

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2008/0123

BETWEEN:

[1] RANDY AARON

Claimant

And

[1] BARRINGTON POND

[2] VIVIAN MAXIMEA

Defendants

Appearances:

Mrs. Dawn Yearwood-Stewart for the claimant

Mrs. Colleen Felix-Grant for the 1st Defendant

Ms. Laurie Smickle for the 2nd Defendant

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2012: August 7th, 10th

2014: August 15th
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JUDGMENT

- [1] **COTTLE, J:** On 28th August 2005 there was a motor vehicle accident on the Canefield Highway near the Wearhouse Disco. Three vehicles were involved. All vehicles had been travelling in a southerly direction with the claimant's vehicle in the lead followed by the vehicle driven by the first defendant. The second defendant drove the vehicle that brought up the rear. There was a collision. The first defendant's vehicle struck the rear of the



claimant's vehicle. The second defendant's vehicle hit the back of the first defendant's vehicle. The exact sequence of the collision is disputed.

The Claimants case

- [2] The claimant says that on the night of the accident – it was around 9:00 p.m.- he was driving along the highway heading south when his vehicle was struck from the rear. The impact propelled his vehicle forward. It overturned and ended up off the road in the premises of a nearby primary school. He subsequently learned that it was the vehicle driven by the first defendant which had struck his vehicle. He also became aware that there had been a collision between the second defendant's vehicle and that of the first defendant.
- [3] As a result of the impact of the collision the claimant sustained injuries. He had to be taken to the Princess Margaret Hospital. The x rays showed a bilateral malleolar fracture of the left ankle. There was also a 15cm wound to the left leg at the medial side which extended to the fascia. He was unable to ambulate. The claimant was 59 years old at the time of the accident. At the hospital his wound was sutured and he was discharged.
- [4] Continuous excruciating pain caused him to consult with Mr. Hendricks Paul, and Orthopedic Surgeon. It was then that an x –ray examination was ordered which showed the fracture. The claimant was re-admitted to the Princess Margaret Hospital. The leg was placed in a cast. Complication ensued in the healing process and the claimant was compelled to obtain further medical treatment abroad.

The first Defendants case

- [5] The first defendant says that he was driving southward on the evening of 28th August 2005 along the main highway from Massacre to Canefield. In the vicinity of the Warehouse Disco he felt a tremendous impact on the rear of his vehicle. He was thrust into the vehicle in front. The collision caused the vehicle in front to overturn and go off the road near the Massacre Primary School. He did not see what became of the driver of the vehicle in front.

The police came. They took measurements and statements from the second defendant and the first defendant. The second defendant later accepted liability for the damage to the first defendant vehicle and paid him the entire amount of \$15,000.00 as full compensation. The first defendant blames the second defendant entirely for the collision and resultant loss.

The second Defendant case

- [6] The second defendant says that on the night in question he was driving south along the Massacre Public road. The weather was fine and the roadway was dry. On approaching Mam's guest house, he was overtaken by a vehicle driven by the first defendant at great speed. Shortly afterwards he observed that vehicle stopped in the middle of the road ahead of him. He applies brakes but was unable to stop in time. He collided with the rear of the first defendant's vehicle. He exited his vehicle. He saw another vehicle overturned in a ditch on the left side of the road. He later learned that the claimant was the owner of the vehicle. He enquired about the driver but was told that he had been taken to the hospital.
- [7] He spoke to the first defendant and accepted liability for the damage to the vehicle of the first defendant. He paid for the cost of the damage to the first defendant's vehicle. At the trial he says he regrets that since it was the negligent driving of the first defendant which caused his own loss. He says he acted at the time without legal advice. He denies any responsibility for the damage to the claimant's vehicle as there was never any collision between his vehicle and that of the claimant. He adds that the damage to the claimant's vehicle occurred before he collided with the rear of the first defendant's vehicle.
- [8] In her closing submissions, counsel for the second defendant sought to suggest that the claimant, a diabetic, might have suffered from hypoglycemia and its effects. This may have caused or contributed to the accident. The suggestion is without any merit. No evidence was led along these lines. No evidence was led to suggest that the claimant drove negligently on the night of the accident. It is entirely improper to seek to raise this as an issue in the written closing submission.

- [9] Counsel also sought to suggest that the claimant was not the driver of his vehicle at the time of the accident. Neither defendant testified that they saw the claimant at the scene of the accident. The second defendant says that he is a police officer. He enquired and learned that one Ed James had been the driver and had been hospitalized. No effort was made to produce Mr. Ed James as a witness and there was no attempt to explain away the severe injuries sustained by the claimant who was hospitalized on the very night of the accident. I have no difficulty in finding as a fact that it was the claimant who was driving his vehicle as he testified.
- [10] I also find that the version of events according to the second defendant to be incapable of belief. It would be very unlikely that the second defendant, who says he was proceeding at a moderate speed, would see an accident and an immobile vehicle ahead of him and would be unable to stop or avoid colliding with that vehicle. It is telling that the second defendant accepted liability for colliding with the first defendant and would have been willing to pay for all the repairs to the first defendant's vehicle.
- [11] Surely if that vehicle had already been seriously damaged by an earlier collision he would not have accepted full responsibility. Counsel cited the case of **Brown and Lynn v Western Scottish Motor Traction Co. Ltd**¹. In that case it was held that a driver of a following vehicle was not negligent if he could not cope with an exceptionally abrupt stop by the vehicle ahead of him. **Brown's** case is easily distinguished from the present case on the facts. Even on the version of the second defendant there was no sudden abrupt stop.
- [12] In his evidence the second defendant swears that the accident between the other two vehicles had already occurred and the second defendant vehicle was at a standstill when it came into his view.

¹ 1994 SC 31

- [13] I accept the evidence of the first defendant as being more likely to be true. I find that the second defendant was wholly to blame. He ran into the rear of the first defendant's vehicle and caused it to strike the claimant's vehicle.

Damages

- [14] At the trial, the injuries of the claimant were not contested. It was not suggested that the items of special damages pleaded by the claimant did not represent actual expenditure by him. The expenditure is supported by receipts and without any challenge by the defendants. I am content to award \$3,593. EC and \$60,611.23 US as claimed under this head.

Loss of earnings

- [15] The claimant is a farmer. He seeks to recover 74 weeks' worth of vegetable sales to the Roseau Market. He also wishes to be compensated for lost sales to hotels, restaurants, hucksters and farmers worldwide. He quantifies the loss at \$140,750.00 EC. No explanation is given of any efforts to mitigate his losses. It remains for the claimant to establish his true level of loss. This he has failed to do. I therefore disallow this head of damages.

Loss of vehicle

- [16] The claimant's vehicle was a total loss. Before the accident, the value was \$13,000.00. The salvage value was \$2,500.00. I award the claimant \$10,500.00 under this head.

Personal injury

Pain suffering and loss of amenities

[17] In **Lawrence Raymond v Lester Joseph**² decided in August 2001 Cenac J awarded \$25,000.00 as general damages to a claimant who suffered fractures of the lateral and medial malleolar. In **Erickson Bazil v Harriette Alleyne**³ the court awarded \$40,000.00 as general damages to a 45 year old claimant who suffered trauma to the right ankle and laceration exposing the bone. In the present case I consider an award of \$45,000.00 is reasonable to compensate the claimant for the pain and suffering and loss of amenities.

[18] The total award is this:

Special damages	\$3,593.00 EC
	\$60,611.23 US or
	\$164,256.43 EC
General damages vehicle	\$ 10,500.00
Pain suffering loss of amenities	\$ 45,000.00
 Total	 \$223,349.43

Costs

[19] The second defendant will pay prescribed costs on the global award.

[20] In closing I must apologize to the parties for the delay in delivering this judgment. In the manual filing system that previously existed this case file was misfiled and has only recently been retrieved and passed to me for delivery.



Brian Cottle

High Court Judge

² DOMHCV1994/0289

³ DOMHCV2005/0063

