

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

CLAIM NO. ANUHCV2015/0866

RACHEL JOYCE

Claimant

and

ALPHEUS JACOBS

Defendant

Appearances:

Mr. George Lake, Counsel for the Claimant
Mr. Peyton Knight, Counsel for the Defendant

2020 March 4th;
2020 March 13th

JUDGMENT

- [1] **KELSICK, J [Ag.]**: The parties are taxi drivers operating, at the relevant time, from the VC Bird International Airport. An altercation occurred between them on 7th August 2015 at approximately 3.30pm.
- [2] According to the evidence of the Claimant, she observed the Defendant and dispatcher having a dispute as to who was next in line to receive passengers. She indicated that she informed the dispatcher who was next in line which caused the Defendant to become very angry. He told her: “me go f** up your face” and then attacked her without any provocation and began beating her about the head and face. She then turned to face him at which point the Defendant continued to beat her about the face, head, arms and shoulders.
- [3] It was elicited in cross-examination of the Claimant that she had been involved in another incident earlier that day, around 6.00 am with another taxi driver. The suggestion was put to her that this caused her to become angry which anger lasted to the time the incident with the Defendant occurred. The Claimant denied that she remained angry throughout this period and I believed her.

- [4] It was also put to the Claimant that she jeered at the Defendant and was the first to strike him, both of which she denied.
- [5] This explanation, then, is that the Defendant acted as he did simply because the Claimant intervened in advising the dispatcher as to who was next in line.
- [6] Ms. Joan Salmon gave evidence on behalf of the Claimant. She said she has been friends with the Claimant for about 15 years. She said she was present on 7th August 2015 when the incident occurred. She said that the Defendant was refused a job after which he went to sit down. While he was seated the Claimant passed by him and said something which Ms. Salmon could not hear. At that point the Defendant told the Claimant "Girl, I will tump you in your face". After this, the Claimant leaned in closer to the Defendant and again said something to him which Ms. Salmon did not hear. The Claimant then proceeded to walk away and the Defendant got up and hit her in the back of her head with his fists. She stumbled forward and turned around at which point the Defendant continued hitting the Claimant with closed fists. During this, the Claimant's glasses were knocked off in Ms. Salmon's direction. Ms. Salmon bent down to pick them up and when she returned to an upright position the Defendant was still hitting the Claimant.
- [7] Ms. Salmon testified that at no time did she see the Claimant hit the Defendant. After the altercation, Ms. Salmon said that she returned the Claimant's glasses to her but the Claimant was dazed and it took 3 to 4 times before the Claimant took the glasses.
- [8] On this evidence, although Ms. Salmon could not hear what was said by the Claimant to the Defendant, it can readily be inferred that the Defendant acted as he did because of something said to him by the Claimant. Mr. Knight for the Defendant submitted that if the Claimant had said nothing to the Defendant nothing would have happened. I agree.
- [9] Finally, the Defendant's evidence was that he was next in line for passengers but at that point got a short job into St. Johns. When he returned to the airport, there were then four drivers in front of him. Because he got the short job when he was first in line, the dispatcher agreed to share the next group between the Defendant and the driver who was then first in line. The Defendant said he "graciously declined" and allowed the group to go with the other driver. Shortly after, the Claimant accosted the Defendant, stuck out her tongue at him and conducted herself in an extremely vulgar manner. He raised his hand to keep her away from him being careful not to touch her. Suddenly, he felt a blow to the left side of his face which he realized was a punch from the Claimant after which he retaliated in self-defence. The Claimant then viciously attacked him with her hands and feet but he did not allow himself to be further drawn in to the confrontation and walked away.
- [10] Of all the versions, I find the Defendant's the most unlikely. One could understand a driver being upset if the Defendant jumped the line. But in the Defendant's testimony, he said that although offered to do so, he declined. Why would the Claimant have attacked him for declining to jump the line?
- [11] Of the remaining two versions (that of the Claimant and Ms. Salmon), I think Ms. Salmon's is the more credible. It sheds some light on why the Defendant acted as he did. Although Ms. Salmon could not hear what was said, clearly the Claimant said something that provoked the Defendant.

The Claimant's evidence that she did not jeer at the Defendant was an attempt to absolve herself of any responsibility for the incident. I do not accept her evidence in this respect. I think, however, that the true events are to be gleaned from all three witnesses

- [12] My findings therefore are as follows. The Claimant was at are near the front of the line when he got a short job to St. John's. Upon his return to the airport, there were four drivers ahead of him and he felt he should not be prejudiced by being relegated to fifth position for taking the short job. When the dispatcher gave the driver then at the front of the line the group of passengers, the Defendant was angry and removed himself to sit down. The Claimant then passed by where the Defendant was sitting and said something to him which caused him, already in an angry state, to threaten to "tump" her in her face. The Claimant, rather than diffuse the situation by walking away, leaned in and said something to the Defendant which caused him to lose control and attack her.
- [13] The actions of the Claimant were regrettable. However, the evidence of Ms. Salmon was that she only said things to the Defendant. Ms. Salmon gave no evidence to suggest that the Claimant acted in a threatening manner which would have justified the Defendant in battering the Claimant to defend himself.
- [14] Angry as he might have been as exacerbated by the Claimant's words, the Defendant had no lawful excuse to hit the Claimant. Were these criminal proceedings, the provocation might have served as a mitigating factor in assessing the punishment, but this is not available in civil proceedings where the court is concerned with compensation and not punishment.
- [15] I therefore find the Defendant is liable for battery.
- [16] The parties agreed at the trial that I should find on the issue of liability only and that the assessment be conducted separately. I acceded.
- [17] However, notwithstanding this agreement, it is not sufficient for me simply to find that the Defendant was liable. In paragraph 7 of her Statement of Claim, the Claimant averred that she suffered bruises and contusions to her arms, shoulders, face and head, and bleeding from her nose and mouth. There was a dispute as to whether the Claimant was struck in her face or head. Were I not to address this, the judicial officer assessing the damages will be required to try the issue and make the necessary findings in order to conduct the assessment.
- [18] The Claimant produced photographs to show bruising to her right upper arm. She indicated that these photographs were taken at Photo Genesis 3 days after the incident and that the person in the photographs was her. Mr. Knight put to her that the photographs were not time stamped which the Claimant accepted. Nevertheless, I find that the Claimant's evidence provides sufficient foundation for the photographs to be admitted. I therefore find that the Claimant suffered bruising to her arm as she pleaded.
- [19] With respect to injuries to the face or head, the Claimant and Ms. Salmon gave direct evidence that the Defendant struck her in the head. For his part, the Defendant did not directly deny that he hit the Claimant about her head. He said in his Witness Statement that he retaliated in self-defence but gave no indication of the nature of this retaliation.

[20] The primary basis for the dispute appears to be the illegibility of the Medical Exam Form completed when the Claimant was taken to the hospital on the day of the incident.

[21] However, Dr. Ramsey saw the Claimant on 10th August 2015, 3 days after the incident. He noted, in this regard, that the right side of the Claimant's face was swollen and there was slight swelling to the back of her head. This is entirely consistent with Ms. Salmon's evidence of how the Defendant hit the Claimant.

[22] I therefore find that the Defendant did batter the Claimant about her head as she averred in the pleading.

[23] My orders are:

- (i) Judgment is entered for the Claimant for damages to be assessed.
- (ii) The Defendant shall pay prescribed costs on the amount so assessed.

Damian Kelsick
High Court Judge (Ag.)

By the Court

Registrar