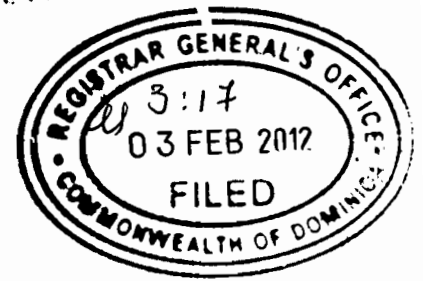


COMMONWEALTH OF DOMINICA
DOMHCV2008/0171



BETWEEN:

EDMUND SAMUEL

Claimant

and

ALVIN PASCAL

Defendants

THE ATTORNEY GENERAL

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Hazel Johnson for Claimants

Mrs. Singoalla Blomqvist –Williams for 1st Defendant

Ms. Tameka Hyacinth for 2nd Defendant

[2012: January 16th 30th]

[February 3rd]

JUDGMENT

- [1] **COTTLE J:** Dominica is a rugged and beautiful island. The roads which traverse its mountainous terrain are narrow, steep and winding. Great care and skill is needed to safely negotiate these roads. On 20th November 2007 the Claimant was driving his Toyota coaster bus along the Newfoundland main road. His vehicle is a large one, 6 feet 7 inches wide and 22 feet 2 inches long. The roadway was wet and the Claimant was travelling downhill.
- [2] The First Defendant was driving a vehicle of approximately the same size in the opposite direction. The Defendant's vehicle was carrying a full load of school children and an attendant. The Claimant was alone in his bus.

- [3] A collision occurred between the two vehicles. The claimant's vehicle sustained damage to the front bumper and right front door quarter glass. Mr. Adler Hamlet of Aadat Engineering Ltd surveyed the damage and estimated a cost of repair of \$27,450.15.
- [4] The Defendant's vehicle was also damaged. Mr. Hamlet surveyed it and found damage to right front and rear quarter. The right front door was irreparably damaged as was the right door mirror, right park lamp and windshield. He estimated a total cost of repairs of \$18,350.14. Mr. Hamlet thought that it would take seven days for each vehicle to be repaired.

The accident

The Claimant's version

- [5] In his evidence in chief the Claimant says he was driving his bus slowly downhill. His vehicle is outfitted with an exhaust braking system which he had engaged. This system makes a loud sound which would warn any oncoming vehicle of his presence. As he approached a bend in the road he saw the Defendant's vehicle approaching "in the middle of the road". It is common ground that the roadway is about 16 feet wide at the point of the accident.
- [6] The Claimant continues "I observed he steered the front of his bus towards his left side of the road. I observed that the back of his bus was in the middle of the road. In an effort to avoid a collision between our two buses I kept to my extreme left side of the road, stopped my bus completely and pulled up the handbrake. The first Defendant then turned his vehicle a little towards me and then, almost immediately turned in the opposite direction away from me. In the process of doing this the right side of his bus hit the right front side of my bus..."
- [7] The Claimant says that after the impact his bus remained on the edge of the left side of the road. There was a deep ravine which made it impossible for him to go any further left. The Claimant says he is an experienced driver who had been driving the bus for 9 years. He was very familiar with the road as he would drive it on a daily basis.

The Defendant's version

- [8] The first Defendant says he was driving his bus carrying 29 students and one attendant uphill. As he approached a corner he heard a squeaking sound of another vehicle which sounded to him like the driver was attempting to stop. The Claimant's

vehicle collided with the Defendant's bus and pushed it towards the side of the road. In his account the Defendant is supported by the witness Joan Lawrence, the bus attendant. She says she saw the Claimant's vehicle "heading straight towards us on our side of the road." She shouted to the first Defendant to "watch it!" and there was the loud noise of the collision.

- [9] Both the first Defendant and his witness say they heard the Claimant say after the accident, "...my brakes boy, the road wet." Luckily no one was injured in the accident. The court was thus called upon to adjudicate on this strict contest of facts. In arriving at a conclusion I was assisted by some pieces of the evidence which caused me to prefer one version over another. These include the position of the vehicles after the accident. After the collision the Claimant's bus was approximately parallel to the roadway. His left front wheel was about 1 foot seven inches from the left side of the road. His left rear wheel was about 1 foot nine inches from the left side of the road.
- [10] It appears that the Defendant's bus came to rest at an angle across the road way. His left front wheel was of the road, on the verge. It is unclear how far his left rear wheel was from the left side of the road but it was not on the verge. To my mind this is more indicative that the Defendant was correct when he says that the Claimant's bus struck his and pushed it towards the side of the road.
- [11] There was also the damage to the vehicles. The impact was along the right side of the Defendant's vehicle and more to the front of the Claimant's vehicle. The Claimant was going downhill – he was alone, whereas the Defendant carrying a full load of students uphill. I find it more likely that the Claimant was driving faster than the road conditions warranted.
- [12] In fact in his cross examination the Claimant confirmed this. He explained that he would usually drive from Roseau to Riviere Cyrique a distance of about 23 miles in 30- 35 minutes. To complete the journey in that time would require an average speed of about 40 miles per hour, which is far too high given the dimensions of his bus and the local road conditions exacerbated by the wet surface. Because of the above factors I conclude that it is the Claimant who is at fault for the accident on that day. I therefore dismiss the claim and give judgment for the Defendants on the counterclaim..

Measure of damages

- [13] The uncontested evidence of Mr. Vincent Charles is that the Defendants paid \$29,047.87 to repair the Defendant's vehicle. But, as has been repeatedly pointed

out in these courts, special damages must be specifically pleaded, particularized and proven in order to be recoverable. In this case the Defendants only pleaded special damages of \$20,524.00. They are thus limited to that sum.

- [14] Judgment is entered for the 2nd Defendants on the counterclaim for \$20,524.00. The claim is dismissed. The Claimant will pay prescribed costs to the Defendants. While the case for the Defendants was presented separately I make no separate award to the first Defendant for costs. The costs to the second Defendant amount to \$3,078.60.



Brian J. Cottle
High Court Judge
Justice Brian Cottle