

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO. ANUHCv2016/0505

LOUBENS DELVA

Claimant

and

SHAWN FRANCE

Defendant

Appearances:

Mrs. Kivinee Knight-Edwards, Counsel for the Claimant
Mr. Loy Weste and Mrs. Lisa John-West, Counsel for the Defendant

2020 March 2nd;
2020 March 13th

JUDGMENT

- [1] **KELSICK, J [Ag.]**: This is a case for damages for injuries and loss said by the Claimant to have been suffered by him as a result of a collision which occurred on 21st May 2014 when he was travelling as a passenger in the Defendant's vehicle.
- [2] At the opening of the hearing, Counsel for the Defendant informed the Court the Defendant lives off island and that several attempts were made, to no avail, to contact him to secure his attendance at trial.
- [3] In the result, only the Claimant gave evidence. The Witness Summary of the Defendant cannot be relied upon. The uncontradicted evidence therefore is that on the day in question, the Defendant was driving in a northerly direction on Buckley's Main Road at about 5.10am. The Claimant could see travelling in the opposite direction two vans which appeared to be racing with the vehicles at times driving abreast. It can readily be inferred that if the Claimant saw them so too did the Defendant.

- [4] The Defendant ought to have been aware of the risk posed by these vehicles some time before he eventually swerved off the road. When he did swerve to avoid colliding with one of the vans, he collided with a tree causing injury to the Claimant.
- [5] The Defendant's negligence lay in him not taking evasive action sooner.
- [6] I find the Defendant liable accordingly.
- [7] I therefore order as follows:
- (i) Judgment is entered for the Claimant for damages to be assessed.
 - (ii) The Defendant shall prescribed costs on the assessed damages.

Damian Kelsick
High Court Judge (Ag.)

By the Court

Registrar