

GRENADA

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

CLAIM NO. GDAHCV2009/0499

BETWEEN:

JAMES BRISTOL

Claimant

and

ANDRE BERNARD

Defendant

Appearances:

Mr. A. John for Claimant

Mr. R. Ferguson with Ms. A. Johnson for Defendant

2011: February 16, 17,
March 9, May 11,
July 7

JUDGMENT

[1] **PRICE FINDLAY, J.:** This action arises out of a motor vehicular accident which took place on the Grand Anse Valley Main Road on the morning of Sunday 19th April, 2009.

[2] The Claimant claims as follows:

Particulars of Special damage –

Survey fees \$600.00

Police Report \$ 10.00

1. General damages for loss of his vehicle Reg. No. P88 following vehicular accident on April 19, 2009
2. General damages for loss of use

3. Interest at the rate of 6% per annum or for such other rate as the Court shall deem fit from the date of the accident until payment
4. Such further or other relief as this Honourable Court shall deem just
5. Costs.

[3] The Defendant counterclaims as follows:

- a. General Damages for damages
- b. Special Damages in the total sum of EC\$9,967.00 together with interest thereon at the rate of 6% per annum from the date of the accident until satisfaction in full.
- c. Such further or other relief as this Honourable Court shall deem just
- d. Costs.

[4] There is a genuine dispute between the parties as to the time of the accident, the Claimant alleging that it was around 8:00 a.m., and the Defendant estimating the time at around 7:15 a.m.

[5] What is not in dispute is that the Claimant was travelling from the Lance Aux Epines direction going towards the Woodlands Rum Factory, with the Defendant travelling in the opposite direction.

[6] It is also not in dispute that the Grand Anse Valley Main Road is a winding road with numerous corners.

[7] It is around one of these corners, the corner just in the vicinity of Qualitek Printers that the collision occurred.

[8] The Claimant and all his witnesses asserted that the collision took place at around 8:00 a.m. on the day in question.

[9] The time of the accident is of great importance to the Claimant as it is his assertion that the Defendant was overtaking the vehicle in front of him at the time of the accident, because the Defendant was late for work at the SGU Hotel in Lance Aux Epines.

- [10] The evidence of the Claimant is that he was travelling towards the Woodlands Rum Factory on his left and proper side of the road. It was asserted by the Defendant that the Claimant was travelling at about 80 mph that morning. It is an assertion which the Claimant strenuously denied. The Claimant in his evidence stated that "not even Lewis Hamilton could drive at 80 mph on that road".
- [11] The Claimant said that he observed a Suzuki jeep ahead of the Defendant, and then the Defendant's vehicle following behind, approaching him from the opposite direction. As he approached the Suzuki jeep and came alongside it, the vehicle driven by the Defendant suddenly pulled out from behind the Suzuki onto the Claimant's side of the road and collided with his vehicle.
- [12] The Claimant further testified that the Defendant's vehicle struck the right front fender of his vehicle, climbing over the fender and along the right side of his vehicle, causing extensive damage to the vehicle ultimately resulting in the total loss of the vehicle.
- [13] The two witnesses who were in the Suzuki vehicle in front of the Defendant's vehicle also testified. Ricardo Strachan was the driver and Ricardo Wickham was seated in the front passenger seat.
- [14] Both Wickham and Strachan testified that the Defendant made several attempts to overtake the Suzuki along the Grand Anse Valley Main Road. The testimony was that the Defendant had attempted to pass the Suzuki at least three times along the said road prior to the accident.
- [15] Ricardo Strachan readily admitted that the collision took place behind his line of vision but, importantly, testified that when he first saw the Claimant's Lotus coming around the corner towards him, it was to his right, on the left and proper side of the road. He also testified that when the Claimant passed his vehicle the Claimant's vehicle was still to the right side of his vehicle, on its left and proper side of the road.

- [16] He testified that he heard the sound of the impact and that this sound came from the right side of his vehicle.
- [17] When he looked back he observed the Defendant's vehicle on the Claimant's side of the road.
- [18] Ricardo Wickham also testified on behalf of the Claimant. He saw the Claimant's Lotus come around the corner and because it was unique in appearance he continued to observe it. It was on its left side of the road. While he was observing the Lotus, he saw the Defendant's vehicle emerge from behind the vehicle he was in. He saw the Defendant's vehicle strike with the Claimant's vehicle, climbing over the bonnet.
- [19] Samantha Bartholomew was in the kitchen of her apartment, preparing baby formula. She was at the window of the kitchen and testified that she had a clear view of the Grand Anse Valley Main Road where the collision took place.
- [20] She testified that she heard the sound of the engine of the Claimant's vehicle and then observed the Lotus travelling along the said roadway. She could not say how fast the Lotus was travelling.
- [21] She also testified that she could see the Defendant's vehicle clearly and that it emerged from behind the Suzuki as if it were going to overtake that vehicle, and that was when the collision took place.
- [22] The Claimant under cross-examination reiterated that the collision took place on his side of the road and pointed to the point of impact on the road pointed out by him to the police officer.
- [23] The Claimant had taken twenty-one photos in the aftermath of the accident and the Court had the benefit of both these photos and a site visit to see the area where the collision took place.

- [24] The Claimant's vehicle after the impact lost the right front wheel and the steering mechanism was destroyed. The vehicle hit the road and continued in its direction of travel until it came to rest some distance from the point of impact.
- [25] The Defendant vehemently denied that he was overtaking the Suzuki in front of him at any time along the Grand Anse Road or any other road that morning.
- [26] He stated that the Claimant was driving at around 80 mph that morning and that there was about 20 ft. between his vehicle and the white Suzuki that was in front of him.
- [27] He observed the Claimant's vehicle coming towards him at a high rate of speed; it was on his side of the road. He tried to avoid the collision by pulling to his extreme left side of the road, but the Claimant's vehicle collided with his.
- [28] On impact his vehicle was spun and hit a tree on the right side of the road.
- [29] The Defendant did admit that the marks which appeared on the Claimant's vehicle would appear to be markings left by his tyres. He also admitted that most of the debris from the accident appears to be on the Claimant's side of the road.
- [30] While the Claimant pointed out a point of impact which could clearly be seen in the photos, the Defendant, however, did not point out a point of impact.
- [31] Javin Church gave evidence on behalf of the Defendant. He testified that he was passed by the Claimant after the supermarket. The Claimant was travelling in the opposite direction to him. He said that the Claimant was travelling at about 80 mph and caused his vehicle to vibrate as they passed. He admitted, however, that he did not witness the collision.
- [32] In cross-examination he changed the position of the area where he passed the Claimant's vehicle but, as far the Court is concerned, nothing turns on this evidence.

- [33] The last defence witness, Warren Phillip, was not at the scene of the accident and did not witness same. In fact his sole purpose was to repeat a conversation he overheard at a wedding reception where the Claimant said that he drove the Lotus on a Sunday morning when there were few vehicles on the road and that is when he gives it "a good run".
- [34] The Claimant does not deny that he may have used those words, and explained that he liked to drive the vehicle from his home around the island on a Sunday morning to give the engine some work.
- [35] The officer on the scene of the accident, PC 775 Kenneth Chasteau, was called by the Court to clarify the measurements taken by him at the scene.
- [36] Officer Chasteau attended court for examination-in-chief. He attended the site visit and was informed that he was to return for further cross-examination by Counsel. On the two further occasions when he was requested to return to court, the Officer failed and/or refused to do so, and despite a formal summons being sent to both the officer and his superiors, no explanation was forthcoming as to why the Officer failed to appear to complete his testimony.
- [37] The measurements, as submitted in the officer's report, were contradictory and confusing, and given the non attendance of the officer to complete his testimony, I find that I can place no credence to either his report or his incomplete testimony. As such I agree with Counsel for the Defendant that his testimony (such that it was) must be struck from the record.
- [38] On examination of the totality of the evidence, I find that it was the Defendant, in his attempt to overtake the vehicle ahead of him, who was the sole cause of the collision that morning. I accept the evidence of the Claimant and his witnesses to that effect.
- [39] I have a difficulty with accepting the Defendant's assertion that the Claimant's vehicle passed the white Suzuki that was travelling in front of the Defendant at a

distance of about 15 ft., yet without striking that vehicle, the Claimant impacted the Defendant's vehicle which was to the extreme left of the road.

[40] The photos which were tendered in evidence, as well as the site visit, made it more reasonable for the Court to accept the explanation given by the Claimant over that of the Defendant.

[41] Further, the damage to the Claimant's vehicle, with the tyre marks on the bonnet and down the right side suggest that it was the Defendant's vehicle which ran over the Claimant's and not vice versa.

[42] I accept that the cause of the accident was the Defendant's ill advised attempt at overtaking when it was clearly unsafe to do so. Approaching a bend on a road with many turns and attempting to overtake, especially while driving a left-hand drive vehicle, was a dangerous manoeuvre. It resulted in the collision.

[43] The test for negligence is set out in the case **Mc Call v Ogiste [1965] 9 WIR 291** at 292:

"What this Court has to consider is whether it could objectively be said that this was the act of a prudent driver. The law places the onus on a driver of an overtaking vehicle to make sure that that movement is safely conducted and completed; one must make sure that one can pass a vehicle and get back at once to the proper side before the approach of oncoming vehicles ..."

[44] As a result of the accident the Claimant's vehicle was considered to be a write off or total loss. The Claimant was paid the sum of \$280,000.00; he testified that he could take no steps to replace the vehicle until his claim was settled as he could not afford to do so.

[45] In any event, he did not replace the vehicle with an identical model; he bought an alternative vehicle which was delivered in mid July 2009. He therefore claims loss of use for 87 days at \$200.00 per day.

[46] The Claimant also rented a vehicle for that 87-day period, per the evidence of Phillip David. The Claimant rented a Land Rover Discovery, the closest vehicle in

terms of value to the Claimant's Lotus. This vehicle was rented for US\$800.00 per week, the EC equivalent being \$2,168.00 per week.

[47] The parties had agreed at pre trial review that the pre accident value of the Claimant's vehicle was EC\$309,000.00 and the post accident value was EC\$41,333.33.

[48] In the circumstances, I would award the Claimant the following sums:-

- (a) \$267,666.66 for the vehicle
- (b) \$17,400.00 for loss of use
- (c) \$600.00 for survey fee
- (d) \$10.00 for police report
- (e) \$46,500.00 for costs.

[49] The following cases and authorities were cited:

1. **Fardon v Harcourt-Rivington** [1932] 146 LT 391, 392
2. **Moore (an infant) v Poyner** [1975] RTR 127
3. **Mc Call v Ogiste** [1965] 9 WIR 291
4. **Lagden v O'Connor** [2003] UKHL pg. 64
5. **Clippens Oil Co. v Edinburgh & District Water Trustees** [1907] AC 291
6. **Ruth Spencer v Bernard Bonny** – ANUHCv2005/0039
7. **Malcolm Joseph & Anr. v Alison Charles** – GDAHCv2002/0077

[50] I would like to thank Counsel for their assistance in this matter.


Margaret Price Findlay
High Court Judge