

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2005/0144

BETWEEN:

JAMES A. L. BRISTOL

Claimant

AND

MARGARET BLACKBURN

Defendant

Appearances:

Mr. L. Haynes QC with Mr. A. Joseph for Claimant

Mr. G. Delzin with Ms. M. Emmanuel-Steele for Defendant

2012: October 15

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This matter arises out of a motor vehicular accident which took place on the 8th November, 2003 on the Grand Anse Pubic Road in the vicinity of the Excel Plaza.
- [2] The Claimant was the driver of PM3, a BMW, and at the relevant time had one passenger in the vehicle with him. The Claimant was driving in a southerly direction on the said road coming from the St. George's direction. The Defendant was the driver of PP980, a Honda Accord, at the relevant time; she was accompanied by three other persons. She was travelling in the opposite direction to the Claimant.
- [3] The Defendant was driving in a northerly direction on the said road. She was attempting to enter the Excel Plaza to her right.

[4] The Claimant claims as follows:

1. Special Damages of \$245,754.56;
2. General Damages;
3. Interest pursuant to section 27 of the West Indies Associated Supreme Court Act Cap. 336 of the Laws of Grenada 1990 on such damages as may be awarded from November 8, 2003, until judgment or for such period as this Honourable Court may deem fit;
4. Costs; and
5. Further or other relief.

[5] The Defendant filed both a defence and counterclaim in this matter. The Defendant counterclaimed as follows:

1. Special damages in the sum of \$207,010.38;
2. General damages;
3. Interest from November 8th, 2003 until payment;
4. Further or other relief;
5. Costs.

[6] Both parties accused the other of being negligent in the cause of the resultant collision. As a result of the collision, both vehicles were a total loss. The Claimant, an Attorney-at-Law, in his evidence stated that he was travelling along the Grand Anse Main Road in a southerly direction at approximately 30-40 mph when he approached the corner to excel Plaza. The road was clear, he exited the corner, crested the incline in the road and he saw a vehicle about 30 feet away on his side of the road. The vehicles collided head on; he could not avoid the accident.

[7] He further testified that he never at any time left his side of the road. The road was dry and visibility was excellent. He stated that both the vehicles stopped where the accident occurred, about 18-20 feet from the Mall entrance on his side of the road. He further testified that all the debris from the collision along with the

oil and water and liquid from the vehicles were concentrated in the same area. There was no debris on the opposite side of the road.

- [8] The Claimant said that the back of his vehicle was about 5-10 feet from the entrance to Excel Plaza and the front about 20 feet from there. The police came and took measurements and marked the road with the position of both cars with white paint. He spoke with the Defendant who knew, she, too, being an Attorney-at-Law. He helped her into an ambulance at the scene.
- [9] In cross-examination, the Claimant agreed that the Excel Plaza corner is a blind corner, and that there was a sign at the side of the road (his side) stating, 'SLOW VEHICLES EXITING AHEAD' He also pointed out the damage to his vehicle.
- [10] From the pictures which were admitted in evidence, it is clear that the Claimant's vehicle sustained damage to the front, with the front right position of the vehicle receiving the most severe damage. He also stated that the Defendant's car spun and was facing the curb after the impact. It had spun at the point of the collision. He insisted that it was a head on collision.
- [11] He denied driving at a greater speed than 30-40 mph, and denied that he was driving too fast to be able to stop when he saw the Defendant approaching and making a turn into Excel Plaza. The Claimant gave additional evidence about another vehicle which he owned and which was also involved in an accident. The Court finds that this evidence is of no consequence and has no relevance to these proceedings.
- [12] Peter Baksh was the Claims Investigator for United Insurance of Barbados Ltd. He was requested by that Company to investigate the accident. The Claimant's vehicle was insured with United.
- [13] He came to Grenada twice and interviewed several persons concerning the collision. These included the Defendant, Tessa Andrews, the Claimant, Llewelyn Cummings and Rhonda Mitchell. He also visited the South St. George Police Station. He produced his notes which he took upon interviewing some of these

persons to the Court. He said that the Defendant admitted to him that she did not come right up to the entrance of Excel Plaza to make the turn into the Plaza. She admitted that she started to turn right a little before the entrance to the Plaza and that she started to go across and then she heard a bam. She was going slowly.

[14] He also spoke with Tessa Andrews; he said that she got permission from the Defendant to sign the statement she made. She phoned the Defendant and spoke to her in his presence. There were conditions laid down by the Defendant in order for this to happen and he met all the conditions. He recorded a statement from Ms. Andrews and she signed same. He also interviewed Rhonda Mitchell. She too gave him a statement and signed it.

[15] In cross-examination that he was unaware if his investigation would affect United's position on liability. He stated that he was not requested by United Insurance to conduct his investigation. He became aware that the Defendant's vehicle was insured by Netherlands Insurance during the course of his investigation. The Defendant so informed him and he believed her.

[16] He came to Grenada and interviewed the principals involved in the accident as well as their witnesses. He made contemporaneous notes of these interviews, but admitted that he did not take a statement from the Claimant. He also stated he had no statement from Llewellyn Cummings in his file but there was a strong possibility that he did record a statement from him. He could not recall interviewing Piankhi Toussaint.

[17] He also did not record a written statement from the Defendant, even though he had conducted an interview with her. He made a note of what the Defendant said but did not show her the note. He was adamant that he forced no one to give him a statement. He did not hand his statement over to the police.

[18] When taking Tessa Andrews' statement, he stated that he had a sketch in front of her, but could not recall if he drew the cars on the sketch for her. After the

interview with Tessa Andrews, he produced a statement and prepared a certificate and she signed it.

- [19] He said that it was merely a coincidence that the only statements he took were those which contradicted what the Defendant's version of the events were. He also gave evidence on the sketch of the scene which he had produced.
- [20] He explained to the Court how he produced the sketch which he used. The sketch he stated, consisted of information which he received, and he described the approach to the entrance of the Excel Plaza as well as the area where the accident occurred.
- [21] He stated that it is only when one is approximately 15 feet from the entrance to the Plaza that you could make out the top of vehicles travelling in the opposite direction. This is due to the curve and the incline of the road when approaching the Plaza from the St. George's direction. The incline he described as being a steep one going from north to south.
- [22] Patrick David testified that he did not see the accident but arrived on the scene after the collision had occurred. He put the time of his arrival at approximately between 11:00 p.m. and midnight.
- [23] He admitted that he was not a collision expert and that he had no experience in assessing where on the road the accident took place. He did say where he saw the two vehicles after the impact. He was present when the police took measurements. He observed that the Claimant's vehicle was on the left hand side of the road facing south and the Defendant's vehicle was at an angle with the front several feet into the left lane and the back just over the white central dividing line of the road. He did not recall seeing any skid mark on the road that night.
- [24] Gilbert Massell, a licensed surveyor, gave evidence that he carried out a detailed survey of the portion of the Grand Anse Main Road in the vicinity of the Excel Plaza and sent a digital copy of the survey to James Harris. The plan was admitted as an exhibit. He described a wall which runs along the roadway leading

to the Plaza but stated that this does not obstruct one from seeing the entrance to the Plaza from the corner.

[25] Royston Haywood was a witness at the scene of the accident. He, like Patrick David, did not see the collision, but arrived at the scene after it had occurred. He took photos at the scene. He did not speak with either the Claimant or the Defendant. He printed the photos himself from a digital cameral. He gave the photos to the Claimant on a floppy disc.

[26] Nigel Gresham also arrived on the scene after the collision and he spoke to the Claimant. He put his time of arrival at between 8:00 p.m. and 9:30 p.m. He described a scene almost identical to that of Patrick David in his witness statement.

[27] Tessa Andrews opened the case for the Defendant. She testified that she was employed by the Defendant at the date of the accident. She worked up to approximately 11:15 p.m. on the night of the accident and the Defendant along with her employees left the Plaza to deposit monies at NCB House.

[28] The Defendant was to drop her at her house in the Limes, which is on the road where Excel Plaza is located but on the opposite side. The Defendant was driving, she Tessa was in the front seat. The Defendant missed the turn off for Limes and continued towards the Excel Plaza entrance.

[29] At the Plaza entrance the Defendant slowed down to turn right into the Plaza. She checked and saw no vehicles approaching. Her window was down and she could hear the loud noise of an engine, but it sounded a long distance away. As the Defendant started to turn into the Plaza a yellow car 'shoot out' at them coming from St. George's. She said 'Oh God', then she smelt smoke. She could not exit the vehicle through the front passenger door, so she did so through the Defendant's door. She saw the Defendant and was then taken to the hospital. She had an injury to her right thumb, her elbow and right shin.

- [30] She said the Defendant stopped on the left side of the road (her left) just before the entrance to the Plaza, then proceeded to enter the Plaza. She could not say how long she stopped for. The front of the Defendant's car was facing the entrance to the Plaza, but was not on the right side of the road when the collision took place. When she first saw the yellow vehicle, the Defendant had already started making the right turn into the Plaza.
- [31] She recalled speaking to Peter Baksh. He showed her some pictures and they went to the area where the accident had occurred. She recalls seeing white markings on the road. She spoke with him and signed a statement and gave it to Mr. Baksh. She could not recall reading the statement before signing it. She could not recall exactly what she had told Mr. Baksh. She vehemently denied telling Baksh that 'and about 25 ft. from the entrance to Excel Plaza, Margaret Blackburn crossed the white line ...'
- [32] Dr. Douglas Noel testified as to the nature of the injuries sufficient by the Defendant as a result of the accident. In his report he stated that after the accident the Defendant complained of 'right upper quadrant pain and pain in the left 3rd, 4th and 5th toes, right big toe and right ankle'. Further x-rays of the left foot revealed a fracture to the left 4th at the neck of the proximal phalanx. A laceration on the right big toe was sutured and a splint applied to the left 3rd, 4th and 5th toes. An ultra sound of the abdomen revealed a tiny amount of fluid in Morrison' pouch. She also had a pain in her thoracolumbar spine after the accident, as well as pain in the neck and right lower limb region left forearm, left wrist and left thigh, leg and right ankle. He also believed that the Defendant had fractured ribs. The prognosis was as follows:

"Ms. Margaret Blackburn is a 56 year-old lawyer who was allegedly involved in a road traffic accident on 8/11/03 in which she sustained right sided chest and upper abdominal trauma, contusions to the left forearm and left thigh and abrasions to the left thigh and left leg with a laceration to the right big toe, fracture to the right ankle and fracture to the left 4th toe.

A repeat abdominal ultrasound performed on the 26/11/03 was normal with no free fluid present. Mrs. Blackburn is now in a right below knee fibreglass cast which is due to be removed around the 7th January. Her ankle pain can continue on and off indefinitely. She has a 10% chance of arthritis developing in this right ankle. I expect the abrasion on her left thigh and left leg to cause permanent scarring. I am under the impression that she has a fractured rib or ribs in the right lower chest as she is still quite tender there and rib fractures do not show up on chest X-rays quite often. I would expect this clinical rib fracture to heal and be pain free within 3 months of the accident. Her left 4th toe fracture should heal within 6 weeks of the injury. Her contusion should resolve within 6 weeks of the accident as should her abdominal pain. I would expect her to be able to return to work by about the 12th January, 2004."

- [33] In cross-examination Dr. Noel described Defendant's fracture as a chip fracture. He recalled giving the Defendant sick leave but could not recall for how long. She was also fitted with a below the knee cast, but she would be able to stand and read with such a cast. He opined it would be better for patient to leave leg elevated to prevent deep vein thrombosis.
- [34] Last time he examined the Defendant was May 2007 and that was enough time between the accident and that date for the fracture to heal. He was of the view that the Defendant's life would continue normally.
- [35] The Defendant, also an Attorney-at-Law, testified that on the day in question, she had gone to NCB House to do a night deposit. She had three of her employees with her. One was in the front passenger seat and the other two were seated in the rear of the vehicle. She intended to enter the Limes to drop off Tessa Andrews but she missed the entrance and decided to go to Excel Plaza, enter and then exit onto the main road and thereafter enter the Limes.
- [36] She testified that she drove slowly on her left and proper side of the road and arrived at the entrance to the Plaza. She stopped on her left side and after

ensuring that nothing was coming in the opposite direction, she started to make a right turn to go through the entrance of the Plaza. As she was about to enter the Plaza she saw a flashing light, heard a loud sound and felt an impact on the left front corner of her vehicle. She said that she realised that she had been hit by a vehicle. She attests that the vehicle must have been travelling at an excessive speed.

[37] Her vehicle was struck with great force and it felt as if it had been lifted up off the ground. Her vehicle swung around and ended up practically facing the Sugar Mill area. She was dazed and in shock. She realised that the other vehicle was driven by the Claimant. It was a BMW car. She detailed her injuries and stated that she had permanent scarring on her left thigh and right leg and still suffers pain to the ankle and discomfort when wearing shoes which are not flat.

[38] She further stated that she was unable to walk unaided from the date of the accident, that is, 8th November 2003 to about January 7th 2005 (this must be 2004 in accordance with the date in the medical report). As a result of the accident, the business where the employees work RBU was closed for approximately two weeks. He was unable to attend her law chambers for 3-4 months after the accident. She gave the losses as follows:

1. Total loss of car	\$96,000.00
2. Antilles Loss Adjusters survey fees	\$240.00
3. MICAD Enterprises Limited Adjusters fee	\$3,270.38
4. Antilles Loss Adjusters fees	\$7,800.00
5. Loss of Earnings	\$100,000.00
6. Medical Bills	\$2,000.00
7. Physical Therapy	\$3,200.00
TOTAL	<u>\$212,510.38</u>

[39] In cross-examination she testified that she applied for employment injury benefits but could not say if she received any monies. She testified that the money (if any) would have been paid to the office. She did not know what the earnings of her law office of Renwick & Payne were for the years 2001 or 2002, or 2003 and 2004. She could not recall the income for RBU (the ice cream shop) RBU closed after

the passage of Hurricane Ivan. She then testified that RBU made \$10,000.00 net per month.

[40] On the night in question she was not familiar with the road to Limes as she had only dropped Ms. Andrews home once prior to that night. After missing Limes entrance, she decided to go to the Plaza and turn around. She testified that she had turned into the Plaza many times prior to that night, even though it was not something she normally did after depositing money at NCB House.

[41] She was adamant that she stopped at the entrance to the Plaza. She put on her indicator, she was close to the white centre line in the road. There were people in the Plaza car park as cinema had just ended. She looked and saw nothing coming up to the blind corner. She could see up to the blind corner but not beyond. She started to turn, she crossed over the white line at an angle, she turned the steering wheel and got a shock. She heard BOW! and saw a flashing light. She did not see the vehicle that hit her prior to the collision.

[42] She said that when she got hit she was facing the Plaza entrance but at an angle. She knew she had to get over the road as quickly as possible because of the blind corner, but at no time was she in the Claimant's lane facing the direction of St. George's. She did not point out a point of impact to the police officer on the scene that night; she was in no condition to do so. She went back to the scene about three weeks after the accident and pointed out certain things to Officer Bubb at that time.

[43] She denied that on the night in question that she was driving on the wrong side of the road. She denied that Peter Baksh made notes when she spoke with him; and she took issue with the statements attributed by Baksh to her. Officer Dawn Bubb was the officer on the scene of the accident. When he arrived on the scene he observed the two vehicles, both of which were on the left side of the road facing the Sugar Mill direction. He recorded a statement from the Claimant, as well as recorded measurements in the Claimant's presence. They were as follows:

Facing the Sugar Mill – Vehicle PM3

From: P.O.I = L.O.R = 6' 8"
From P.O.I = R.O.R = 17' 8"
Width of Road = P.O.I = 24' 4"
L.O.U = 14' 1"
W.O.U = 5'
R.F.W = R.O.R. = 16' 6"
R.R.W = R.O.R = 16' 10"
L.F.W = L.O.R = 2' 1"
L.R.W = L.O.R = 8 inches
From corner to brow of hill = 99' 6"
From brow of hill to P.O.I = 50' 6"

- [44] On 22 November 2003 he revisited the scene with Defendant and recorded the following measurements:

Vehicle No. PP980

W.O.R = P.O.I = 25' 5"
P.O.I = L.O.R = 15' 8"
P.O.I = R.O.R = 9' 9"
Difference in P.O.I = 35' 5"
R.F.W = R.O.R = 15' 3"
R.R.W = R.O.R = 10' 3"
L.F.W = L.O.R = 3' 7"
L.R.W = L.O.R = 9' 5"
L.O.U = 14' 4" Drag marks 10' 6" & 11' 4"
W.O.U = 5' 2"
From corner to P.O.I = 114' 5"

He then submitted a report to the Traffic Department.

- [45] Piankhi Toussaint was an eye witness to the accident. At the time of the accident he was 19 years old. He was standing near the entrance of the Plaza on the night of the accident. It was just after 11:00 p.m. He saw the Defendant leave the Plaza earlier and was surprised to see her vehicle return to the Plaza that night. He testified that he saw the Defendant's car stop at the entrance to the Plaza, she turned and was about to come up the entrance to the Plaza. She was crossing the road slowly. He heard the sound of an engine but it seemed far away.

- [46] The Defendant's vehicle started to straighten when he saw a yellow vehicle hit the Defendant's vehicle. He did not hear any braking sound but he heard a quick horn sound from the direction of the yellow car. The impact occurred in the left lane travelling to Sugar Mill. At the time of the collision the Defendant's car had already crossed the middle of the road and a portion of it was in the left lane, approximately half of the front of the vehicle. He could not recall the Claimant pointing anything out to the police that night but he recalls the police making certain marks in the road.
- [47] Both parties called expert witnesses who supported the theory of the accident put forward by the party who called them. The Court finds that the accident occurred on the Grand Anse Main Road in the south bound lane, that is, the lane heading towards Sugar Mill. It is a fact that the corner approaching the Excel Plaza from either direction is a blind corner so that vehicles going south do not see the vehicles coming in the opposite direction until they come around the corner and up the slight incline that leads to the entrance of the Excel Plaza.
- [48] It is also a fact that vehicles coming from the Sugar Mill direction, that is, in the north bound lane also do not see the vehicles coming in the opposite direction. The Excel Plaza entrance is situated at the top of a slight incline, which is also around a blind corner. Because of the presence of this blind corner, drivers in both directions have to exercise more caution than is usual. But drivers who wish to enter the Plaza from the north bound lane have to be extra careful and cautious because they are crossing into the south bound lane in order to enter the Plaza. The persons in the south bound lane have the right of way, and while they too must exercise due care, they are not turning across traffic but proceeding straight on, on their correct and proper side of the road. On the facts of this case, the manoeuvre which the Defendant sought to execute was a dangerous but legal one. There was nothing preventing the Defendant from attempting to enter the Excel Plaza from the northbound lane that night.

[49] But bearing in mind that it was night, that there was a blind corner beyond the entrance of the Plaza, the Defendant had to take extra precaution in carrying out such a dangerous manoeuvre. Tessa Andrews the passenger in the front seat of the Defendant's vehicle said that she heard the sound of an engine prior to the Defendant starting to turn into the entrance to the Plaza. Further, Mr. Toussaint also testified that he heard a car horn coming from the direction of the yellow car, also before the collision. From this evidence led by the Defendant, it appears to this Court that the Defendant was put on notice that a vehicle was approaching from the opposite direction yet the Defendant continued her attempt to enter the Plaza without taking heed of these warning signs. It is an established rule of the road that when one is seeking to perform a hazardous but legal manoeuvre that one must ensure that it is safe to do so.

[50] It has been postulated that the Claimant was travelling in excess of the 40 mph speed limit and therefore bear some responsibility for the collision. I am not persuaded by the calculation of the expert putting the Claimant's speed at between 50-62.6 mph. This calculation is based in part on the eye witness account of Mr. Toussaint, who himself was not a driver at the date of the accident. The police found no evidence that the Claimant was travelling at an excessive speed that night, there is no such finding contained in the police report, nor is there any indication by way of skid marks from which any clear determination could be made as to the speed of the Claimant's vehicle at the time of the accident.

[51] The pictures of the scene and of the damage to the vehicles tell the story. The right front of the BMW was severely damaged, but there was also damage to the entire front portion of that vehicle. The front left of the Defendant's vehicle was also severely damaged with extensive damage to the entire front portion and bonnet. From the Court's perspective, looking at the evidence as a whole, it is safe to conclude that this was an almost head on collision, with the Defendant's vehicle at an angle turning into the Plaza, and the Claimant's vehicle colliding with the Defendant's on the south bound lane.

[52] Examining all the relevant factors, I do not find that that Claimant was at fault in the cause of this collision. I find that the Defendant failed to exercise due care and attention in attempting what she must have known to be a dangerous turn, given all the attendant circumstances. I also find that the Defendant ignored or was oblivious to certain warning signs that night, the sound of the engine heard by her passenger Tessa Andrews before she attempted the turn into the Plaza, and the sound of the horn heard by Mr. Toussaint as well before the Defendant attempted to turn.

[53] Had the Defendant heeded these warnings she may not have attempted to enter the Plaza but may have waited until it was safe to do so. Rawlings, J in the case of **Cheryl Edwards Administratrix of the Estate of Janique Lewis v Etnel Mills** HCANV108/1998

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. They are expected to use and to 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 the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

[54] I find that the collision was solely due to the negligent driving of the Defendant. She failed to keep a proper look out and take the necessary action to avoid the collision. The Court further finds that in the absence of any evidence, the issue of contributory negligence does not arise. The Claimant is therefore entitled to the damage claimed and costs.

[55] It is therefore ordered as follows:

- i. Judgment is entered for the Claimant.
- ii. The Defendant shall pay to the Claimant the following:

1. Total loss of BMW motor car	\$279,000.00
2. Surveyors fees paid to Robert Miller	\$ 275.00
3. Cost of Advertisement re bids for salvage	\$ 80.00
4. Vehicle survey fees (Barbados)	\$ 1,199.48
5. Adjuster's fees (Pioneer Claims Services)	\$ 6,906.60
6. Expert's fees (James Harris)	\$ 6,923.80
7. Expert's accommodation charges in Grenada (James Harris)	\$ 2,892.93
8. Expert's meals in Grenada (James Harris)	\$ 204.25
9. Towing fees (Elisha Japal)	\$ 750.00
10. Cost of photographs (Modern Photo Studio)	\$ 1,725.00
	\$299,957.06
Less recovery salvage	\$54,202.50
	\$245,754.56

[56] Prescribed costs in the sum of \$36,750.00.

Margaret A. Price Findlay
HIGH COURT JUDGE