

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

**COMMONWEALTH OF DOMINICA
DOMHCV2008/0206**

BETWEEN:

HELIOUS TROCARD

Claimant

and

NIGEL EDMUND

Defendant 1

KURT GEORGE

Defendant 2

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Dawn Yearwood - Stewart for Claimant
Mr. Bernard McDonald Christopher- for Defendant

JUDGMENT

[2010: March 9th]

[May 12th 2010]

[1] COTTLE J: On 29th July 2007 the claimant was riding his bicycle southward along the Belfast Mahaut road. The first defendant was driving the second

defendant's motor vehicle along the same road in the same direction as the claimant. It was about 4p.m. on a bright sunny afternoon and the villagers of Mahaut were celebrating the feast of St. Anne.

- [2] A collision occurred between the two vehicles. The car driven by the first defendant struck the bicycle ridden by the claimant from the rear. The claimant was tossed into the air by the impact. He landed on the windscreen which was broken as a result.
- [3] The claimant instituted the present claim for damages alleging negligent driving by the first defendant. The first defendant denies that he was careless. He blamed the claimant for the accident. He counter claimed for the damage to the vehicle. The issue of liability thus was a simple contest of facts.

The Evidence

- [4] The claimant testified. He was vigorously cross-examined. He denied being under the influence of alcohol on the date of the accident. He swore he was of the Seventh Day Adventist faith and he had not had alcohol for 35years. With the benefit of having seen and heard his testimony, I believed him. I prefer his account of how the accident occurred. But in this contest of facts it was not merely that the court found the claimant a more credible witness.
- [5] The defendants testified. So too did the girlfriend of the first defendant who had been a passenger in the vehicle driven by the first defendant. All witnesses agree that the first defendant struck the claimant's vehicle from the rear. It is common ground that the impact flung him into the air and caused him to land on the windscreen of the car, shattering it. I find it very unlikely that the claimant could have caused the collision by suddenly swerving into the path of the first defendant.
- [6] Nigel Edmond testified that he first observed the claimant some distance ahead of him. He saw him "zig zagging." He recognized that he needed to be careful yet he attempted to drive past him at such a speed that the impact of the collision was sufficient to toss the claimant onto his windscreen and then into the bushes off the left shoulder of the roadway.
- [7] It was the duty of the first defendant to exercise care in his attempt to overtake. He also spoke of a truck traveling in the opposite direction. I find it more probable that the first defendant, in his effort to move away from the

oncoming truck moved back to the left of his lane and there struck the claimant I find him entirely to blame for the accident.

[8] I now address the issue of the quantum of damages which should be awarded to the claimant. At the time of the incident the claimant was 65 years old. He suffered multiple minor injuries. These were listed in the medical report of Dr. Robertson Thomas which was attached to the claim form. These were

- Right Dorsum of wrist abrasion 3x1.5 cm (dried)
- Nine (9) cm abrasion in the left posterior aspect of arm (involving elbow and distal aspect of arm)
- Right supra orbital 1.5 cm dried abrasion
- Left maxilla abrasion
- Mid lower lip 1cm
- Left temporal 6cm abrasion
- Generalized body tenderness on palpation including thoracic cage
- No crepitations
- Lumbar tenderness

[9] The principles which guide the court when awarding damages as compensation for personal injury are well known. They are too well known to bear repeating here.

[10] The injuries suffered by the claimant were minor; happily he appears to have made a full recovery. Counsel for the claimant cited the Barbadian case of Sealy v Mullins (1994) 30 Barbados L.R. 47

[11] The claimant in that case suffered injuries more severe than the present claimant. She lost consciousness and had widespread abrasions of the right forearm and severe burnt out surfaces just below the elbow. She continued to have pain in her wrist when she attempted to lift heavy objects and her neck movements were restricted. Further recovery was not likely. The court awarded her \$25, 000 for pain, suffering and loss of amenities.

[12] I prefer whenever possible to consider judgments of this court as guidance. There is the St. Lucia case of Louis v St. Omer et al SLUHCV 2001/0586 decided on the 15th July 2005 by Shanks J. The claimant in that case suffered minor injuries in a motor vehicle accident. These were, laceration of the scalp and left shoulder, ligamentous injury to the left thumb, a sprained shoulder and a laceration of the left forearm from which a piece of glass had to be

removed under local anesthesia. All the injuries healed in 4 weeks with no complications. Shanks J. awarded \$7, 500 for pain, suffering and loss of amenities. Mr. Trocard's injuries are not wildly unlike those of the claimant in the St. Lucian case. I award him \$7,500 as general damages for pain, suffering and loss of amenities.

Special Damages

- [13] In order for special damages to be recovered they must be pleaded, particularized and proved. The claimant pleaded several items of loss and special damage; however, in his evidence he only led evidence as to cost of replacing his destroyed bicycle. Receipts for his medical report and medical expenses were available but sadly the claimant did not adduce these in evidence or even refer to them at all.
- [14] No evidence was led of his loss of earnings. The cost of domestic help to assist him during his convalescence was not ever paid by him. In the circumstances all I can award under special damages is \$700.00- the cost of the replacement bicycle. I pause to add that there is no loss of future earnings, the claimant's earning capacity is undiminished and he is once again gainfully employed.

Conclusion

- [15] The total award to the claimant is $\$7,500 + \$700 = \$8,200.00$. Interest is awarded on that sum at the rate of 5% from judgment until payment. The defendants will pay the costs to the claimant on the basis of prescribed costs in the sum of \$2,460.00. The counter claim is dismissed.

Brian Cottle
High Court Judge