

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 450 OF 2003

BETWEEN:

FITZ JACKSON

Claimant

v

**KALIQUE BAILEY
SADIQ EDWARDS**

Defendants

Appearances: Mr. Richard Williams for the Claimant
Mr. Perry Joseph for the Defendants

2005: December 13 and 19
2006: July 3

RULING

[1] **THOM, J:** By Claim Form filed on 21st October 2003, the Claimant claims from the Defendants damages for damage sustained to his motor vehicle H 3201 and loss of use as a result of a motor vehicle collision between motor vehicle H 3201 owned by the Claimant and motor vehicle HA 784 owned by the first Defendant. The collision occurred on the 1st day of June 2003. The Claimant alleged the collision was caused by the negligence of the second Defendant who was the driver of the first Defendant's vehicle.

[2] The Particulars of Negligence were outlined as follows:

- (1) Driving too fast
- (2) Failing to give any or any proper warning of his approach
- (3) Driving on the right and wrong side of the road
- (4) Failing to keep any or any proper look out or to observe or heed the presence or approach of the Claimant's vehicle

- (5) Failing to apply his brakes in time or at all or so to steer or control his minivan as to avoid the collision
- (6) Trying to enter the Argyle Bridge which only accommodated one line of traffic when it was unsafe to do so.

[3] The Defendants in their defence denied that the collision was caused as a result of the first Defendant's vehicle being driven negligently by the second Defendant and alleged that the collision was caused by the negligence of the Claimant's agent and driver of the Claimant's vehicle Leon Payne.

[4] The first Defendant counterclaimed for damages for loss and damage to his vehicle as a result of the collision and outlined the Particulars of Negligence as follows:

- (1) Failure to exercise due care and attention while using the road
- (2) Driving at an excessive rate of speed
- (3) Failure to keep a sufficient or a proper look out for other road users while driving
- (4) Failure to give any or any proper warning of his approach
- (5) Failure to steer, manage or otherwise manoeuvre H 3201 so as to avoid colliding with the first Defendant's vehicle
- (6) Failure to slow down or apply his brakes in sufficient time or at all to avoid the said collision.

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

[6] The Claimant called four (4) witnesses being Andre Laidlow, Leon Payne, Anthony Richards and Humphrey James. The Defendants called two (2) witnesses, the first Defendant and Marcia Nero. The witness statements were admitted as the evidence-in-chief of the witnesses. The Court permitted the Police Investigating Officer Sgt. Colbert Straker to testify at the trial. He was questioned by both Counsel for the Claimant and Counsel for the Defendants.

ANDRE LAIDLLOW:

[7] In his examination-in-chief, the witness stated that he was traveling to Biabou in the Claimant's van. He was sitting in the front passenger seat close to the door. The driver of the Claimant's vehicle was not speeding. After the van entered the bridge at Argyle he saw a van coming from the countryside. The driver of the Claimant's van slowed down when he entered the bridge. While crossing the bridge he saw the other van approximately 30 to 40 yards away, smoke was coming from the tires and the van was speeding and skating towards the Claimant's van. As soon as the Claimant's van exited the bridge the driver of the Claimant's van pulled to the right and the Defendant's van collided with the Claimant's van.

[8] Under cross-examination he stated that the bridge is a single-lane bridge. When approaching the bridge a person has a clear view of the road ahead. Nothing obstructs your view. He first saw the Defendant's van while on the bridge. Before you enter the bridge you cannot see oncoming traffic but while on the bridge you can see oncoming traffic. The Defendant's vehicle was skidding for about 30 to 40 yards. It did not stop. The accident occurred as soon as the Claimant's van came off the bridge. The driver of the Claimant's van pulled to the right. The Defendant's van did not stop until it hit the Claimant's van.

LEON PAYNE:

[9] This witness stated he was the driver of the Claimant's vehicle on June 1, 2006. He was driving to Georgetown at about 30 to 40 miles per hour. While crossing the Argyle bridge which is a single-lane bridge and while he was about one half (1/2) to two-thirds (2/3) way across the bridge he saw the Defendant's van speeding towards him. He reduced his speed to about 15 to 10 miles per hour then to about 5 to 10 miles per hour. He heard the tires of the Defendant's van screeching, smoke was coming from them. As he exited the bridge to avoid a collision he pulled to the right but nevertheless the vehicles collided. The Police took measurements in his presence.

- [10] Under cross-examination he stated that as a van driver the Argyle route was not his route but he is familiar with the Argyle route. There is a small corner before the bridge when you get to that area you can see what is coming from the opposite direction. Nothing obstructs your view. He agreed he did not see the van before he entered the bridge. He did not increase his speed on seeing the Defendant's vehicle.
- [11] On further cross-examination, he stated he did not have time to stop his vehicle on the bridge. He denied he was speeding on the bridge and said he was driving 5 to 10 miles per hour on the bridge before the accident occurred.
- [12] Under re-examination, he stated that the reason for the brake impressions by the vehicle he was driving was because he swerved to the right to avoid the collision.

ANTHONY RICHARDS:

- [13] In his evidence-in-chief this witness stated he was traveling to Biabou in the Claimant's van. The van was not speeding. While crossing the Argyle Bridge he saw the Defendant's van coming from the opposite direction. This van was speeding. The driver of the Claimant's van on exiting the bridge pulled to the side but the two vehicles collided. The wheels on the Defendant's van were dragging and the van did not stop until it collided with the Claimant's van.
- [14] Under cross-examination the witness stated he was seated in the second to last seat in the van on the left side. There were about twelve (12) to thirteen (13) persons in the van. He saw the Defendant's van while on the bridge. The Claimant's van slowed down. The Defendant's van did not stop before the collision. When on the bridge the view is clear but before the bridge there is a grape tree which obstructs your view.

HUMPHREY JAMES:

- [15] In his evidence-in-chief the witness stated that he was a passenger in the Claimant's van. The vehicle was not speeding. While the van was coming off the Argyle Bridge he saw the

Defendant's van speeding towards the Claimant's van. The van pulled off to the side to avoid the collision. The Defendant's van did not stop; it collided with the Claimant's van.

- [16] Under cross-examination the witness stated the Argyle Bridge is wide enough for two vehicles to fit side by side. He was in the second seat. He was seated behind the driver. The Defendant's van was speeding; the Claimant's van was not speeding.

SADIQ EDWARDS:

- [17] In his evidence-in-chief this witness stated that he was the driver of the first Defendant's minivan on June 1, 2003. He was traveling from Sandy Bay to Kingstown. When he reached in the Argyle area there is a sign indicating single lane bridge ahead. He was traveling at about 40 miles per hour. He saw the Claimant's van approaching from the opposite direction at about 50 to 60 miles per hour. He applied brakes and his van skidded to the right. He turned to the left and stopped. The Claimant's van exited the bridge and collided with his van. The Police took measurements in his presence.

- [18] Under cross-examination he stated the sign before the bridge says single lane bridge 200 feet away. When you pass the sign you can see the bridge. He was about 70 feet to 80 feet away from the bridge when he first saw the bridge. He saw the Claimant's van immediately before it got to the bridge. He started to apply brakes when he was about 40 to 50 feet away from the entrance to the bridge. He was not aware the Police measurement showed 62 feet brake impression. He said he applied brakes when he saw that Claimant's van was not stopping. When he first saw Claimant's van it was about 60 feet from him.

MARCIA NERO:

- [19] In her evidence-in-chief she stated that on June 1, 2003 she was sitting on the porch of her home which was above the Argyle Public Road. She had a clear view of most of the bridge but she could not see the entrance to the bridge from the Georgetown side because of shrubs. She was about 450 feet from the road. She noticed the Claimant's van speeding on the Argyle road and when the van got to about 10 feet from the entrance to

the bridge she saw the Defendant's van speeding from the opposite direction. When the Defendant's van was about 150 feet from the bridge she heard the sound of tires at this time the Claimant's van was then crossing the bridge. She heard the Defendant's van slow down and stopped and then a loud bang. She did not see the collision because of the shrubs. She went to the scene and saw both vehicles damaged.

- 20] Under cross-examination she stated that the collision took place just off the bridge. She could see about one-half (1/2) of the bridge from the Kingstown side of the bridge. She heard the vehicle stop by the sound of the brakes. The Defendant's vehicle was swerving when the tires were screeching.

SGT. CALBERT STRAKER:

- [21] In answer to Learned Counsel for the Claimant he stated he took measurements in the presence of both drivers. The measurements are as follows:

- (a) Width of road at point of impact 18' 5"
- (b) From point of impact to left of road 10' 4"
- (c) From point of impact to right of road 8' 1"
- (d) From point of impact to rear wheel of Defendant's van HA 784 8' 4"
- (e) From point of impact to where Claimants vehicle H 3201 was parked 10'
- (f) Distance between vehicles 1' 11"
- (g) Length of brake impression on right rear wheel of Claimant's van 34'
- (h) From point of impact to where driver of Claimant's van first saw Defendant's van 133'
- (i) Length of brake impression of left rear wheel of Defendant's vehicle 71', brake impression of right wheel 62'.

The officer stated the accident was a head-on collision. In the words of Officer Straker, "It was almost dead center."

- [22] In answer to questions by Learned Counsel for the Defendants Officer Straker stated that the collision occurred a little distance after the exit of the bridge going towards

Georgetown. The deterioration of the bridge is on the left hand side when traveling towards Georgetown.

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

- (a) On June 1, 2003 the bridge at Argyle was under construction and was a single-lane bridge. All of the witnesses except Humphrey James testified that the bridge is a single-lane bridge.
- (b) There was a sign on the Georgetown side of the bridge and on the Kingstown side of the bridge warning motorists that a single-lane bridge was ahead.
- (c) The Argyle bridge is on the main road that leads from Kingstown to Georgetown. A driver traveling from Kingstown to Georgetown has an unobstructed view of traffic coming from the opposite side of the bridge before a driver gets onto the bridge. All of the witnesses agree to this except Anthony Richards and Andre Laidlow who agreed under cross-examination that one could see the oncoming traffic before you get on the bridge but under re-examination he stated that it was not possible to see oncoming traffic before you get onto the bridge because a grape tree obstructs your view.
- (d) The collision took place after the exit of the bridge when traveling towards Georgetown.
- (e) I accept all of the measurements given by Police Officer Straker.
- (f) Both the driver of the Claimant's vehicle and the second Defendant the driver of the first Defendant's vehicle were speeding at the time of the accident. I believe the evidence of Marcia Nero. She was not contradicted under cross-examination. I also believe the evidence of the Police Investigating Officer Colbert Straker, the first Defendant's vehicle had brake impressions of 72' and 61' while the Claimant's vehicle had brake impression of 34'.

[24] Both drivers were driving in a negligent manner. They were both speeding. 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."

[25] 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."

[26] I find that the driver of the first Defendant's van was partly to be blamed for the accident. Despite the warning of a single-lane bridge and he being familiar with the route he drove the motor vehicle in such a manner that he could not bring the vehicle to a halt in such a position as to avoid the accident. The collision occurred between 4 p.m. and 5 p.m. on the main road that leads from Kingstown the capital to Georgetown. At that time of the day motorists would expect to find other vehicles traveling from the capital Kingstown to Georgetown.

[27] I find that the driver of the Claimant's vehicle was also partly to be blamed for the collision. Despite the warning of the single-lane bridge he drove the vehicle in such a manner that he could not stop his vehicle and avoid the collision when on the bridge he saw a vehicle skidding towards him with smoking tires. There was a 34' brake impression from his vehicle.

[28] I find that the second Defendant the driver of the first Defendant's vehicle to be sixty per cent (60%) liable for the collision.

[29] It is ordered:

- (1) Judgment is entered for the Claimant on his claim against the Defendants to the extent of sixty per cent (60%) of the claim.

- (2) The Defendants to pay to the Claimant damages for sixty per cent (60%) of the loss occasioned as a result of the collision the said damages to be assessed.
- (3) Judgment is entered for the First Defendant on the counterclaim. The Claimant to pay to the First Defendant damages for forty per cent (40%) of the loss occasioned as a result of the collision the said damages to be assessed.
- (4) The Defendants to pay the Claimant sixty per cent (60%) of the agreed costs.


.....
Gertel Thom
HIGH COURT JUDGE