

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 364 OF 2004

BETWEEN:

CARMILLUS EMMANUEL

AND

CECELIA JOHN

(Administratrix and Co-Administratrix respectively in the Estate of Jasmine Emmanuel
deceased)

Claimant

AND

RONALD PUNNETT

First Defendant

HAROLD KIER

Second Defendant

KENDRICK SCARBOROUGH

Third Defendant

CONSOLIDATED
CLAIM NO: 249 OF 2005

DORNA HACKSHAW

Claimant

AND

KENDRICK SCARBOROUGH

Defendant/
Ancillary Claimant

AND

ORNALD SAMUEL

First Ancillary Defendant

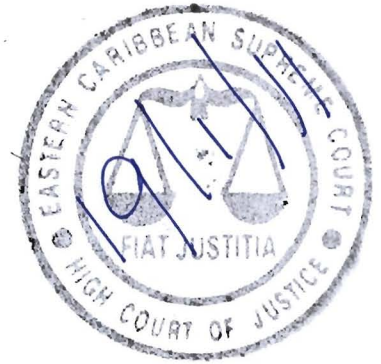
JOSETTE TOMMY

Second Ancillary Defendant

Appearances: Mr. Richard Williams for the Claimants
Mr. S. E. Commissiong for the Third Defendant / Ancillary Claimant

2010: October 18th

2011: January 19th



JUDGMENT

- [1] **THOM, J:** On the 2nd day of August 2002 at about 5p.m. the deceased Ms. Jasmine Emmanuel and Ms. Dorna Hackshaw and others were travelling in motor vehicle P1074 which is owned by Mr. Harold Keir and was driven by Mr. Ronald Punnett when there was a collision between motor vehicle P8412 driven by Mr. Kendrick Scarborough. The collision occurred on the Argyle main road. The Personal Representatives of Ms. Jasmine Emmanuel alleged that she died as a result of the collision and Ms. Dorna Hackshaw alleged that she received several injuries as a result of the collision.
- [2] The Personal Representatives of Ms. Jasmine Emmanuel by Claim No. 364 of 2004 and Ms. Hackshaw by Claim No. 249 of 2005 instituted these proceedings seeking general and special damages from the Defendants. The claim against the First and Second Defendants in Claim No. 364 of 2004 was discontinued pursuant to Order of Court dated 18th July 2005.
- [3] In the claim against Mr. Scarborough they alleged that the collision was caused by the negligence of Mr. Scarborough. The particulars of negligence alleged are:
- (a) driving too fast,
 - (b) failing to give any or any proper look-out or to observe the presence of the First Defendant,
 - (c) failing to apply his brakes in time or at all or so to steer or control his motor vehicle as to avoid the said collision,
 - (d) failing to drive on the left and proper side of the road.
- [4] Mr. Scarborough in his defence to Claim 364 of 2004 denied that the collision was caused due to his negligence. He alleged that he was forced off the road by an on-coming vehicle and he lost control and the collision occurred.

- [5] In his defence to Claim No. 249 of 2005 Mr. Scarborough alleged that the accident was caused by the negligence of Mr. Josette Tommy who was driving vehicle P9288, and Mr. Ronald Punnett who was driving P1074.
- [6] An Ancillary Claim Form was filed and served on the Ancillary Defendants. No appearance was entered or defence filed by the Ancillary Defendants. The Third Defendant claimed that the Ancillary Defendants caused or alternatively contributed to the collision.

ISSUE

- [7] The issue is who caused the collision.

SUBMISSIONS

- [8] Learned Counsel for the Claimants submitted that the evidence of negligence on the part of the Third Defendant was overwhelming. The Third Defendant's pleaded case was not supported by his evidence.

THIRD DEFENDANT'S SUBMISSIONS

- [9] Learned Counsel for the Defendant submitted that while the Defendant was driving at 45 m.p.h there is no speed limit for that part of the Island where the collision occurred. Learned Counsel referred the Court to the Second Schedule to the **Motor Vehicle and Road Traffic Act Cap. 355.**
- [10] Learned Counsel further submitted that judgment should be entered against the Ancillary Defendants since they did not enter appearance, file a defence or attend the trial.
- [11] Learned Counsel further submitted that in Suit No. 364 of 2004 the Claimants pleaded that the collision was caused by the negligence of Ronald Punnett the driver of P1074. They alleged that he was driving too fast, failed to give any or any proper look out or to observe

the presence of the Third Named Defendant, failed to apply his brakes in time or at all or so to steer or control his motor vehicle as to avoid the said collision, failing to drive on the left and proper side of the road. The Claimants having withdrawn their claim against the First and Second Defendants and now claims that the Third Defendant was solely responsible for the collision their testimony should not be considered to be credible. Also some of the Claimant's witnesses testified that the First Defendant was driving on the wrong side of the road. Learned Counsel urged the Court to find the Third Defendant's testimony to be credible.

EVIDENCE

- [12] Ms. Hackshaw and Ms. Carmillus Emmanuel gave evidence on behalf of the Claimants and Mr. Scarborough gave evidence on his own behalf.
- [13] The Claimants relied on the testimony of Ms. Hackshaw. Ms. Carmillus was not present at the scene of the collision. She testified that Ms. Jasmine Emmanuel was her daughter and she is the Administratrix of her daughter's estate. Her daughter worked with Ms. Erica McIntosh.
- [14] Ms. Hackshaw testified that on the 2nd day of August 2002 she was sitting in the back seat of motor vehicle P1074 which was driven by Mr. Punnett. Ms. Jasmine Emmanuel was sitting on her right and Ms. Brenda John on her left. There were about four vehicles in front of P1074. All of the vehicles were travelling towards the windward side of the Island. When they got to the Argyle main road one of the vehicles a white car overtook a bus and then she saw a dark coloured car driven by Mr. Scarborough approaching P1074. Mr. Scarborough was driving very fast, his vehicle "swaddle" across the road and collided with P1074. As a result of the collision she suffered injuries to her shoulder, neck, right foot, knee and ankle. Ms. Jasmine Emmanuel was later pronounced dead.
- [15] Under cross-examination Ms. Hackshaw testified that Ms. Jasmine Emmanuel was her co-worker. They left work at about 4p.m. They were returning home when the collision occurred at about 5p.m. The "big bus" was the first vehicle in the line of vehicles in front of

P1074. The white car was behind the bus. She did not see any vehicle in front or behind the black car driven by Mr. Scarborough. She maintained that Mr. Scarborough was driving very fast and the vehicle "swaddled" before it collided with P1074. She denied that P1074 was trying to overtake another vehicle and that P1074 was in the lane of Mr. Scarborough's vehicle when the collision occurred. Ms. Hackshaw agreed that the damage to Mr. Scarborough's vehicle was on the left side while the damage to P1074 was on the right side.

[16] Mr. Scarborough testified that he is a Police Officer. On the 2nd August 2002 he was off-duty and was driving his motor vehicle P8412 along the Argyle road on his way home when a white car that was travelling in the opposite direction overtook another vehicle and in so doing crossed into his lane. In order to avoid a collision he drove onto a pasture on the left side of the road. He then tried to drive his vehicle back onto the main road and his left front wheel fell into a pothole and the vehicle spun to a 45 degree angle. Before he could properly realign his vehicle, P1074 which was travelling very fast from the opposite direction collided with the left front door of his vehicle. He did not do anything to cause the collision nor could he have avoided the collision.

[17] Under cross-examination Mr. Scarborough denied he was speeding at the time of the accident. He testified that he was driving at about 40-45 mph. He did not know the speed limit of the area. He explained that the white car that was overtaking was in his lane so he swerved off the road but he could not stop his vehicle because he would have driven into some trees so he drove back onto the road. He denied that he had lost control of his vehicle and that the collision was due to the speed at which he was driving. When he drove back onto the road he was driving at 15 mph. He further explained that the statement in his defence that he had lost control was not correct. He only recently learned that Ms. Hackshaw was injured as a result of the collision. He did not see her with any injuries. Under re-examination he testified that the road was not wide enough for the bus, the white car and his vehicle to pass at the same time.

LAW AND COURT'S ANALYSIS

[18] I will deal first with some issues raised by Learned Counsel for the Third Defendant in his submissions.

No Speed Limit

[19] The submission by Learned Counsel that there is no speed limit for the Argyle area where the accident occurred is not accurate. The Second Schedule of the Motor Vehicle and Road Traffic Act Cap. 355 reads as follows:

Speed Limits		
	Motor Omnibuses or Lorries	Other Vehicles
1. Within the towns of Kingstown, Georgetown and Calliaqua, and on Kingstown Hill and Sion Hill Roads, within the villages of Sion Hill, Stubbs and Bridgetown and within Friendly Village and Byrea Tunnel	15 m.p.h	20 m.p.h
2. Elsewhere in Saint Vincent and the Grenadines	20 m.p.h	30 m.p.h

[20] The Second Schedule clearly sets the speed limit for motor cars driven in Argyle at 30 m.p.h since Argyle is not within any of the areas mentioned in paragraph 1 which has a lower speed limit.

Withdrawal of The Case Against The First and Second Defendant

[21] Claim No. 364 of 2004 was filed by the Administratrix and Co-Administratrix of the Estate of Jasmine Emmanuel on the 29th day of July 2004. On December 10, 2004 defence was filed by the First and Second Defendants denying negligence.

- [22] On the 17th day of May 2005 the Claimants made application to withdraw the Claim against the First and Second Defendants.
- [23] On the 24th day of May 2005 Claim No. 249 of 2005 was filed by Ms. Dorna Hackshaw. This Claim was against the Third Defendant only. In her claim she alleged that the collision was caused solely by the negligence of the Third Defendant.
- [24] On July 18, 2005 an order was made granting leave for the claim to be withdrawn against the First and Second Defendants.
- [25] On the 11th day of November 2005 an order was made for consolidation of Claim No. 364 of 2004 and Claim No. 249 of 2005.
- [26] The witnesses for the Claimants were Ms. Dorna Hackshaw and Ms. Carmillus Emmanuel. As stated earlier Ms. Emmanuel was not present when the collision occurred. It is always appropriate where a Claimant does not have sufficient evidence to support a claim made against a Defendant for the Claimant to withdraw the claim against that Defendant as soon as possible. To continue the claim would amount to an abuse of process.
- [27] Having examined the evidence of both Ms. Carmillus Emmanuel and Ms. Dorna Hackshaw who were the only two witnesses for the Claimants I have found no evidence by either witness where they testified that the First Defendant was driving fast and on the wrong side of the road as submitted by Learned Counsel for the Third Defendant. On the contrary the evidence of Ms. Dorna Hackshaw is very clear that the First Defendant was not driving fast but rather it was the Third Defendant who was driving fast and who lost control of his vehicle and the vehicle swerved and collided with P1074 the vehicle that was driven by the First Defendant.

ANALYSIS OF THE EVIDENCE

[28] Having seen and heard Ms. Hackshaw and Mr. Scarborough both of whom were involved in the collision, I found Ms. Hackshaw to be a very reliable witness. Although the collision occurred some eight years ago Ms. Hackshaw's testimony was very clear there was no hesitation in answering questions under cross-examination and there was no contradiction in her testimony.

[29] On the other hand I did not find Mr. Scarborough to be a reliable witness. His testimony was inconsistent with the facts pleaded in his defence. Two defences were filed on his behalf. In his defence to claim No. 364 of 2004 filed on the 17th September, 2004 Mr. Scarborough stated in paragraph 2 as follows:

"It is denied that the third named defendant caused the said accident by his negligence. On the date in question the third named defendant was forced off the road by an oncoming vehicle, his vehicle lost control and the collision occurred. The third named defendant could do nothing to avoid the collision neither did he perform any action to cause the said collision."

[30] In his defence to Claim No. 249 of 2005 which was filed on the 24th October 2005 he pleaded in paragraphs 2, 3, and 5 as follows:

"2. The Defendant denied paragraphs 4 and 5 of the statement of Claim. The Defendant asserts that at all material times he was driving on the left side of the road until a motor vehicle P9288 driven by Josette Tommy travelling third in a line of five vehicles in the opposite direction suddenly and without any warning overtook the two vehicles ahead of his.

3. The Defendant in an attempt to avoid a certain head on collision with H9288 (sic) swerved quickly onto the grass verge and collided with motor vehicle P1074 also travelling in the opposite direction in his lane.

5. The Defendant neither admits nor denies the allegation of negligence in paragraph 6 of the statement of Claim. He says however that any such injury which the Claimant sustained (which he does not admit) was clearly due to the negligence of the driver of P9288."

[31] In both of his defences Mr. Scarborough alleged that the collision was due to the negligence of the driver of P9288. In his second defence he also alleged that the P1074 was being driven in his lane at the time of the collision. In his testimony Mr. Scarborough alleged that P1074 which was travelling at a high speed was overtaking another vehicle

and was in his lane and collided with his vehicle. In his first defence Mr. Scarborough stated that he had lost control of his vehicle but at the trial he testified that he never lost control of his vehicle. I also do not believe his testimony that he was travelling at 15mph when he was driving from the grass verge onto the main road and his front wheel struck a pothole and his vehicle spun around. This was simply the Defendant's way of explaining the damage to his vehicle being on the left side when he was travelling towards Kingstown.

[32] I believe the account of the collision given by Ms. Hackshaw being that the white car that was behind the bus overtook the bus, the defendant who was travelling in the opposite direction and was driving very fast lost control of his vehicle and his vehicle was swerving on the road and collided with P1074 which was the fifth vehicle in the line of vehicles.

[33] A driver of a motor vehicle has a duty to exercise due care when driving on a road. In Cheryl Edwards Administratrix of the Estate of Janique Lewis v Etnel Mills ANV HC/168/1998, Rawlins J as he then was stated the duty of a driver in the following terms:

"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 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."

[34] The collision occurred around 5p.m. on the main road that leads from Kingstown the capital to the windward side of the Island. At that time of the day motorist travelling from the windward side of the Island would expect to find several vehicles travelling from the capital Kingstown towards the windward side of the Island. Mr. Scarborough admitted that he was driving at 40-45 mph. The speed limit in Argyle is 30mph. Motorists are required to drive with due care and attention and to drive within the speed limit. This collision occurred within the vicinity of a bend in the road. Motorists are required to exercise due care at all times more so when approaching areas where there is a bend in the road and at a time when a lot of traffic is expected to be on the road at the end of the "work day". Mr.

Scarborough was speeding and in avoiding P9288 that was overtaking the bus he lost control of his vehicle and struck P1074 which was about the fifth vehicle in a convoy of vehicles behind the bus.

ANCILLARY CLAIM

[35] (a) Part 18 of CPR 2000 deals with Ancillary Claims. The relevant provisions are Part 18.9(3) and 18.12(1) and (2) (a). These provisions read as follows:

“18.9(3) The Rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (default judgment).

18.12(1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.

(2) The party against whom the ancillary claim is made -

(a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim.”

[36] As stated earlier I believe the testimony of Ms. Hackshaw. The driver of P1074 was not responsible in any way for the collision. The Second Ancillary Defendant in overtaking the bus in an area where the road bends contributed to Mr. Scarborough losing control of his vehicle. I find that the collision was caused as a result of the negligence of Mr. Scarborough and the Second Ancillary Defendant. Mr. Scarborough was seventy percent (70%) responsible and the Ancillary Defendant thirty percent (30%).

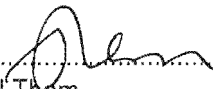
[37] It is ordered that:

(i) Judgment is entered for the Claimants.

(ii) The Third Defendant shall pay damages to the Claimants as assessed on application made by the Claimants. Such application to be made within three months.

(iii) Costs to the Claimants to be prescribed costs.

(iv) The Ancillary Defendants shall indemnify the Third Defendant 30% of damages and costs paid to the Claimants.


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Gertel Thom
HIGH COURT JUDGE