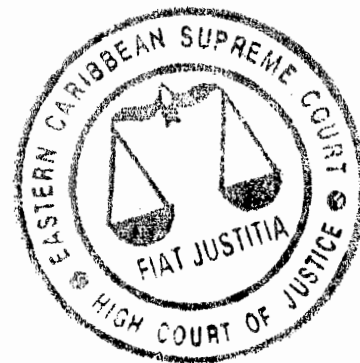


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 418 OF 2000



BETWEEN:

GLORIA DOYLE

Claimant

V

LEROY JACKSON

Defendant

GEORGE GARRICK

Ancillary Defendant

Appearances:

Mr. S. Williams for the Claimant

Mr. S. Commissiong for the Defendant

Mr. P. Joseph for the Ancillary Defendant

2008: February 19;
April 4.

JUDGMENT

- [1] **MATTHEW J (Ag.):** On September 29, 2000 the Claimant filed a statement of claim against the Defendant for the latter's negligence on September 17, 1999 whilst driving at Bridgetown next to the Windward Highway and causing his jeep PD 250 to knock her down where she was sitting on a low wall about three feet from the highway.
- [2] On March 30, 2005 the Claim Form and Statement of Claim were amended to include the Claimant's date of birth to be October 12, 1965 and to give particulars of the injury and particulars of special damages.
- [3] The Claimant alleged that the collision was caused by the negligence of the Defendant. In the particulars of negligence the Claimant alleged that the Defendant was driving on the

wrong side of the road; that he was driving too fast; failing to keep any proper look out or to observe or to heed the presence of the Claimant; and failing to apply his brakes in time or at all or to steer or control his vehicle to avoid it striking the Claimant.

- [4] The Claimant alleged that she would also rely on the doctrine of *res ipsa loquitur*, although that was not pursued at the trial.
- [5] The Defendant filed his defence on November 30, 2001 in which he stated that the Defendant did not strike the Claimant with his motor vehicle and knock her over the wall but rather his vehicle was forced to collide with the wall on which she was sitting after having been struck by the Third Party's vehicle.
- [6] The Defendant denied that the collision was caused by his negligence, and further or alternatively, the accident was caused or contributed to by the negligence of the Third Party, the driver of T 6358. He gave particulars of the Third Party's negligence which included driving into the path of the Defendant's vehicle.
- [7] On December 21, 2001 the Defendant issued an ancillary claim against George Garrick, the driver of T 6358 in which he alleged that "the motor vehicle accident on September 17, 1999 was caused or contributed to by your negligence."
- [8] On October 24, 2002 George Garrick filed a statement of defence to the ancillary claim in which he stated: "As the Ancillary Defendant approached a turn on his right hand side along the narrowing road, he slowed down to approximately 5 miles per hour. The Defendant came around the corner at a fast rate of speed – approximately 40 miles per hour and on the Ancillary Defendant's side of the road." He also gave particulars of the Defendant's negligence.
- [9] So here is the typical case where each driver was blaming the other for the cause of the accident because of the other's speed and driving on the wrong side of the road. The accident occurred at about 7:00 in the morning when the driver of T 6358 was driving from

the direction of Georgetown to Kingstown and the driver of PD 250 was driving in the opposite direction.

- [10] At the trial three persons gave evidence by way of witness statements which were already filed and they were cross-examined on their witness statements. Since I was asked by the parties to adjudicate only on liability and to leave damages to be assessed by the Master, my account of the evidence will not include the Claimant's injuries and treatment or damage to the vehicles.
- [11] Gloria Doyle filed her witness statement on April 30, 2003. She said the time was close to 7:00 in the morning when on September 17, 1999 she alone was sitting on the wall as the vehicles traveled the road in the opposite direction.
- [12] She said she saw the two vehicles approaching each other. There was a hole almost in the centre of the road. The vehicle going to town swerved away from the hole and collided with the vehicle going towards the Windward. She said the right front wheel of the vehicle going into town hit the right front wheel of the vehicle heading towards the Windward.
- [13] She further stated that there was a drain on the side of the road close to the vehicle going towards the Windward. The vehicle going towards the Windward pulled away from the drain, presumably after the impact, to avoid going into it and in so doing crossed the road and headed into the wall where she was sitting. She said she was flung into the air and did not know what happened after that. When she awoke the next morning she found herself at the Kingstown General Hospital.
- [14] When she was cross-examined by learned Counsel for the Defendant she said, "I do not think where I was sitting was a safe place to sit." In her witness statement she had stated that the main road is approximately three feet from the wall and between the main road and the wall was dirt.

- [15] When she was cross-examined by learned Counsel for the Ancillary Defendant she stated, "Jackson was speeding when he came around the bend."
- [16] Leroy Jackson, the driver of jeep PD 250 which was traveling in the direction of Georgetown, filed his witness statement on April 30, 2003.
- [17] In the statement he said he was an irrigation technician and on the morning he was traveling about 25 miles per hour and vision was clear from both directions. He said on approaching a residence at Bridgetown opposite the Baptist Church he saw vehicle T 6358 approaching extremely fast from the direction of Georgetown. He kept to his left side as much as possible because the road was very narrow. There was a wall and deep gutter on his left. He slowed down his vehicle from 25 miles per hour to 22 miles per hour.
- [18] He stated that the right front wheel of T 6358 struck the right rear wheel of his jeep and the wheel burst. He said the impact caused his vehicle to skid and he briefly lost control. He said he held on to his steering wheel and tried to control the vehicle so that the Claimant might not get the full impact.
- [19] He said T 6458 was off its hand trying to avoid pot holes on its side of the road.
- [20] He said his vehicle went towards the right and struck the wall about 1 foot high from the surface of the road. He said the front of the vehicle pinned the Claimant to the wall which broke and in consequence she fell over the bank. The jeep then turned over on its left side.
- [21] Besides his witness statement the Defendant gave additional oral evidence. He said it was in his lane that the collision took place. He said that as a result of the blowing up of his right back wheel the centre of gravity of his vehicle increased acceleration and caused his vehicle to change direction.
- [22] He also stated that the front wheel of T 6358 had something in it which protruded.

- [23] When he was cross-examined by learned Counsel for the Claimant he stated that the truck had load and that caused the blowing up of his back tyre and after that his vehicle traveled on three wheels.
- [24] He reiterated that the truck was filled with load and people were at the back of the pick up.
- [25] When he was cross-examined by learned Counsel for the Ancillary Defendant he said the wall broke away because it had cracks before.
- [26] I could not help noting the embellishment of the witness' written statement. In the written statement he said the impact caused his vehicle to skid but in oral testimony there is no mention of skidding. In the written statement there is no mention of T 6358 having load on it but here he says there was load so much so in his Counsel's submission one hears for the first time of "T 6358 heavily loaded with ground provisions."
- [27] The written statement has no issue of the change of centre of gravity and the resulting acceleration of the jeep after the accident and there is no mention of jeep traveling on three wheels. Then also there was nothing in the written statement that says the wall was cracked before the accident.
- [28] While it is true a party may be allowed to give additional evidence to what was written the Court must examine what is being added. The written statement was made over 3 ½ years after the accident so there was sufficient time to include all the details. The kind of embellishment given here raises a good deal of suspicion of untruthfulness and that is putting it mildly.
- [29] The driver of T 6358 did not give evidence but the owner of the vehicle who was on it at the time of the accident gave a witness statement on July 22, 2003. In that statement he puts the cause of the accident on the very fast driving of PD 250 which came over his side of the road. He said the Defendant lost control of the vehicle and after the impact when he

immediately looked back he saw the Defendant swerve away from the wall on his side of the road and drove across the road to the bridge where the Claimant was sitting.

- [30] When he was cross-examined by learned Counsel for the Claimant he denied that his vehicle was carrying load on that day. When cross-examined by learned Counsel for the Defendant he admitted that his side of the road had pot holes. He said, "My wheels would have gone into the pot holes. I did not move from centre line to avoid the pot holes. It is not correct that I moved from the pot holes to go on the other side."

CONCLUSIONS:

- [31] I accept the evidence of Gloria Doyle that T 6358 in swerving to his right to avoid the pot holes on his side of the road collided with PD 250. This is an indication of the negligence of the driver T 6358. Although speed of itself is not necessarily an indication of negligence it is usually so on narrow curving roads filled with pot holes as this particular road was.
- [32] I accept also the evidence of Leroy Jackson that the driver of T 6358 was driving too fast on the narrow curving road.
- [33] But I find that the collision with the Claimant could have been avoided if the Defendant himself was not driving too fast as the Claimant said after cross-examination by learned Counsel for the Ancillary Defendant. Learned Counsel for the Defendant referred to the English High Court case Quinn v Scott (1965) 2 ALL E.R. 588 where the Defendant was not negligent when driving on a straight level main road 32 feet wide in his Jaguar at 70 to 75 miles per hour when a falling tree across the road came into his path. Surely that cannot be a guide in the circumstances of this case.
- [34] I do not believe the Defendant when he said he was driving at 25 miles per hour and slowed down to 22 miles per hour just before the accident.

- [35] As learned Counsel for the Complainant put to the Defendant it is unthinkable that the vehicle driving at 22 miles per hour could after the impact develop such speed to cause it to move from one side of the road to another, then hit the wall, breaking it up and then for the jeep to turn over its side.
- [36] I reject entirely the explanation by the Defendant for the collision with the Claimant and it is not true at all that the wall which he put at one foot high in his statement, but two feet high under cross-examination by learned Counsel for the Claimant, had cracks before the impact. That is one of his untruthful additions to his written statement.
- [37] So in summary I find that both vehicles were going too fast at the particular time of day on this relatively narrow road and they both contributed to the accident.
- [38] During the trial I reserved my ruling on the admissibility of certain photographs which were sought to be tendered in evidence by the Defendant. I never had any doubt that the magisterial proceedings touching on the accident was admissible in these proceedings. What I did not appreciate was that the photographs formed part of those proceedings.
- [39] I therefore rule that the photographs which related to the various positions of PD 250 are admissible but I did not find them helpful in addition to what was given in oral evidence.
- [40] Learned Counsel for the Defendant in his written submissions stated that the speed limit for that portion of the road where the accident occurred is 20 miles per hour in accordance with the Schedule to Section 46 of the Motor Vehicles and Road Traffic Act, Chapter 355. So if as his client says he was traveling at 22 miles per hour that is at least evidence of the Defendant's negligence. Of course I am of the view that he was driving faster than 22 miles per hour at the time of the accident.
- [41] Learned Counsel for the Defendant has it wrong when he said: "Wendell James, who was in the vehicle at the time, never came to Court to testify even though he gave a witness statement," and again when he said, "Three witnesses testified: the Claimant, the

Defendant and the Ancillary Defendant.” Mr. Wendell James was cross-examined by learned Counsel for the Defendant when he said he did not move from the centre line to avoid the pot holds. Of course I do not believe Wendell James here. I prefer to believe the evidence of the Claimant that he did avoid the pot holes and in so doing collided with PD 250.

[42] With reference to the Claimant's negligence learned Counsel for the Defendant simply stated in his closing submissions, “It is worthwhile considering the risk the Claimant took in sitting on a wall so close to the busy highway. She admitted in cross-examination by Counsel for the Defendant that she accepted it was dangerous to sit there. The Court may wish to take this into consideration.” This does not appear to me to be a forceful submission.

[43] But learned Counsel for the Claimant has responded to the statement. In his written submissions he stated: “The Claimant under cross-examination stated she did not think it was a safe place to sit on the wall and that was the first time from her knowledge that an accident occurred in that area. In other words when the Claimant was asked whether it was a safe place to sit, her response that it was not safe was based on her actual experience on the day in question.”

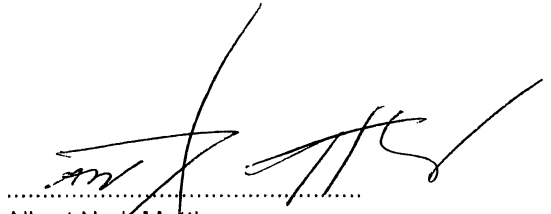
[44] I would remind learned Counsel for the Claimant that there must be a first time and the views of the Great Reformer, Martin Luther, of medieval time that “wrong is not the less wrong for being long upheld and that right, even if new, may still be right.”

[45] It appears to me that for one to be sitting on a low wall, less than three feet high, and only three feet away from the main road to and from Georgetown at 7:00 in the morning when traffic is expected to be heavy indicates a measure of negligence and lack of care for one's own safety. On general principles, the Claimant should share a portion of the blame for the cause of the accident. However, I cannot remember a case where such a Claimant was held to be partly responsible for such an accident. Learned Counsel for the Ancillary Defendant was helpful on this point by reference to the judgment of Sellers L.J. in Watson

v Thomas Whitney & Co Ltd (1966) 1 All E.R. 122. C.A. and also the judgment of Lord Greene M.R. in Laurie v Raglan Building Co (1941) 3 All E.R. 332 C.A.

[46] I am persuaded by those authorities and I therefore apportion the blame for the cause of the accident to the Defendant and the Ancillary Defendant in the ratio of 40 per cent and 60 per cent respectively.

[47] As requested by all the Parties the Master shall assess the damages accordingly and I direct her to award costs as she deems fit in the said proportion.



Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)