

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 337 OF 2007

BETWEEN:

LUTHEL DEBIQUE

Claimant

V

GARFIELD BARKER

Defendant

Appearances:

Ms. Suzanne Commissiong for the Claimant

Mr. Cecil Williams for the Defendant

2009: February 10

2010: August 4

JUDGMENT

- [1] **BRUCE-LYLE, J :--** On Friday the 5th day of June 2007 at approximately 6:50 p.m., Curtis Debiqne was driving the Claimant's Mitsubishi Pajero Jeep, registration number PJ 200 from Kingstown towards Campden Park. At the same time, the Defendant was driving motor vehicle TP 109 and traveling from the opposite direction. On reaching the vicinity of Grand Gate Corner, close to the road leading to the Maryfield Hospital, both vehicles collided. The police arrived at the scene of the accident and measurements were taken by PS 602 Wayne Grant in the presence of both parties. Both parties agreed with the measurements. The measurements were recorded by the Claimant on a piece of paper and annexed them to his witness statement.

- [2] In essence, both parties had a different version as to how the accident happened. The Claimant Debique holds the Defendant liable for the accident and the Defendant held the same for the Claimant Debique.

CLAIMANT'S CASE

- [3] The Claimant's case revolved around the evidence of the Claimant and his girlfriend Romia Baptiste. His father was also a passenger in the Claimant's vehicle. In his witness statement sworn on the 10th day of October 2008 the Claimant stated that he was driving his mother's jeep from Kingstown to Campden Park. He stated that on approaching the right corner at Grand Gate, just before the road leading to the Maryfield Hospital, he saw a build-up of traffic traveling towards Kingstown. He said he noticed two trucks at the head of the line. The second truck was being driven by the Defendant.
- [4] According to the Claimant, within a split second of the first truck passing him, he saw the Defendant's truck coming towards him and occupying half the lane in which he was traveling. He said that the Defendant pulled out and attempted to pass the first truck, not realizing that there was traffic traveling from the opposite direction. He stated that the Defendant attempted to overtake on the corner when it was unsafe to do so.
- [5] The Claimant went on to testify that the Defendant's truck occupied so much of the Claimant's lane that the Claimant had to pull as far left as possible and stop immediately. He said this is when the truck collided with the right front of his jeep and then slid along the entire length of its right side and then stopped 60 feet away from the collision. He said if he had not pulled away as far left as he could the collision would have been a head-on collision.
- [6] Romia Baptiste, the Claimant's witness in a witness statement which she swore to on the 8th day of October 2008, stated that the events leading to the collision were just as the Claimant had stated. She said the Claimant had no choice but to stop the jeep completely because the Defendant was occupying so much of the lane in which he was traveling. She

confirmed that the Defendant's truck impacted the right front of the Claimant's jeep and slid along its right side and was unable to stop immediately. She described it thus that he stopped "quite far from the point of impact."

[7] The interesting feature of both the Claimant's testimony and evidence and that of his witness Romia Baptiste was that the Defendant had attempted to settle the matter with the Claimant's father, Kenneth Debique, rather than inform the police and summon them to the scene. The Claimant gave evidence to the effect that the Defendant admitted liability on the spot and agreed orally to fix the Claimant's jeep. However, when the police arrived the Defendant reneged. In the same view, Romia Baptiste confirmed this scenario and stated that the Defendant said, "All ah we is truck men, we can work it out." But then when he realized the police would be called in, he became angry. I shall return to this area of the evidence later on in this judgment.

[8] According to the Claimant's case the measurements showed that the point of impact was in the lane in which he was traveling. No real admissible evidence of the measurements taken by the police has been put in evidence by the Claimant except for what he purports to be measurements he wrote down as the police took the measurements. I place no reliance on this document tendered as part of the Claimant's evidence and case, and I state that categorically at this stage of my judgment.

DEFENDANT'S EVIDENCE

[9] According to the Defendant, in his evidence, he was traveling towards Kingstown and that on approaching the right-hand corner at Grand Gate, he saw the Claimant's jeep traveling towards him and that the driver was not only speeding, but traveling in the "middle" of the road. He further stated that he was not driving fast or quickly because his young son was riding in the truck with him. He said the Claimant's jeep struck his truck, rather than the other way around. Under cross-examination the Defendant insisted and maintained that the point of impact was in his lane. As stated earlier, there is no evidence to confirm this, except for what the Claimant states was indicated by the police measurements, which are

not in evidence. But under cross-examination, the Defendant said that he agreed with the police measurements because he had no choice. Learned Counsel for the Claimant submits that the Defendant had no choice but to agree with the police measurements because they were correct. The measurements however are not properly in evidence and the Court will have no regard to the measurements tendered by the Claimant.

ISSUES

- [10] The sole issue for this Court to determine without more, is who was negligent in the circumstances and therefore who caused the accident? This revolves around the issue of credibility. Who is more believable on a balance of probabilities, having regard to all the circumstances of this case.
- [11] On a close analysis of the facts of this case as per the versions put forward by both sides to this case, it is clear that the Defendant's vehicle being a large vehicle and a truck for that matter must have gone over its lane on a narrow stretch of road and in a curve, causing it to strike or collide with the Claimant's vehicle which was on its side of the road. The preponderance of the evidence flowing from the Claimant's evidence together with his witness brings this out to the fore.
- [12] There is no doubt in my mind that the Defendant in attempting an overtaking maneuver went into the Claimant's lane thereby causing this accident. Flowing from this, I agree with submissions from Learned Counsel for the Claimant that the Defendant in attempting to overtake at a corner, was negligent and therefore liable for the accident.
- [13] Regulation 26 (5) (e) of the Motor Vehicles and Road Traffic Act Chapter 355 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 provides:-
 - "... shall not drive so as to overtake other traffic unless he has a clear and unobstructed view of the road ahead and he shall not overtake such other traffic unless he sees that the road ahead is clear fro a sufficient distance to enable him to overtake and get back to his proper side before meeting any traffic coming from the opposite direction."

- [14] Regulation 26 (5) (f) of the Motor Vehicles and Road Traffic Act Chapter 355 of the Laws of Saint Vincent and the Grenadines, Revised Edition 1990 also provides that a driver:

“...shall not overtake other traffic when rounding a corner, or where roads intersect or fork, or where the road passes over a humpbacked bridge, or in any circumstances where the driver cannot see sufficiently far ahead to overtake with safety.”

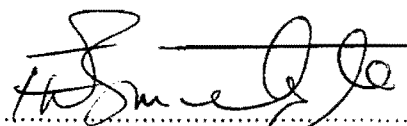
The High Court Cases of **Edmond Thomas v Mavis Lewis and Jeff Lewis** – Civil Claim No. 537 of 2001 Saint Vincent and the Grenadines; and **Gregario Ozuna v Errol Taylor** – Civil Claim No. 229 of 2006 Antigua and Barbuda are cases in point.

- [15] Further, there is evidence from both the Claimant and his witness that the Defendant attempted to settle the matter with the Claimant's father Kenneth Debique rather than have the police summoned to the scene. The Claimant also stated in his evidence that the Defendant admitted liability on the spot and agreed orally to fix the Claimant's jeep. He, however, reneged when the police arrived. This was supported by the evidence of the Claimant's witness when she stated that the Defendant said to Kenneth Debique in her presence that “all ah we is truck men, we can work it out.” But then the Defendant became angry when it was suggested that the police be called instead.

- [16] On a balance of probabilities, I believe the Claimant's version on this issue. I believe the Defendant admitted liability on the spot and offered to repair the Claimant's vehicle because he knew he was the cause of the accident. If he did not believe he was the cause of the accident why would he have offered to fix the Claimant's vehicle or admitted liability on the spot? Why would he have agreed to the police measurements if he believed he was not liable? His explanation to this Court that he agreed to the police measurements because he had no choice defies logic. I find that the only reason for his behaviour that night was because he knew he was liable.

- [17] Having regard to the whole of the evidence and on a balance of probabilities, I find the Defendant was negligent in the circumstances and that he caused the accident and is therefore wholly liable for the same.

[18] Damages are to be assessed by the Master with costs agreed in the sum of \$2,000.00.

A handwritten signature in black ink, appearing to read "F. Bruce-Lyle", written over a horizontal dotted line.

Justice Frederick V. Bruce-Lyle
HIGH COURT JUDGE