

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2017/0490

BETWEEN:

GADEN BROOKS

Claimant

and

ANIQUE HILLAIRE

Defendant

Appearances:

Ms. Kalicia Marks and Mr. Kemar Roberts, Counsel for the Claimant
Ms. Sherry-Ann Bradshaw, Counsel for the Defendant

2020 June 25th
July 1st

JUDGMENT

- [1] **KELSICK, J [Ag.]**: On 1 May 2014 the Claimant's vehicle, TX926, and the Defendant's vehicle A6887, collided on Popeshead Street near the junction with St. George's Street.
- [2] That is the extent of common ground between the parties.

The Claimant's Account

- [3] According to the Claimant, who operates a taxi, he arrived in the area at about 4.25am in response to call he received from Wayne Martin who required the Claimant's services to take him home after his shift ended. Mr. Martin at the time was working at a bar on Popeshead which was situated between the junctions with St. George and St. John's Streets.

- [4] The Claimant states that he came from the direction of Fort Road and drove south on Popeshead. At the junction with St. George Street he crossed the center line of the road and parked, facing south, on the western side of Popeshead near Wendy's Bar. He turned off his engine but kept his taxi light on. He said he pulled up behind a parked garbage truck which was in front of Wendy's. He chose that spot because he knew it was a safe place to park as it provided a clear view of any oncoming traffic from either end of the street. He said in cross-examination that he parked behind the garbage truck so as not to cause an obstruction to traffic and that when the garbage truck moved he would then have a clear view of the traffic coming up Popeshead.
- [5] After he was parked for about 20 minutes, he saw the Defendant's vehicle coming towards him travelling south to north on Popeshead. By this time the garbage truck had left and the Claimant says that his was the only vehicle parked on Popeshead at the time. The Defendant's vehicle was swerving (in cross examination he also used the expression "zigzagging") as it approached the Claimant and it appeared to him that the Defendant was not in full control of the vehicle. He then flicked his lights to alert the Defendant to his presence. In cross-examination, he indicated that he observed this swerving when the Defendant was in the vicinity of the junction with St. John's Street and that; he saw the Defendant's vehicle coming because he was looking up most of the time. He was asked why, then, he only saw the Defendant's vehicle at St. John's Street and not earlier. He said he could see the vehicle from far but it was only as it came up that he saw that it was out of control. He said that it was only at St. John's Street that he saw the Defendant swerving. His evidence in cross-examination on this issue exhibited a complete lack of clarity and was, like his evidence in cross-examination in several other respects, marked by evasiveness.
- [6] As the Defendant came up Popeshead Street, it suddenly picked up speed and collided with the Claimant's vehicle. The impact caused the Claimant's vehicle to be pushed back a "fair" distance to the intersection between St. George's and Popeshead Streets.
- [7] In cross-examination, the Claimant was asked what he meant by a fair distance. He said it was about 12 feet. He also said in cross-examination that this was the measurement which the Police had taken, whilst conducting their investigations, of the tire marks caused when his vehicle was pushed back.
- [8] Mr. Martin gave evidence on behalf of the Claimant. In his witness statement he supported the Claimant's version in all material respects. He says that he saw when the Claimant arrived and parked on the western side of the road. He observed the Defendant's vehicle traveling northward on Popeshead Road and that it was swerving as it came up the street. The Defendant's vehicle started to go faster as it continued up the street and ran directly into the Claimant's vehicle pushing it back "a fair distance".

- [9] In his cross-examination, Mr. Martin said he was outside the bar at the time and saw the Claimant come from Fort Road coming south. He could not remember when Mr. Brooks arrived but the sun was rising at the time. After the Claimant arrived, and going to speak with him¹, Mr. Martin said he returned to the vicinity of the bar where he was working but did not go inside.

The Defendant's Account

- [10] The Defendant says that at about 6.00am on 1 May 2014², she was traveling south to north on Popeshead. Upon approaching the junction with St. George Street, the Claimant, who was driving on St. George Street at the time, took a wide left turn onto the western side of Popeshead Street into her path and collided with her vehicle.
- [11] In cross-examination, the Defendant states that she was returning from a Sailing Week event in English Harbour. She said that she had had a beer or two. At the time of the collision, she was en route to dropping home her two friends who were in the car with her. She said that she was not tired even though she had been to work the day before and then attended an all-night party. She stated that her driving was not impaired by her being tired or having consumed alcohol.
- [12] Ms. Renata Thomas, who was one of the occupants of the Defendant's vehicle at the time of the collision, gave evidence on her behalf. She corroborated the Defendant's version in all material respects.
- [13] In cross-examination, Ms. Thomas was asked to confirm that she sat in the rear right of the Defendant's vehicle behind Claimant who was driving. She read the witness statement and corrected it to say that she was in fact on the left rear side of the vehicle. She said she could not recall whether it was Sailing Week but that they had attended a party held by her cousin in English Harbour every year. She maintained that she saw the accident occur.

The Traffic Reports

- [14] Two traffic reports relating of the accident were in evidence, dated 16 May 2014 and 24 September 2014 respectively.
- [15] The report of 16 May stated, so far as material, as follows:

¹ In para 4 of his witness statement, Mr. Martin said that when the Claimant arrived and parked, he walked over to the Claimant to let him know that he was not yet ready as the party being hosted at the bar was not yet finished.

² In her witness statement, the Defendant mistakenly stated the day to be Saturday. It was in fact a Thursday.

“Investigations revealed that, motor car A6887 was travelling from south to north on Popeshead Street. On reaching the vicinity of Wendy’s Bar and Night Club the driver lost control of the vehicle and collided with motor van TX926 which was parked on the western side of the said road.

Beverly Renata Thomas of Lower Gambles a passenger of motor car A5887 and Gaden Brooks driver of TX926 sustained injuries and were taken to the Mount St. John’s Medical Centre by the Emergency Medical Services. Both vehicles were damaged, licensed and insured. The Driver’s licenses (sic) were in order and the drivers were warned of Intended Prosecution on the spot.”

- [16] The report of 24 September was in the nature of a supplement to the previous report. It contained the same information with the following additions:

“Measurements were recorded and are as follows;

Width of Road at Point of Impact= 24ft

Point of Impact to the junction= 21ft

Left Rear Wheel of A6887 to East of Road= 15ft

Left Front Wheel of A6887 to East of Road=15ft

Motor van TX926 was pushed 12ft back from parking”

- [17] These reports proved to be controversial. The Defendant states that she did not make a statement to the police officer³ at the scene after the collision, that she saw no measurements being taken before being taken away in the ambulance, and never pointed out a point of impact to the officer.
- [18] On the other hand, the Claimant stated in cross-examination that when the police officer arrived at the scene he took a statement from the Claimant. In answer to a question from Ms. Bradshaw as to where that statement was, he said he told the police officer what happened and that he, the police officer, had the record but the Claimant did not.
- [19] The Claimant also stated in cross-examination that he could hear the conversation between the police officer and the Defendant. He could not remember everything that was said in that conversation because he was frightened from the accident.
- [20] He said that all measurements were taken before the ambulance came, that is, before the Defendant had left the scene.
- [21] In cross-examination of the Defendant, it was put to her that she never challenged the reports. She said she did challenge it. She did not agree with them but that they were the

³ I shall refer to police officer in the singular. However, it appears from the evidence that at least two police officers were on the scene.

reports. By this, I understood the Defendant to be stating that she had no control over the content of the reports but that she did not agree with those contents.

[22] This controversy was possible primarily because of the deficiencies of the reports themselves:

- (a) There is no indication in them how the information was obtained, other than the bald statement that “investigations revealed” it;
- (b) If the circumstances as stated in the reports were confirmed by a statement from the Defendant, this statement would have been admissible in evidence against her as an admission and would have disposed of the issue of liability;
- (c) The reports did not indicate how the point of impact was identified. If the point of impact was pointed out by both parties, this too could have amounted to an admission by the Defendant which would have been very material to the determination of which version of events was true;
- (d) The reports did not indicate how it was determined that the Claimant's vehicle was pushed back by 12 feet. The Claimant and Mr. Martin both indicated in cross-examination that there were tire marks on the road caused when the Claimant's vehicle was pushed back. The presence of tire marks features nowhere in their respective witness statements nor in the reports.

[23] I therefore derive no assistance whatsoever from the reports and will not rely in any respect on their contents.

Findings

[24] It has to be stated that, in this case, either the Claimant and Mr. Martin, or the Defendant and Ms. Thomas, are not telling the truth. There can be no reconciliation between their respective accounts.

[25] In the absence of any third-party evidence⁴, I am therefore left with having to determine the credibility of the witnesses and the inherent probabilities or improbabilities of their evidence. Upon a review of the evidence, I prefer the evidence of the Defendant and Ms. Thomas.

[26] My reasons follow.

⁴ By which I mean evidence other than that of the parties or persons known to them

- [27] As I indicated earlier, the Claimant was evasive in cross-examination. Very often his answers were not responsive to the questions posed. I did not find him a credible witness. Neither did I find Mr. Martin a credible witness for reasons which I will explain below.
- [28] In addition to their lack of credibility, there were difficulties with the evidence sought to be given by the Claimant and Mr. Martin.
- [29] The Claimant states his address to be Cassada Gardens. He said he received a call from Mr. Martin on 1 May 2014. He did not state the time but, according to his evidence, it must have been between 12.00am and 4.25am.
- [30] There is no evidence from the Claimant where he was at the time he received this call. If he was at home in Cassada Gardens, it is not entirely clear what route he would have taken to bring him to Fort Road to turn down Popeshead, and why that route was chosen by him as opposed to other routes that may have been shorter. If he was not at his home, there is no evidence as to where he was or why he was there at that time of day.
- [31] On the issue of the Claimant coming from Fort Road, as indicated earlier Mr. Martin stated in cross-examination that he observed the Claimant coming from Fort Road. This is odd evidence. To be able to say this, Mr. Martin would have had to have observed a vehicle turn from Fort Road to the north, observe that vehicle continuously as it drove down Popeshead Street, and upon arrival to the bar further observe that this vehicle was in fact the Claimant's vehicle. He does not give this evidence and therefore has not explained how he knows that the Claimant came from Fort Road. This evidence is not credible.
- [32] I therefore find that this evidence about coming from Fort Road is not true and I further find that the Claimant was travelling east to west on St. George Street immediately before turning onto Popeshead into the path of the Defendant.
- [33] Mr. Martin further states that after going over to the Claimant upon his arrival, Mr. Martin returned to the Bar but remained outside. He did so until the Defendant's vehicle proceeded up Popeshead Street and was thus able to observe the accident.
- [34] Mr. Martin does not state how much time elapsed between the Claimant's arrival and the accident but the Claimant said it was about 25 minutes. Mr. Martin does not give any evidence as to what his job was that night and whether it involved him being inside the bar outside. Unless he was acting as some form of security, it is difficult to understand why he would fortuitously have been outside the bar at the two critical moments, the arrival of the Claimant and the occurrence of the accident.
- [35] I reject this evidence in its entirety. In the absence of any other evidence, it, too, is simply not plausible.

- [36] The Claimant's theory of why the Defendant drove into his parked vehicle is also not plausible on the evidence given. It is common ground that the Defendant was coming from English Harbour. She was therefore able to navigate without incident the journey from there to Popeshead where, according to the Claimant, she lost complete control of the vehicle or fell asleep. There is no evidence that the Defendant was impaired by the consumption of alcohol. She admitted to having a beer or two but this admission is not evidence of impairment at the time of the accident and the Defendant expressly stated that she was not impaired.
- [37] It is also common ground that the vehicles came to a rest at the junction of St. George Street and Popeshead Road. In this regard, I would refer specifically to paragraph 10 of the Claimant's Witness Statement where he states that as a result of the collision his vehicle was "pushed back to the intersection between St. George's Street and Popeshead Street". It was put to him in cross-examination that this is where the accident occurred and that his vehicle was not pushed back at all.
- [38] No evidence was proffered by the Claimant to corroborate that it was possible for the Defendant's vehicle to push the Claimant's vehicle back 12 feet and if so the speed at which she must have been traveling to do so. As to the Defendant's speed, the Claimant and Mr. Martin state that as the Defendant approached the vicinity of the junction with St. John's Street, she sped up before colliding with the Claimant's vehicle. No evidence was proffered as to why this acceleration would have occurred just before the accident. No doubt it was realized by the Claimant and Mr. Martin that the Claimant's vehicle could not be pushed back unless the Defendant was travelling at an excessive speed. Unless she was travelling at that excessive speed for the whole journey up Popeshead, she must have accelerated some point just prior to the accident. But why would the Defendant have done so? There is simply no evidence to explain this mysterious and sudden increase in speed just as the vehicle was approaching the Claimant's vehicle. I reject, too, this evidence.
- [39] The Defendant's version of the accident is simple and straightforward. It is not met with the same difficulties which the Claimant and Mr. Martin have faced and left unaddressed.
- [40] In addition, I find that the Defendant and Ms. Thomas were credible witnesses. They answered the questions posed to them forthrightly and directly. I accept their evidence in its entirety.
- [41] I therefore find that the collision occurred as related by the Defendant and Ms. Thomas and find that it was caused by the sole negligence of the Claimant.

Orders

- [42] I therefore order as follows:

- (a) The claim is dismissed.
- (b) There is no order as to costs on the claim.
- (c) Judgment is entered in favour of the Defendant on the counterclaim for damages to be assessed if not agreed.
- (d) The Claimant shall pay prescribed costs on the counterclaim on the damages assessed.

Damian Kelsick
High Court Judge (Ag.)

By the Court

Registrar