

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCv2013/0206

BETWEEN:

**[1] CLARENCE MARTIN
[2] YVONNE MARTIN**

Claimant

and

EDRIS GEORGE

Defendant

Appearances:

Ms. Joy Dublin and Ms. Judith Dublin for the Claimant
Mrs. Kivine Knight Edwards and Ms. Samantha May for the Defendant

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2016: May 30, 31
2017: October 25
.....

JUDGMENT

Introductory

[1] **LANNS, J: [AG]:** This is a claim in negligence for loss and damage arising out of a collision between two motor vehicles on the American Road in the vicinity of the St Patrick's Child Care Development Center in Antigua, on the 31st January 2010. Interest and costs are also claimed.

[2] The first named claimant, Clarence Martin (Mr Martin) was the driver of Motor Jeep A19124, owned by the second named claimant, Yvonne Martin, (Mrs. Martin). The defendant was the driver and owner of motor car A1049. The defendant denies liability. She asserts that the collision was caused wholly by the negligent driving of Mr Martin. She counterclaims for special damages, general damages, interest and costs.

The Issues

[3] The issues for determination are:

- (a) Whether the defendant is liable in negligence to the claimant
- (b) If so liable what is the measure of damages to be awarded?
- (c) Whether the claimant is liable in negligence to the defendant
- (d) If so liable what is the measure of damages to be awarded?

The Evidence -- Liability

- [4] The claimants and one other witness gave evidence on their behalf. The defendant and one other witness gave evidence on her behalf. Police Constable Jacobs who was the investigating officer at the scene of the accident also gave evidence.

Mr Martin's account of the collision

- [5] Mr Martin in his witness statement said in essence that
- (a) The accident occurred at about 8:30pm on the 31st January 2010.
 - (b) His wife was seated as a front seat passenger in the left hand drive SUV.
 - (c) He was driving at or about 20 mph. on his way home
 - (d) On reaching the vicinity of South Leeward Mission of Seventh Day Adventists, his wife suddenly yelled "we are going to be hit"
 - (e) At the same time he saw red car dart across the road at an angle and slammed into the SUV hitting the rear of the right front wheel;
 - (f) On impact, he immediately lost control of his vehicle and was unable to apply brakes or steer it.
 - (g) His vehicle crawled across the road and stopped on the side walk on the other side of the road;
 - (h) Upon exiting his vehicle he noticed the defendant's car had stopped at a diagonal position in the middle of the road where the collision had occurred;
 - (i) He and his wife went across to see the condition of the other vehicle and its occupants. The defendant was someone with whom he was familiar. She was in a state of hysteria. He tried to console her. She kept repeating "I do not know what happened. I could not control the car."

- (j) He noted the defendant's car was severely damaged. The tyre was flat. There were skid marks leading to the right front wheel of the defendant's vehicle
- (k) His wife called the police who arrived 45 minutes later.
- (l) The police took measurements and statements were taken from both drivers.
- (m) He took his vehicle to an auto mechanic the next day.
- (n) The mechanic assessed the damage, and carried out repairs.
- (o) He spent \$14,993.00 in repairs to his vehicle.

[6] Mr Martin was subject to vigorous cross examination by Mrs. Knight Edwards. In answer to counsel's suggestion that he was swerving away to avoid an indentation on his side of the road, and as a result drove on to the defendant's side of the road and caused the collision, Mr Martin denied that he was swerving away from the indentation. He accepted that there was an indentation about 18 inches – one and one half ft. wide. But he was familiar with it, and on the night in question, he straddled the hole as he was accustomed to do. He went on to explain that due to the size of his vehicle, he was able to straddle the hole comfortably, and there was no need to swerve to avoid it. He maintained that he was driving at about 20 miles per hour on the left side of the road. He further stated that he did not leave his side of the road or drive into the defendant's path.

Evidence of Yvonne Martin

- [7] Mrs. Martin's witness statement, with a few variations, corroborated that of Mr Martin. She stated in essence that
- (a) She was seated a front seat passenger in the vehicle driven by her husband.
 - (b) When their vehicle was approximately 100 yards from the Police Headquarters she noticed Motor vehicle driven by the defendant. It was travelling in the opposite direction.
 - (c) The defendant's vehicle suddenly moved a forty-five degree swerve from its side of the road and came across the road directly towards the claimants' vehicle
 - (d) She shouted out to her husband "we are going to be hit" but he was unable to do anything as almost instantaneously the defendant's vehicle collided with claimants' vehicle
 - (e) After being hit, the claimants' vehicle rolled slowly to a stop across the road.

(f) She and Mr Martin left their vehicle and went over to the other vehicle. The defendant was shaking like a leaf and kept on saying "I do not know what happened. I couldn't control the car."

[8] During cross examination, Mrs. Martin stuck to her story. In answer to questions from counsel, Mrs Martin responded that there were not many vehicles on the road, and that it was a road which they normally travelled. The following exchange then took place:

Put: I put to you that when the collision happened your husband was on the defendant's side of the road

Answer: No

Put: I put to you that Mr Martin was the cause of the accident

Answer: No

Put: I put to you that any damages suffered were caused by Mr Martin

Answer: He did not.

[9] In her testimony in court, Mrs. Martin said that as their vehicle was a left-hand drive, she had a better view of the collision than Mr Martin. She repeated how the accident happened. She recalled that upon impact, Mr Martin lost control of the vehicle and was unable to steer it. The mechanic had subsequently informed them that the brake fluid and steering fluid had leaked out as a result of the impact.

Evidence of Simeon Davis

[10] In his witness statement, Mr Davis stated that on the night of the accident he was travelling on the St Johnston's Main Road in a south bound direction. As he crossed over the junction of American Road and Factory Road, in the vicinity of Harney Motors, he noted Motor Vehicle A1049 driving in front of him in a haphazard manner, zigzagging between left and right side of the road. The vehicle

continued zigzagging in this manner until it reached the vicinity of the Seventh Day Adventist Headquarters, when it drove directly across the road and into the path of a jeep going opposite direction and colliding with it. He brought his vehicle to a stop and approached the defendant's motor vehicle. There were two occupants-a male and female and the female appeared to be frightened.

[11] During cross examination it emerged that Mr Davis assisted the defendant and her husband in getting out of their vehicle. When it was put to Mr Davis that the defendant and her husband exited through the window, he unhesitatingly responded, "I open the door and pull her out. How the car door couldn't be opened and is I open the door for her?" When it was further put to him that the defendant and her husband climbed through the driver's window to exit the vehicle, Mr Davis responded thus: "Me Lady, that's a lie." In response to counsel's suggestion that Mr Davis' sole purpose for testifying was because he was trying to solicit business from the claimants, Mr Davis responded thus: "I say what I see. I have no reason to lie."

[12] The court visited the locus. At the locus, Mr Davis in essence repeated the evidence he had already given. However, he pointed out the distance between where he first observed the defendant's vehicle zigzagging across the road and the point at which the collision occurred. He emphasised that when the defendant reached the South Leeward Mission of Seven-day Adventists Offices, he saw the defendant "leave her side of the road and go straight into the jeep bing"

[13] That was the case for the claimant

Evidence of Edris George

[14] In her witness statement, the defendant stated in essence that

(a) She is the owner of A1049

- (b) On the evening of 31st January 2010, at approximately 9:00pm she had just left a church service at Good shepherd Anglican Church and was travelling from north to the American Road heading home.
- (c) She was driving on her side of the road close to St Patrick's preschool when she felt a blow to the right side of her vehicle. Her husband was sitting beside her in the passenger seat.
- (d) The claimant's vehicle which was travelling south to north hit her vehicle.
- (e) The impact spun her vehicle a little, the driver's side window shattered on her and all the systems in her car completely shut down.
- (f) Mr Martin stopped his vehicle about 50 feet directly behind her on her side of the road.
- (g) She came out of her vehicle through the driver's window which was shattered as the doors would not open. Her husband came behind her using the same driver's side window.
- (h) Police Constable Jacobs arrived on the scene, took statements and measurements,
- (i) She obtained an estimate for repairs from Nathaniel Bowers Body shop. She paid \$8, 524,16 for repairs to her vehicle
- (j) She reported the accident to her insurers, People Insurance Company (PIC), and she obtained a police report which was issued by the Royal Police Force of Antigua Traffic Department, which report indicated that Mr Martin was at fault.

[15] Under cross examination, Mrs. George was shown her hand written statement tendered to PIC which statement indicated that her husband exited the vehicle through the front passenger door. She accepted that this was inconsistent with her evidence contained in her witness statement and her testimony before the court. She agreed that she was travelling along All Saints Road and that her correct side of the road would have been the eastern side. She accepted the width of the road as being 24 ft. and that each driver was allotted 12 ft. on either side, and that her side measured 12 ft. from the eastern side of the road.

[16] Ms George accepted that the right front wheel of her car was 5 ft. from the west of the road and her rear right wheel was 18 ft from the west of the road. She accepted that based on these measurements which were recorded by the police, (from the information which she gave to them) that her vehicle was diagonally across the road. She further accepted that the right front portion of her vehicle was across the center of the road and was partially on Mr Martin's side of the road.

She admitted to having a flat tyre but denied that the tyre had been flat prior to the collision, and she denied that it was the flat tyre that caused her to lose control of her vehicle.

- [17] Interestingly, Mrs. George, during cross examination admitted that a not guilty verdict had been entered in favour of Mr Martin in relation to the charge of dangerous driving laid against him in the magistrate's court.¹

Evidence of Theodore George

- [18] In his witness statement, Mr George's account of the accident was similar to that of Mrs George. . He said that the claimants' vehicle struck his wife's vehicle on the right driver's side. The impact spun the defendant's vehicle around and the driver's side window was shattered. His wife tried to open the car door but it did not open. He tried to open his door and it would not open either. They both exited through the shattered driver's side window.
- [19] Mrs. George's vehicle was damaged from the right front lights straight to the back. The police came on the scene, took statement and measurements.

Police Constable Jacobs' Evidence

- [20] PC Jacobs recorded information obtained from his investigations in his notebook. He also recorded the measurements taken at the scene. He agreed that based on the direction in which Mr Martin was travelling, his correct and proper side of the road was on the western side and Mrs. George's proper side was on the eastern side
- [21] PC Jacobs stated that both parties pointed out different points of impact and based on the information in his notebook, Mrs. George's vehicle remained at the point of impact. He said that based the location of Mrs. George's right front wheel, Mrs. George's point of impact was 5 ft to the west of the road. A portion of Mrs. George's car was on the western side of the road. Mr Martin's

¹ The document evidencing the not guilty verdict was not disclosed until the day of trial although the claimant had it in his position since 2012 after the end of the case. By virtue of CPR 28.13 the document was not admitted in evidence, but the defendant has admitted that the not verdict had been entered in favour of Mr Martin.

point of impact was 2 ft. from the west of the road which would have been Mr Martin's' good and proper side of the road. He opined that the accident was a low speed accident. He did not remember seeing Mr Simon at the scene of the accident, but there were several bystanders.

Liability

- [22] It is well settled that drivers of motor vehicles have a duty to exercise due care when driving on the road. This principle finds support in the case of **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**, Claim No 168 of 1998, wherein 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. They are expected to use and observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including, weather, and visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road."

- [23] I am quite satisfied, based on the totality of the evidence that the claimants' account of how the accident occurred is to be believed. The measurements taken are more consistent with the claimants' and Mr Davis' account of how the defendant approached and was zigzagging at the time. It is also reasonable to infer that the defendant's vehicle sustained a puncture and that the flat tyre caused the vehicle to zigzag which in turn caused her to lose control of her vehicle. As noted by counsel for the claimant, it is very telling that the defendant chose not to claim for the flat tyre which she seems to be asserting was sustained during the collision. Zigzagging can also be a result of a driver falling asleep. Both Mr and Mrs Martin gave evidence that Mrs. George kept on repeating "I do not know what happened. I could not control the car." I do not believe they made this up. I believe them.

- [24] Aside from that, I find Mr and Mrs. George were not forthright with the court when they stated that they exited their vehicle through the shattered driver's window; that Mrs. George exited first and Mr

George followed after. Indeed, I find it mindboggling that both of them would take the risk of escaping through a shattered glass window, and sustained no injuries/cuts. Mr Davis' evidence that he assisted the defendant and her husband by opening the door for them to get out is more believable and more consistent with the circumstance of the shattered window. This witness was certain and convincing. In fact, based on the documentary evidence, the defendant contradicted herself by saying to her insurers that they exited through the door, and then changing her story in her witness statement and oral testimony by saying that they exited through shattered windows. I do not believe them on this issue.

- [25] That having been said, I find, on a balance of probabilities that both Mr Martin and Mrs. George 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 any action to avoid the accident. Mrs. Martin admitted that she was the one who had a better view of the accident; but she was not the driver. The onus is on Mr Martin (who was the driver) to keep a proper look out; to observe oncoming traffic and to take evasive action, such as applying brakes, slowing down or stopping where necessary as was required in this case. The evidence is that Mrs. Martin shouted to Mr Martin that they were going to be hit. Did she frighten him and make him lose control of his vehicle? His vehicle ended up a distance of 52 ft. away from the point of impact. The evidence is that it continued to travel at a distance before it came to stop, so the inference is that Mr Martin was travelling at a fast rate of speed that made him incapable of controlling his vehicle in such a way as to avoid the collision. But this is not of itself determinative of liability. It must be remembered that Mr Martin said that he was travelling at 20 miles per hour, and PC Jacobs was of the view that the accident was a low speed accident. I bear in mind however that based on the measurements, the collision occurred on the near side of Mr Martin's proper side of the road. Still, the absence of any avoiding action on the part of either party makes both drivers equally to blame for the accident.

Conclusion

- [26] I therefore have no hesitation in finding, on a balance of probabilities, that both Mr Martin and Mrs. George 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 50% to the claimant and 50% to the defendant.

[27] In the result, I enter Judgment for the claimants Clarence Martin and Yvonne Martin against the defendant, Edris George for damages to be assessed and costs as prescribed.

[28] I enter judgment for the defendant Edris George on her counterclaim for damages to be assessed and prescribed costs.

And it is ordered that

1. The defendant Edris George do pay to the claimants Clarence Martin and Yvonne Martin one half of the damages when assessed and prescribed costs
2. The claimants do pay to the defendant one half of the damages when assessed and prescribed costs.
3. 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.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar