

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 8 OF 2005

BETWEEN:

SEMOL ALEXANDER MAY

Claimant

v

LANCELOT STEVENSON

Defendant

Appearances: Mr. S.E. Commissiong for the Claimant
Mr. Richard Williams for the Defendant

2005: November 20

2006: July 3

DECISION

- [1] **THOM, J:** This is a Claim for damages for personal injuries sustained as a result of a motor vehicle collision on the 20th day of November 2002.
- [2] The Claimant alleged that the collision occurred as a result of the negligence of the Defendant and outlined the particulars of negligence as follows:
- (a) Driving into the path of the Claimant
 - (b) Failing to stop, swerve or otherwise avoid the accident
 - (c) Driving too fast in all the circumstances
 - (d) Failing to alert the Claimant of his intention to enter upon the main road
 - (e) Entering into the main road when it was unsafe so to do.
- [3] The Defendant in his defence denied that the collision was as a result of his negligent driving. He alleged that the collision was as a result of the Claimant's negligent driving and

the Defendant counterclaimed for damages to his motor vehicle. He outlined the particulars of negligence as follows:

- (i) Driving west on Grenville Street, Kingstown at 7:00 p.m. on a Wednesday afternoon, when a great deal of traffic was likely to be in the street;
- (ii) driving his motor cycle in such a negligent manner that he could not manage or control it so as to prevent it from colliding with the Defendant's motor vehicle P 3611;
- (iii) driving so recklessly and thereby rendering the motor cycle uncontrollable that he was obliged to jump from it before allowing it to crash into the left rear side of the Defendant's car;
- (iv) driving too closely behind P 3611 at too fast a speed that he became incapable of bringing it to a halt when he wanted to do so.

[4] At trial the only issue before the Court was liability, the question of damages if any to be determined on a later application.

[5] The Claimant testified on his own behalf. The Defendant testified on his own behalf and called two witnesses being Nicole Wilson and Tyrone Cyrus. The witness statements were admitted as evidence-in-chief of the witness.

SEMOL MAY:

[6] In his evidence-in chief this witness stated that on November 20, 2002 he was riding his motor cycle No. P 1159 along the public road in the direction of the Milton Cato Memorial Hospital when the Defendant who was driving motor vehicle P 3611 exited into the said main road from the Banfield Service Station. The Defendant's vehicle struck his motor cycle and he was thrown from the motor cycle. He denied that he was overtaking vehicles when the collision occurred. He was riding at about 25 to 30 miles per hour. He said to avoid a head-on impact he turned his motor cycle into a sliding manoeuvre but could not avoid the collision. He suffered personal injuries, loss and damage as a result of the collision.

- [7] Under cross-examination he stated that the left side of the Defendant's vehicle was damaged. His vehicle was struck on the right side. He first saw the Defendant's vehicle when he came across the pedestrian crossing. The Defendant's vehicle was about 10' away from him. He saw the lights of the Defendant's car exiting the gas station. From the time he left the National Commercial Bank building he could not recall if any vehicle was in front of him. The collision was caused by the Defendant entering the lane in which he was driving. The Police took measurements but he does not recall the length of the brake impressions.

LANCELOT STEVENSON:

- [8] In his evidence-in-chief this witness stated that on Wednesday November 20, 2002 at approximately 7:00 p.m. his motor vehicle P 3611 was at a standstill at the Shell Petrol Station on Grenville Street close to the Cambridge Building. He was waiting for the opportunity to turn right onto the southern lane of Grenville Street. He saw a vehicle at the intersection by the Kentucky Fried Chicken building traveling west and another by the Methodist Church traveling east. He decided to cross the road. When he had completed his crossing to the left lane and had driven about fifteen (15) feet he heard the sound of a motorcycle engine behind him and he felt an impact on the rear of the motor vehicle. When he stopped his vehicle he saw a man lying in the middle of the road between the Cambridge building and Tony's Pizza. He stated that before he began turning he did not see a motor cycle nor did he hear the sound of one coming towards him. As a result of the collision his left rear door, left rear fender, bumper and light assembly were damaged.
- [9] Under cross-examination he stated that the Claimant hit the left rear of the vehicle. The impact from the collision caused the trunk of the vehicle to be damaged along with the bumper, the left door and the left lights, the hubcaps on his left wheel got damaged as well. No damage was done to the right side of his car. He maintained he only heard the sound of the vehicle and felt the impact when he was already driving in the southern lane.

NICOLE WILSON:

[10] In her evidence-in-chief this witness stated that she is a nurse attached to the Milton Cato Memorial Hospital in Kingstown. On November 20, 2002 at approximately 7:00 p.m. she was on her way to work traveling west along Grenville Street. On approaching the intersection by the Kentucky Fried Chicken building she heard the sound of a motor cycle. It appeared to be an accelerating sound. She looked in her rear view mirror and saw other vehicles behind her but she did not see the motor cycle. Shortly after she saw the Claimant riding a motor cycle and he passed her. He was traveling at about 40 to 50 miles per hour. There was a car in the same lane as she was that was driven by the Defendant. She saw the Claimant's brake light and the motor cycle skidded into the rear of the Defendant's car. She stopped her vehicle and rendered assistance to the Claimant. The accident occurred in front of Tony's Pizza.

[11] Under cross-examination, she stated that the Claimant passed from behind her. He passed her on the right side. There is a middle lane on the road. The middle lane was clear. She was in the left lane. When the Claimant passed her he was speeding. She could not tell how fast he was driving. She did not know where the Defendant's vehicle came from. She was looking at the motor cycle.

[12] Under re-examination, she stated that the middle lane was used by vehicles turning right to Paul's Avenue.

TYRONE CYRUS:

[13] In his evidence-in-chief this witness stated that on November 20, 2002 at about 7:00 p.m. he was standing downstairs of the Cambridge Building on Grenville Street. The Defendant's car was close to the said building. There was a motor vehicle by the Kentucky Fried Chicken building. He saw the Defendant turn right onto Grenville Street. At the same time he heard the sound of a motorcycle and he saw the Claimant overtake the car by the Kentucky Fried Chicken building. The Claimant was speeding. The Defendant was already in the left lane and was by the Glass Galleria building. The Claimant pulled to the right as if to overtake the Defendant's vehicle but two vehicles were

approaching from the opposite side and the Claimant swerved suddenly to the left and collided with the left rear fender of the Defendant's vehicle.

[14] Under cross-examination the witness stated that he does not have a driver's license. After the Defendant was on the road the Claimant's motor cycle collided with the Defendant's rear fender.

[15] Having seen the witnesses and heard their testimony I find the following facts:

- (1) The collision occurred at approximately 7 p.m. on November 20, 2002.
- (2) Nicole Wilson was approaching the intersection by the Kentucky Fried Chicken building on Grenville Street. She was traveling west on Grenville Street. There were other vehicles behind her vehicle.
- (3) The Defendant's vehicle turned right into the southern lane on Grenville Street from the Banfield Gas Station.
- (4) The Claimant overtook the vehicles at the said intersection.
- (5) The Claimant first saw the Defendant's vehicle when he got to the pedestrian crossing.
- (6) The collision between the Claimant's vehicle and the Defendant's vehicle occurred on the southern lane on Grenville Street.
- (7) The Claimant's vehicle was damaged on the right side, while the Defendant's vehicle was damaged on the left rear side.
- (8) The Claimant was driving above the speed limit in Kingstown.

[16] I agree that speeding does not necessarily amount to negligence. In Quinn v Scott [1965] 2 AER p. 588 Glyn Jones J said at p. 590:

"The high speed alone is not evidence of negligence unless the particular conditions at the time preclude it."

Grenville Street is a main road in the capital Kingstown. The portion of the road from the National Commercial Bank to where the collision occurred is a straight road.

- [17] A driver of a motor vehicle has a duty to exercise due care when driving on a road. In Cheryl Edwards Administrator of the Estate of Janique Lewis v Ethel Mills No. ANUHCv 168/1998 Rawlins J as he then was stated the duty of a driver in the following terms:

"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 manoeuvre their vehicles in order to prevent and avoid accidents. They are expected to use and to 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."

- [18] I believe the testimony of the Defendant that on November 20, 2002 when the Defendant began his manoeuvre to turn right on to Grenville Street from the Banfield Gas Station he did not see the Claimant approaching the said intersection. The Defendant saw Nicole Wilson's vehicle. He made an assessment that he could turn into the southern lane without colliding with Nicole Wilson's vehicle. Nicole Wilson was also driving in the southern lane. His assessment was correct. Indeed, he did not collide with Nicole Wilson's vehicle.

- [19] I believe the testimony of Nicole Wilson. The Claimant overtook her by the intersection. He was speeding and shortly thereafter the collision occurred. Under cross-examination the Claimant after a very long delay said he could not remember if he overtook any vehicles between the National Commercial Bank building and the point of collision. The Claimant himself testified that he first saw the Defendant's vehicle when he was crossing the pedestrian crossing. The Defendant's vehicle was about 10 feet away from him.

- [20] I find that the Claimant in driving his vehicle did not exercise due care and attention. He was driving at such speed that when he overtook Nicole Wilson's vehicle at the intersection and he saw the Defendant's vehicle he could not control his motor cycle so as to avoid the collision. As stated earlier, the Defendant crossed into the lane Nicole Wilson was driving but he did not collide with her. The Claimant overtook her and collided with the Defendant.

[21] I find that the Claimant has failed to prove on a balance of probabilities that the collision was as a result of the Defendant's negligence.

[22] The claim is dismissed.

[23] I find that the Defendant has successfully proved on a balance of probabilities that the collision was as a result of the Claimant's negligence.

[24] It is ordered that judgment be entered for the Defendant on the counterclaim. Damages to be assessed. Costs to be prescribed costs.


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Gertel Thom
HIGH COURT JUDGE