

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2004/0337

BETWEEN:-

[1] IGNACE DETOUCHE

Claimant

-and-

[2] JERRY ANDREW

Defendant

Mr David Bruney for the Claimant

Mrs Singoalla Blomqvist Williams for the first named Defendant

.....
2016: April 25;
2018: October 24;
November 22;
2019: July 25.
.....

[1] **STEPHENSON J.:** This is an action for damages arising out of a motor vehicle collision which occurred on the road that runs from Roseau to the village of Soufriere.

[2] This accident happened on the 6th June 2003. The claimant was driving a Mitsubishi Tipper Truck registration TB939 in the direction of Roseau and the Defendant was driving motor bus Registration number HB847. Both parties suffered injuries loss and damage.

[3] Both parties had a different version as to how the accident happened. The claimant claims that the defendant liable for the accident and the defendant claims the same for the claimant. There is a statement of claim, amended defence and counterclaim and defence to counterclaim.

[4] From the claimant's evidence the relevant allegations of negligence on the part of the defendant were:

- i. driving at fast rate of speed;
- ii. overtaking another vehicle on the road when it was unsafe to do so;
- iii. driving unto the claimant's side of the road when it was not safe to do so, and when, by reason of the presence and approach of the claimant's truck it was dangerous so to do; and
- iv. driving on the wrong side of the road.

[5] From the defendant's evidence the relevant allegations or particulars of negligence of the claimant can be itemized as:

- i. driving too fast in the circumstances;
- ii. failing to keep any or any or any proper look out or to have any or any sufficient regard for the other motor vehicles on the said road;
- iii. driving on the wrong side of the road when it was unsafe so to do and without regard for traffic on the road and the presence of the defendant's vehicle on the road; and

- iv. failing to stop or slow down to swerve or in any other way to manage or control the truck as to avoid the said collision.

[6] This trial is a bifurcated one and therefore the sole issue for this Court to determine without more, is who was negligent in the circumstances and therefore who caused the accident?

The Evidence

[7] The court heard from four witnesses and has been able to make a finding of fact based on the evidence adduced. This case clearly turns on credibility issues and whose negligence, on a balance of probabilities, was responsible for the accident wholly or in part.

Ignace Detouche (The claimant)

[8] It is the claimant's case on the day in question he was traversing from Soufriere towards Roseau on the left hand side of the road. He alleges that the defendant was driving towards him and was in all the circumstances driving at a fast rate of speed and at the time of the accident was overtaking another vehicle which was driving in front of him when it was unsafe to do so and coming into collision with him.

[9] The claimant's evidence is that as he was driving, he saw a bus approaching at high speed and so he moved to his left, he also noticed that the right indicator for the bus go on, then he saw the front of another (a second) bus immediately behind the first bus which moved to its right in an attempt to overtake the first bus. That when he saw this, he moved even further to his left on his side partially going off the road, the

first bus passed him and that the second bus which was driven by the defendant was attempting to overtake the first bus and collided head on with him.

[10] The claimant said when he saw the right indicator go on the first bus he understood it to mean that the bus in front was indicating to the bus behind not to overtake as there was an oncoming vehicle.

[11] Under cross examination by learned Counsel Mrs Singoalla Blomqvist Williams on behalf of the defendant, the claimant insisted that he was not speeding and that he was driving down hill when he saw the two buses coming up the hill in the opposite direction from him. The claimant contended under cross examination that both of the buses were coming at a speed and the first bus passed him straight. He said the accident occurred about five seconds after he saw the first bus.

[12] The claimant denied that he was driving fast and that he was not the one who collided with the defendant's bus but that he was "off the road" and the defendant's "left side hit him on his side of the road".

[13] The claimant under cross examination said "...as I saw the first bus is so I saw the second bus. I went on the side immediately and at the same time he (the second bus) turned on me at the same breath".

[14] The claimant contends that the accident was caused by the defendant driving too fast, overtaking when it was unsafe to do so, failing to keep his side and failing to maneuver his bus so as to avoid the collision.

Corporal Mervin Andrew

[15] Officer Andrew was called by the claimant to give evidence. He spoke of visiting the accident scene three times. The first visit was immediately after the accident. Neither of the drivers involved in the accident were present. That he visited the scene of the accident on the following day and took measurements in the presence of the claimant and then he visited a third time with the claimant and the defendant's brother. The officer was never able to take the measurements in the presence of both of the drivers.

[16] There were some measurements taken however there was no evidence adduced as to the point of impact which would have assisted the court in its finding of facts.

[17] Officer Andrew did however give the court a description of the location of the vehicles after the accident and from his evidence he said that the claimant's vehicle was on the western side of the road and the defendant's vehicle was on the eastern side of the road he also said that the width of the road at the point of impact was 16 feet, the width of the truck was 5 feet 6 inches and the length of the bus was 15.5 feet in length. He observed and described the damage to both vehicles was to the right front side of both vehicles and that the damage was extensive.

[18] Under cross examination the officer was unable to recall with clarity who he spoke to and whether or not there were passengers in the vehicles and whether he took statements from them. He said he could not remember some things about the accident but that he did record them in his official pocket book. At the time of giving evidence he did not know where his official pocket book from that time was. He said he made a report however there is no note in the evidence taken that he actually identified the official report that he made.

[19] Officer Andrew never visited the accident scene the defendant.

Jerry Andrew (The defendant)

[20] The defendant's version of how the accident occurred differed greatly from the claimant's version. He claimed that he was driving up to Scott's Head behind another bus. The bus in front of him he claims was driving on the left and swerved left and went into the gutter and thereafter a tipper truck which he felt apparently forced the bus ahead of him off of the road appeared and the truck collided with the right side of his bus.

[21] In amplifying his witness statement the defendant told this court, that he did not know anything about the bus in front of him speeding as the bus was about 30 feet ahead of him. He said he did not observe the bus in front of him put on his indicators he only saw the bus sway to the left into the gutter at the side of the road to give way to the blue truck that was coming down the hill at a fast rate and that truck collided with him spinning his vehicle to face Roseau.

[22] Under cross examination from learned Counsel Mr David Bruney, the defendant insisted that he was not speeding neither was he attempting to overtake the bus that was ahead of him as is alleged by the claimant.

[23] The defendant insisted that he was about 30 feet behind the bus ahead of him when he observed the bus swerve to the left and "ride the drain" which was about three to four feet at the side of the road. The defendant under cross examination said that when he saw the bus which was driven by someone he called "Smokey" sway to the left his initial thought was that maybe Smokey had fallen to

sleep, that he could not understand what was going on then he saw the blue truck coming and he too swerved to the left and entered the gutter. He later said that he did not go into the gutter but to the edge of the gutter.

[24] The defendant described the damage to his bus as mostly to the centre of the front. The defendant said that he only saw the bus ahead of him just before the accident and that he did not leave Roseau the same time as him neither did he see him earlier at the bus stand.

[25] The claimant denied accepting responsibility for the accident.

Shawn St Hilaire

[26] The final witness in the trial was Shawn St Hilaire who was a passenger on the bus that was ahead of the defendant's bus. Mr St Hilaire told this court that on the morning he was heading up to the hot water springs in Soufriere on the bus driven by one Mr Sylvester called "Smokey".

[27] He told the court that Smokey was not driving fast as they were going uphill. This witness told the court that there came a time when Smokey pulled to the left there was a bump and they went into the drain on the left. St Hilaire said that when the bus he was in did this, the driver was making space to allow the dumper driven in the opposite direction by the claimant to pass. The witness also said that the driver (Smokey) had to do this when they saw the dumper coming to avoid being hit by the dumper. It is to be noted that Mr Hillaire was sitting in the front passenger seat of the bus and he was the sole passenger on the bus that morning.

[28] Mr St Hillaire said that after they pulled to the left they remained right there as they heard the sound of impact of the accident behind.

[29] Under cross examination from Learned Counsel Mr David Bruney, this witness said that the defendant was travelling about twenty feet behind them from about Champagne (that is when he heard him in the quiet of the morning) which he said was quite a distance away from where the accident happened. That the defendant was driving behind them and that he did not at any time observe the defendant trying to overtake the bus that he was driving on.

[30] Upon being questioned by the court, Mr St Hillaire said that the truck driven by the claimant passed frighteningly close to the bus he was on but it passed all the way.

ANALYSIS OF EVIDENCE

[31] Crucial to this case is the evidence of Mr Shawne Hillaire. He is an independent witness. His evidence speaks not to the actual impact between the vehicles driven by the claimant and the defendant; however his testimony gave this court a very good view of what happened immediately before the collision.

[32] The essence of his evidence is that the two buses one driven by Mr Sylvester on which he was a passenger and the other by the defendant were heading up from Roseau in the direction of Soufriere and onward to Scott's Head. He said the bus which he was on that was in the front of the defendant's bus pulled to the left into the

drain to avoid coming into contact with the claimant's truck that was coming in the opposite direction down the hill.

[33] Mr Hillaire spoke of how close the truck came to the bus he was on but that it was able to pass all the way.

[34] The defendant stated in his evidence that he saw the bus ahead of him pull to the left and when he did he realised it was to avoid colliding with the truck that was coming down the hill and that he too pulled to the left to avoid the truck but collided with it.

[35] My view on this is that there was more than enough space for the claimant's vehicle and the defendant's vehicle to pass as the width of the road was given as 16 feet and the width of the truck as 5 feet 6 inches. However on the morning of the 6th June 2003 both buses travelling in the opposite direction of the truck had to pull to the left. The bus driven by Mr Sylvester did so successfully, barely so.

[36] It is the defendant's evidence that he was travelling a distance of 30 feet behind the bus in front. Mr Hillaire says he was about 20 feet behind. It is clear to this court that had the defendant been driving at a slower pace or had he been keeping a better look out he may have been able to pull further to the left to avoid coming into contact with the claimant. Likewise it is clear to the court that the claimant was not keeping to his side of the road as the bus driven by Mr Sylvester had to pull out of the way by pulling off of the road into the gutter on two to three feet off of the road barely avoiding him.

[37] I do not accept the evidence of the claimant that the two buses were speeding or that the defendant was trying to overtake the bus ahead of him and based on the fact that there was severe impact on the right hand side of the defendant's vehicle based on the evidence of Mr Hillaire that the defendant was pinned in his vehicle against the dumper I do believe that it was the claimant who was on the defendant's side of the road somewhat.

[38] On a close analysis of the facts of this case as per the versions put forward by both sides to this case, it is clear that the Defendant's vehicle being a large vehicle and a truck for that matter must have gone over its lane on a narrow stretch of road and in a curve, causing it to strike or collide with the Claimant's vehicle which was on its side of the road. I hasten to say even if the stretch was narrow if both vehicles proceeded cautiously they would have been able to pass each other without incident.

[39] There is no doubt in my mind that the defendant was not attempting to overtaking going into the claimant's lane thereby causing this accident. Flowing from this, I agree with submissions from Learned Counsel for the defendant that the claimant came over onto the defendant's side of the road and collided with him and was negligent and therefore bears some liability for the accident.

Liability

[40] It is well settled law that all drivers of motor vehicles have a duty to exercise due care when driving on the road. In the case of **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**,¹ Rawlins J stated:

"Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected ... to determine what other users of the road are doing. They are expected to maneuver their vehicles in order to prevent and avoid accidents".

[41] I agree with the learned Judge that all drivers must exercise due care and attention at all times. I am quite satisfied, based on the totality of the evidence that the defendant's account of how the accident occurred is to be believed and that he is not totally responsible for the accident.

[42] I find the evidence of Mr Hillaire to be very helpful to the court in coming to a conclusion as to what happened on the morning in question. All told, and having regard to the findings made earlier in this judgment I find also that the defendant contributed in some way to the accident I am of the view that had he been paying more attention he would have been able to take sufficient evasive action to avoid the accident quite like Mr Sylvester who was driving ahead of him.

[43] That having been said, I find, on a balance of probabilities that both the claimant and the defendant are to be blamed for the collision. They both failed to exercise due care and attention on the road; they both failed keep a proper look out for oncoming traffic. Neither of them took sufficient action to avoid the accident. The defendant in this matter had a responsibility and onus to keep a proper look out; to

¹ HCANV108/1998

observe oncoming traffic and to take evasive action, such as applying brakes, slowing down or stopping where necessary as was required in this case.

[44] The evidence is that Mr Sylvester who was driving some way ahead of the defendant had to pull to the left into the drain to avoid colliding with the truck coming down the hill, the defendant observed that and pulled left but clearly not enough to also avoid colliding with the truck driven by the claimant in the circumstances of this case this court finds that it is reasonable that he could have done so and that in failing to do so could only probably mean that he was not paying sufficient attention or driving too fast. Either way he clearly contributed to the accident.

[45] I find that the absence of sufficient avoiding action on the part of the defendant makes him partially to blame for the accident.

Conclusion

[46] I therefore have no hesitation in finding, on a balance of probabilities, that both the claimant and the defendant are liable for the collision. In other words, the negligence of both drivers was the effective cause of the collision and the degree of fault is determined as 70% to the claimant and 30% to the defendant.

[47] In the result, I enter Judgment for the claimant Ignace Detouche and against the defendant , Jerry Andrew on his claim for damages to be assessed and costs as prescribed

[48] I enter judgment for the defendant Jerry Andrew on his counterclaim for damages to be assessed and prescribed costs.

[49] And it is ordered that

- (i) the defendant Jerry Andrew do pay to the claimant Ignace Detouche 30% of his damages when assessed and prescribed costs
- (ii) The claimant do pay to the defendant 70% of the damages when assessed and prescribed costs.
- (iii) . The parties do within 30 days of delivery of this judgment apply for damages to be assessed and costs. However, they are at liberty to agree quantum and costs.

M E Birnie Stephenson

High Court Judge

[SEAL]

By the Court

Registrar