

- [3] The claimant in her claim form filed 6th March 2020 avers that the accident was caused solely by the negligent driving of the defendant/ancillary claimant. The claimant claims, inter alia: General damages for negligence and/or breach of statutory duty; Special damages in the sum of \$180.00; Interest; and Costs.

Defendant/Ancillary Claimant's case

- [4] The defendant/ancillary claimant contends he was travelling along the Eastern Main Road in the direction towards Hope and Munich when he indicated to turn off to the left at the La Poterie main road. The defendant/ancillary claimant avers that he had almost completed the manoeuvre when the front of the ancillary defendant's vehicle collided into the back of the defendant/ancillary claimant's vehicle.
- [5] The defendant/ancillary claimant further states that the claimant sat at the back seat of the bus and placed her elbow outside of the window frame while the bus was in motion, which was not safe to do. The defendant alleges that the claimant was contributory negligent in placing her elbow outside the moving vehicle when it was unsafe to do so and failing to take precaution for her own safety while being a passenger on a motor vehicle.
- [6] The defendant/ancillary claimant filed an ancillary claim against the ancillary defendant in which he alleges that the accident was caused by the negligence of the ancillary defendant which he particularized to include: Failing to steer or control her vehicle so as to avoid colliding with the bus; Failing to apply brakes properly or at all; Failing to heed the presence of the bus; Failing to stop or observe that the defendant/ancillary claimant was conducting a manoeuvre; Overtaking when it was unsafe to do so; Failing to stop; and colliding into the back left side of the bus.

- [7] The defendant/ancillary claimant seeks General damages for negligence; Indemnity for general and special damages claimed by the claimant; Special Damages of \$20,575.50; costs and interest.

Ancillary Defendant's case

- [8] The ancillary defendant admits that the defendant/ancillary claimant's bus was travelling in front of her vehicle but avers that the defendant/ancillary claimant indicated right, moved to the right side of the road then swirled back to the left side without warning. The ancillary defendant further avers that the defendant/ancillary claimant gave no signal that the bus was going to the left, thus there was no proper indication by the defendant/ancillary claimant. An assertion denied by the defendant as he said that he turned on his left indicator light to indicate that he was turning left. He states that the left indicator light was on even after the impact.

Legal Analysis

Whether the accident was caused by the negligence of the defendant, the ancillary defendant, or both the defendant and the ancillary defendant

- [9] The driver of a vehicle on the road owes a duty of care to other road users¹. In **Clarence Martin et al v Edris George**² Lanns J (Ag.), relied on dicta of Rawlins J in **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**³ wherein it was stated, inter alia:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected... to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents...”

- [10] The defendant/ancillary claimant in his witness statement and at trial states that he was manoeuvring to make a left turn when the collision occurred. It is the

¹ Kodilinye G, Commonwealth Caribbean Law Series, 3rd Edn, Cavendish Publishing 2003

² ANUHCv2013/0206

³ Claim No. 168 of 19

claimant's evidence that it is necessary to make a wide turn to the right side of the main road in order to enter into the La Poterie Road.

[11] WPC Delia Cameron in her witness statement and at trial corroborated the need to pull to the right when turning into the La Poterie Road. WPC Cameron relies on the measurements taken at the scene of the accident that placed the left front wheel of the defendant/ancillary claimant's bus on the La Poterie Road.

[12] At the trial, the ancillary defendant states that the vehicle was suddenly ahead of her, and she couldn't stop. It is the evidence of the ancillary defendant that at the point in time the accident occurred, she was driving along the left side of the vehicle. She said that the defendant did not give her enough time to stop. It is the defendant/ancillary claimant's evidence that the ancillary defendant was attempting to overtake on the left side of the bus.

[13] In **McCall v Ogiste**⁴, it is stated by Phillips JA at page 293:

“The law places the onus on the driver of an overtaking vehicle to make sure that that movement is safely conducted and completed; one must make sure that one can pass a vehicle and get back at once to the proper side before the approach of oncoming vehicles”

[14] It is the responsibility of the driver especially a driver of a public bus to give sufficient indication to alert oncoming vehicles or those at the back of an intention to turn into a side road. However, it is also a requirement that a vehicle should be at least two car lengths or at a reasonably safe distance behind a moving vehicle ahead. Drivers are under a duty to remain alert on the road while driving especially when there is a vehicle ahead. It is the evidence that the road was wet at the time of the accident which required even more caution. As indicated above, the police report places the defendant/ancillary claimant's left front wheel of the bus was on the La Poterie road into which the defendant/ancillary claimant was manoeuvring into. The report also demonstrates that the damage to the ancillary defendant's vehicle was to the entire front of the vehicle, so much so both indicators were affected. This means that the entire front of the ancillary

⁴ [1965] 9 WIR 291

defendant's vehicle collided with the defendant/ancillary claimant's bus, placing the defendant/ancillary claimant's bus horizontal in position to the ancillary defendant's vehicle.

[15] WPC Camaeron states that there were not any evidence of skid marks or brake impression on the road to suggest that the ancillary defendant made any attempts to stop the vehicle to avoid the collision.

[16] This court is of the view that had the ancillary defendant been mindful of her duty of care and the speed at which she was driving, given that the vehicle before her was manoeuvring into a minor road, the accident could have been avoided. Also, the impact and the inability to even apply brakes in time to stop the car suggests that the ancillary defendant was driving too close to the back of the vehicle and at excessive speed.

[17] With respect to the cause of injury suffered by the claimant and the damage to the defendant/ancillary claimant's vehicle due to the ancillary defendant's breach of her duty of care, dicta from the House of Lords in **Sienkiewicz (Administratrix of the Estate of Enid Costello (deceased)) v Greif (UK) Ltd; Kowsley Metropolitan Borough Council v Willmore** is instructive:

"It is a basic principle of the law of tort that the Claimant will only have a cause of action if he can prove, on balance of probabilities, that the Defendant's tortious conduct caused the damage in respect of which compensation is claimed. He must show that, but for the Defendant's tortious conduct he would not have suffered the damage. This broad test of balance of probabilities means that in some cases a Defendant will be held liable for damage which he did not, in fact, cause. Equally there will be cases where the defendant escapes liability, notwithstanding that he has caused the damage, because the Claimant is unable to discharge the burden of proving causation."⁵

[18] It is the preliminary view of this court that the ancillary defendant was in breach of her duty of care to the defendant/ancillary claimant as road user. This court applying the 'but for' test to the injury suffered by the claimant and the damage to

⁵ [2011] UKSC 10

the defendant/ancillary claimant's bus, is also of the view that the said injury and damage was factually caused by the breach of the ancillary defendant.

Whether the claimant was contributorily negligent

[19] The guiding principle in proving contributory negligence is whether the respondent by his acts or omissions, contributed to his injuries, in the sense that he/she failed to take reasonable care for his own safety⁶. In **Davies v Swan Motor Co Ltd**⁷ it was held that the contributory negligence involved the claimant materially contributing to the damage.

[20] Gilbert Kodilinye in **Commonwealth Caribbean Tort Law**⁸ states that:

“Contributory negligence is basically carelessness on the part of the plaintiff which combines with the defendant's negligence or breach of duty in bringing about the plaintiff's damage. In many cases, the plaintiff's negligence will have been a contributing cause of the accident which led to the damage...”

The author goes on to state:

“Contributory negligence does not involve any breach of duty owed by the plaintiff to the defendant, for it does not necessarily connote activity fraught with undue risk to others, but rather failure on the part of the person injured to take reasonable care of himself in his own interests.”

[21] Counsel for the claimant suggests that, should the court find that the claimant was contributorily negligent, an apportionment of a percentage of no more than 5 is appropriate. Counsel for the defendant/ancillary claimant argues that had the claimant's arm been on her lap or safely inside of the bus, it would not have been trapped. Counsel submits that the claimant contributed to her injuries by fifty percent (50%). The defendant/ancillary claimant relies on the case of **Khan v Bhairod**⁹.

⁶ Claim No. 0033 of 2013 - Michael Francois v Ryan Richards

⁷ (1940) AC 921

⁸ Kodilinye G, *Commonwealth Caribbean Tort Law*, 4th ed., (Routledge 2003), p. 63

⁹ (1970) 17 WIR 192

[22] The court accepts that had the placement of the claimant's arm been within the safety of the bus, her injury would not have likely occurred to such an extent. None of the other passengers who were within the bus were reported to have suffered injuries like the claimant's. The court also accepts that the force from the impact of the collision may have displaced the claimant's arm from its resting position on the frame of the window of the bus, thereby trapping and injuring her elbow. However, the court accepts that "but for" the accident the placing of the elbow on the widow ledge on the left side of the vehicle would not by itself be extremely dangerous. However, taking all the evidence in the round, the court is of the view that the fact that the claimant's elbow was protruding outside of the vehicle was unsafe and caused more damage than had it not been in the position. Accordingly, the court is of the view that a ten percent (10%) apportionment contributory negligence to the claimant is appropriate in the circumstances.

Whether the claimant and defendant are entitled to damages

General Damages

[23] The principles which govern awards for personal injuries are laid down in **Cornilliac v St. Louis**¹⁰ and are well known. Consideration is given to the nature and extent of the injuries sustained, the nature and gravity of the resulting physical disability, the pain and suffering endured, the loss of amenities endured, and the extent to which the claimant's pecuniary prospects have been affected.

[24] Dr. Alexis Isaacs in his report dated 17th September 2021 states that the claimant presented herself on 19th March 2015 with severe pains and swelling of her left elbow. Upon examination, the claimant had mild to moderate painful distress. Her elbow had decreased range of movement in flexion and extension at the elbow joint. Her arm was placed in an arm sling for an unstated period, and she was referred for X-Ray that revealed soft tissue edema with no bony injury.

¹⁰ 7 WIR 491

- [25] Dr. Isaacs further stated that two weeks after the incident, the claimant continued to experience severe pains with difficulty using the arm. The claimant was then referred to the Orthopaedic outpatient department for further evaluation and management.
- [26] Further to the accident, the claimant has not provided any updated medical expert report detailing the impact to the claimant which may have persisted at the time of the trial. The claimant states that the pain has lessened and she only experiences pain when wringing clothes.
- [27] An award is usually made in line with similar awards in keeping with the well know principles in **Wells v Wells**¹¹ . Counsel for the claimant submits that the claimant is entitled to the sum of \$15,000.00 in general damages. The claimant relies on the authorities of **McPherson Barber v Meyona Samuel**¹², **Andrella Wickham & Ors v Deshawn Gordon**¹³, **Harvey Taliam & Ors v Kurt Duncan & Anr**¹⁴ among others.
- [28] Counsel for the defendant and ancillary defendant suggest respectively suggest the sum of \$5000.00.
- [29] The claimant's injuries to her elbow resulted in swelling, soft tissue edema and decreased range of motion. The claimant suffered severe pain which continued in excess of two weeks after the accident. The claimant states that due to impecuniosity was unable to do the follow up Orthopaedic outpatient treatments. It is the claimant's evidence that the severity of the pain has subsided significantly but gets pain when she attempts to wring clothes. The court takes into consideration the severe pain after the impact but notes the significant improvement with lingering pain since the accident in 2015. Accordingly, an award is made to the claimant in the sum of \$10,000.00 for pain and suffering and loss of amenities of amenities.

¹¹ [1998] 3 All ER 481

¹² Claim No. 101 of 2009

¹³ Claim No. 116 of 2016

¹⁴ Claim No. 418 of 2018

Nursing/Domestic Care

- [30] A claimant may recover compensation for a third party such as a family member who provides care during the period the claimant is incapacitated¹⁵. This claimant has failed to substantiate her claim for domestic care and accordingly no award is made under this head.

Special Damages

- [31] The sum of \$180.00 in special damages is unchallenged and is accordingly awarded.

Defendant/Ancillary Claimant

- [32] The defendant/ancillary claimant claims special damages in the sum of \$15,325.50 representing the costs of the repairs to his vehicle and relies on a report produced by Hayden Alexander of Alexander's Auto Clinic.

- [33] The defendant/ancillary claimant has provided the court with two receipts in the sums of \$3,637.50, totalling \$7,275.00, dated 2nd and 17th April 2015 and made out by Alexander's Auto Clinic to the defendant/ancillary claimant. However, the defendant relies on the evidence of Hayden Alexander in support of the total sum pleaded. The court accepts the evidence of Hayden Alexander in his witness statement and confirmed at trial and accordingly awards the sum of \$15,325.00 for the repairs of the said vehicle.

Loss of Use

- [34] In **Tropical Builders v Gloria Thomas**¹⁶, Blenman J (as she then was) addressing the issue of loss of use held:

"It is the law that the owner of a motor car that is damaged... is entitled to recover for being deprived of its use during the period that he was without a motor car. The general principle is that the court seeks to compensate

¹⁵ Donnelly v Joyce (1973) All ER 475

¹⁶ ANUHCv228/2004

the claimant for the use which, but for the wrong, he would have had of the motor car.”

[35] The defendant/ancillary claimant claims loss of use of the bus at a daily rate of \$350.00 for fifteen (15) days for a total of \$5,250.00. This sum is not unreasonable having regard to the fact that the bus was a profit-making chattel in keeping with the decision in **Malcolm Joseph etal v Alison Charles**¹⁷.

Conclusion

[36] In conclusion, the claimant and defendant/ancillary claimant have proved their claim and counterclaim, respectively.

[37] It is hereby ordered as follows:

- (i) The Ancillary defendant, Londa Hyacinth Bernard, shall pay the claimant, Ann-Marie C. Baptiste, the following awards:
 - (a) the sum of \$10,000.00 for pain and suffering and loss of amenities with interest at the rate of 6% per annum from judgment until payment in full.
 - (b) Special damages in the sum of \$180.00 with interest at the rate of 3% per annum from the date of filing until date of judgment and at the rate of 6 % per annum from judgment until payment in full.
 - (c) Contributory Negligence of 10% to the claimant.
- (ii) The Ancillary Defendant, Londa Hyacinth Bernard, shall pay the defendant/ancillary claimant, Septimus Thomas, special damages in the sum of \$20,575.00 with interest at the rate of 3 % per annum from the date of filing the claim until judgment and at the rate of 6% from the date of judgment until payment in full.

¹⁷ GDAHCV2002/0077

- (iii) Prescribed Costs to the claimant, Ann-Marie C. Baptiste, and defendant/ancillary claimant, Septimus Thomas, respectively, in keeping with CPR 65.5.

Agnes Actie

High Court Judge

By the Court

Registrar