

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2012/0203**

**BETWEEN:**

**DIAN CUPID**  
of Georgetown

**CLAIMANT**

**-AND-**

**RAYMOND SHALLOW**  
of Georgetown

**1<sup>st</sup> DEFENDANT**

**AUGUSTUS HUMPHREY**  
of Bay Road, Georgetown

**2<sup>nd</sup> DEFENDANT**

Appearances: Ms Samantha V Robertson for the Claimant, Mr Duane Daniel for the Second Defendant. No appearance by the First Defendant.

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2015: Oct. 15  
Dec. 3  
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**JUDGMENT**

**BACKGROUND**

[1] **Henry, J.:** The claimant Dian Cupid was injured in a motor vehicle accident, when the Toyota Corolla driven by Augustus Humphrey collided with her as she crossed the main public road in Georgetown. At the time, the vehicle was owned by Raymond Shallow. Ms Cupid alleges that the accident was caused by Mr Humphrey's breach of statutory duty and negligent driving of the vehicle. She claims that he was negligent by driving too fast, failing to keep a proper lookout, stop, slow down, steer or swerve to avoid hitting her or take adequate care or her

safety and by failing observe or heed her presence on the road, failing to give her precedence or any warning of his approach. She brought this claim seeking general and special damages from Mr Humphrey and Mr Raymond Shallow. Mr Humphrey was subsequently convicted of driving without due care and attention at the Georgetown Magistrate's Court. He claims that Ms Cupid caused or contributed to the accident by her own negligence by not paying attention as she crossed the street. She denies this. Before the trial started, learned Counsel Ms Samantha Marshall informed the court that Mr Shallow was not served with the claim form. Consequently, the claim against him was formally dismissed.

## **ISSUES**

[2] The issues which arise for consideration are:

1. Whether the accident was caused by Mr Humphrey's negligence, and if so is Dian Cupid thereby entitled to recover damages?
2. Whether Dian Cupid contributed to the accident?

## **ANALYSIS**

**Issue 1 – Was the accident caused by Mr Humphrey's negligence, and if so is Dian Cupid thereby entitled to recover damages?**

[3] The accident happened on July 22, 2009. Ms Cupid and Mr Humphrey were the only persons to testify. Their witness statements served as their evidence in chief and they were cross-examined. Ms Cupid explained that she was employed as a cook at the Velocity Bar and Restaurant situated along the Mount Bentick main road in Georgetown. She testified that around 8.00pm she was at work frying chicken when the cooking gas "ran out." She recounted that her friend Carlie Baptiste came to her workplace and they decided to cross the road. They took two stools and went to the other side of the road where they sat and remained chatting for about 30 minutes. She denied having anything to drink during that time.

- [4] Ms Cupid testified that she decided to return to her workplace to clean up the kitchen. She explained that she got up, looked right and left to make sure that the road was clear, ascertained that nothing was coming and started crossing the road. She indicated that she was near to the other side of the road when her friend shouted something to her, whereupon she stopped, looked back at him, smiled and resumed crossing the road. It was at this point that she claims she was struck by the oncoming car driven by Mr Humphrey. She denied being distracted by her friend or turning around to return to him. She also denied that she was speaking to Carlie or he was speaking to her when she got struck by the car. She gave conflicting accounts about whether she stopped in the road or not. At one point she testified that she stopped in the road and looked back at Carlie and at another point she stated that she “did not really stand up in the road.”
- [5] Mr Humphrey testified that he is a mechanic and as the driver of Toyota Corolla PH363 when it hit Ms Cupid. He deposed that around 10.00pm he was driving along Georgetown Commercial Road enroute to Byrea and was about to pass 4 vehicles parked on the left side of the road, when Ms Cupid ran across the road from the right side. He explained that she was about 15 to 20 feet away from him when he first saw her and he immediately applied his brakes but collided with her in the middle of the road where she had stopped as if she was speaking to someone. He claims that Ms Cupid darted out into the road so suddenly that there was little time to react. I find that Ms Cupid stopped briefly in the road when Carlie Baptiste called out to her and it was at that point that the vehicle struck her. This accords with both her testimony and Mr Humphrey’s.
- [6] Mr Humphrey stated that the centre of his vehicle struck Ms Cupid. He indicated that he was not speeding, could not recall how fast he was travelling at the time but remembered that Ms Cupid landed on the left side of the road about 20 feet from the point of impact. He denied knowledge of the speed limit for that stretch of road and indicated that no speed limit sign was up. He exclaimed: “I tried to help by applying my brakes, ‘cause she ran across like she was gazing, paying

attention to someone else.” Mr Humphrey testified further that his vehicle made brake impressions on the road but he could not recall how much further along the road he was able to stop and bring the vehicle under control, after the impact.

[7] Neither party presented any measurements from the scene of the accident. Ms Cupid described the road as a straight one without obstruction in either direction. She estimated its width to be between 15 and 18 feet<sup>1</sup> while Mr Humphrey’s approximation put it at 22 feet wide. I prefer Ms Cupid’s testimony over Mr Humphrey’s and where there are conflicts I accept hers. She appeared at times not to understand what was being asked of her and for the most part impressed me as a witness of truth. Mr Humphrey was selective in the type of testimony he gave to the court, particularly regarding the speed at which he was travelling. While he could not recall the speed at which he was travelling or the speed limit in that area, he was adamant that he was not speeding, a conclusion which requires knowledge of the speed limit. Furthermore, if Mr Humphrey is a licensed driver, he is expected and deemed to know the speed limit for the respective roads along which he drives. I do not believe him when he says he does not know the speed limit, nor do I accept his testimony that he was not speeding.

[8] I infer from all of the circumstances including the distance Ms Cupid was propelled by the impact, the distance Mr Humphrey claims he was from her when he first saw her and that Mr Humphrey was travelling above the 20 mile speed limit set by law.<sup>2</sup> Both Ms Cupid and Mr Humphrey place Ms Cupid on the left side of the road after impact. This lends credence to Ms Cupid’s testimony that she had almost reached the other side when the vehicle collided with her. I reject Mr Humphrey’s account that Ms Cupid was in the middle of the road. I find therefore that the point of impact was on the left side of the road away from where Ms Cupid and Mr Baptiste were conversing. Ms Cupid’s testimony that the road was clear with no

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<sup>1</sup> From one end of the court room to the other.

<sup>2</sup> See the Motor Vehicles and Road Traffic Act Cap 483 of the Laws of Saint Vincent and the Grenadines; Second Schedule.

obstructions is not difficult to reconcile with Mr Humphrey's account that there were a line of four cars on the left side of the road. Based on their respective accounts, Ms Cupid crossed the road from the side opposite to where the cars were parked.

[9] They also agreed that the headlights on Mr Humphrey's vehicle were on and street lights were on in the vicinity. Mr Humphrey opined that street lights do not always provide adequate lighting, but stopped short of saying that the street lights in that area were inadequate. I accept that that stretch of road was clear, illuminated by street lamps and the vehicle's headlights and nothing impeded either party's view of the other. Accordingly, I find that Mr Humphrey was negligent in failing to keep a proper lookout or heed Ms Cupid's presence on the road, and by failing to stop, slow down swerve or otherwise maneuver the car to avoid hitting Ms Cupid.

[10] The tort of negligence was described by Lord Atkin in **Donoghue v. Stevenson**<sup>3</sup> where he opined that everyone must take "reasonable care to avoid acts or omissions which he can reasonably foresee" would injure someone else.<sup>4</sup> Someone who fails to do so would be liable in negligence for breach of such duty which results in damage to the other. The duty owed equates to a level of care that someone of ordinary prudence would exercise under the same circumstances. Motorists in general owe a duty of care to other road users including pedestrians. As he approached the scene of the accident that fateful night, Mr Humphrey had a duty to exercise caution as he moved into the middle of the road to get pass the parked vehicles. In particular, he owed a duty to pedestrians in that area, including Ms Cupid to drive carefully, and within the speed limit, paying attention to any existing pedestrian traffic as he did so. The absence of a pedestrian crossing did not absolve him of that duty as it is

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<sup>3</sup> [1932] A.C. 562 at 580.

<sup>4</sup> Bullen & Leake and Jacobs Precedents of Pleadings 12<sup>th</sup> edition, page 682.

notoriously accepted that pedestrians in rural communities do not only cross streets using the pedestrian walkway.

[11] In seeking to navigate beyond the parked cars, Mr Humphrey was endeavouring to engage in a perfectly legal and necessary manoeuvre albeit one which necessitated extra care<sup>5</sup> as there were businesses on both sides of that road which could potentially generate foot traffic. He failed to proceed with the necessary caution, which in those circumstances demanded that he reduce speed and signal his approach by sounding his horn. Those are the actions which a reasonable and prudent motorist would be expected to take. From the available evidence, I infer and conclude that Mr Humphrey took none of those measures.

[12] Mr Humphrey was convicted in the Georgetown Magistrate's Court<sup>6</sup> of driving without due care and attention with respect to the collision. That conviction is deemed by law to be proof of not only of his careless driving but also negligent driving characterized by failure to drive carefully and pay attention, amounting to breach of his duty of care to Ms Cupid.<sup>7</sup> In the premises, I have no difficulty in

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<sup>5</sup> Bristol case (Grenada)

<sup>6</sup> See conviction record.

<sup>7</sup> See section 26 of the Evidence Act Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines which provides:

"S. 26: (1) In any civil proceedings the fact that a person has been convicted of an offence in Saint Vincent and the Grenadines by or before any court shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is party to the civil proceedings, but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which, by virtue of this section, a person is proved to have been convicted in Saint Vincent and the Grenadines by or before any court, he shall be taken to have committed that offence unless the contrary is proved.

finding that Mr Humphrey's negligent driving at an excessive speed, failing to sound his horn, keep a proper lookout and swerve or stop to avoid hitting Ms Cupid caused the accident and injuries to Ms Cupid. He is accordingly liable to her in damages to be assessed.

## **Issue No. 2 - Did Dian Cupid contribute to the accident?**

[13] Mr Humphrey contends by his defence that Ms Cupid was wholly or partially responsible for the accident due to her own negligence "with respect to the manner in which she crossed the road." He alleges that Ms Cupid failed to monitor the road to make sure that no vehicle was coming before she crossed, failed to cross at a pedestrian crossing or at an appropriate point and failed to keep a proper lookout or observe or heed the traffic on the road. Ms Cupid disputes this. The court having found that Mr Humphrey's negligence caused the accident, the pertinent question at this juncture is whether Ms Cupid was partly responsible. In order to establish contributory negligence Mr Humphrey must establish on a balance of probabilities that Ms Cupid failed to take reasonable care to protect herself from injury from the approaching vehicle and thereby did not discharge her duty of care towards him.

[14] Viscount Simon expressed this principle in the following terms in **Nance v British Colombia Electric Railway Co. Ltd**:<sup>8</sup>

*"...when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take*

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(3) Nothing in this section shall prejudice the operation of section 28 or any other written law whereby a conviction or a finding of fact in any criminal proceedings is, for the purpose of any other proceedings, made conclusive evidence of any fact."

<sup>8</sup> [1951] A.C. 601 at pgs. 611 – 612.

*reasonable care of himself and contributed, by this want of care, to his own injury. ... In running down cases, the claimant owes the defendant a duty to act carefully. ...”*

*“When a man steps from the kerb into the roadway, he owes a duty to traffic which is approaching him with risk of collision to exercise due care,” and “Such a plea should be treated as setting up want of care by the plaintiff for his own safety, whether in the circumstances of the accident the plaintiff owed a duty to the defendant or not.”*

[15] Ms Cupid and Mr Humphrey both testified that Ms Cupid stopped in the road after she had started crossed. I accept Ms Cupid’s testimony and find as a fact that she stopped in the road when Carlie called out to her. I got the impression from her that she stood still only for a brief moment before she resumed crossing the road. It was at that point that the vehicle collided with her. However long Ms Cupid stopped in the road, it was not advisable or wise for her to do so. By doing so Ms Cupid demonstrated a disregard for her own safety and exposed herself to the risk of being injured in a collision. She thereby failed in her dual duty to take care of herself and her corresponding to Mr Humphrey to keep a proper lookout for oncoming vehicular traffic as she crossed the road. She would have noticed the oncoming vehicle if she was more vigilant and quite likely completely and safely crossed the road. These failures were contributing causes of the accident. Although when she started crossing the road when it was safe to do so, her decision to stop in the road prevented her from noticing the oncoming vehicle before it was too late. I therefore find while Mr Humphrey’s negligence was the primary cause of the accident, that Ms Cupid was partially to blame.

[16] I conclude that Mr Humphrey was principally to blame for the accident driving due to his several failings described earlier and because by being behind the wheel of the car he had control of potentially dangerous machinery. In apportioning

blameworthiness, the court is mandated by statute<sup>9</sup> to reduce the damages recoverable by the injured party. In doing so the court must make a determination of what is just and equitable having regard to all the circumstances.<sup>10</sup> This apportionment has been described as a “somewhat rough and ready exercise”<sup>11</sup> comprising two aspects, namely the “respective causative potency of what they had done and their respective blameworthiness”,<sup>12</sup> of which the former underscores the “potential destructive nature of driving.”<sup>13</sup>

[17] Mr Humphrey was behind the wheel of a car, driving at an excessive speed when he struck Ms Cupid. It cannot be gainsaid that he was substantially more to blame than she was. In cases with somewhat similar factual background, the courts have consistently apportioned liability in the range of 70/30 to 80/20, the larger portion being attributed to the driver.<sup>13</sup> In keeping with established precedent and on the facts of this case I apportion responsibility for the accident, 80% to Mr Humphrey and 20% to Ms Cupid.

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<sup>9</sup> See section 3 (1) of the Contributory Negligence Act Cap.123 which states:

“3 (1): “Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the Claimant’s share in the responsibility for the damage....”.

<sup>10</sup> See **Stapley v Gypsum Mines Ltd [1953] 2 All E.R. 478 at 486 per Lord Reid** where he stated:

“A court must deal broadly with the problem of apportionment and in considering what is just and equitable must have regard to the blameworthiness of each party, but “the claimant’s share in the responsibility for the damage” cannot, I think, be assessed without considering the relative importance of his acts in causing the damage apart from his blameworthiness.”

<sup>11</sup> In **Jackson v Murray and another [2015] 2 All E.R. 805 at 813, per Lord Reed**, with whom Lady Hale and Lord Carnwath agreed.

<sup>12</sup> See **Eagle v Chambers [2003] EWCA Civ 1107 per Hale LJ**.

<sup>13</sup> See **Baker v Willoughby [1969] 3 All E.R. 1528; Ehrari v Curry [2007] EWCA Civ 120; Tavares v Hudson-Rotin [2012] EWHC 3171 (QB); Vann and others v Ocidental – Companhia De Seguros SA [2015] EWCA Civ 572**.

[18] Mc Cupid has made no allegations of breach of statutory duty against Mr Humphrey. There is therefore no merit in that aspect of her claim and no finding is made in respect of that assertion. Mr Humphrey submits that Ms Cupid did not file any receipts with her claim form and were therefore not properly pleaded and is stopped from relying on them subsequently even on assessment of damages. He did not provide any authority in support. This matter was before the court at this stage to determine liability. Assessment of damages (if awarded) would take place subsequently. A claimant has an obligation to set out her case, identify any document she considers to be necessary to her case and include or attach to the claim form or statement of claim a schedule of any special damages claimed.<sup>14</sup> Ms Cupid has listed at paragraph 7 of her statement of claim, 21 items in which she is seeking special damages. No medical report or receipts were filed with the claim form and statement of claim. However, a number of documents<sup>15</sup> were disclosed in her List of Documents filed on May 3, 2013. That failure does not preclude Ms Cupid from recovering those expenses if she produces the applicable documentation during the assessment stage. There is no merit in Mr Humphrey's submission on this score. The parties had agreed costs at \$3000.00. Ms Cupid is entitled to receive 80% of those costs.

## **ORDERS**

[19] It is accordingly ordered:

1. Dian Cupid's claim against Raymond Shallow is dismissed.
2. Augustus Humphrey shall pay to Dian Cupid 80% of the damages for the injuries she sustained and the losses she incurred to be assessed on application to be made by her on or before December 31, 2015.

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<sup>14</sup> See Civil Procedure Rules 2000 ("CPR") rules 8.7 and 8.9 (5).

<sup>15</sup> Including receipts.

3. Augustus Humphrey shall pay to Dian Cupid agreed costs of \$2400.00.

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**Esco L. Henry**  
**HIGH COURT JUDGE**