

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV2008/0452

BETWEEN:

GEORGE BAPTISTE

Claimant

and

GAVIN BLANCHARD

Defendant

Appearances:

Ms. Denise Jonas-Parillon for the Claimant
Ms. Stacy Richards-Anjo for the Defendant

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2009: September 24
2010: March 22
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JUDGMENT

- [1] **MICHEL, J:** By Claim Form and Statement of Claim filed on 24th July 2008 the Claimant, George Baptiste, claimed against the Defendant, Gavin Blanchard, special damages of \$67,015, general damages, interest and costs, for negligence occasioning a vehicular collision.

- [2] By a Defence filed on 1st October 2008 the Defendant denied negligence on his part in causing the vehicular collision and counterclaimed against the Claimant for special damages of \$12,235, general damages, interest and costs.
- [3] On 29th October 2008 the Claimant filed a Reply to the Defence and a Defence to the Counterclaim, joining issue with the Defendant on his allegations.
- [4] On 8th December 2008 a Case Management Order by Master Cheryl Mathurin was made and entered in the matter.
- [5] On 30th January 2009 the Defendant filed his Witness Statement and the Witness Statement of an intended witness for the Defendant.
- [6] On 3rd March 2009 the Claimant filed his Witness Statement and a Witness Statement for his witness, Sergeant Bastin Burke. The Claimant also filed a Pre-Trial Memorandum and a List of Documents at the same time.
- [7] On 30th March 2009 the Defendant filed his List of Documents.
- [8] On 9th June 2009 a Bundle of Pleadings and a Bundle of Witness Statements were filed by the Claimant and on 14th September 2009 a Bundle of Documents was also filed by the Claimant.
- [9] The trial of the matter took place on 24th September 2009, with the Claimant giving evidence on his own behalf and calling one witness and with the Defendant giving evidence on his own behalf and calling no witnesses.
- [10] In his Witness Statement forming part of the examination in chief of the Claimant, the Claimant stated that on Tuesday 18th October 2005 he was driving his motor car registration number A20222 from north to south on Coolidge Main Road with motor jeep

registration number A6311 driven by the Defendant driving behind him. That the Defendant's jeep then overtook his car and, to his surprise, the Defendant's jeep then came to a sudden stop in front of his (the Claimant's) car. That the Defendant did not give any signal that he was going to stop. That, upon seeing this, he (the Claimant) took corrective action by moving to his right to prevent a collision and to proceed on his way. That while he was proceeding, the Defendant's jeep then made a sudden right turn towards a bye road. That the Defendant did not turn on his right indicator before he attempted to turn and he (the Claimant) was therefore caught by surprise again. That the Defendant did not first check whether it was safe to make the right turn at that time. That the sudden right turn by the Defendant's jeep caused the front of the Claimant's car to collide with the right rear corner of the Defendant's jeep. That after the collision the Defendant came out of his jeep and apologised for causing the collision. That the police arrived about 15 to 20 minutes after the collision and took statements from both drivers and also took measurements. That the front of his car was damaged. That he had his car towed by Jim Daddy's Wrecker Service to Alfred Titus Repair And Body Shop where the damage to the car was assessed. That he received an estimate dated 23rd October 2005 which indicated that virtually the entire front of the car was damaged and that the cost of repair would be \$20,215. That he retained Mr, Alfred Titus to repair his car for him for \$20,215, but Mr. Titus could not get some of the parts locally and these had to be sourced and ordered overseas. That he was without the use of his car for 233 days and had to "beg rides, catch bus and hire taxis for transportation."

- [11] In his testimony in Court the Claimant said that, contrary to the statement made by the Defendant in his Witness Statement, there were no skid marks left on the road by his vehicle because he never had time to apply any breaks and the police never took any measurement of skid marks. Commenting on paragraphs 4 and 5 of the Defendant's Witness Statement, the Claimant said that what he derives from the content of these paragraphs is that the Defendant intended to turn into one corner, changed his mind and then proceeded to take the next corner and, upon proceeding to do so, that's where he overtook the Claimant's car and made the immediate stop. But his observation as to what actually happened is that the Defendant missed his turn and made an immediate stop,

trying to recover himself after he had overtaken the Claimant, and that's what caused the accident. That he did not observe any oncoming vehicle after the Defendant stopped.

- [12] Under cross examination, the Claimant testified that the Defendant came to an immediate stop after overtaking his vehicle. That he (the Claimant) went on to his right so that he could proceed on his journey and the Defendant immediately made the right turn. That he (the Claimant) was travelling between 30 to 35 miles per hour just before the collision. That when the collision occurred the Defendant was driving at between 5 to 10 miles per hour to make the right turn. That the Defendant did not stop in the middle of the road after overtaking, but stopped on the left side of the road in front of the Claimant. That he (the Claimant) then went around him to proceed on his way, meaning that he moved to the right of the Defendant's vehicle. That he (the Claimant) never got a chance to indicate that he was going right. That he was in a moving position and never stopped before the collision. That it is correct that he was moving too quickly to be able to stop. That there was a passenger in the front seat of his car at the time of the collision, but she is not a witness in the case. That when the police came to the scene there was sufficient light for the police to have taken measurements of tyre marks if there were any. That when they reached at the police station the Defendant told him that he was sorry, that he missed his turn and that's what caused him to make the sudden stop. That he then told the Defendant that we are all students and you fix your vehicle and I will fix mine. That he went on to say to the Defendant that it is a mistake which any one of us could make at any given time. That with the whole front of his vehicle mashed up he suggested that he would fix his vehicle. That it is not true that he said that because he knew he was at fault. That it is not correct that the Defendant had almost completed the turn when he hit the Defendant. That it is not correct that he caused the accident. That he was not driving fast. That if he was driving fast then the Defendant would have to drive faster than him to overtake him and then to make that stop at that speed. That if the situation warranted he would have been able to stop.

- [13] In re-examination, the Claimant testified that the Defendant overtook him and came to a sudden stop in front of him and that in his mind at the time there was a possibility that he

could have run into the Defendant and that's why he went to the right. That at that point he had to make a decision and that was his judgment.

[14] The one witness called by the Claimant was Sergeant Bastin Burke. In his Witness Statement, which constituted his evidence in chief, he stated that at about 7:24 p. m on 18th October 2005 he arrived at the scene of a traffic accident on the Coolidge Public Road involving motor car registration number A20222 owned and driven by the Claimant and motor jeep registration number A6311 owned and driven by the Defendant. That he observed that the front portion of the car was very badly damaged and the rear bumper of the jeep was slightly damaged. That, upon asking the drivers for an explanation from each of them as to how the accident occurred, the Claimant said: "I was driving from north to south. While coming from north to south, Mr. Blanchard passed me. After he passed me he pulled off to my left and slowed down. It appears as if he miss his turn. He then swung right and I proceeded and, in doing so, both [vehicles] collided." That the Defendant said: "As we were coming up I proceeded to overtake him. I underestimated my right turn, slowed down and pull left then right with breaks after pulling to my right. He also applied brake and pulled to the right and we both collided." That both drivers agreed on the point of impact of the vehicles, which was ascertained by measurement to be 16 feet 4 inches to the east of the road, which road was 21 feet in width.

[15] Under cross-examination, Sergeant Burke testified that the words quoted from the Claimant contained all of what the Claimant told him at the time as to how the accident happened. That he does not recall the Claimant saying that the Defendant came to a sudden stop in front of him. That the opinion which he expressed to the police officer assigned to prepare the police report on the accident was that the Defendant should be prosecuted for careless driving.

[16] Under questioning by the Court, Sergeant Burke testified that none of the drivers were prosecuted in this case because both the Claimant and the Defendant came to him afterwards with a statement that they do not wish any further police action in this matter because they were going to fix their own vehicles. Sergeant Burke also testified that from

his investigations of the accident it was his assessment that the Defendant overtook the Claimant and then turned to go into a road on the west leading to the Coolidge Police Station; he misjudged the road and pulled back in front of the Claimant's vehicle and as a result the Claimant collided into the rear of the Defendant's vehicle and pushed it off the road. He assessed that both vehicles were travelling moderately fast. He stated that the distance of the two vehicles from each other would be accounted for by the speed that both vehicles were driving. He testified that the Claimant's vehicle was at the point of impact whilst the Defendant's vehicle had travelled 41 feet 5 inches away from the point of impact.

[17] Under further questioning by Counsel for the Defendant, following questions by the Court, Sergeant Burke testified that 41 feet 5 inches is the distance that the Defendant's vehicle was pushed by the impact. That he is aware that the Claimant was driving a Toyota Corolla and the Defendant was driving a Toyota Rav 4, which is a larger vehicle that is heavier on the road. That the distance that a vehicle would have been pushed by a collision would be a factor of the speed with which the other vehicle was travelling.

[18] That is the case for the Claimant.

[19] In his Witness Statement, the Defendant stated that at about 7:20 p.m. on 18th October 2005 he was driving his motor jeep registration number A6311 from north to south along Coolidge Main Road. That there were 2 persons in the vehicle with him. That after he passed a certain junction he put on his right indicator and proceeded carefully to overtake the Claimant's vehicle. That after overtaking he returned to his side of the road and continued along the Coolidge Main Road in a southerly direction. That he again used his right indicator because he intended to turn right off the Coolidge Main Road. That the street that he intended to turn into was Atlantic Avenue, which is a minor road with 2 entrances/exits on Coolidge Main Road. That he indicated approximately 30 feet prior to the first junction of Atlantic Avenue and Coolidge Main Road going south, but he was unable to negotiate the turn because of the flow of traffic from the opposite direction. That he took off the indicator and continued on Coolidge Main Road and just before the next

right turn he put on his indicator again to signal that he intended to turn right, he slowed and he came to a stop to wait for oncoming traffic to pass. That before he could make the turn, the Claimant's vehicle collided with the back of his vehicle, damaging the right bumper and right quarter panel. That the police were called and they came and took measurements. That he recalls the measurement of the skid marks left by the tyres from the Claimant's vehicle to be 47 feet. That his vehicle could not be driven for 19 days. That the average cost of the hire of a car at that time was \$200 per day. That he was not negligent in driving that day. That he did all that he was required to do. That he was hit by the Claimant and he had to pay \$12,235 to replace parts on his vehicle and for the cost of labour to fix it. That he is asking the Court to reject the Claimant's claim against him and to give him judgment in the sum of \$12,235 for the damage to his vehicle and a reasonable sum for loss of use for 19 days.

- [20] Under cross-examination, the Defendant testified that he agrees that what is contained in his Witness Statement is different from what he said to Sergeant Burke, but that the difference is explained by the fact that in giving his statement to Sergeant Burke he was directed to use particular language which resulted in the difference between the two statements. He testified that after I overtook the Claimant it is not exactly correct that I stopped in front of him; I did not stop at that point; I stopped at some point; before I stopped I indicated to the Claimant that I was going to stop. It is correct that nothing in my Witness Statement suggests that I had indicated to the Claimant that I was going to bring my vehicle to a stop. That I agree that it is a requirement that I indicate to other road users when one is going to make a stop. That after I stopped I made a right turn on my second attempt to make the turn where the Coolidge Police Station is. That I disagree that the evidence I have just given is different to what I said in my Witness Statement. That it is correct that I made a right turn. That it is upon making the right turn that the collision occurred. It is correct that I am required to check my mirrors before making the right turn. That I did so but I did not see the Claimant. I agree that before making the right turn I was required to look back. That I did look back but I did not see the Claimant. That I would agree that in making a right turn I would have to do so safely. That I also agree that I would have to do so only if I would not by doing so cause other road users to have to

change their speed and direction. That I did comply with that. That my position is that at the time of making the right turn the Claimant was nowhere in sight. I did not see him. I had just overtaken him so I knew he was on the road. I knew he was proceeding in the same direction as me. That the collision occurred on the right hand side of the Coolidge Main Road. We were both on the right hand side of the road. That I was not driving recklessly. That the accident occurred at night. That the headlights of both vehicles were on. That it is not correct that there was no way I could miss the Claimant's vehicle. That it is not correct that I was driving recklessly because I knew that the Claimant was there since I had just overtaken him. That it is not correct that I made up that the Claimant's vehicle left 47 feet of skid marks.

[21] In re-examination, the Defendant said that when one is making a right turn one would be left of centre on the road and that when he was about to move from left of centre to make the right turn is when he heard the sound of tyres behind him and then felt a collision to the right rear of his vehicle. He testified that between 10 a.m. and 11 a.m. on the day following the accident he came back to the scene of the accident along with his father to measure the distance of the tyre marks left on the road. That he was able to identify the Claimant's tyre marks because there was oil from the Claimant's vehicle and he saw where the tyre marks were from that point.

[22] That is the case for the Defendant.

[23] On this state of evidence this Court is called upon to decide on a balance of probabilities whether the collision was caused by the negligence of the Defendant and so to give judgment in favour of the Claimant on his claim or whether the collision was caused by the negligence of the Claimant and so to give judgment in favour of the Defendant on his counterclaim.

[24] Looking at the evidence as a whole I cannot say that the Claimant has proved on a balance of probabilities that the collision involving his motor car and the Defendant's motor jeep was caused by the negligence of the Defendant. The Claimant's evidence to the

effect that the Defendant overtook his vehicle, came into the left lane and stopped, leading him to try to get around the Defendant by overtaking him and then colliding with him when the Defendant, without warning, attempted to make a right turn, is rendered somewhat improbable by the fact that the collision occurred more than three quarters way to the right side of the road going south and that the point of impact is to the entire front of the Claimant's vehicle and to the right rear end of the Defendant's vehicle. This would suggest that the Defendant was in an advanced stage of his right turn when the Claimant ran into the right rear end of his vehicle. When one combines this with the fact that the Claimant's vehicle remained at the point of impact, while the Defendant's bigger and heavier vehicle was thrust 41 feet 5 inches by the impact, it becomes difficult to conclude on balance that the cause of the collision was the negligence of the Defendant and not that the Claimant was unable to control his speeding vehicle, remembering that he expressly stated under cross examination that he was moving too quickly to be able to stop.

[25] The assessment by Sergeant Burke as to how the collision occurred does not add to the probability of the Claimant's case, because the officer assessed that the collision occurred when the Defendant overtook the Claimant, turned into the road leading to Coolidge Police Station, misjudged the turn and then pulled back in front of the Claimant's vehicle, thus causing the collision. This assessment is rendered improbable by the very measurements provided by Sergeant Burke, which showed that the accident happened just 4 feet and 8 inches from the right side of a road measuring 21 feet in width, so that the Defendant had not pulled back to the Claimant's side of the road when the collision occurred; the collision occurred when the Claimant was trying to overtake the Defendant's vehicle while the Defendant was making a right turn into a side road.

[26] The Claimant also sought assistance from a confession of liability which he alleged that the Defendant made to him. But, although the Defendant did appear to make some concession of negligence on his part in terms of the explanation he gave to the police as to how the accident happened, the Claimant's allegation as to what the Defendant told him at the police station on the night of the collision cannot be accepted as credible, considering that it is virtually identical to what the Claimant suggested that he surmised

from the Defendant's Witness Statement at the time when he (the Claimant) was commenting on paragraphs 4,5 and 6 of the Defendant's Witness Statement.

- [27] In his aforesaid comment, made in examination in chief, the Claimant said that his observation (as he put it) as to what actually happened was that the Defendant missed his turn and made an immediate stop, trying to recover himself after he had overtaken him, and that's what caused the accident.
- [28] Under cross-examination, the Claimant said that when they reached the police station the Defendant told him that he was sorry, that he missed his turn and that's what caused him to make the sudden stop.
- [29] If it was that the Defendant had told the Claimant so from the night of the collision, then the Claimant would have had no reason to have to deduce that from things said by the Defendant in his Witness Statement when he had a direct quotation from the Defendant himself saying virtually the same thing.
- [30] The Defendant's counterclaim does not fare out any better than the Claimant's claim. His evidence that he had overtaken the Claimant's vehicle, returned to his side of the road and continued along the road, then indicated his intention to make a right turn, cancelled that indication, drove 300 feet, indicated again an intention to turn right, stopped to allow oncoming traffic to proceed and then made a right turn, only to be hit by the Claimant from behind, is weakened considerably by the explanation which he gave to the police immediately after the collision as to how the collision happened. His attempts under cross examination to explain the manifest inconsistency in these two accounts of how the collision occurred were extremely unconvincing. The proximity in both distance and time of his overtaking of the Claimant's vehicle before essaying a right turn also makes a finding in his favour on the facts somewhat improbable.

[31] The decision of the House of Lords in **Rhesa Shipping Co. SA v Edmunds**¹ provides judicial support for the approach taken here. At page 718 of the report Lord Brandon said: "...the judge is not bound always to make a finding one way or the other with regard to the facts averred by the parties. He has opened to him the third alternative of saying that the party on whom the burden of proof lies in relation to any averment made by him has failed to discharge that burden." This is the view taken by the Court in this case in relation to both the Claimant's claim and the Defendant's counterclaim.

[32] It is noteworthy that, apart from the Claimant and the Defendant, there were 3 other occupants of the vehicles involved in the collision and that none of them were called as witnesses in this case, thus depriving the Court of independent eye witness evidence as to what had transpired on that day. It is also worthy of note that there was no prosecution of a traffic case because, according to the Investigating Officer, the Claimant and the Defendant came to him and requested that there be no further police action in this matter because they were each going to fix their own vehicles. Maybe this matter was always destined to produce no winner.

[33] The Claimant's claim and the Defendant's counterclaim are both dismissed and no order is made as to costs.

[34] The following authorities were cited by Counsel in this case:

By Counsel for the Claimant –

1. The **Vehicles and Road Traffic Act** Cap. 460 of the Revised Edition
(1992) of the Laws of Antigua and Barbuda

2. **Tropical Builders v Gloria Thomas**²

¹ [1985] 2 ALL ER 712

² Antigua and Barbuda Claim No. ANUHCv 228/2004

3. Quinn v Scott³

By Counsel for the Defendant –

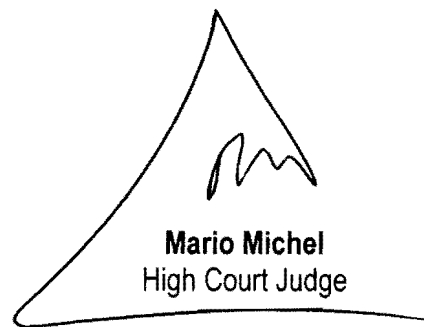
1. Kunwarsingh v Ramkelawan⁴

2. Daniel Joseph Jolliffe v Colin Ronald Sinclair Hay⁵

3. Jenkins v Holt⁶

4. Halsbury's Laws of England, Fourth Edition, Volume 12 (1)

5. Bingham and Berrymans' Motor Claims Cases, Eleventh Edition, Paragraphs 42.50 and 42.56



Mario Michel
High Court Judge

³ [1985] 2 ALL ER 588

⁴ 21 WIR 445

⁵ [1991] SLT 151

⁶ [1999] RTR 411