

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

GRENADA

CLAIM NO. GDAHCV2013/0597

BETWEEN:

**[1] ROLSON GEORGE
[2] GEORGE MEDFORD**

Claimants

and

**[1] KEVIN DABREO
[2] YVONNE DABREO**

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mrs. Crystal Braveboy-Chetram with her Ms. Skeeta Chitan and Mr. Kadeem Strachan for the Claimants

Mr. Benjamin Hood for the Defendants

2022: March 3.
June 10

JUDGMENT

[1] **GLASGOW, J.:** This is a claim for damages for negligence arising out of a motor vehicle collision between the vehicle driven by the first claimant, Rolson George and the vehicle driven by the first defendant, Kevin DaBreo.

Claimants' case

[2] On 17th December 2013, the claimants, Rolson George (Mr. George) and George Medford (Mr. Medford) filed a claim form against the defendants seeking damages for negligence and personal injuries. In summary, they plead that:

- (1) On 1st March 2011 at about 9:45 pm, Mr. George was driving a Toyota Noah registration number HW 656 on the Cherry Hill public road heading in the direction of the town of St. George's.
- (2) Mr. Medford was the owner of the vehicle which was being driven by Mr. George.
- (3) Kevin DaBreo (Mr. DaBreo) was driving a Toyota car registration P 2204 in the opposite direction heading towards Gouyave when he negligently caused his car to collide with the Toyota Noah van being driven by Mr. George.
- (4) The collision occurred while Mr. DaBreo attempted to overtake another vehicle travelling in the same direction as the car driven by Mr. DaBreo. Mr. George pleads that Mr. DaBreo sought to overtake the vehicle when there was insufficient room to complete his overtaking manoeuvre.
- (5) As a consequence of the overtaking manoeuvre, the vehicle being driven by Mr. DaBreo collided head on with the Toyota Noah being driven by Mr. George.
- (6) The collision was caused by Mr. DaBreo's negligence. As a result of Mr. DaBreo's negligent driving, Mr. George has suffered injuries, loss and damages.
- (7) At the material time, Mr. George was driving the Toyota Noah as Mr. Medford's servant or agent, the owner of the vehicle.
- (8) By reason of the collision, the Toyota Noah was damaged and was written off since it was not economical to repair it.
- (9) Mr. Medford claims general damages, special damages in the sum of \$19,575.50 and damages for loss of profit in the sum of \$11,500.00.

(10) Mr. George also claims cost of medical expenses in the sum of \$1,157.56 and costs to pay a substitute driver to operate the bus in the sum of \$16,957.56.

(11) In addition to damages the claimants also seek interest and costs.

Defence and counterclaim

- [3] The defendants in their response to the claim deny that Mr. DaBreo was negligent. The defendants state that Yvonne DaBreo, the second defendant, who was the owner of the vehicle, gave Mr. DaBreo her consent to drive the vehicle on the evening of the 1st March, 2011. Further, they plead that at the time of the accident, Mr. DaBreo had successfully completed the overtaking manoeuvre and successfully returned to his respective lane. They plead that the Toyota Noah driven by Mr. George was driving in the wrong lane heading towards Mr. DaBreo. In an attempt to avoid the Toyota Noah, the defendants plead that Mr. DaBreo tried to swing away into the next lane but was unsuccessful and the collision occurred. The defendants say that the collision was caused wholly or in part by of Mr. George's negligence. Additionally, the defendants counterclaim for special damages, damages for negligence, interest and costs.

Evidence in relation to the cause of the collision

Mr. George's evidence

- [4] The facts surrounding the events that led up to collision are largely in dispute. On the one hand, the claimants aver that Mr. DaBreo negligently overtook another vehicle within the vicinity of a corner. He then collided with Mr. George driving in the opposite direction heading towards the town of Saint George's. Mr. George in his witness statement makes the charge that while driving in the direction of the town of St. George's he observed a car and a bus driving along the park stretch. The car was on the right side attempting to overtake the bus and both vehicles were travelling side-by-side. He says that he flashed his lights and pulled over to his left

of the road and brought his vehicle to a complete stop. Thereafter, he observed that saw Mr. DaBreo's car was less than 10 feet away from him and as such he says that he quickly put the van in "park", and attempted to pull himself from the driver's seat.

Mr. DaBreo's evidence

- [5] Mr. DaBreo pleads that on the night of the incident he was driving the second defendant's vehicle along the western main road in the vicinity of Green Bridge when he observed a bus travelling in the same direction. He says that he sped up in order to overtake the vehicle in front of him. Whilst overtaking the vehicle, he says that the vehicle sped up and tried to run him off the road. However, he pleads that he successfully completed the overtaking manoeuvre. Thereafter, Mr. DaBreo says that he observed Mr. George coming from the direction of Cherry Hill, St. George heading towards St. George's and driving on his side of the road. Mr. DaBreo case is that he attempted to pull away from Mr. George and steered his car to the right side of the road, but he observed that Mr. George also simultaneously tried to steer his vehicle to right side of the road. As a result of both actions, the collision occurred.

Reagan Ross' evidence

- [6] Mr. Reagan Ross was a witness to the collision. In his witness statement he explains that at the time of the incident he was driving mini bus registration number P4454 heading in the direction of Happy Hill, St. George. When he reached the vicinity of Green Bridge (near the National Stadium), he observed a car attempting to overtake his bus by moving to the right lane. The car remained alongside his bus as they travelled along park stretch. Thereafter, he also observed a Toyota Noah travelling in the opposite direction. The car which was still on the right side of the road collided with the Toyota Noah just before the intersection at the road leading up to Darbeau. In respect of the damage to the vehicles, Mr. Ross states that both vehicles suffered extensive damage.

Cheddie Peters' evidence

- [7] Mr. Cheddie Peters was a passenger in Mr. DaBreo's car at the time of the incident. He testifies that he witnessed the collision. He says that while Mr. DaBreo's car was travelling in the direction of Gouyave, he saw a bus that was stationary at the bus stop. Mr. Peters avers that when Mr. DaBreo attempted to overtake the bus, it moved off from the bus stop at the same time. Both Mr. DaBreo's car and the bus drove abreast of each other until they got to the corner at the end of the road alongside the stadium. Mr. DaBreo then returned substantially to his side of the road. Thereafter, he observed a Noah coming from the direction of Cherry Hill towards Ms. DaBreo's car. Mr. Peters claims that Mr. DaBreo had already completed the overtaking manoeuvre and was then driving on his side of the road. Mr. Peters recalls that all that he saw were lights approaching Mr. DaBreo's car. After seeing the lights, the next thing that he remembered was that he awoke at the hospital.

PC 604 Alford Cornwall's evidence

- [8] PC 604 Alford Cornwall in his statement¹ dated 15th March 2011, gave the following measurements from the scene of the accident:

	Van	Car
(1) Width of road at point of impact	21' 4"	21' 4"
(2) Point of impact to right/left of road	Nil	17' 5"
(3) Length of vehicle	14' 5"	12' 10"
(4) Width vehicle	5' 5"	5' 5"
(5) Right front wheel to right of road	18' 9"	3' 10"
(6) Right rear wheel to right of road		16' 9"
(7) Left front wheel to left of road		6' 9"
(8) Left rear wheel to left of road		15' 4"
(9) Brake impressions		17' 10"
(10) Distance when vehicle [sic] stop		
(11) Distance between two point of impact	4' 8"	4' 8"

¹ Pages 150-151 of Trial Bundle

Findings on the evidence

- [9] My first observation relates to Mr. Peters' conflicting evidence as to whether Mr. DaBreo was able to successfully overtake the bus and return to his side of the road. In his statement to the police dated 2nd March 2011, Mr. Peters stated that *"on reaching the national stadium there was a minibus park [sic] close to the corner near the intersection to go to the power station and other vehicle park [sic] along side [sic] of the road on the left side there was a vehicle approaching from the opposite direction and **the driver of my vehicle could not find space to pull away or stop and all I know both vehicle [sic] collided with each other.**"*
- [10] Mr. Peters' initial statement to the police reveals that while Mr. DaBreo was overtaking the bus another vehicle was approaching in the opposite direction. His statement to the police indicates that Mr. DaBreo could not find space to return to his side of the road while overtaking the bus. This evidence suggests that Mr. DaBreo was unable to successfully complete his overtaking manoeuvre as pleaded by Mr. George. However, in his witness statement Mr. Peters changed his version of the events. His statement contains testimony to the effect that *"Mr. DaBreo then returned substantially to his side of the road."* Testimony at trial did not get any better with Mr. Peters. He came across as evasive and uncandid. Having regard to the inconsistencies in his statements, demeanour and evasive responses to questions posed by counsel for the claimants at trial, I find the evidence from Mr. Peters to be largely unhelpful. In light of what I have to say below, I do accept though that his initial statement to the police was mostly accurate. That is to say, I believe that Mr. DaBreo attempted to overtake the bus but could not safely return to his side of the road before colliding with Mr. George's vehicle.
- [11] In addition to the foregoing assessment, I prefer and accept the evidence from PC 604 Cornwall in respect of the measurements at the scene of the accident and the evidence of Reagan Ross, who was the eye witness. Their evidence suggests that Mr. DaBreo did not successfully complete his overtaking manoeuvre. At trial Mr.

Peters, the passenger in Mr. DaBreo's vehicle, accepted under cross examination that Mr. DaBreo drove side-by-side with the bus which he was overtaking until the corner at the end of the stadium. Further, the facts reveal that at the end of the stretch of road, where Mr. DaBreo was overtaking another vehicle, there is a corner and an intersection with a road leading to premises belonging to the Grenada Electricity Services Ltd. (GRENLEC), the National Stadium and its environs. I am of the view that this placed a greater burden on Mr. DaBreo to exercise even greater care since he may have been restricted in his ability to see oncoming vehicles travelling in the opposite lane around the corner.

[12] In **McCall v Ogiste**², Phillips JA stated at page 293 of the judgment that:

"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." (My emphasis)

[13] Aziz J in **Janice Andrea George and another v Christopher Roderiquez**³ had this to say on overtaking:

"In further considering the Rules and Regulations for the driver and in particular overtaking, it becomes clear that for any driver on the roads, there are certain rules to keep firmly in mind. They are that no overtaking ought to be done unless the road is sufficiently clear ahead, making sure before overtaking that mirrors are used and that no one is about to overtake you, that there is a suitable distance or gap in front of the vehicle that has been overtaken." (My emphasis)

[14] In this case, Mr. DaBreo was conducting a difficult and possibly dangerous manoeuvre to overtake the bus. He had a duty to do so in a manner that was safe and that was conducted with due care and attention.

[15] In relation to the duty of care of a driver on the road, Price-Findlay J in **James A. L. Bristol v Margaret Blackburn** adopted the dicta of Rawlins J in **Cheryl Edwards**

² (1965) 9 WIR 291

³ GDAHCV2013/0057 at para. 62

Administratrix of the Estate of Janique Lewis v Etnelm Mills, where his Lordship stated:

“...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 to 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.” (My emphasis)

- [16] PC 604 Cornwall’s testimony indicates measurements that show the point of impact of the two vehicles to be on the right side of the road. The right side at that material time was Mr. George’s side of the road. Mr. DaBreo’s brake impressions were found about 17 feet 10 inches on the right side of the road. The road was found to be about 21 feet in width. I do not accept Mr. DaBreo’s evidence that it was Mr. George who was driving on the wrong side of road when the collision occurred.
- [17] Mr. Ross’ evidence also corroborates Mr. George’s case that Mr. DaBreo was in the process of overtaking his vehicle when the collision occurred. I note that there were no brake impressions from Mr. George’s vehicle which also corroborates his case that he steered and parked his vehicle to his side of the road in effort to avoid the collision. I find that on a balance of probabilities Mr. DaBreo attempted to overtake the bus without the requisite due care and attention. He sought to overtake the vehicle in such a manner that he was unable to complete the overtaking manoeuvre and thus collided with Mr. George’s vehicle. I find that it is Mr. DaBreo who was negligent in the circumstances.

Contributory negligence

- [18] At trial, Mr. Benjamin Hood, counsel for the defendants, in his oral submissions argued that Mr. George contributed to the accident by steering his vehicle on the

wrong side of the road. Counsel submits that when Mr. George saw both vehicles approaching him he ought not to have attempted to jump to the back of the vehicle. Mr. Hood posits that Mr. George should have remained in control of the vehicle in order to avoid the accident. However, PC Cornwall's evidence about measurements reveal that the point of impact of accident was 17 feet 5 inches on the right side of road on which Mr. George was travelling. The measurements also reveal that Mr. George's vehicle which is about 5 feet 5 inches in width was located near or close to the side of the road. This evidence suggests that it is quite credible testimony that Mr. George may have indeed attempted to pull to his side of the road to avoid the accident.

- [19] In view of the foregoing matters, I accept that it was Mr. DaBreo who was driving on the wrong side of the road (right lane) while overtaking Mr. Ross' bus. Mr. DaBreo sought to perform this manoeuvre immediately before the corner and intersection of the road leading to the national stadium. This is the area where he collided with Mr. George's vehicle. Further, I accept that Mr. George steered his vehicle to his side of the road in an attempt to avoid a head on collision and jumped to the back of the van to escape the full impact. Accordingly, I am of the view that the accident was solely caused by reason of Mr. DaBreo's negligent overtaking another vehicle in a manner which was unsafe and when it was unsafe to do so. There is therefore no contributory negligence.

General Damages for pain and suffering and loss of amenities

- [20] Mr. George pleads the following particulars of his injuries:
- (1) Loss of consciousness immediately after the collision;
 - (2) Pain in the right hip immediately after the collisions;
 - (3) Superficial abrasions to the right anterior knee and leg;
 - (4) Comminuted fracture of acetabular floorbroken right hip;
 - (5) Hospitalisation for 17 days;
 - (6) Immobilisation for 10 months;
 - (7) Risk of post traumatic arthritis of right hip and risk of total hip replacement.

[21] Counsel for the claimants, Mrs. Crystal Braveboy-Chetram submits that Mr. George is entitled to general damages for pain and suffering and loss of amenities in the range of \$120,000.00 to \$140,000.00. Counsel commends the court to awards granted in the following cases:

- (1) **Sheridan Butler v Ralson King et al**⁴
- (2) **Avaline O' Garro et al v Neil Ross et al**⁵
- (3) **Troy Barthelmy v John Neptune**⁶
- (4) **Wadadli Cats Limited v Frances Chapman; Keithley George et al v Gerald Khoury**⁷
- (5) **Dr. Wezenet Tewodros v Dr. Ganendra Malik et al**⁸

[22] Dr. Kester Dragon in his medical report dated 13th September 2013 states that when Mr. George visited him on 11th September 2013, he observed that Mr. George ambulated or walked with a mild limp and that his right hip was painful on passive external rotation.

[23] I have read the case law referred to by learned counsel for the claimants. The awards for pain and suffering and loss of amenities range from \$120,000.00 to \$150,000.00. In **Sheridan Butler v Ralson King et al**, the claimant suffered from hip injuries similar to those suffered by Mr. George. Further, the claimant in that case was hospitalised for 3 weeks and was at risk of developing early degenerative changes to her hip and knee joints. The court awarded her the sum of \$150,000.00 as general damages for pain and suffering and loss of amenities. I note Dr. Dragon's assessment that there is a possibility that Mr. George may develop post traumatic arthritis which may require total hip replacement in the future. Further, Dr. Dragon's report indicates that on examination two years after the collision, he found that Mr.

⁴ SVGHCV2005/0467

⁵ SVGHCV2004/0329

⁶ SLUHCV2009/0147

⁷ ANUHCVP2004/16 heard together with ANUHCVP2004/19

⁸ SLUHCV2009/0746

George continued to experience pain on sitting for prolonged periods or when he turned from side to side.

- [24] Having regard to the awards given in similar cases, the nature and extent of Mr. George's injuries, the pain and suffering he endured and his loss of ability to enjoy his daily routines and activities, I am of the view that Mr. George ought to be awarded the sum of \$100,000.00 for pain and suffering and for loss of amenities.

Costs to pay substitute driver

- [25] Mr. George's pleadings and evidence state that as a result of his injuries he was unable to operate his bus registration number HX 73 for a period of 158 days. He claims that he employed and paid one Perrin Gilbert (Mr. Gilbert) to operate his bus for approximately 6 months at a daily wage of \$100.00. He relies on a letter written by Mr. Gilbert about those payments being made. I note that this cost is claimed as an out-of-pocket expense, but there is no documentary evidence before this court of those payments being made to Mr. Gilbert.
- [26] Notwithstanding the above, the case law suggests that where a claimant has prima facie pleaded the value of his or her loss and the value of the loss has not been challenged, the court may grant the relief for special damages in full if the court is satisfied that the claim is made out by the claimant. In **Grant v Motilal Moonan Ltd. and Another**⁹, the claimant pleaded and particularised special damages in the sum of \$20,440.40 for damages to her furniture and other articles that were damaged arising out of motor vehicular crash into her home. However, the claimant was unable to produce receipts for the value of those articles. In assessing the special damages in default of a defence, the master ruled that the value had not been proved and therefore made "*ex gratia*" payment of \$6,000.00. On appeal, Bernard CJ held:

⁹ (1988) 43 WIR 372

“allowing the appeal, that although special damage must be pleaded, particularised and proved strictly, the appellant had prima facie established the cost of the articles and as the respondents had not attempted to challenge the values placed on them the only courses of action properly open to the master were to accept the appellant’s claim in full or to apply her mind judicially to each item and its value; as the values were not unreasonable, the claim of \$22,044 for special damage would be allowed in full.” (Emphasis mine)

- [27] The dicta from **Grant v Motilal** was adopted by Barrow J as he then was in **Malcom Joseph and Another v Alison Charles**¹⁰. I note that the defendants have not specifically challenged the evidence that Mr. George employed Mr. Gilbert to operate his bus nor have they challenged whether the costs claimed by Mr. George are reasonable. Having regard to the injuries to his limbs and hip as outlined in the expert evidence report of Dr. Kester Dragon which have not been contradicted, I accept on a balance of probabilities that Mr. George may have been unable to operate his bus for the claimed period of 158 days. Additionally, I do not find the claim for payment to a replacement driver at the sum of \$100.00 per day to be unreasonable or out of scale. Accordingly, I am of the view that Mr. George has prima facie established this loss and I award him the sum of \$15,800.00 for the costs of hiring a substitute driver.

Loss of profit

- [28] Mr. Medford, the owner of the Toyota Noah driven by Mr. George, pleaded that he was unable to secure a replacement vehicle until 24th June 2011. He claims loss of profit that he would have earned but for the collision at a rate of \$100.00 per day for 115 days totalling \$11,500.00. Counsel for the defendants, Mr. Hood, in his oral submissions at trial, objected to the loss of profit claimed by Mr. Medford. Mr. Hood argues that the loss of profit claimed is unreasonable. Mr. Hood explains that Mr. Medford could have purchased another Toyota Noah in a shorter period of time instead of purchasing a Toyota Hiace. Counsel’s posture is indeed a quite reasonable one to take. Regrettably, this was not borne out by any of the evidence.

¹⁰ GDAHCV2002/0077

There was simply no evidence presented to show that Mr. Medford could have procured another Noah in a shorter period of time than the time it took for him to obtain the Toyota Hiace. The case law suggests that the burden of proof rests on the defendant to show that the claimant failed to mitigate his loss. In **Michael Bridgeman v Kenwyn Maitland**¹¹, Barrow JA stated:

“...McGregor On Damages appears another well-established proposition: that **the burden of proof is on the defendant to show that the claimant should have taken certain steps to mitigate his loss**. The author cites Roper v Johnson as establishing that **the normal measure of damages will not be cut down unless the defendant succeeds in showing that the claimant ought reasonably to have taken the suggested mitigating steps**.” (My emphasis)

[29] Therefore, having regard to the lack of evidence to challenge Mr. Medford's loss of profit and to the fact that the loss seems quite reasonable, I award Mr. Medford's loss of profit in the sum of \$11,500.00.

[30] Mr. Medford also claimed special damages for the loss and damage to his Toyota Noah which have been pleaded, particularised and proved. The particulars of special damages are as follows:

- (1) Value of Toyota Noah (Pre-accident value of \$23,000.00 less salvage value of \$4,000.00) - \$19,000.00;
- (2) Adjuster's fee - \$295.00;
- (3) Wrecker's fee - \$250.00
- (4) Estimate fee (Dexter Calliste) - \$20.00
- (5) Cost of police report - \$10.00

Therefore, Mr. Medford is awarded special damages in the sum of \$19,575.50

Comment on the second defendant's car not being insured

¹¹ GDAHCVAP2004/24 at para. 7

[31] At trial during a line of questioning by Mrs. Braveboy-Chetram to Ms. DaBreo, it was admitted by Ms. DaBreo that the insurance for her vehicle which was driven by Mr. DaBreo had lapsed since 9th December 2010 which was approximately 3 months prior to the date of the accident. While this case does not turn on this fact, I am of the view that the defendants were rather negligent in permitting the vehicle to be driven on the public road without insurance in the first place for such a considerable time. Both defendants as driver and owner ought to be aware that it is against the law¹² to permit a vehicle to be driven on the public road unless it is insured.

Conclusion

[32] For all these reasons, the claimants have succeeded on their claim and judgment is entered for them. The defendants' counterclaim is dismissed. I order as follows:

- (1) Special damages to Mr. George in the sum of \$1,157.56 for medical expenses.
- (2) Special damages to Mr. George in the sum \$15,800.00 for the costs of the substitute driver.
- (3) Special damages to Mr. Medford in the sum of \$19,575.50.
- (4) Loss of profit to Mr. Medford in the sum of \$11,500.00.
- (5) General damages for pain and suffering and loss of amenities to Mr. George assessed in the sum of \$100,000.00.
- (6) Interest on the special damages awarded to each claimant at the rate of 3% per annum from the 1st March 2011 (date of accident) to the date of trial.
- (7) Interest on the global sum of damages awarded to Mr. George in the sum of \$116,957.56 at the rate of 6% per annum from the date of judgment to the date of payment.
- (8) Interest on the global sum of damages awarded to Mr. Medford in the sum of \$31,075.50 at the rate of 6% per annum from the date of judgment to the date of payment.

¹² Section 3 (1) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap. 202 of the 2010 Continuous Revised Edition of the Laws of Grenada

(9) Costs are awarded to Mr. George in the sum of \$5,000.00.

(10) Costs are awarded to Mr. Medford in the sum of 3,000.00.

Raulston L.A. Glasgow

High Court Judge

By the Court

Registrar