

IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)

CLAIM NO. GDAHCV2008/0038

BETWEEN:

1. BERNICE JEREMIAH  
2. TALITHA JEREMIAH  
(By her mother and next friend, BERNICE JEREMIAH)

Claimants

and

1. ROYSTON GILBERT  
2. GLENNA GILBERT  
3. PETER GILBERT

Defendants

**Appearances:**

Mrs. C. Edwards, Q.C, with her Ms. Sabrita Khan for Claimants  
Mrs. Afi Ventour de Vega for first and second Defendants  
Mr. Derick Sylvester for third Defendant

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2010: January 11, 13  
February 18

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**JUDGMENT**

FACTS

- [1] **PRICE FINDLAY, J.:** On the 5<sup>th</sup> November 2006 the Claimants were passengers in a vehicle driven by the second Defendant along the Springs Public Road. The vehicle was travelling in the direction of Springs, away from St. George's.
- [2] The second Defendant was on her way to the Open Bible Church in Springs. She, in her evidence, said that she could not recall how fast she was driving (in terms of mph), 20 – 25 mph, could be more, could be less, but up to the point of Dafeau she was driving on the left-hand side of the road.

- [3] There was a single vehicle ahead of her. That vehicle made a left turn into Dafeau Gap. The second Defendant left her side of the road overtaking the vehicle in front of her. She went over to the right side of the road. According to her, the collision took place some 5-6 seconds after she overtook the vehicle in front of her. In cross-examination she stated that when she just saw the third Defendant's vehicle she was on the right side of the road overtaking another vehicle.
- [4] The third Defendant was also travelling on the Springs Public Road, but he was heading in the opposite direction to the second Defendant. The third Defendant was travelling towards St. George's.
- [5] The collision took place in the area of the day care, which is attached to the Open Bible Church. The road is not straight. In fact, it was admitted by all parties that there is a slight bend in the road and it is a blind corner of sorts in that one cannot see the oncoming traffic in either direction for a period of time in the area of the collision.
- [6] The third Defendant had a passenger in the front seat of his vehicle; she, fortunately, sustained no injuries as a result of this collision.
- [7] The two vehicles approached the Open Bible Church from opposite directions. The second Defendant says that she heard a loud noise like the sound of a motor vehicle coming in the direction of her car. The first Claimant described the noise she heard as "sounding like a plane". In her cross-examination she said, "I heard a noise sounding like a plane." This was the vehicle driven by the third Defendant. She described the noise as being like when a plane taking off – a very loud noise. She said that within 2 – 3 seconds of hearing the noise, the two vehicles collided.
- [8] She said she heard the sound "pow-dow-pow". She described the third Defendant as driving very fast and that he was driving in the middle of the road.
- [9] The first Claimant did say in cross-examination that the second Defendant was driving fast but could not say that the second Defendant was late to collect her

husband and the second Defendant denied being in a hurry or being late to collect her husband.

- [10] The second Claimant could give no testimony as to the accident as she was asleep in the back seat of the vehicle driven by the second Defendant. She did not see the accident; she only awoke after the collision had taken place.
- [11] The third Defendant in his evidence says that he saw the vehicle of the second Defendant approaching him on his side of the road. He says he swerved away and stopped in the middle of the road to avoid the collision, but the cars collided.
- [12] The witness Nigel Morain was travelling behind the third Defendant on the Springs Public Road on the day in question. He said he noticed that the third Defendant mash brakes so hard that his back wheels started smoking. He further said that when the vehicles collided that the back portion the third Defendant's vehicle "lifted off the ground for a few seconds and went back down".
- [13] Beverly St. John, the passenger in the third Defendant's vehicle said that she saw a Pajero Jeep coming towards the vehicle she was in on their side of the road.
- [14] Garth St. Bernard said that he heard the noise of a motor vehicle coming from the opposite direction of the second Defendant's vehicle. He was on the balcony of the Open Bible Church and had a clear view of the area of the road where the collision took place. He admitted that he did take his eyes off of the second Defendant's vehicle because he did not see her overtake the vehicle at Dafeau Gap. He says that at no time did he see the second Defendant's vehicle on the right side of the road. This is not accurate as the second Defendant admits that she ventured onto the right side of the road in order to overtake another vehicle.
- [15] Importantly, he said that the third Defendant was driving at a very fast speed, he said approximately 80 mph. He went on to say that the third Defendant's vehicle appeared to be swerving and out of control. He admitted on cross-examination that 80 kph was much slower than 80 mph. He also said that he was not a professional to say that the third Defendant was travelling at approximately 80

mph. He did say that he saw the vehicle of the third Defendant "dragging", that is when one is mashing brakes. This dragging went on for about five seconds. He also said that the speed of the third Defendant's vehicle did not significantly reduce at the time of the collision.

[16] Further to the viva voce testimony in the matter, the Court had the benefit of the police report and the measurements taken at the scene on the day of the accident.

[17] The road surface on the day in question was dry, flat, smooth and gently sloping towards the direction of Woodlands. Visibility was not good in both directions.

[18] There were brake impressions measured with respect to the vehicle driven by the third Defendant. They were as follows:-

Braking impression of right wheel to point of impact – 47 ft.

Braking impression of left wheel to point of impact – 60 ft.

There was no record of brake impression with respect to the vehicle driven by the second Defendant.

#### CONCLUSIONS (FACTUAL)

[19] Having reviewed all of the evidence adduced in the matter by both parties, I find as a fact that:

- (a) The second Defendant was driving along the Springs Road and overtook a vehicle which was ahead of her, turning into Dafeau Gap.
- (b) In order for her to carry out this manoeuvre she had to cross onto the right side of the road, leaving her left and proper side.
- (c) That she had not returned to the left and proper side of the road completely prior to the collision.
- (d) The third Defendant was travelling in the opposite direction of the second Defendant, also on the Springs Road.

- (e) The third Defendant was travelling at an extremely fast rate of speed.
- (f) The third Defendant left 47 ft. and 60 ft. of brake impressions on the road leading to the point of the collision.
- (g) Judicial notice is taken of the fact that the area of the accident is a blind corner and that the parties involved in the accident only saw each other within seconds of the collision.

### NEGLIGENCE

- [20] "Negligence is defined as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do." – per Baron Alderson in **Blyth v Birmingham Waterworks** [1856] 11 Ex 781 at 784.
- [21] The elements of negligence are well established –
1. The existence of a duty of care
  2. The breach of that duty of care by the defendant
  3. A causal connection between the defendant's carelessness and the damage
  4. The damage must not be too remote
- [22] All drivers on the road owe a duty of care to other users of the road, whether in vehicles or on foot. In order to achieve this the driver of a vehicle ought to keep a proper lookout, observe the rules and signs of the road and avoid excessive speed.
- [23] "Although it does not necessarily follow that negligence is to be imputed to a driver who breaks the speed limit, there is no doubt that evidence of the speed limit being broken may provide evidence of negligence." **Grealis v Opuni** [2003] EWCA Civ. 177.

- [24] Given all the attendant circumstances here, the slight uphill path, the blind corner which the third Defendant was approaching; it required a greater degree of care than that exercised by the third Defendant on the morning of the accident.
- [25] "It is also well established that the onus on the driver of an overtaking vehicle is to make sure that the entire movement is safely conducted and completed." – **McCall v Ogiste** [1965] 9 WIR 291. "One must make sure that one can pass the vehicle and get back at once to the proper side before the approach of oncoming vehicles." **McCall v Ogiste** (supra).
- [26] Again, taking into account the conditions that existed at the time of the collision, a greater duty of care was required of the second Defendant in carrying out the manoeuvre she attempted that morning.
- [27] I find that neither the second or third Defendant exercised that degree of care that a reasonable and prudent driver would exercise in the circumstances.
- [28] I find therefore as a fact that both drivers were at fault in the collision; and I apportion the blame equally.

#### PRELIMINARY POINT

- [29] Counsel for the third Defendant raised a preliminary point with respect to the medical reports tendered by the Claimants. He took issue with the Claimants' attempt to rely on certain medical reports, that is, the reports of all the medical practitioners in the matter. In support of his submission he cited CPR 32.6 and also submitted that the Claimants had failed to comply with the relevant rules.
- [30] Part 32.6 of the CPR states:
- "(1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.
  - (2) The general rule is that the court's permission is to be given at a case management conference.

- (3) When a party applies for permission under this rule –
  - (a) that party must name the expert witness and identify the nature of his or her expertise; and
  - (b) any permission granted shall be in relation to that expert witness only.
- (4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.
- (5) The court must direct by what date the report must be served.
- (6) The court may direct that part only of an expert witness' report be disclosed."

[31] But Part 32.6 must be read along with Rule 8.7 which states that the Claimant must identify or have annexed thereto a copy of any document which the Claimant considers to be necessary to his or her case.

[32] It is clear that here the Claimant did attach the report of Dr. Dragon to her claim as required by the Rules. The physiotherapy report was not prepared and the treatment not given until after the filing of the claim, hence that report was not attached at the time of the first filing.

[33] In any event, the onus then switches to the Defendant via Rule 10.6 of the Rules. If the Claimant has attached a report from a medical practitioner to the claim form or statement of claim, the Defendant must state in the defence whether all or any part of the medical report is agreed and if any part is disputed, the Defendant must state the nature of that dispute.

[34] This Rule puts the onus on the Defendants to state specifically if they accept the report and, if not, to state specifically the dispute that they have with the report. This is to allow the Claimants to know before the Case Management Conference

what, if any, additional evidence they need to call in terms of proving the claim for personal injuries.

- [35] If the Claimant is aware of the disputed areas it allows for the Claimant to know that the evidence of the medical practitioner is necessary by way of witness statement, and it alerts the Claimant that the medical practitioner ought to be made available for cross-examination (if necessary).
- [36] The third Defendant in his defence did not state that he disputed the contents of the medical report attached to the Statement of Claim, nor did he state the nature of any dispute that he may have had with the report.
- [37] He only raised the issue at the opening of the trial. The third Defendant has failed to comply with Rule 10.6 and cannot now raise the issue as to whether the Claimant can rely on the report of Dr. Dragon. The Court finds that the Claimant can rely on the report of Dr. Dragon attached to the Statement of Claim.
- [38] In view of the fact that the report from the chiropractor was obtained after the filing of the claim, the Rule would not apply and the Court will consider all medical reports submitted on behalf of the Claimants in assessing the relevant amount of damages due to the Claimants. The weight to be attached to the relevant documents is a matter to which the Court will address itself when damages are being assessed.

#### GENERAL DAMAGES

- [39] Having decided that the first and third Defendants are equally liable for the damages suffered by the Claimants, the Court must now assess the damages. The guidelines set out in the case of **Cornilliac v St. Louis** [1964] 7 WIR 491 – Sir Hugh Wooding, CJ. set out the criteria to be considered in assessing general damages. These are:
- The nature and extent of the injuries suffered.
  - The nature and gravity of the resulting physical disability.

- Pain and suffering.
- Loss of amenities.
- The extent to which pecuniary prospects were affected.

#### SPECIAL DAMAGES

[40] The first Claimant claims that she has expended monies on medical bills consequent upon the accident. These expenses were as follows:

|    |                      |          |
|----|----------------------|----------|
| 1. | Medical report       | \$400.00 |
| 2. | Physiotherapy        | 500.00   |
| 3. | Consultations        | 1500.00  |
| 4. | Transportation costs | 2040.00  |
| 5. | Loss of income       | 9200.00  |

The first Claimant in this matter suffered significant injuries and while the injury to her daughter was not as serious, nevertheless they were painful injuries.

[41] I wish to express my thanks to all Counsel involved in the matter for the authorities which were submitted to the Court. I was referred to, among others:-

**Christopher Flermius v Andre Solomon & Fimber Louis – SLUHC2002/1041**

**Mohammed v Supersad**

**Bacchus v Mohammed**

**Randy Oliver v Godwin Keir & Lennox Parsons – SVGCV1998/215**

**Sharmala Pereira v Reginald Mills – SKBHCV2004/0038**

**Marcel Fevrier & Jenny Fevrier v Bruno Canchan, Asphalt Product et al, the succession of Joseph Felicien – SLUHCV1989/313**

- [42] While the injuries in the authorities vary and none is on all fours with the injuries in the present matter, it is important to compare the facts in those cases especially as it relates to the seriousness of the injuries suffered by the first Claimant.
- [43] Dr. Kester Dragon's report of November 7, 2007 sets out the injuries the first Claimant suffered as follows:
- The left leg was grossly deformed and swollen.
  - Tenderness was elicited on palpation over the proximal tibia.
  - Left knee effusion
  - Anterior chest was tender on palpation over the sternum.
  - X-rays of the left leg showed a complete comminuted fracture of the proximal tibia extending to the joint.
- [44] The doctor concluded that she had the following injuries:
- a. Sternal contusion
  - b. Displaced intra-articular fracture of the left proximal tibia.
- [45] She was operated on, an open reduction of the fracture was done and the leg immobilized in plaster of Paris.
- [46] She was administered with analgesics. Anticoagulation therapy was used and intravenous antibiotics were administered. Physiotherapy was started.
- [47] After her discharge from the hospital she had persistent swelling of the left knee and leg.
- [48] She had further surgery in August 2007 for manipulation of her left knee as flexion and extension of the knee were limited.
- [49] Dr. Dragon did promise a supplementary report, however, none was forthcoming.

- [50] The report of the physiotherapist Ben Wallis is dated 8<sup>th</sup> October 2008, almost two years after the accident. The report details that the first Claimant complained of constant pain, and pins and needles over her anterior knee, laterally down her calf, anteriorly over the ankle and into the arch of the foot.
- [51] The therapist found that she had limited flexion of the left knee and she could fully weight bear on the left leg with some pain. He found that after several sessions of therapy her symptoms showed little improvement and he was of the opinion that she may have reached her full potential. She had home exercises which she had to do.
- [52] Dr. Pelham Mc Sween in his report indicates that the first Claimant has a short left leg, and that her physiotherapy would continue for another six months from the date of his report (January 2009).
- [53] As a result of this accident the first Claimant said in her evidence that her quality of life had changed. She is no longer an independent, sexually active female. She can no longer jog, which she used to do daily. She can no longer help herself around the house in the manner in which she did before. She has gained weight. She is depressed. She says she is in constant pain. Her daughter testified to her mother's crying due to the pain and her having to rub her mother's leg to alleviate that pain. She now has a 10-inch scar on her leg.
- [54] The first Claimant has had to rely on friends to do her household chores. Simon Nicholas testified to going to the first Claimant's home and preparing breakfast for her, bathing and cleaning her for a period of time after the accident. He also testified that her lifestyle had changed from what it was prior to the accident. She was no longer the active and vibrant person he knew. He said that he was not paid for his services.
- [55] Prior to the accident the first Claimant worked part-time, earning a wage of \$200.00 per week. She stopped working the Friday before the accident. She will be disadvantaged in the workplace once she returns to work as a result of the

injuries she suffered. I am of the view that the first Claimant will be able to work but will only be able to do so at a reduced capacity given her injuries. Her work prospects as a result might be limited.

#### PAIN & SUFFERING AND LOSS OF AMENITIES

- [56] She will not be able to play netball or jog as a result of the accident.
- [57] I have looked at the various authorities and as I indicated earlier, no case is on all fours with the present facts. However, having considered all the relevant factors placed before the Court, I would assess these damages at the figure of EC\$80,000.00.
- [58] The pecuniary prospects of the first Claimant are not dim but they are not as bright as they would have been but for the accident. She has been left with a shortened left leg; she is in constant pain; she cannot sit nor stand for long periods; she walks with a limp. It would seem that these things will put her at a disadvantage when she seeks work in whatever area she chooses so to do. She will certainly not be as mobile or agile as other workers. Given all the uncertainties and taking into account the material before me, I assess these damages at a global figure of EC\$25,000.00.
- [59] The special damages of \$4,400.00 as claimed for her medical expenses would be awarded but as she was unemployed at the time of the accident no award would be made for that period for loss of earnings.
- [60] Interest will be awarded on the sums at the rate of 6% per annum from the date of the filing of the Claim Form to the date of trial.
- [61] Of course, the first Claimant would have had to pay someone to care for her after the accident. She was unable to walk for a period of approximately 24 months and was on crutches for a considerable period of time. She needed help to bathe and otherwise care for herself. She should get some relief under this head. I am of

the view that \$100.00 per week is not an unreasonable sum, and I would therefore award the sum of EC\$10,400.00.

[62] With respect to the second Claimant, no medical records were tendered on her behalf but there was evidence of her pain. She testified to having a twisted jaw, to pain in her jaw, headaches which continued for a considerable period of time. She also testified about her performance in school and how it suffered due to the accident.

[63] Having reviewed the evidence I would award the second Claimant the sum of EC\$15,000.00 as general damages, with interest to run on that sum at the rate of 6% per annum from the date of filing the claim to the date of trial.

[64] The total award is as follows:

1. Damages for pain & suffering and loss of amenities
  - First Claimant \$80,000.00
2. Lost pecuniary prospects - First Claimant \$25,000.00
3. Home care - First Claimant \$10,400.00
4. Pain & Suffering and loss of amenities
  - Second Claimant \$15,000.00
5. Special Damages \$ 4,400.00
6. Costs to be prescribed costs at the appropriate rate which I hope Counsel would be able to agree.

[65] With respect to the Ancillary Claim made by the first and second Defendants, the Claim stands dismissed.

  
**Margaret Price Findlay**  
High Court Judge