

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 375 of 2006



BETWEEN:

DAVID BALCOMBE

Claimant

v

VAUGHN LOWMAN

Defendant

Appearances: Mr. Ronald Marks and Ms Niara Fraser for the Claimant
Mr. Joseph Delves for the Defendant

2008: April 2
May 27

JUDGMENT

- [1] **THOM, J:** This is a claim for damages for personal injury sustained as a result of a motor vehicle accident.

BACKGROUND

- [2] On the morning of the 24th day of December 2005 the Defendant was driving motor vehicle Registration No. PK 377 on the Georgetown public road. While doing so his vehicle collided with the Claimant and as a result the Claimant suffered personal injury.
- [3] The Claimant in his statement of case alleged that the collision was caused or contributed to by the negligence of the Defendant, while the Defendant in his defence alleged that the collision was caused solely or was contributed to by the negligence of the Claimant.

EVIDENCE

- [4] The Claimant gave evidence on his own behalf and called one witness. The Defendant gave evidence on his own behalf, he called no witnesses.

DAVID BALCOMBE

- [5] The Claimant in his evidence-in-chief stated that on December 23, 2005 after 4.00a.m. he was at Yolanda's bar in the company of some friends. He went to another bar on the opposite side of the road to buy some drinks for his friends. He bought the drinks and crossed back to Yolanda's bar. As he stepped onto the side walk he felt a blow to his right side. He subsequently woke up in the hospital and saw that his right hand had been amputated.
- [6] Under cross-examination the Claimant testified that the accident occurred on the morning of December 24, 2005, during the nine mornings celebrations. That was the last morning of the nine mornings celebration. The accident occurred approximately one half of an hour after he arrived at Yolanda's Bar. There was a crowd of people in the area of Yolanda's Bar celebrating nine mornings. He denied that he was intoxicated and staggering when the accident occurred. He admitted that he drank about three or four beers before the accident. He also stated that about one year prior to the accident he was a heavy drinker of strong rum. He still takes a couple of shots of strong rum each day. He however denied that he was drinking strong rum on the morning of the accident. When the accident occurred he had two bottles in his hand a beer and a mauby. The bar where he went to purchase the drinks was lower than the road. When he stepped up from the bar he received the blow. He did not reach the road. He did not look left or right. He did not have to cross the road at that time. He was walking on the side of the road. Several other persons were on the road. He denied that he ran across the road into the path of the car. He admitted that he did not see the car before he got struck. He agreed if he had looked towards the Mt. Young direction (to his right) he would have seen the motor vehicle approaching. He stated he did not see the vehicle as his back was turned. He denied

telling the Defendant and one Maxroy Forbes that he was drinking all night before the accident occurred.

BERTON JOSEPH

[7] This witness stated in evidence-in-chief that on December 23, 2005 after 4.00 am he met the Claimant and two other men at Yolanda's bar in Georgetown. The Claimant went to a bar across the road to buy some drinks. He saw the Defendant drove his car down the road then he saw him drive back up the same road at a very fast speed. The Claimant was returning with the drinks and when he stepped up onto the sidewalk he was struck by the vehicle driven by the Defendant. The Claimant was thrown into the air. The vehicle did not stop immediately. A policeman who was off-duty ran behind the vehicle. The vehicle stopped about three gaps away. The Defendant then reversed the vehicle and he saw the claimant's arm inside the vehicle. The claimant was subsequently taken to the hospital.

[8] Under cross-examination the witness testified that he knew the Claimant for more than ten years. He knew that the Claimant drinks beer, strong rum and Ju-C. On the morning of December 24, 2005 he met the Claimant and some friends at Yolanda's Bar. The Claimant drank beers. He denied that the Claimant was intoxicated. He stated that the Claimant was acting in a normal way, he was not staggering. When the Claimant was struck he had a mauby and a beer in his hands. The Claimant had stepped up from the bar onto the side of the road when he was struck by the vehicle. The vehicle did not go off the road or up the side walk or in the ditch. In answer to the Court the witness explained that the Claimant was at the end of the side walk by the road when he was struck by the vehicle. He denied that the Claimant said he was drinking all night and from the day before. He stated that the Claimant appeared to be unconscious after he was struck, he was not talking.

VAUGHN LOWMAN (The Defendant)

[9] The Defendant stated in evidence-in-chief that at the time of the accident that is at about 5:30 a.m. there was a party going on at a bar in the area. He was returning from Mount Young having washed his motor car. He was about eight feet away from the Claimant when he first saw him. The Claimant ran out of a bar and headed to the other side of the road with the drinks in his hand. The Claimant ran out into the path of his vehicle. The Claimant did not look right or left before he ran into the road. The Claimant admitted to him and to other persons that he was drinking all night and from the day before. At the time of the accident the Claimant was drinking a beer. When he saw the Claimant he immediately pulled the vehicle away, he had very little time to react. The Claimant had his hands outstretched with drinks in them. His windshield collided with a bottle the Claimant had in his hand and the Claimant get injured. He stopped some distance away from where the accident occurred because he thought there was a fight and that is why the Claimant was running. He saw the bottle in his car and he did not want to stop close to the fight. There was a crowd in the area. Most of the persons were on the northern side of the road. The road is a straight road.

[10] Under cross-examination the Defendant stated that he was familiar with the nine mornings celebration. He knows that each year there are nine mornings celebration in Georgetown. On the morning of the accident, when he drove pass the area music was playing, persons were on both sides of the road but they were not dancing on the road. He did not have to reduce his speed or blow his horn as he passed. About one half an hour later he was driving between 40 – 50 m.p.h. His windscreen was broken. He agreed that the arm of the Claimant was ripped from his body and was inside his car on the left side. He denied that the Claimant was on the side walk when he struck him. He also denied that the accident was caused by his reckless driving. He admitted that he was convicted in the Magistrate's Court for reckless driving.

ISSUE

[11] The issue for the Court to determine is whether the accident was caused solely by the negligence of the Defendant or the Claimant or whether they both contributed to the accident.

SUBMISSIONS

- [12] Learned Counsel for the Claimant submitted that the evidence led on behalf of the Claimant as to how the accident occurred was consistent with the injury suffered by the Claimant and the medical report of Dr. Woods.
- [13] Learned Counsel urged the Court to find that the accident was as a result of the negligence of the Defendant who admitted that he drove his vehicle at about 40 – 50 m.p.h. in an area where the speed limit is 15 m.p.h. and at the time when nine mornings activities were taking place and there was a crowd gathered in the area. Learned Counsel referred the Court to the cases of **Cheryl Edwards Administrator for the Estate of Janique Lewis v Ethel Mills** No. 168/1998 ANOHC; **Galius Mathurin and Joachim Mathurin v Andrew Paul** No. 867/2002 SLV HC; and **North Western Utilities Ltd v London Guarantee and Accident Co. Ltd** 1936 A.C. 108 at 126.
- [14] Learned Counsel for the Defendant submitted that the Claimant's evidence was not reliable. It was not possible for the accident to have occurred in the manner in which the Claimant testified. The Claimant did not know how the accident occurred as he was intoxicated at the time. The Defendant's version is more credible than the Claimant's version. The Defendant's version was not challenged by the Claimant.
- [15] Learned Counsel also submitted that the Claimant's admission that he did not look left or right before he entered the roadway amounted to his substantial contribution to the accident. Also speed by itself is not evidence of liability in motor vehicle negligence cases. Learned Counsel further submitted that the fact that the Defendant was convicted is conclusive only to the fact that he was convicted of the offence and not as to the fact that he did or did not commit that offence. Further the Claimant's contribution to the accident would not have been an issue open for consideration in the criminal trial. The Claimant by his pleadings admitted that he was partly to be blamed for the accident. Learned Counsel referred the Court to **Keane: The Modern Law of Evidence** 4th Edition p. 544 and 6th Edition p. 672 and section 26 (2) of the Evidence Act Cap. 158 Laws of Saint Vincent and the Grenadines.

LAW

- [16] There is no dispute as to the law applicable in this case. It is settled law that a driver of a motor vehicle has a duty to exercise due care when driving on a road. Rawlins J (as he then was) stated the duty in the following terms in the Cheryl Edwards case:

"Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to maneuver their vehicle in order to prevent and avoid accidents. They are expected to use and observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road."

- [17] The duty of care to be exercised by a driver was stated in similar terms by Rowlatt J in Page v Richard and Doper as follows:

"... It seems to me that when a man drives a motor car along the road, he is bound to anticipate that there may be people or animals or things in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he has seen it. If there is any difficulty in the way of seeing, as, for example, a fog, he must go slower in consequence. In a case like this, where a man is struck without the driver seeing him, the defendant is in this dilemma, either he was not keeping a sufficient look-out, or if he was keeping the best look-out possible then he was going too fast for the look-out that could be kept. I really do not see how it can be said that there was no negligence in running into the back of a man. If he had had better lights or had kept a better look-out the probability is that the accident would never have happened."

- [18] In his defence the Defendant raised the issue of contributory negligence. In Lewis v Denye [1939] 1 A.E.R. - 310 du Parcq L.J. in discussing what amounted to contributory negligence stated the following:

The standard of care in contributory negligence is what is reasonable in the circumstances, which in most cases corresponds to the standard of care in negligence. It does not depend on breach of duty to the defendant. It depends on foreseeability."

On the issue of foreseeability Denning L.J. stated in Jones v Livox Quarries Ltd. [1952] 2 Q.B. p. 608 at p. 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."

[19] In relation to the effect of the conviction of the Defendant for the offence of reckless driving the applicable provision is in section 26 of the Evidence Act of Saint Vincent and the Grenadines. Section 26 (1) and (2) reads as follows:

"(1) In any civil proceedings the fact that a person has been convicted of an offence in Saint Vincent and the Grenadines by or before any court shall (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings, but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which, by virtue of this section, a person is proved to have been convicted in Saint Vincent and the Grenadines of an offence by or before any court, he shall be taken to have committed that offence unless the contrary is proved."

[20] I will apply the above principles to this case.

[21] Having seen and heard the witnesses I found the evidence on behalf of the Claimant to be reliable. The witnesses were not contradicted. I found them to be quite forthright in their answers under cross-examination. While the Claimant denied that he was drinking strong rum on the morning of the accident, the Claimant did not hesitate to state that he takes a couple of shots of strong rum each day, nor did he hesitate to state that he did not look left or right when he came out of the bar. I also found that the injury suffered was consistent with the Claimant's version of how the accident occurred. The injury was to the Claimant's right arm which was completely severed above the elbow from his body.

[22] This accident occurred during the early morning of the last day of nine mornings celebration. The Defendant is familiar with these celebration where large numbers of persons are usually partying on the sides of the road. He had driven past the crowd before

the accident occurred. I believe the evidence on behalf of the Claimant that the Claimant's back was turned towards the Defendant's motor vehicle when he was struck.

[23] In an area where the speed limit is 15 m.p.h., the Defendant by his own admission was driving at approximately 40 to 50 m.p.h. While I agree that speed alone does not necessarily amount to negligence, speed in the circumstances of this case did amount to negligence on the part of the Defendant. The Defendant was aware of the crowd in the area, he was familiar with the activities of nine mornings celebrations, he heard the music, he saw persons partying at the side of the road, he was required to go no faster than would permit him stopping his vehicle or deflecting his course to avoid a collision. He was also required to keep a proper look out and to anticipate movement of persons on the side of the road. Adopting the words of Rowlatt J., I really do not see how it can be said that there was no negligence on the part of the Defendant in colliding with the Claimant from the back thereby ripping his right arm above the elbow completely from his body while driving at 40 to 50 m.p.h. in an area where the speed limit is 15 m.p.h. and at a time when festival activities were taking place on the sides of the road.

[24] Did the Claimant contribute to the accident?

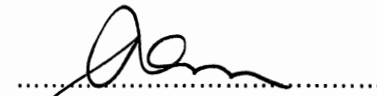
[25] As stated earlier I believe the Claimant's version of how the accident occurred. I found that the Claimant did not run into the path of the Defendant's motor vehicle. The fact that the Claimant did not look left or right and if he had looked to his right he would have seen the vehicle does not in the circumstances of this case amount to contributory negligence. The Claimant had just stepped up from the bar and was walking along the side walk by the edge of the road when he was struck from behind by the Defendant's motor vehicle.

[26] I find that the Claimant has proved on a balance of probabilities that the accident was caused solely as a result of the negligence of the Defendant.

[27] Judgment is entered for the Claimant. It is ordered that:

- (a) The Defendant shall pay the Claimant damages for the loss occasioned as a result of the accident, the said damages to be assessed on application of the Claimant.

(b) Costs to the Claimant to be prescribed costs in accordance with Part 65.5.



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Gertel Thom
High Court Judge