

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2010/0351

BETWEEN:

ROSEMARIE WALKER
of Vermont

CLAIMANT

-AND-

ROHAN MILLER
of Campden Park

DEFENDANT

Appearances: Mr Sylvester Raymond Cadette for the Claimant, Ms Patricia Marks for the Defendant.

2015: May 14
Jul. 8

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The claimant Rosemarie Walker is a self-employed businesswoman who owns a business renting motor vehicles. The defendant Rohan Miller rented a car from her on May 23rd 2010 for two days. The following day, while he was driving the vehicle it was damaged in an accident in which the car collided with a wall. Ms Walker alleges that Mr Miller was negligent and caused the accident by driving the car at an excessive speed. She seeks special damages of \$14,500.00, loss of use, general damages and interest. Mr Miller claims that when he received the car from Ms Walker the tires were worn and defective and this prevented the brakes from working properly. He alleges that Ms Walker's

failure to adequately maintain the vehicle and install proper tires, caused the accident. He seeks damages for breach of contract.

ISSUES

[2] The issues which arise for consideration are:

1. Whether the accident was caused by the negligence of either Rosemarie Walker or Rohan Miller?
2. Whether there Rohan Miller's allegation of breach of contract by Rosemarie Walker is made out?
3. Whether Rosemarie Walker or Rohan Miller is entitled to recover damages?

ANALYSIS

Issue 1 – Was the accident caused by the negligence of either Rosemarie Walker or Rohan Miller?

[3] Negligence arises in circumstances where a person who owes a duty of care to another, by his conduct fails to behave towards that person with the level of care that someone of ordinary prudence would have exercised under the same circumstances. In those circumstances a breach of that duty occurs if the other person suffers damage or injury.¹ In the words of Bowen L.J.², "*Negligence is simply neglect of some care which we are bound to exercise towards somebody.*"

[4] Rosemarie Walker avers that Rohan Miller's reckless and negligent driving of the vehicle at an excessive speed rendered him unable to control it as he turned a corner. She posits that this was the cause of the accident. Ms Walker testified that she visited the scene of the accident and observed from the marks on the road that it appeared that the vehicle mounted a wall on the side of the road. She opined that it appeared that "the driver could not negotiate the bend which

¹ *Donoghue v Stevenson* [1932] A.C. 562 per Lord Atkin.

² In *Thomas v Quartermaine* (1887) 18 Q.B.D. 685 at p. 694.

resulted in the vehicle slamming into a wall directly opposite the junction, which caused the vehicle to be a 'write off'. Ms Walker admitted that she was not present at the time of the accident. Further she stated that she visited the scene only after the vehicle was moved to another location. Ms Walker did not profess to have any expertise in vehicular accident reconstruction and she did not present expert testimony of a witness skilled in either discipline. Her opinion on the cause of the accident is therefore baseless, unreliable and is accordingly discounted.

[5] Mr Miller testified that he is a mechanic. He indicated that when he rented the vehicle he checked the steering and the tires. He noted that the tires were smooth but nonetheless, he accepted the vehicle in that condition. Mr Miller explained that he was traveling down a slope at about 20 mph in "free wheel", (i.e. in neutral) when the back of the car skated. He tried to pull it back and applied brakes, at which point the vehicle skated into the wall. He said that he had the car towed to a garage for safety. He admitted that he did not go back to Ms Walker after the accident to explain to her what had happened but spoke to her by phone.

[6] Mr Miller explained that the transmission box was damaged in the accident and as a result all of the oil leaked out. He was adamant that it is possible for such damage to be caused to a vehicle travelling at 20 mph. He conceded that it could be negligent to allow a vehicle to go down a hill in neutral, but added that it all depends on the reason for doing so. He explained that he wanted to save gas and this was his reason and he did not expect the vehicle to go out of control. Mr Miller admitted that one has no control over a vehicle if it skates after one applies the brakes. However, he opined that a vehicle can be controlled in neutral as well as while it is in gear.

[7] Mr Miller testified that he offered to put four new tires on the vehicle at the time of renting. This was the first time that he was making such assertions. It was not a part of his case either on the pleadings or in his witness statement. It is quite

unusual for a patron seeking to rent a vehicle to offer to put not one but 4 tires on it. I do not believe Mr Miller. He deposed that he expected Ms Walker to have “proper insurance” as is the normal practice with rental vehicles. He insisted that Ms Walker bears responsibility for the accident as she did not have proper tires on the vehicle. Mr Miller appeared nonchalant throughout his testimony even grinning at times as he described the accident. His demeanour throughout his testimony was a mixture of amusement, belligerence and indifference. He did not impress me as a witness of truth. Mr Miller left the court with the impression that he was unconcerned about the accident or what damage was caused to the vehicle. I reject his testimony that the vehicle’s tires were smooth.

[8] As a mechanic he would appreciate the importance of ensuring that a vehicle he intends to drive is fitted with proper tires. Furthermore, by his own admission he knew that driving a vehicle downhill in neutral would be negligent and that a car could not brake properly if the tires are smooth. Yet, Mr Miller admitted to driving a vehicle with smooth tires downhill in neutral. This is incredible. I do not believe him. I also reject Mr Miller’s testimony that he was traveling at 20 mph at the time of the accident. His description of the damage to the vehicle suggests that it connected with the wall at a force and speed substantial enough to damage a “cast iron” transmission.

[9] I note that it does not appear from Mr Miller’s testimony that he applied brakes at the crest of the hill when he started his descent but only after he had proceeded downhill for some distance. In such a situation, one would expect the vehicle to generate increasing speed and it strikes me that this is why Mr Miller tried to apply brakes. The circumstances of the accident as described by him lead me to the logical and reasonable conclusion that he was traveling above the speed limit and that his excessive speed contributed to the accident. I do not accept his evidence that he was driving at only 20 mph or that the tires were smooth. I find that the accident was caused by Mr Miller’s negligent driving of the vehicle downhill in

neutral at an excessive speed which caused it to get out of control and crash into the wall, when he attempted to apply the brakes.

Issue 2 – Is Rohan Miller’s allegation of breach of contract by Rosemarie Walker is made out?

[10] Rohan Miller contends that it was an implied term of his contract with Rosemarie Walker that she would provide him with a vehicle in good working condition. He alleges that Ms Walker failed to do so and instead rented him a vehicle with defective tires, and which was not properly maintained. Mr Miller has failed to establish this. There is no credible evidence of such an assertion and I accordingly find that Ms Walker did not breach her contract with him in this regard. I find that Ms Walker was not negligent in renting the vehicle to Mr Miller with smooth tires. I accordingly make no award of damages in favour of Mr Miller for breach of contract.

[11] Mr Miller alleges that Ms Walker rented him a vehicle which did not have proper insurance on it. He submits that this was in breach of her contract to him. Mr Miller has provided no evidence that Ms Walker had no insurance coverage on the vehicle. His claim for breach of contract must accordingly fail. He is not entitled to recover damages for such breach. I therefore make no award of damages in this regard. Mr Miller’s assertions that Ms Walker failed to mitigate her losses does not create a cause of action by which he becomes entitled to damages. His claim for general damages on this basis is dismissed.

Issue 3 – Is Rosemarie Walker entitled to recover damages?

[12] Ms Walker is entitled to recover damages from Mr Miller for any damage she would have sustained which was reasonably foreseeable to be the direct consequence of his negligence.³ She is not entitled to recover damages from Mr

³ The Wagon Mound [1961] A.C. 338, J.C.P.C.

Miller in respect of any sums she would have been paid by an insurer under a policy of insurance. An insured who claims against a third party wrongdoer after being indemnified by the insurer, functions as a trustee for the insurer in relation to any compensation awarded in such an action.⁴ Ms Walker claims \$14,500.00 as the value of the vehicle. She has not produced any proof of such value or any other basis on which the value can be ascertained or assessed. Special damages must be strictly proved. Ms Walker has failed to prove this element of her case. There is no evidentiary basis on which to make an award of damages in respect of the value of the vehicle. I make no such award.

[13] Ms Walker claims loss of use of the vehicle at a daily rate of \$130.00 for a period spanning May 25th 2010 to present. At paragraph 1 of her claim form she asserts that she rented the vehicle to Mr Miller at that rate. He does not deny this. This figure is therefore accepted. Ms Walker is entitled to recover a reasonable sum as loss of use. She is required by law to mitigate her losses and in the circumstances should in my estimation have been able to arrange to obtain a replacement vehicle within 30 days. Having regard to the circumstances of the case, I consider 30 days to be adequate and fix loss of use at 30 days at the rate of \$130.00, a total of \$3,900.00.

[14] Ms Walker also seeks general damages. On the facts of the case, there is no basis to support an award of general damages and I make no such award. Ms Walker is entitled to recover interest on the judgment at the statutory rate of 6% per annum⁵ and I so order. Ms Walker holds those sums as trustee of the insurer,

⁴ **Midland Insurance Co. v Smith (1881) 6 Q.B.D. 561; Castellain v Preston (1883) 11 Q.B.D. 380 C.A.**

⁵ See section 4 of the Interest Act, Cap 27 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provides:

"4. Where no interest is stated or made payable under any judgment of any Court of record, the plaintiff or person claiming under such judgement shall be entitled to interest on the sum payable thereunder at the rate of six per centum per annum from the day of entry of judgment."

if she was indemnified by them for such loss of use. She is required to file in the court office within 7 days of today's date a certificate of insurance in respect of motor vehicle R8866 for the period May 1, 2010 to May 31, 2010. The learned Registrar is directed to provide the insurer (if any) with a copy of this judgment within 21 days of today's date if it turns out that Ms Walker was indemnified for loss of use under her insurance policy.

ORDERS

[15] It is accordingly ordered:

1. Rohan Miller shall pay to Rosemarie Walker the sum of \$3900.00 being loss of use for her vehicle for the period May 25, 2010 to June 23, 2010 with interest at the rate of 6% per annum from the date of judgment until full satisfaction. Ms Walker shall hold those funds as trustee for her insurer if she was indemnified for such loss of use.
2. Rosemarie Walker's claim for special damages of \$14,500.00 is dismissed.
3. Rosemarie Walker's claim for general damages is dismissed.
4. Rohan Miller's claim for damages for breach of contract is dismissed.
5. Rohan Miller shall pay to Rosemarie Walker prescribed costs of \$585.00 pursuant to CPR Part 65.5 (1) (a).

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Esco L. Henry
HIGH COURT JUDGE