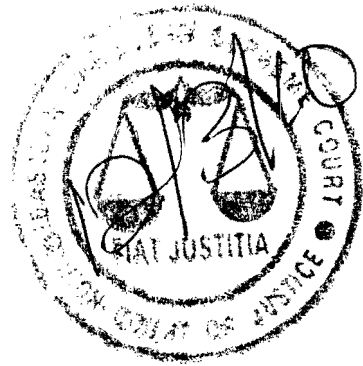


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 42 OF 2007



BETWEEN:

LONNIE ROBINSON

Claimant

AND

JASMINE SAMUEL

Defendant

Appearances:

Mr. Ronald Marks for the Claimant
Ms. Nicole Sylvester for the Defendant

2009: February 25
2010: March 9

JUDGMENT

- [1] **BRUCE-LYLE, J -:** On the 9th October 2005 the defendant was driving a black Suzuki Escudo jeep bearing registration number PJ 111 in the vicinity just before Nero's Corner, on the Leeward Highway. The claimant was riding a bicycle also on the said Leeward Highway in the same vicinity of Nero's Corner, when an accident occurred. It was between 3:00 p.m. and 4:00 p.m.
- [2] The defendant from all indications as gleaned from the evidence was driving PJ 111 East to West from Kingstown to Layou, whilst the claimant was riding his bicycle from West to East from Penniston to Kingstown. This is not disputed from any of the parties to this case.
- [3] It is also not in dispute, and I so find from the facts that the claimant and the defendant are the only two eye witnesses to the accident in issue. The accident resulted in damage to

the left front and rear doors, left door visor and bonnet of jeep PJ 111 and the claimant sustained injury to his face, skull and left arm.

- [4] The claimant's injuries are no doubt severe as evidenced by the medical reports of Dr. Charles Woods and Dr. St. Clair Thomas which are filed and tendered as part of the claimant's case. The claimant claims that as a result of those injuries he has suffered loss of amenities. The claimant at the time of the accident was 19 years old and a second-year student at the St. Vincent Community College, pursuing studies in Mathematics, Geography and Economics. It is claimed that due to the injuries resulting from the accident/collision and the need to travel for surgery, the claimant has been unable to attend his classes.
- [5] The claim further alleges that as a result of the collision, the claimant has suffered paralysis of his left arm and has to wear a sling on a full-time basis; and that prior to this collision the claimant was very active around his home, helping with the chores and was involved in numerous sports such as cricket, football, long distance running and bike riding. It is also claimed that prior to this collision, the claimant was regarded as a role model at his school; he was President of the Student Council and a member of the Performing Arts Society; and that he was quite talented in these fields and won best supporting actor in the 2004 National Drama Festival and was a Gold Medalist at the National Music Festival 2005, and a member of the College's award-winning group ECLIPSE. The claim further states that the claimant has had to cease all of these activities as a result of his injuries. His roles at home, schools and his performance in any after-school activities is now negligible, and he continues to experience persistent pain from the injuries sustained from the collision.
- [6] The claimant therefore claims Special Damages in the sum of \$379,511.94 and continuing; General Damages, Interest as the Court deems fit, further or other reliefs as the Court deems necessary to appropriate and costs. The claimant itemized particulars of Special Damages as follows:

Travel Expenses	\$ 7,868.45
Medical Expenses	<u>\$371,643.49</u>
Giving a total of	<u>\$379,511.94</u>

[7] The claimant in his claim form contends that the collision was caused solely by the negligence of the defendant, and states the particulars of the negligence as follows:

- (a) that the defendant failed to stop, slow down, steer or otherwise control the said vehicle so as to avoid striking the claimant;
- (b) failed to keep any or any proper lookout;
- (c) drove too fast in all the circumstances;
- (d) failed to apply her brakes on time or at all;
- (e) failed to see the claimant in time or at all;
- (f) failed to take any adequate care for the safety of the claimant;
- (g) failed to keep her vehicle on the left side of the road;
- (h) struck and injured the claimant;
- (i) exposed the claimant to a foreseeable risk of injury.

[8] On the 7th October 2008 the claimant filed an amended claim form, and on the 7th November 2008 a consent order was filed in accordance with the filing of a schedule of special damages on the 17th June 2008n by the claimant. This consent order ordered that the special damages be amended from \$375,511.92 to \$198,874.17 and that the schedule by the claimant filed on 17th June 2008 be amended. This matter came to trial on the 25th February 2009 and lasted one day.

[9] There are two main issues for the Court to determine:-

- (a) Whether the accident occurred as a result of the defendant's negligence or the claimant's.
- (b) Does the issue of contributory negligence arise?

- [10] The claimant's case was based on his own evidence before the Court by way of his witness statement and viva voce evidence under cross-examination; that of his witnesses Damion Alexander and Romor Finch. The claimant testified that he saw the defendant's jeep as he was negotiating the Nero's Corner and as such he took evasive action to his left towards the gutter. He stated under cross-examination that had he continued on his left that would have taken him into the gutter. But he further stated that at no time did he end up in the gutter.
- [11] However, witness Damion Alexander said he noticed the jeep from since the flat area before Nero's Corner. The claimant did not notice the jeep until after he had taken the said corner. It is also interesting to note that the claimant, and it is not in dispute, had no warning device on his bicycle even though he said he had been riding for 15 years; and was not wearing a helmet on the said day. He stated that it was not necessary to be wearing a helmet because he was not riding at a speed to make the wearing of a helmet necessary. It is noted that most of the injuries to the claimant as a result of this collision were to his head. It is obvious and should be so to any sensible cyclist that the wearing of a helmet is a prudent thing to do when riding a bicycle, and is also a requirement.
- [12] There was also evidence, which has not been rebutted by the claimant that his tyres on his bicycle were smooth, especially the rear wheel tyre. There was no evidence from one Kemron Small who was claimed to be the one who serviced the claimant's bicycle, as to the state of the rear wheel of the bicycle. This said Kemron Small, was part of the claimant's group of riders on the day in question. It is clear that when the wheels of a bicycle are smooth it substantially affects the efficiency of the braking system. However, the case does not turn on this issue alone.
- [13] The witnesses Damion Alexander and Romor Finch were of no assistance to the Court as to how the accident happened. Alexander stated he first saw the jeep coming up the incline when he was on the flat area before the corner. He was able to pass this jeep without hindrance as the jeep was coming up the incline and going past the vehicles parked on the left side of the jeep and on his, Alexander's right side. He said the jeep was

within the second and third parked vehicle. Alexander was not wearing a helmet and neither was Finch wearing a helmet. But Alexander stated that he was able to pass the jeep safely. Then he heard a sound "Bam!" and a voice say, "Oh God!" and then said he saw the claimant flying over the jeep at an angle. At around this time cyclist Kemron Small who was in the lead had already passed the jeep and parked vehicles safely.

[14] Finch, I must say, was not a helpful witness to the claimant. His evidence left the Court with much to speculate, and his evidence was mainly based on hearsay. He could not assist the Court as to how the accident happened.

[15] The defendant's case was based on the evidence of the defendant Jasmine Samuel and an accident expert, Carl Cupid. Jasmine Samuel stated that she noticed the three cyclists riding towards Kingstown as soon as she turned the corner in the vicinity of Coconut Range. By this time, there were three vehicles parked on her left side where there is a slight incline. Damion Alexander had also stated that there were parked vehicles on the defendant's left side of the road. Whether there were three or five parked vehicles is of no moment. There were parked vehicles on the defendant's left side of the road, but as the defendant stated there was sufficient space for vehicles to proceed to and from. This is borne out by the fact that two of the cyclists passed her comfortably, without hindrance or incident, by which time she had also passed two of the parked vehicles.

[16] At this point the defendant stated that she slowed down to allow the third cyclist to pass her. It was at this point that the cyclist, presumably the claimant, came around the corner and rode up on her left front bumper. As a result of this collision her jeep's left front and rear post was damaged along with the bonnet and left front visor. The defendant clearly stated that before this accident there was no damage to the jeep. She also stated that after the accident there was a piece of bone stuck on the left front post, and a tooth in the jeep. She further stated that at no time that day, whilst driving was she using her cell phone, and therefore could not have been distracted. And even after the accident she could not call for assistance as she did not have her cell phone.

- [17] There was some evidence under cross-examination pertaining to an accident the jeep was involved in on the 28th October 2005. I agree with Learned Counsel for the defendant that this has no bearing on this case and is indeed a dry red herring. The defendant also stated that after the accident she did move her vehicle onto the right hand side of the road but this was only because there was a buildup of traffic towards Questelles and she could not remain where she was immediately after the accident.
- [18] Enter, witness Carl Cupid. His report on evidence to the Court was material in these respects - the rear brake pad of the bicycle was worn considerably and the metal could be seen. This has not been controverted. Further, he stated that these could not have been as a result of the accident, nor would the smoothness of the tyres also be affected by the accident, the bike having been in police custody up to the time of inspection by Mr. Cupid.
- [19] This expert also opined that the claimant was descending the incline, and as he was on the left side of the road, on the defendant's hand, it was a higher probability that he would have automatically chosen to evade on the left side and not the right as he claims. I tend to agree with this contention, if one considers that it was the same stretch of road with parked vehicles on the left of the defendant's side of the road that allowed the first two cyclists to ride past comfortably and without hindrance on the defendant's right side. Why then did the claimant alone encounter difficulties ending up on the left side of the defendant's vehicle? Is it because the claimant misjudged because of the manner he took Nero's Corner? Was speed a factor in this misjudgment causing the claimant to decide to take the left of the defendant's vehicle instead of the right? I answer these questions in the affirmative.
- [20] Going further, it is obvious and this I accept from this expert Cupid, that as a result of the worn brakes, the claimant having applied brakes would have rendered the efficiency of these brakes substantially compromised, and would not have held, thereby lifting the cyclist over the jeep, in addition to colliding with it. There is no doubt that the cyclist, Claimant, became airborne. This is also borne out by the evidence of Damion Alexander.

This expert, Cupid, also contended that his report is based on information from the Investigator, statements from all parties and measurements he took himself.

[21] There is no doubt in my mind that the parked vehicles on the left side of the defendant's side of the road did encroach slightly into the road, thereby rendering the defendant's vehicle to move slightly to the center of the road. But the fact remains that vehicles could pass to and fro without problems. The first two cyclists passed the defendant's vehicle without problems. Why was the claimant the only one who encountered problems? There is uncontroverted evidence from the expert Carl Cupid that the road, not including where the vehicles were parked measured 26 feet from the edge of the pavement to the other edge and that the jeep measured only 5 feet 5 inches in width which would have left more than enough space for a cyclist to maneuver to pass the jeep.

[22] The question then is: Why did the Claimant decide to go to the left of the defendant's vehicle? Is it because he lost control coming around the corner and had no choice but to try to negotiate his bicycle between the parked cars and the defendant's vehicle? Or was it because the defendant had moved into the right side of the road and into the claimant's side of the road thereby preventing him from using that side of the road? I am inclined to believe the defendant's side of the story considering the fact that when the first two cyclists passed the defendant she was still going past the parked vehicles and there was no hindrance to the cyclists. Why was there a problem with the Claimant? My answer is that there was a clear misjudgment on the part of the claimant leading to this collision and his subsequent injuries. The damage to the defendant's vehicle was to its left side, a clear indication that the claimant tried to pass this vehicle on its left side and nowhere else. It is my contention that if the claimant had followed the other two cyclists, this accident would not have happened.

[23] It is also my contention and finding of fact that the jeep was going slowly up the incline and stopped on seeing the cyclist take the corner uncontrollably. It is also my finding that the cyclist could only have ended up on the left of the defendant having taken Nero's Corner traveling very fast and having no other alternative but to go to the left of the defendant's

vehicle, parked cars and all, and with failing brakes which resulted in the collision. There is no doubt in my mind that the collision was to the left of the defendant's vehicle, and that the defendant's vehicle would have had to be completely off its left side of the road to cause the claimant to go to the vehicle's left side.

[24] As to whether the accident occurred as a result of the defendant's negligence, or the claimant's, turns on the issue of credibility. From all the evidence adduced, it is a fact that the Claimant and the defendant are the only witnesses (eye witnesses) to this accident. There is no doubt in my mind that the claimant encroached on the defendant's side of the road. If that is so, as I have found, then the claimant is responsible for the accident. The point of impact as put forward by the claimant is not acceptable to this Court. The other cyclists passed the defendant's vehicle safely when she was clearly driving on her side of the road; if she was driving where the Claimant said she was driving, off her hand and on the right side of the road, then her vehicle would have had to be 5 feet from the right side of the road which would have left very little space for the claimant to pass on his side and which would have placed him clearly in the gutter with even more serious injuries.

[25] In the case of **Nance v British Columbia Electric Railway Co. Ltd.** (1951) 2 All E.R. 448, the Privy Council held:

"In running down accidents, when two parties are so moving in relation to one another as to involve the risk of collision, each owes the other a duty to move with due care, and that is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle."

Also in the case of **Cletus Dolor v Alcide Antoine et al** No. SLUHCV2001/0555, Hariprasad J held:

"He owes a duty of care to Cletus and it is reasonably foreseeable that if he fails to exercise that degree of care and skill and drives his motor vehicle as a reasonable and prudent driver would being the duty not to encroach into Mr. Antoine's side of the road, that he would injure Cletus."

[26] These authorities succinctly put into clear perspective the way this accident in issue happened. The Claimant, on the said day was not driving with due care and attention; he

failed to notice the jeep as it was proceeding up the incline, and he failed to take adequate evasive action upon noticing the jeep, after he had turned Nero's Corner. At this point the jeep was either traveling very slowly or was at a standstill.

[27] In the text Commonwealth Caribbean Tort Law by Gilbert Kodilinye, 2nd Edition – 2000, page 117, it states:-

“In deciding whether there has been a breach of duty, the Courts in the Commonwealth Caribbean have frequently had recourse to certain presumptions of negligence. Negligence is commonly presumed where, for example ... the defendant's vehicle collides with the plaintiff's vehicle which is traveling in the opposite direction, the point of collision being on the plaintiff's side of the road.”

[28] As I see it, the claimant's case cannot be grounded, as I find as a fact that the damage following the accident of the 9th October 2005 was to the left side of the vehicle of the defendant. Unless the claimant can explain and give a plausible explanation as to how he ended up on that side of the defendant's vehicle, then to my mind there was ample space for him to proceed on his side of the road, then I have no alternative but to find as a fact that he was wrong, negligent, careless, and misjudged completely by his riding of that bicycle. If I believe the claimant's version of events, then any other evasive action he may have taken would have ended him straight in the gutter on his side of the road. But that is not what happened as far as the evidence presents itself.

[29] I believe that the Claimant was traveling at a speed in excess of 20 miles per hour on that bicycle, and when he came around Nero's Corner he was, on the defendant's side of the road and was unable to take effective evasive action, thereby colliding with the left side of the defendant's bumper. It does not take an expert to explain how this accident happened. Commonsense alone lends powerful credence to explain the so-called mystery of this accident. It is no mystery at all. The angle of the incline the defendant was traveling at, and the fact that the claimant, having come around the Nero's Corner was traveling downhill explains the matter. The claimant lost control and had no choice but to ride or allowed himself by momentum to ride into the left side of the defendant's jeep. This was also compromised by the smoothness of the tyres of the claimant's bicycle and attended compromising of the efficiency of the braking mechanism of the bicycle as a result.

[30] If one rides a bicycle around a corner and starts proceeding downhill at some considerable speed and loses control going around a corner and comes face to face with a vehicle coming in the opposite direction with vehicles parked on the left side of the road, as the vehicles in St. Vincent and the Grenadines with its narrow, congested roads, what is the expected result? Exactly what we see in this case: an extreme case of abject negligence in riding and exercising care on the road, to the detriment of other road users. To compound it, none of the cyclists were wearing a helmet, including the claimant, a requirement the claimant was aware he was obliged to.

[31] So was the defendant contributorily negligent? I would say no!! Pertaining to the facts and also the law relating to this case, the claimant was a bike rider of 15 years, according to his own evidence before this Court. He ought to have seen the possibility of an accident occurring when traveling on the public road. And if even he did so carefully (which he did not) that he could well sustain a greater hurt if he failed to wear a helmet. I need not stress the sensibility of one riding a bicycle wearing a helmet in St. Vincent and the Grenadines. This negligence on the part of the claimant was mainly to blame for his serious head injuries, which are in the main.

[32] Then, there is the other aspect of not being able to give any proper warning of his approach because he had no warning signs or implements on his bicycle, viz. – a bell; and then there was no proper evasive action possible, because the brakes on his bicycle malfunctioned due to the smooth, worn out nature of the rear tyre. I am convinced that the claimant is liable for the accident occurring. There is no evidence of any contributory negligence on the part of the defendant. She did no wrong. And I buttress this finding with the authority Jones v Livox Quarries Ltd (1952) 2 QB 608 Denning LJ at page 615:-

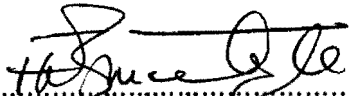
“Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.”

- [33] The only two witnesses to this accident of the 9th October 2005 were the Claimant and the Defendant. It is from their version of events and the points of impact given by them that measurements were taken. These formed the basis of the expert's evidence to the Court. If we look at the only helpful evidence to the claimant it is that of Damion Alexander, which I find is not enough. He can only assist this Court in regard to his position in relation to the Claimant and where the jeep was when he first saw it, and where he passed it. At that time the jeep was not off its hand. There is no evidence that it ever went off its hand.
- [34] The damage to PJ 111 was on its left side. That has remained uncontroverted evidence that that damage was as a result of the accident on 9th October 2005. If the collision was to the right of the defendant's vehicle as the claimant pointed as the point of impact, the claimant would have ended up in the gutter on his left side of the road. But that is not where he ended up, leading to his injuries; that is not where the defendant's vehicle sustained its damage. I have already found as a fact how and where these questions lead to by way of answer.
- [35] It does not take any rocket science to discern how this unfortunate accident happened. Most of the damage was to the left side of the defendant's vehicle. It is obvious that that is where the claimant's bicycle and his person collided with the vehicle. I do not accept the Claimant's evidence as to his point of impact. If I accepted that I would also have to conclude that his injuries would have been far greater, especially if he collided with the right side of the vehicle, as he would have definitely fallen in the gutter.
- [36] Having considered all the evidence and on a balance of probabilities, I am certain and do find that the accident occurred at the defendant's point of impact given the damage to the vehicle, the measurements taken and also the evidence given by Damion Alexander putting the defendant towards the centre of the road but still on her hand.

CONCLUSION:

[37] I therefore hold that the defendant is not liable to the accident of the 9th October 2005, and that it was wholly caused by the negligence of the Claimant. I therefore dismiss the claimant's claim with costs to be paid to the defendant in the sum of \$8,000.00.

[38] This is a most unfortunate case. A young man's otherwise bright future has been brought to a halt at least for the moment, by this accident. But right is right, and wrong is wrong, and the law and justice should prevail above all other considerations.


.....
Frederick V. Bruce-Lyle
HIGH COURT JUDGE