

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

(CIVIL)

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2007/0216

BETWEEN:

[1] ROGERS GIN

(By his duly authorized Attorney Kendra Magloire)

Claimant

and

[2] LEO MITCHELL

Defendant

Appearances:

Mrs. Gina Dyer Munro for the Claimant

Mrs. Singoalla Bloomqvist Williams for the Defendant

2015: September: 20

DECISION

[1] **Stephenson J.:** This is a claim by Rogers Gin against the defendant for damages for personal injuries. It arises out of a collision between a motor cycle driven by the claimant and a Dodge pick-up driven by the defendant on the Lagoon Bridge at Portsmouth, Dominica. There is also a defence by the defendant denying negligence as claimed and a counterclaim that the accident was in fact caused by the claimant's negligence and he claims special damages for the damage sustained to his vehicle.

Background

- [2] On the 18th March 2007, the claimant Rogers Gin was the owner and driver of a motor cycle PG857. The Defendant Leo Mitchell was the owner and driver of motor van registration number PD879.
- [3] On the evening of the 18th March 2007 the claimant was riding his motor cycle along Bay Street in Portsmouth northwards on the Lagoon Bridge and the defendant was driving in a southerly direction when there was a collision. As a result of the collision the defendant was thrown from his motorcycle off of the bridge landing below the bridge.
- [4] Both parties say they suffered damage and loss as a result of the accident.
- [5] The claimant claims that the accident was caused due to the defendant's negligence in that the defendant drove onto the Lagoon Bridge when he the claimant was nearly exiting the bridge and that he the claimant had a the right of way and the defendant failed to stop to allow him to finish exiting the bridge.
- [6] The claimant further contends that the defendant drove on the wrong side of the bridge at the time of the accident and came unto the claimant's side of the bridge. The claimant contends that the defendant was driving on the western side of the bridge when he should have been driving on the eastern side of the bridge and that he failed to heed the presence of his motorcycle on the bridge, he also failed to give way to the oncoming traffic but instead attempted to pass when the space was insufficient causing his motor cycle to collide with his defendant's vehicle and that he the defendant, failed to brake, steer, swerve or take action to avoid the collision.
- [7] The defendant denies that he was driving negligently as claimed, he denies that claimant was exiting the Lagoon Bridge as is claimed and that he failed to stop to allow him to do so or that he was driving on the wrong side of the bridge as

alleged. The defendant says that accident was entirely as a result of the Claimants negligent driving of his motor cycle.

Issue

- [8] The issue that arises for the court to resolve is on the balance of probabilities whose negligence caused the accident which was occurred on the 18th March 2007 on the Lagoon Bridge.

Evidence

- [9] Several witnesses testified on behalf of Mr. Gin and the defendant and they were all cross examined. I have paid regard to the agreed documents which were tendered in evidence in support of the viva voce evidence adduced at the trial.

The accident

- [10] The claimant said in his evidence that on the day and time in question he was riding his motor cycle on Bay Street northwards on the Lagoon Bridge when he collided with the Dodge Pick Up truck driven by the defendant.

- [11] The claimant states in his evidence that he was exiting the northern end of the bridge and was nearly finished doing so when his motorcycle collided with the defendant's vehicle. He contends that the defendant did not stop to allow him to finish exiting the bridge. He contends that the defendant was driving too fast at the time of the accident and as a result could not stop when he had to.

- [12] The claimant contends that as a result of the collision he was thrown off of the bridge and that he fell onto the western bank of the Lagoon River. He says he fell

down about 15 to 18 feet from the bridge. After that, he fell he had to crawl up the river bank for help.

[13] The claimant said that the motor cycle remained upright braced on the railing of the bridge.

[14] The court heard from Police Officer Armand Didier who investigated the accident. Officer Didier said he went to the scene of the accident and that he prepared a Motor Vehicle Accident Report in the matter.

[15] Officer Didier said he took statements in the absence of the claimant who was at that time already transported to the Hospital. The measurements taken were not admitted into evidence because they were taken in the absence of the claimant. Officer Didier however, gave other evidence which assisted the court in making a finding of fact in the matter.

[16] Officer Didier said that when he arrived at the scene of the accident he observed that the Motorcycle was on the northern edge and on the western side of the bridge and he observed debris on the northern edge of the bridge. Officer Didier said that this is where vehicles travelling northwards exit that bridge.

[17] It is to be also noted that Officer Didier said that when he saw the claimant at the Portsmouth Hospital he observed that the claimant's clothes were wet which to some extent supports the defendant's claim that the claimant fell into the water below and not on the northern bank of the river as the claimant claimed.

[18] Miss Micah Donna Jeremy gave evidence on behalf of the claimant. She said that on the night in question she was walking in a northerly direction on the said lagoon bridge when the accident occurred.

[19] Miss Jeremy says that the claimant passed her on his motorcycle travelling on the western side of the bridge heading northwards and he had nearly exited the bridge when she saw the defendant driving a van coming onto the bridge travelling southwards. That just as the claimant was about to exit the bridge there was a collision between the motor cycle and the van and that after the collision the claimant fell off the bike over the bridge and into the lagoon river under the bridge. It is to be noted that Miss Jeremy said that the claimant's motor cycle remained slanted on the bridge.

[20] Miss Jeremy further stated that, the defendant in her view was driving on the wrong side of the bridge and that he was travelling southwards and should have been travelling on the eastern side of the bridge instead he was travelling on the western side of the bridge. Under cross examination Miss Jeremy insisted that the accident happened not in the center of the bridge but on the northern edge of the bridge. She even said that if the accident happened in the center of the bridge she would have been involved in the accident and she was not.

[21] Evidence as to how the accident happened came from the defendant himself. Mr. Mitchell said that on the night in question he was driving his motor vehicle registration number PJ879 with a friend in the passenger seat travelling in a southerly direction approaching Portsmouth. He said that he got onto the Lagoon Bridge and he observed a motor cycle approaching the bridge. That the motorcycle tried to pass on the right side of his vehicle. He said that he noticed that there was no space for the cycle to pass and that the motor cycle did not wait for him to leave the bridge before approaching the bridge, that when he realized that the motorcycle was trying to pass him he stopped his vehicle when all of a sudden the motorcycle collided with the right side of the van.

[22] Mr. Mitchell said that there was a passenger on his vehicle at the time of the accident and that the Lagoon Bridge is narrow and cannot accommodate two-way

traffic. That he was the first person on the bridge and that the claimant ought to have waited for him to clear the bridge.

[23] In cross examination the defendant insisted that he was on the bridge before the claimant. It is noted in his witness statement he said he was midway on the bridge and in his evidence he said that he was 1/3 way across the bridge. The defendant also insisted that he was stationary when the accident occurred and that the claimant should have come to a stop and allow him to exit the vehicle before he entered the bridge. The defendant was also adamant that the claimant collided with the right hand side of his vehicle, further, that he was not speeding as alleged neither was he driving on the wrong side of the bridge as that would not have been possible as the bridge was narrow and his vehicle took up nearly the whole width of the bridge.

[24] The court also heard from Ramoult Matthew who was a passenger on the defendant's vehicle. He said he was familiar with the Portsmouth road and in particular with the Lagoon Bridge. He said that on the evening in question the defendant was taking him home after work and that they were travelling in a southerly direction from Savanne Paille approaching Portsmouth.

[25] Mr. Matthew said that they were about 1/3 across the bridge when he noticed the oncoming lights of the motorcycle and that they were midway across the bridge when he saw the motor cycle trying to pass them on the right side. He said that the claimant did not wait for them to exit the bridge before coming onto the bridge and in trying to pass them the claimant collided with the right hand side of the defendant's vehicle. It is noted that Mr. Matthew would have been sitting on the right hand side of the vehicle as the defendant's vehicle is left hand drive.

[26] Under Cross examination Mr. Matthew admitted that his sight is somewhat impaired however I do not find that his evidence was inconsistent as learned

defence counsel sought to put to him. He said they were on the bridge first and that he expected the oncoming vehicle to wait for them to exit the bridge before coming onto the bridge. He also said that he saw the collision which occurred on his side of the vehicle. I believe him and accept his evidence as being truthful.

Claimant's submissions on the issue of negligence

[27] Mrs. Dyer Munro learned counsel for the defendant submits that her client has established a case of negligence on the balance of probabilities and asks that judgment be entered for him, in the alternative learned counsel is asking to find that the defendant contributed to the accident.

[28] Learned counsel asked to the court to find the following:

- (1) The defendant said that he was one third across the bridge which means that he had just entered the bridge and as contended by the claimant he was on the northern edge of the bridge.
- (2) That in his witness statement the claimant said that he was midway on the bridge but in his viva voce evidence he said he was one third way on the bridge.
- (3) That the defendant's evidence that the claimant collided with the right side of his vehicle was contradicted by the estimate of repairs that he produced which shows that the damage was to the right front of the vehicle and not on the side.
- (4) That the defendant's statement that he stopped his van when he realized that the driver was trying to squeeze pass his van when all of a sudden the motor cycle collided with the right side of my van must be rejected because the defendant's witness says that on impact the claimant fell and he opened his door and immediately ran to the rear of his vehicle. Learned counsel submitted that if the accident happened on the right side of the claimant's vehicle why then didn't the defendant go to the right side of the vehicle, why did he go to the

rear of his vehicle? Learned counsel Mrs. Dyer Munro asked the court to find that he did so because the accident happened at the northern edge of the bridge which was behind the vehicle and that is why the claimant ran to the rear of the vehicle. I must say that I do not agree with counsel in this regard. The accident happened on the right side of the vehicle and the vehicle is a left hand drive vehicle so when the defendant exited the vehicle he could have run either in front of or behind the vehicle to get to the right side of the vehicle and I therefore find that it does not mean that the accident was to the rear that he ran to the rear of the vehicle.

- (5) That the evidence for the defence is contradictory, in that, the defendant said he came to a stop and then the claimant ran into his vehicle and his witness said as he hit he stopped. I find this to be of not much moment as we have here a situation of the accident happening in a short space of time and this evidence is of no assistance to the court.
- (6) That the evidence of the defendant's witness ought not to be accepted by the court because his vision was impaired and he could not properly see what happened that night. Further that there were inconsistencies in his evidence in that in his witness statement he said they were one third way on the bridge when he saw the lights and in his viva voce evidence and under cross examination he said they were one half way across the bridge when he saw the lights. That the said witness said that the damage to the defendant's vehicle was to the front of the vehicle which is supportive of a frontal collision and not a side collision as is claimed by the defendant. That his evidence contradicts the defendant's case. I find that there were discrepancies in the defence case but they were not serious discrepancies. This court is aware that persons may see the same thing differently and that at the end of the day I have to assess the evidence in its totality and make a finding of fact.

[29] Mrs. Dyer-Munro submitted that the defendant is bound by his pleadings and relies on the dicta of the court in **Melvina Frett-Henry –v- Tortola Concrete Limited and Clayton Smithen**¹. Learned counsel submitted that the defendant in the case at bar adduced evidence which is a different version of the events as pleaded. Learned counsel submitted that in his counterclaim the defendant says he stopped his vehicle and the claimant collided with the right side of the defendant's vehicle causing damage which was contradicted in the evidence of the estimate produced and from the evidence of the defendant's witness. Counsel further submitted that it is clear that the collision was on the front right side of the defendant's vehicle. It is noted that counsel also claims that the accident happened at the rear of the defendant's vehicle.

[30] Learned counsel submitted that if in the event that the court does not accept the claimant's case the court should find that the defendant contributed to the accident that night. Learned counsel submitted that the fact that the fact that the investigating officer did not determine who was write of wrong so he charged both drivers speaks volumes of that fact that there is a difficulty in ascertaining what happened that night.

[31] Learned counsel referred the court to the **Melvina Frett Henry**² decision where it was held *inter alia* that

“Generally a person is guilty of contributory negligence where that person fails to take reasonable care of himself/herself in circumstances where the person ought reasonably to have foreseen that if he/she did not act as a reasonable prudent person, he/she might be hurt; and in such reckonings he/she must take into account the possibility of others being careless. ... (i) She did foresee harm to herself; and (ii) she acted as a reasonable prudent person for her own safety and guarded herself against the negligence of Mr Smithen. The primary focus would be on the foreseeability of harm to herself apart from her duty to other road users. The learned judge failed to apply the law of contributory

¹ HCVAP 2008/0024 (Territory of the Virgin Islands)

² *ibid*

negligence where she made no distinction between the standard of care required for the appellant's contributory negligence and the respondent's negligence"

[32] Learned counsel made further reference to the following words of Justice of Appeal Edwards³

"When contributory negligence is set up as a defence, ... all that is necessary to establish such a defence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury he cannot call on the other party to compensate him in full.

The primary question therefore for the trial judge, in relation to the skid and contributory negligence would be whether Mrs. Frett Henry had by her evidence established on a balance of probabilities that (1) she did foresee harm to herself; and (ii) she acted as a reasonable prudent person for her own safety and guarded herself against the negligence of Mr. Smithen. The primary focus would be on the foresee ability of harm to herself apart from her duty to other road users"

[33] Mrs. Dyer-Munro submitted that there was no evidence led by the defendant negating contributory negligence. In fact the defendant's case is simply that he did not cause the accident. Learned counsel pointed out that the defendant did say that he stopped when he saw the motorcycle but that his evidence in this regard was contradicted by his own witness who said that he stopped after the collision.

[34] Learned counsel for the claimant also submitted that the claimant acted as a reasonable prudent driver in that he was driving on the left hand or western side of the bridge as was his right to do. She urged the court to find that her client was a credible witness as there was no inconsistency in his evidence under cross examination. Learned Counsel also made reference to the statement made by the

³ Ibid At paragraphs 24 & 25

defendant to his insurance company when he said that he saw the claimant some 500 feet away which if it is to be believed would have given him ample time to stop to avoid the accident.

[35] Learned counsel invited this court to make a similar finding as the court in the **Frett Henry Case**⁴ where the judge concluded that ...

“from the time Mrs. Frett Henry saw the truck she would have had ample time to stop safely. That she was unable to stop and it is thus reasonable to infer that she was driving at an unsafe speed having regard to the conditions of the road... “and to find that the defendant saw the claimant some 500 feet away and in those circumstances he would have had ample time to stop safely and in the circumstance the court should infer that the defendant was driving at an unsafe speed.

Defendant's submissions

[36] Mrs. Bloomqvist Williams counsel for the defendant invited the court to accept the defendant's version of the accident and make a finding in his favour.

[37] Learned counsel submitted that the claim was filed by the claimant for damages for personal injuries caused by the defendant's negligent driving on the night in question. That it is the claimant who has to prove on a balance of probabilities that the defendant breached the duty of care owed to him and that as a result he suffered loss.

[38] Counsel also submitted that the question to be decided is whether the defendant exercised the degree of care and skill required and whether he drove his vehicle in a manner which a reasonable and prudent driver would.

⁴ Op cit

[39] Learned counsel submitted that the claimant must prove the particulars of negligence by the defendant and the particulars of damage as alleged in his claim that he suffered pain, injury, loss and damage because the defendant:

- (1) was driving too fast in the circumstances;
- (2) failed to pay attention to the road;
- (3) failed to give way to the claimant who had a right of way
- (4) failed to drive on his proper side of the road that is, the left side of the road;
- (5) failed to keep any proper lookout or to heed to observe the claimant;
- (6) failed to apply brakes in time or at all or to adequately and competently steer and control his vehicle so as to avoid the accident

[40] Learned counsel submitted that there has been no evidence led by the claimant to establish that the defendant was driving too fast in the circumstances or failed to pay attention to the road.

[41] Counsel for the defendant submitted that the claimant case is supported by one eye witness Micah Donna Jeremy and the evidence of Police Officer Armand Didier. That in his evidence the claimant says he saw the defendant's vehicle 35 feet away from the bridge that he embarked upon the bridge and the defendant's vehicle struck him that he fell under the bridge. That his eyewitness Ms. Jeremy said she saw the whole accident as the area was well lit. Learned counsel submitted that the police officer's evidence contradicts this in that he said that the bridge was not well lit and urged the court to find that in the circumstances that Ms. Jeremy could not have the clear view as she claims to have had.

[42] Learned counsel further pointed out that the eye witness sought to tell the court that the defendant was driving on the wrong side of the bridge and that this could not be as the bridge could only accommodate one way traffic.

[43] Learned counsel submitted, that it is the defendant's case that he was first on the bridge and it was the claimant who attempted to squeeze past him after he had come to a stop. That it is the defendant who collided with him on the right side of his vehicle.

[44] That the damage to the defendant's vehicle is supportive of the fact that the collision was to the side of the vehicle and not the front as the claimant wants the court to believe.

[45] Mrs. Bloomqvist-Williams pointed out to the court that the claimant fell into the water which is proof that that accident happened towards the center of the bridge. That the claimant's eyewitness under cross examination admitted that the claimant fell into the water which fact is confirmed by the claimant and his witness.

[46] Learned counsel for the defendant submitted that if the collision occurred as the claimant contended, that the defendant was driving at a fast rate of speed that the collision would have been frontal however, that the damage was to the right side of the vehicle is supportive of the defendant's version that it was the claimant who was trying to squeeze between the defendant's vehicle and the side of the bridge when he came into contact with the side of the defendant's vehicle falling off his bike over the side of the bridge into the river.

[47] Learned counsel further submitted that there was no evidence presented to the court about damage to the bike and if the claimant's version is to be accepted by the court, then, how can the vehicle strike the bike with such force and no damage was done to the bike?

[48] Learned counsel for the defendant submitted that it is the case for the defence that the accident occurred as a result of the claimant's negligence. Further that if the court were to take the claimant's case at its highest if it were true that he was almost exiting the bridge when he saw the defendant's vehicle coming onto the bridge, what steps did he take to prevent the collision. It is submitted that the defendant did not attempt to stop or alert the defendant of his presence.

[49] Learned counsel made reference to the case of **Nance –v- British Columbia Electric Railway Co. Ltd**⁵ where it was held that “in running down accidents, when two parties are so moving in relation to one another as to involve the risk of collision each owes the other a duty to move with due care and that is true whether they are both in control of vehicles, or both proceeding on foot or whether one is on foot and the other controlling a moving vehicle.”

[50] Counsel also made reference to the learning in **The Commonwealth Caribbean Tort Text Cases and Materials**⁶ which stated;

“In deciding whether there has been a breach of duty the courts in the Commonwealth Caribbean have frequently ad recourse to certain presumptions of negligence. Negligence is commonly presumed where for example the defendant's vehicle collides with the plaintiff's vehicle which is travelling in the opposite direction the point of collision being on the plaintiff's side of the road”.

[51] Counsel Bloomqvist-Williams further submitted that the defendant's evidence is that it was the claimant who was approaching at a fast speed, that when he got midway on the bridge the motorcycle which was approaching the bride tried to pass on the right side when he realised what the drier was trying to do he stopped his van and all of a sudden the motor cycle collided with the right side of the van. Counsel pointed out that the claimant in contrast did not say what steps he took as a prudent driver to prevent the accident.

⁵ [1951] 2 All E R 448

⁶Kodilinye 2nd Edition page 117

[52] Learned counsel also pointed out that in his evidence the claimant said the defendant was travelling southward and he should have been travelling on the eastern side of the bridge but instead the defendant was traveling on the western side of bridge. Learned counsel submitted that this was not logical as the bridge could only accommodate one-way traffic. Reference was made to **Dawn Yearwood Stewart –v- Addison Abel and Martha Abel**⁷ where it was held that the consideration of the issue must begin with the consideration of the claimant's case. That the claimant must convince the court on a balance of probabilities that his version is more believable than the defendant's version.

[53] Learned counsel for the defendant submitted that the claimant has produced no measurements of any kind neither of the bridge, the vehicle or any other which could assist the court in ascertaining the point of collision. That there is no evidence before the court of any damage to the motorcycle. That the only evidence which the court has before it is the evidence of five witnesses two eyewitnesses for the claimant, two eyewitnesses for the defendant and the Police officer who investigated the accident.

[54] Learned counsel submitted that defendant did what any reasonable driver would have done having embarked on the bridge halfway down upon seeing the claimant he stopped because he knew that both his vehicle and the bike could not pass without colliding with each other. That had he come to a stop the claimant would not have been thrown off whilst attempting to squeeze past the defendant's vehicle which occupied most of the vehicle.

[55] Learned counsel made reference to the following two cases for the court's consideration, **Raymond Langlais –v- Eulalie Burton**⁸ where the damage to the side of the vehicle confirmed that it was not a frontal collision and the case of

⁷ DOMHCV2009/208

⁸ DOMHCV2011/0383

Dawn Yearwood Stewart –v- Addison Abel and Martha Abel⁹ where it was held that the claimant's vehicle was the striking vehicle.

[56] Mrs. Bloomqvist-Williams invited the court to accept the evidence of the defendant and his witness and to find the claimant liable for the damage done to the defendant's vehicle.

Courts analysis and decision

[57] The legal definition of Negligence is trite. There is nothing unusual in this case on the fundamental law of Negligence. The three (3) elements of negligence to be proved by the Claimant is:

- (1) a duty of care owed by the defendant to the plaintiff;
- (2) breach of that duty by the defendant; and
- (3) damage to the Claimant resulting from that breach.

[58] It is a well-established principle of law that a driver of a vehicle on the road owes a duty of care to other road users to drive carefully. In determining whether that duty was breached, the court considers whether or not a reasonable man placed in the position of the defendant would have acted as the defendant did.

[59] Dominica is known as the land of many rivers, some say that there are 365 of them. As one traverses the country side on this beautiful lush green mountainous island one cannot help but observe that you have to traverse these rivers by crossing on bridges. Many of these bridges are small, narrow, short bridges able to accommodate only one way traffic at a time. In the absence of any measurements adduced by either party to the court it would be safe to say that the Lagoon Bridge the scene of this accident prior to it being replaced by what is there today was one of these small narrow bridges that one would be sure to encounter as one crosses the many rivers of this island.

⁹ Op cit

[60] The claimant under cross examination also said that the bridge was about 25 feet long.

[61] The evidence before the court is that the defendant Leo Mitchell was driving a Dodge Ram van which is by no means a small vehicle. In his evidence the claimant said that *"the defendant's vehicle was very big and accommodates the whole bridge"*¹⁰.

[62] Having reviewed the evidence adduced at trial and the submissions of counsel, I find the facts of this case to be; that both the defendant and the claimant were both on the Lagoon Bridge on the night in question. That the Lagoon Bridge was a narrow bridge spanning the Lagoon River and was about 25 feet in length. The defendant's vehicle was a Dodge Ram and took up most of the width of the bridge. That there was no right side or wrong side of the bridge as the bridge could only accommodate one way traffic at a time.

[63] That the accident occurred towards the northern end of the bridge as this is where the motorcycle was found by the police officer and location of the debris caused by the accident. This to my mind is the silent evidence that would assist the court in a material way in coming to its decision as to where the impact was, this is especially so when no measurements have been produced by the claimant who in this case bore the burden of proof albeit on a balance of probabilities.

[64] I find as a fact that both parties were on the bridge at the same time and given the usual size of a Dodge Ram truck and the size of the bridge it is not easy to ascertain who entered the bridge first as the van may well have entered the bridge and would have reached midway across as the defendant said. I accept the evidence of the police officer Mr. Didier when he says he was unable to ascertain who was to blame for the accident.

¹⁰ Evidence in chief of the claimant Rogers Gin taken on the

[65] I find as a matter of fact that there was no frontal collision as the claimant sought to establish as there would have been more damage to the front of the defendant's vehicle and I accept the defendant's evidence regarding the possible typo on the estimates from Auto Trade Limited regarding the need for a bumper front bracket LH.

[66] In her cross examination of the defendant, learned counsel Dyer Munro sought to challenge the defendant's contention that the impact occurred to the right side of his vehicle by making reference to the mention of the "bumper front bracket LH". However a perusal of the said document one cannot but help notice that among the parts which needed attention was the "door trim board front RH, Door regulator handle front RH, Door Pull Inner Front RH, Door Mirror RH and Door Handle Outer Release Front RH" which to my mind indicates that there was damage to the right hand side of the vehicle which really corroborates the defendant and the witness for the defendant's evidence that the impact was to the right side of the vehicle.

[67] Given the length of the bridge and the size of the vehicle I find that it is quite possible that the accident could have happened to the northern end of the bridge as the vehicle driven by the defendant would have taken up most of the length and breadth of the bridge and the defendant would have found himself midway on the bridge with his vehicle extending to the northern end of the bridge, I therefore find as a fact that the defendant was on the bridge when the motorcycle came onto the bridge. I accept the defendant's version of the accident.

[68] I also accept that the defendant stopped when he observed the light coming closer to him. Having accepted that the claimant came into contact with the right side of the defendant's vehicle it is clear to me that it is more probable that it is the claimant having found himself on the bridge the same time as the defendant was seeking to squeeze past the defendant's vehicle, and in doing so he failed to exercise the duty of care owed to the other road user, he was in fact in breach of

that duty to the other road user and to himself and he was responsible for the damage to the defendant's vehicle.

[69] I do not accept the claimant's evidence that there was a frontal collision as this is not borne out by the damage on the defendant's vehicle. Further there was no evidence before this court that the claimant tried to take any evasive action whatsoever to avoid the accident. There was no evidence adduced by him that he came to a halt or even slowed down when he came upon the defendant's vehicle. There is no evidence before this court by either party that sounded a horn to alert the other party of their presence. In short I am of the considered view that both drivers if they had been careful enough could have avoided this accident.

[70] It is therefore my view and I so hold on a balance of probabilities that the accident was not caused solely by the claimant nor the defendant but hold both drivers liable for the collision. They were both negligent.

[71] The court did not have the benefit of any evidence as to the measurements at the scene. We however have evidence as to where the motor cycle was found and of the debris on the bridge,

[72] Looking at the nature and circumstances of this whole issue and on a balance of probabilities, I find both drivers partly responsible for the collision. I would put the extent of liability for each driver at 50% for the Defendant and 50% for the Claimant.

[73] Damages and costs to be assessed by the Learned Master.

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M E Birnie Stephenson
High Court Judge