

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2015/0409

BETWEEN:

KRISTIN MYERS

Claimant

and

COLLIN NELSON

Defendant

Appearances:

Mr. Raymond Dexter Wason, Counsel for the Claimant

Mrs. Kivinee Knight-Edwards, Counsel for the Defendant

2020 February 4th; 7th

JUDGMENT

Preliminary

[1] **KELSICK, J [Ag.]**: At the opening of the trial Mr. Wason suggested that the trial proceed on the issue of liability only, with assessment of damages, should it become necessary, being deferred. Mrs. Knight-Edwards did not object and the Court observed, also, that it would have in any event been difficult to conduct an assessment without the mechanics being witnesses (the estimates not, apparently, being agreed).

[2] I therefore adopted this course and my decision will be on the issue of liability only.

Issues

- [3] On 17th January, 2014 at about 11:00 p.m. the Defendant was driving his motor van C8417 in an easterly direction on Halcyon Heights Road ("**HH Road**") heading towards the junction with Marble Hill Main Road ("**MHM Road**"), which runs north to south. At the same time, the Claimant was driving his motor SUV A25260 on MHM Road in a northerly direction heading towards the same junction.
- [4] HH Road is a minor road and MHM Road is a major road. For present purposes, this means that traffic travelling on HH Road must come to a stop at the junction before proceeding while traffic on MHM Road is not required to stop at the junction. This is all common ground.
- [5] A collision occurred between the Claimant and Defendant just north of the junction. At a visit to the site, Police Constable Jeffrey, who investigated the accident, when questioned by Mr. Wason pointed out the agreed point of impact. This was on or close to the median line of HH Road approximately 20 feet north of the junction. In response to a question from Mrs. Knight-Edwards, Constable Jeffrey said that the point of impact could have been more towards the east of the road but that it was closer to the median line than the eastern edge of the road.
- [6] The parties have diametrically opposing versions of the cause of the collision. The Claimant asserts that the Defendant drove through the junction without stopping and collided with the left side of the Claimant's vehicle.
- [7] The Defendant asserted in paragraphs 3 and 4 of his Statement of Claim that he was already travelling on MHM Road and had indicated that he was turning right on a dirt road roughly parallel, and just to the north of, HH Road ("**Dirt Road**"). The Claimant, who was travelling at a high rate of speed and when it was not safe to do so, then tried to overtake the Defendant colliding with the front right portion of the latter's vehicle.
- [8] In paragraph 5 of his Defence the Defendant stated that the point of impact was not at the junction with MHM Road but at a point where (sic) the next right turn, off of MHM Road, approximately 55 feet from the junction.
- [9] In his witness statement the Defendant puts forward different reasons for the collision. In paragraphs 3 and 4 he says that on reaching the junction he stopped, looked left and right and on seeing that there were no vehicles coming along MHM Road in either direction, proceeded through the junction, turned left on MHM Road and then indicated to make a right turn onto the Dirt Road. In the process of making the right turn he felt an impact on the front right quarter panel of his vehicle. The Claimant's lights were not on and he must have been travelling at a great rate of speed because he looked both ways and did not see the Claimant before proceeding through the junction.
- [10] In paragraph 7 of his witness statement, the Defendant adds that after the collision he observed that the Claimant was slurring his words and smelled strongly of alcohol.
- [11] The allegations that the Claimant was driving without his lights or that he was driving while intoxicated were not foreshadowed in the Defence or Counterclaim and made their first

appearance in the witness statement of the Defendant and his witnesses, Ms. Onique Matthew and Ms. Cerina James. However, there was no application by counsel for the Claimant to strike out the paragraphs of the witness statements in which these allegations were put forward.

[12] The issues therefore are:

1. Was the Claimant driving with his headlights off;
2. Was the Claimant intoxicated or otherwise impaired at the time of the collision;
3. Was the Claimant driving at a high rate of speed at the time of the collision; and
4. Did the Defendant stop before proceeding through the junction?

[13] The determination of these issues will inform the decision as to how the collision occurred.

[14] There were subsidiary issues as to the distance travelled by the Claimant's vehicle before coming to a stop which will be dealt with in the course of this judgment.

Was the Claimant driving with his headlights off?

[15] The evidence of the Claimant was that he had his headlights on. He said that his vehicle is set so that its headlights automatically turn on when it gets dark. Counsel for the Defendant put it to him that he could turn off his headlights notwithstanding this feature. The Claimant agreed but said he had no reason to do so particularly because MHM Road is very dark and he would not have been able to see if his lights were not on.

[16] In paragraph 4 of her witness statement, Ms. Matthew said there were no lights on because she would have seen the Claimant's vehicle. In paragraph 4 of her statement, Ms. James said that the Claimant's lights were not on and when she had looked in the southern direction, where the Claimant approached from, she did not see any vehicle. In paragraph 4 of his statement, the Defendant states that the Claimant's lights were not on and that he must have been travelling at a great rate of speed because he had looked and did not see any vehicles coming from either direction.

[17] The Claimant's evidence is plausible. No explanation was proffered by the Defendant as to why the Claimant would drive his vehicle on a dark road without his headlights on. Further, he gave his evidence forthrightly and without hesitation. I found his evidence on this issue credible.

[18] The corollary of the plausibility of the Claimant's evidence is that Defendant's and his witnesses' evidence on this issue is implausible. In conjunction with its inherent implausibility, the Defendant admitted that he did not inform PC Jeffrey at the time of the accident that the Claimant was driving

without his lights. Ms. Matthew and Ms. James each also admitted that as far as they were aware PC Jeffrey was not informed at the time he investigated the accident that the Claimant was driving without his headlights.

- [19] Finally, PC Jeffrey said that he could not recall anyone suggesting to him at the time of his investigation on the night of 17th January, 2014 that the Claimant was driving with his headlights off.
- [20] There was no attempt to explain why this was not done if, indeed, the Claimant was driving without his headlights on. It is also relevant to note that the Defence, which was filed on the 3rd of June, 2015 also makes no mention of this allegation.
- [21] In her re-examination of Ms. James, when asked by Mrs. Knight-Edwards if Ms. James' recollection of the events in 2017, when she did her witness statement, was not better than the date of the trial, answered yes. But it could equally be said that her recollection of the events on the 17th of January, 2014, when the collision occurred, would have been better than in 2017.
- [22] In their cross-examinations, the Defendant and his witnesses held fast to their evidence that the Claimant was driving without lights. But in light of the issues mentioned above, mere adamancy is not enough. One has to address the issues frontally.
- [23] I therefore did not find the evidence of the Defendant, Ms. James or Ms. Matthew credible and I do not accept it.
- [24] I therefore find that on the night in question, the Claimant's headlights were on prior to, and at the time of, the collision.

Was the Claimant Intoxicated or otherwise impaired?

- [25] In his cross-examination, the Claimant stated that he was driving from his workplace at the time of the accident. When asked whether he was drinking, he said no and that drinking was not allowed at his workplace.
- [26] In re-examination he explained that on that day, the work he was involved with involved his exposure to pungent alcohol fumes which sticks to one body and clothes.
- [27] The Defendant presented no evidence to rebut the Claimant's evidence.
- [28] However, each of the Defendant, Ms. Matthew and Ms. James stated that the Claimant was slurring his speech and smelled of alcohol. But, again, the Defendant did not tell PC Jeffrey of this on the night of the accident and Ms. Matthew and Ms. James could not recall if anyone had done so.

- [29] Unlike with the issue of the headlights, it was indeed possible for PC Jeffrey to detect from observation of the Claimant whether he was intoxicated or otherwise impaired from alcohol. He said in evidence that he could not recall anyone raising the issue of drinking.
- [30] I therefore did not find the evidence of the Defendant, Ms. James or Ms. Matthew credible and I do not accept it.
- [31] I find that the Claimant was not intoxicated or impaired from alcohol on the night of the collision.

Was the Claimant driving at a high rate of speed?

- [32] The Claimant's evidence is that he was driving at between 30 and 40 miles per hour. It was put to him that he was driving at 60 miles per hour or more. He denied this emphatically.
- [33] This is the only direct evidence on the issue. Circumstantially, the Defendant asserts that the Claimant's vehicle ended up 500 feet from the point of impact. This is supported by Ms. Matthew and Ms. James. From this, the Defendant argues that it could be inferred that the Claimant was driving at a fast rate.
- [34] At the site, PC Jeffrey pointed out a speed limit sign to the north of where the impact occurred on MHM Road where he estimated that the Claimant's vehicle ended up. He also said that when he measured the distance, he had to use his measuring tape twice but the distance to the vehicle was not the full extent of two measures. His measuring tape is 100 feet long. He therefore estimated that the vehicle ended up at about 130 feet from the point of impact. In answer to a question from Mrs. Knight-Edwards, he said it could have been beyond the speed limit sign but not by much.
- [35] I accept the evidence of PC Jeffrey and find that Claimant's vehicle ended up at about 130 feet or thereabouts from the point of impact and reject the evidence of the Defendant, Ms. Matthew and Ms. James to the contrary.
- [36] "High rate of speed" is somewhat of a value judgment. What the Court must find, as best as possible, is the probable speed the Claimant was driving, and to make a determination, based on all the circumstances, whether this speed was excessive or not.
- [37] Other than the Claimant's evidence, there was no other evidence from which I could infer the speed the Claimant was driving based on the fact that his vehicle ended up 130 feet or thereabouts from the point of impact. The burden of proof rests on the Defendant to prove the Claimant was travelling fast (as he asserts this in his Defence). To discharge this burden he must prove, on a balance of probabilities, the speed which the Claimant was travelling and that this speed was excessive in the circumstance. The Defendant has not discharged this burden.

[38] I therefore find that the Defendant has provided no evidence to support a finding that the Claimant was travelling at any particular speed nor that the speed was excessive.

Did the Defendant stop before entering the junction?

[39] In light of my previous findings, I find that as the Claimant's headlights were on at the time, was not intoxicated, and could not be proven to be travelling at an excessive speed in the circumstances, on a balance of probabilities, the collision was caused by the Defendant's failure to stop before entering the junction and I so find.

Findings and Conclusion

[40] I find further as follows.

[41] As the Claimant was travelling in a northerly direction on MHM Road with his headlights on and not intoxicated by alcohol and as he approached the junction, the Defendant drove into the junction from the HH Road without stopping and into the path of the Claimant. The Claimant swerved to avoid a collision but the vehicles in any event collided.

[42] The sole cause of the accident was the Defendant's negligent driving.

[43] In the result, I order as follows:

1. Judgment is entered for the Claimant for damages to be assessed.
2. The Defendant shall pay the Claimant prescribed costs on the amount so assessed.
3. The Counterclaim is dismissed with no order as to costs thereon.

Damian Kelsick
High Court Judge (Ag.)

By the Court

Registrar