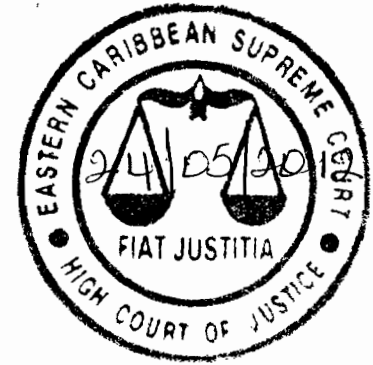


**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 80 OF 2006**



BETWEEN:

TISHELLE BROWNE

Claimant

v

**LENNOX ISRAEL
MAURICE ROBERTSON
ATTORNEY GENERAL**

1st Defendant/Ancillary Defendant

2nd Defendant/Ancillary Claimant

3rd Defendant

Appearances:

Mr. Jaundy Martin for the Claimant

Ms. Samantha Robertson for the 1st Defendant/Ancillary Defendant

Ms. Ruth-Ann Richards for the Defendant/Ancillary Claimant and 3rd Defendant

2011: April 3
2012: May 24

JUDGMENT

- (1) **THOM, J:** On February 19, 2005 a motor vehicle collision occurred on the Casson Hill Public Road between a mini-van driven by the First Defendant and an ambulance driven by the Second Defendant. The Claimant who was pregnant and experiencing birth pains was a passenger in the ambulance. She was being transferred from the Levi Latham Health Clinic in Mesopotamia to the Milton Cato Memorial Hospital in Kingstown. The Claimant suffered injuries as a result of the

collision. She instituted these proceedings against the Defendants in which she seeks special damages in the sum of \$17,300.00, general damages and costs.

- (2) The First Defendant in his defence denied that he was negligent and alleged that at all times he drove with due care and attention. He alleged further that the collision was due to the negligence of the Second Defendant.
- (3) The Second and Third Defendants denied that the Second Defendant was negligent. They alleged that the Second Defendant had the siren of the ambulance on to alert other road users of the emergency. They further alleged that the Second Defendant drove with due care and attention.
- (4) The Second Defendant also filed an ancillary claim against the First Defendant in which the Second Defendant seeks special damages in the sum of \$630.00, general damages, interest and costs for personal injuries, loss and damage.
- (5) The First Defendant in his defence to the Ancillary Claim denied he caused the collision or contributed to the collision and contends that the collision was caused solely by the negligence of the Second Defendant. The First Defendant also filed a counterclaim against the Ancillary Claimant in which he alleges that he suffered personal injuries as a result of the collision and his mini-van was damaged. He claims damages of \$10,575.53 for repairs to the mini-van, loss of income of \$250.00 per day from February 19, 2005 to 29th April, 2005, general damages, interest and costs.

ISSUE

- (6) The issue is whether the collision was caused by the First Defendant or the Second Defendant or whether they were both contributory negligent.

EVIDENCE

- (7) The Claimant testified and she called two witnesses being Ms. Elma Browne and Ms. Monique Glasgow.
- (8) The Claimant in her witness statement stated that on February 19, 2005 at about 9:00a.m. she was a patient in an ambulance driven by the Second Defendant. They were on their way to the Milton Cato Memorial Hospital in Kingstown. She was experiencing birth pains and nurse Ms. Julia Williams was in the ambulance taking care of her. When the ambulance reached the Casson Hill area she heard a loud crash and she felt a very strong blow. She felt intense pain and lost consciousness. She suffered injuries to her left hand and mouth.
- (9) Under cross-examination the Claimant agreed that she was lying on a bed in the ambulance and therefore she could not see how the collision occurred. She recalled the siren of the ambulance was on.
- (10) The Claimant's witnesses Ms. Elma Browne and Ms. Monique Glasgow were not present when the collision occurred. They therefore could not give any evidence as to how the collision occurred.
- (11) The evidence of the First Defendant is that on the morning of the collision at about 8:15a.m. he was driving his mini-van from Kingstown towards Stubbs. He was traveling at about 30mph. When he approached Casson Hill there were several vehicles traveling in the opposite direction. He saw the ambulance moved out of the line of vehicles and into the lane that he was traveling and headed towards his mini-van. He applied

brakes and stopped his mini-van. The ambulance collided with his mini-van. His mini-van was damaged and he suffered injuries as a result of the collision. He did not hear the siren of the ambulance.

- (12) Under cross-examination by Mr. Martin the First Defendant testified that the collision occurred by the entrance to the Estate House on Casson Hill. At that point of the road, the road is narrow and it is not possible for three vehicles to pass at the same time. He agreed that about three vehicles that were in front of his vehicle passed the ambulance without collision. He explained that those vehicles had already passed the narrow area. He stopped for about five to seven minutes before the ambulance collided with his mini-van. The area where the collision occurred is a clear straight road. When he saw the ambulance moving out of the traffic, the ambulance was about two hundred and twenty feet (220ft) away from his vehicle. The ambulance was traveling at about 60mph.
- (13) Under cross-examination by Ms. Richards the First Defendant denied that he had music playing in the van, he said he was listening to the radio. He denied he was speeding and stated that he was driving at about 18-20mph. When he saw the ambulance coming towards him he pulled aside and stopped.
- (14) The First Defendant's witness Ms. Clarke testified that she was sitting in the front passenger seat of the mini-van. When they got to the Casson Hill area she saw a car that was in front of the mini-van pull aside by the first entrance. She then saw an ambulance move out of the line of traffic that was traveling in the opposite direction and collided with the mini-van.

- (15) Under cross-examination Ms. Clarke stated that she did not hear the siren of the ambulance. She stated that music was playing in the mini-van, it was dancehall music by Elephant Man. The window next to her was turned up because there was 'slight rain'. The car that was in front of the mini-van stopped by the first gap where mini-vans usually stop. The collision occurred a short distance from the second gap. There was a ditch to the left of the mini-van, the mini-van could not move further to the left. The mini-van stopped and she felt the collision.
- (16) The Second Defendant stated that he has worked as an ambulance driver for more than three years. His usual route was from Mesopotamia to the Milton Cato Memorial Hospital. On the morning of February 19, 2005 he was driving from the Levi Latham Clinic in Mesopotamia to the Milton Cato Memorial Hospital. It was not raining, the condition of the road was good. He was driving at about 30mph. He was trying to get the Claimant to the hospital as quickly as possible.
- (17) At Casson Hill he began to overtake a line of vehicles that were in front of him because it was safe to do so as the lane for traffic going in the opposite direction was clear. The siren of the ambulance was on. The vehicles in the lane in which he was traveling stopped and allowed him to proceed. While he was overtaking vehicles he saw the First Defendant's mini-van approaching the ambulance. The mini-van was not slowing down so he slowed down the ambulance to about 25mph. There was a line of traffic to his immediate left so he could not move to his left. The mini-van continued speeding towards the ambulance and collided with the ambulance. As a result of the collision the ambulance crashed into a vehicle that was to the left of the ambulance.

- (18) Under cross-examination the Second Defendant testified that when he left Mesopotamia the traffic was not busy. However when he reached Casson Hill the traffic in his lane was 'bumper-to-bumper'. The road where the collision occurred is a straight road. The collision did not occur as soon as he was out of the line of traffic. He drove for about twenty feet (20ft) before the collision occurred. He saw the mini-van about ten (10) seconds before the collision occurred.
- (19) Under cross-examination by Ms. Robertson the Second Defendant confirmed that the collision occurred towards the Casson Estate House. He also agreed that visibility was clear for "a couple" hundred feet as it was a straight road. The mini-van was not the only vehicle approaching from the opposite direction. The vehicles slowed down for him to pass. He was driving in the centre of the road between the two sets of vehicles. He did not see the mini-van when he moved out of the line of traffic. He was driving at about 20mph when he was in the line of traffic. When he moved out of the line of traffic he increased his speed to about 25mph. The ambulance was unable to move very fast uphill.
- (20) Ms. Julia Williams who was the nurse attending to the Claimant in the ambulance testified that on February 19, 2005 she was attached to the Levi Latham Health Centre. While she was in the ambulance with the Claimant, when they got to the Fountain area the driver put on the siren for the ambulance. Vehicles were giving way for the ambulance. When they go to the area of Casson Hill there was a sudden impact and there was an explosion.
- (21) Under cross-examination Ms. Williams agreed that she could not see whether the mini-van was in a stationary position when the collision occurred.

SUBMISSIONS

- (22) At the end of the trial an Order was made for written submissions to be filed on or before April 20, 2012. No submissions were received from Learned Counsel for the Claimant or the First Defendant.
- (23) Learned Counsel for the Second and Third Defendants submitted that the Court should accept the evidence of the Second Defendant as being credible and find that the First Defendant was solely responsible for the accident. The witness statement of the First Defendant shows that he was traveling at a speed above the speed limit for the Casson Hill area. Further the significant damage caused to the ambulance is consistent with the mini-van which is a heavier vehicle as admitted by the First Defendant traveling at a fast speed colliding with the ambulance, rather than the ambulance colliding with a stationary mini-van.
- (24) Learned Counsel also submitted that the first Defendant drove without due care and diligence and without regard to other road users and without regard to the condition of the road in question and paid no heed to the siren of the ambulance indicating an emergency. See – Buckoke and Others v Greater London Council (1971) 2WLR 760, 774 where the court stated

“It is common knowledge that members of the public on a highway customarily give precedence to fire-engines, ambulance, police cars and the like when such vehicles indicate by the use of their bells, sirens and so forth that they are traveling on emergency service.”

FINDINGS

- (25) The collision occurred on a straight stretch of road along Casson Hill. It is the public road that leads from the Windward side of the island into the capital Kingstown. The Claimant was a patient and was experiencing labour pains and she was lying on a bed in the back of the ambulance.

She therefore could not see how the collision occurred. Similarly Ms. Williams who was the nurse taking care of the Claimant and who was also in the back of the ambulance could not see how the collision occurred.

- (26) Three of the witnesses who testified had an opportunity to see how the collision occurred. They are the First Defendant the driver of the mini-van, Ms. Clarke who was sitting in the front seat of the mini-van and the Second Defendant the driver of the ambulance.
- (27) They all agree that the collision occurred in the vicinity of the Casson Estate House. However the First Defendant testified that he pulled in and stopped at the entrance to the Casson Estate House. His witness Ms. Clarke did not support his testimony. She testified that the collision occurred after the first entrance where the car that was immediately in front of the mini-van pulled in but just before the second entrance, which is the Casson Estate House entrance.
- (28) All three witnesses agree that there was a line of vehicles traveling towards Kingstown and the ambulance was once such vehicle. The vehicles in the line of traffic stopped to allow the ambulance to pass. A few vehicles were in front of the mini-van, they were all traveling away from Kingstown they passed the ambulance without colliding with it.
- (29) Having reviewed the evidence of the witnesses I believe the testimony of the Second Defendant. His account of how the collision occurred was supported to some extent by the witness for the First Defendant Ms. Clarke. I do not believe the First Defendant's account of how the collision occurred. His account had several discrepancies.

(30) I believe the evidence of the Second Defendant and Ms. Williams that the siren of the ambulance was on from the roundabout at Fountain as they entered the Arnos Vale area. As stated earlier this road is the public road that leads from the Windward side of the island to the capital Kingstown. Between 8:00a.m. and 9:00 road users could expect to find a line of traffic going towards the capital Kingstown. The evidence of the Second Defendant is consistent with the evidence of all the other witnesses including the First Defendant that the vehicles in the lane of the ambulance all stopped. The only conclusion that could be drawn is that the drivers heard the siren of the ambulance and they stopped to make way for the ambulance to pass. The Second Defendant had an urgent case. The patient was crying out in pain. The Second Defendant needed to pass the vehicles that were in front of the ambulance. To do so it was necessary for the vehicles to pull aside. He could only achieve this by the use of his siren. I believe the testimony of Ms. Clarke that her window was wound up because there was a slight rain. Also that there was music playing in the mini-van. She contradicted the testimony of the First Defendant that the news was being reported on the radio. Ms. Clarke was very specific in her testimony that music was playing in the mini-van. She described the type of music that was playing as "dancehall music". She also named the artiste to be "Elephant Man". She however did testify that the music was normal.

(31) I also do not believe the testimony of the First Defendant that the ambulance was travelling at approximately 60mph. I believe the evidence of the First Defendant that when he was in the line of traffic he was travelling at about 20mph but when he moved out of the traffic he increased his speed to about 25mph that he was travelling uphill and the ambulance could not go very fast up the hill. I find it incredible that an ambulance travelling uphill would after travelling a distance of a mere

two hundred and twenty feet (220ft) be able to attain speed of approximately 60mph.

- (32) I also do not believe the First Defendant's testimony that he was travelling downhill at 18-20mph. In his witness statement at paragraph 5 he stated that he was travelling at about 30mph. The speed limit in the Casson Hill area is 20mph. Also the First Defendant testified that he stopped his vehicle in the entrance to the Casson Estate House, his vehicle was there stationary for about five to seven minutes before the ambulance collided with his vehicle. Many persons cannot give a good estimate of time. I find the First Defendant to be one such person. I also find the Second Defendant to be such a person. The evidence of the First Defendant that he stopped for a while before the collision was not supported by his witness Ms. Clarke. Her testimony in her witness statement at paragraphs 7 and 8 read as follows:

"On approaching the midway point on Casson Hill, I saw an ambulance pull out of the line of traffic going in the opposite direction, the ambulance collided with the vehicle in which I was travelling. The impact caused me to be thrown from my seat. I bumped my head and was flung backwards."

No mention is made that the First Defendant stopped his vehicle and while it was stationary the ambulance collided with it. During cross-examination by Ms. Richards, Ms. Clarke stated the First Defendant stopped and she felt the collision. She further explained that the vehicle stopped and she got a bump on her head from the collision. However under re-examination she stated that she did not know if the vehicle stopped before the collision occurred.

- (33) In view of the conflicting evidence of the First Defendant and his witness I accept the evidence of the Second Defendant and I find that the First Defendant did not stop his vehicle before the collision occurred. The siren of the ambulance was on indicating that there was an emergency. I

adopt the principle stated in Cheryl Edwards Administrative of the Janique Lewis v Ethal Mills HCANN 108/1998, that:

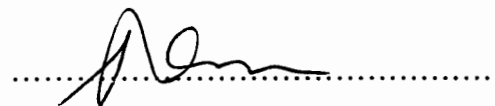
“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to maneuver their vehicles in order to prevent and avoid accidents. They are expected to use and to observe proper signals. 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”.

I also adopt the principle stated earlier in the case of Buckoke and Others v Greater London Council. The First Defendant ought to have taken due care and be on the look out for other road users. All of the other vehicles in front of the First Defendant passed the ambulance without collision. The First Defendant explained that they had crossed the narrow area of the road. I note that the First Defendant testified under cross-examination that he was driving the Kingstown-Stubbs route for the past three years. The First Defendant was therefore familiar with the road in the Casson Hill area. He was not paying due attention to the traffic on the road. The First Defendant was driving above the speed limit of 20mph. I find that the First Defendant is solely responsible for the collision.

- (34) In conclusion I find that the First Defendant is solely responsible for the collision and is liable for the damage suffered by the Claimant and the Ancillary Claimant.

(35) It is ordered that:

- (a) Judgment is entered for the Claimant against the First Defendant. The Claim against the Second and Third Defendants is hereby dismissed.
- (b) Judgment is entered on the Ancillary Claim for the Ancillary Claimant against the First Defendant/Ancillary Defendant.
- (c) The Counterclaim of the First Defendant/Ancillary Defendant against the Ancillary Claimant is hereby dismissed.
- (d) Damages to be assessed on the application of the Claimant and the Ancillary Claimant, such applications to be made within three months.
- (e) The First Defendant shall pay costs to the Claimant and the Ancillary Claimant, such costs to be prescribed costs.



Gertel Thom

HIGH COURT JUDGE