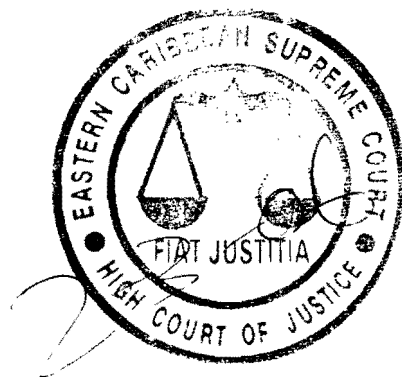


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 124 OF 2004



BETWEEN:

ARTHUR DAVIS

Claimant

AND

SHERITON WILSON

Defendant

Appearances:

Mr. Stephen Williams for the Claimant
Mr. Ronald Marks for the Defendant

2005: February 16
2006: March 2

JUDGMENT

- [1] **BRUCE-LYLE, J -:** On the 3rd day of January 2004, the Claimant was traveling in his minivan HD 970, of which he was the owner, from Kingstown to Belair. It was around 8:00 a.m. The Defendant Sheriton Wilson, was driving a ten-ton Dodge truck T 7409 of which he was the owner, towards Kingstown.
- [2] In the vicinity of the Public Works Department at Arnos Vale both vehicles collided resulting in damage to both vehicles.
- [3] The Claimant has brought his action under the law of negligence claiming that the Defendant breached his duty of care and thus is liable for the damages that he sustained as a result. The Defendant counterclaimed that it was in fact the Claimant that breached his duty of care and that it was his negligence that caused the damage to both vehicles.

Essentially therefore this matter revolves around the Claimant's version of events as against the Defendant's – credibility issues.

[4] In short, the Court has to consider or determine whether the accident was caused solely by the Claimant or Defendant or whether both drivers were partly responsible for the collision and if so, the extent of the liability of each driver. Right at the onset of the trial it was agreed by both parties and the Court that the matter would proceed to trial on the issue of liability only with assessment of damages and costs to be determined by the Learned Master of the Supreme Court.

[5] There is no dispute that the accident took place in the area of Arnos Vale in the vicinity of the Public Works gap at around minutes to eight in the morning. It would be useful to point out that in that area of the Public Works Department there is a bus stop which is located in the wide entrance area of the said Government Department. Vehicles intending to stop at that bus stop usually drive off the main road and into this wide gap leading to the Public Works Department. Once they do this the main road is left free for the flow of traffic unhindered.

[6] The Claimant gave evidence and called one witness in support of his case. The Defendant also gave evidence and he too called a witness in support of his version of how the accident took place.

[7] The Claimant's evidence was that there was a passenger van parked on the Defendant's side of the road and that the Defendant in passing this van had to go over to the Claimant's side of the road, and in so doing the vehicles collided. The Claimant also claims that the Defendant was driving at about 25 mph to 30 mph at the time of the collision thereby introducing an element of recklessness on the part of the Defendant having regard to the nature and circumstances of the road at the time of the accident. The Court therefore has to satisfy itself, in order to ground liability on the part of the Defendant, that

(a) The Defendant crossed over to the Claimant's side of the road; and

(b) The Defendant was traveling at an unsafe speed when he did so.

[8] This accident happened at about 8:00 a.m. on a Saturday morning. It is generally accepted that traffic at that time of the morning on a Saturday would not be as heavy as that on a working day and at the same time. In fact on week days at 8:00 a.m. traffic in that area in issue is bumper to bumper. Flowing from this premise I would agree with Counsel for the Defendant that the fact that a driver infringes onto the side of the road meant for oncoming traffic is not in itself conclusive of negligence.

[9] It is an almost daily occurrence for drivers in Saint Vincent to avoid obstacles such as badly parked vehicles, congregation of pedestrians, vendors and cart pushers and lately crater-like potholes by crossing over the other side of the road either partly or wholly. I again accept that every driver engaging in such necessary maneuvers cannot automatically be deemed tortfeasors in law. There must be evidence that in the circumstances it was a reckless or negligent conduct.

[10] In this case the Defendant's explanation was that there was a mini-bus parked on his side of the road at the Arnos Vale Public Works Department bus-stop. He contends that this bus was off the road and as he approached it the Claimant's mini-bus came around the corner from the Farmer's Market and collided with the Defendant. I am satisfied from the evidence, having regard to photographs marked AD1 – AD4 which were relied upon by the Claimant that the accident occurred more or less in the middle of the road about 1 foot from the centre line on the Claimant's side of the road. It seems to me therefore that the defendant was obviously evading the parked mini-bus at the bus stop which in my view was not completely off the road.

[11] It is common knowledge that minivans or buses do not stop off the road to drop off or pick up passengers. Instead they stop sometimes right in the middle of the road or just partly on and partly off the road to let off passengers. In fact, the Defendant in answering questions put to him said that he had been driving for about 15 years and during that period he had never seen a van driver stop in the road to pick up or let off passengers and

that they always pulled completely off the road. I disagree with this piece of evidence. I do not believe it and therefore do not accept it. It flies in the face of what is the norm in St. Vincent. I am more than satisfied that the Defendant was off his side of the road but not completely when the collision occurred and this was because there was a minivan parked not completely off the road at the bus stop and which caused him to swerve around it.

[12] This view above was also reinforced by the Defendant's witness Wayne Richards who also stated that he had traveled extensively in vans and has never seen a van stop without pulling aside completely when it was picking up or letting off passengers, and on every occasion the vans he observed had taken all the necessary precautions when stopping. I wonder if this witness lives in Saint Vincent and the Grenadines.

[13] The Claimant on the other hand contends that the Defendant drove at about 25 mph to 30 mph and that the Defendant was in a line of traffic heading into Kingstown. Even if there was a line of traffic, it is my contention that it was not a long line of traffic as one would see on a working day, and it is inconceivable that that line of traffic would all have been traveling at that mentioned speed. The Claimant would have had a much longer range of sight than the Defendant. He would have been able to see the Public Works corner for several hundred yards away as there is a long straight stretch of road that he would have had to travel from around the entrance to the Airport all the way to the point of impact. His evidence was that he had a clear view of the road ahead as there was no heavy traffic coming out of Kingstown. To my mind it is doubtful that the Defendant would have been traveling at a high speed in a ten-ton truck around that particular corner which to my mind was a rather sharp bend.

[14] The Claimant having had the clear view from the entrance to the airport and seeing clearly ahead of him that a minivan was parked at the entrance to the Public Works Department within the curve should have been put on his guard and exercised the requisite standard of care in negotiating the bend. From his own photographs AD1 – AD4 it is clear that there was enough space for him to have moved more to his left in negotiating the curve having regard to the fact that vehicles were still coming from the opposite direction past the

minivan which was not properly off the road, and which he says, caused the truck driven by the Defendant to veer onto his side of the road. In short, both drivers if they had been careful enough could have avoided this accident.

[15] It is my view and I so hold on a balance of probabilities that the accident was not caused solely by the Claimant nor the Defendant but hold both drivers liable for the collision. They were both negligent.

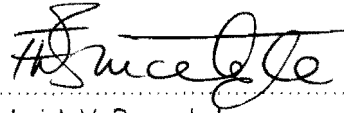
[16] The Court did not have the benefit of any evidence from the Police Officer or Officers who investigated the accident and took measurements at the scene. We however have evidence from the Claimant that he marked the wheels of his van where he had stopped before the collision so that he could show his lawyer. I do not believe his story that he stopped before the collision. I find it highly improbable that that would have happened given the nature and circumstances of the evidence and the area where the accident happened. I place no weight on the markings of the wheel done by the Claimant as there is no confirmation of the truth of that act and its accuracy and especially in view of the fact that the Defendant denies categorically that he was present when this was done. I would have been inclined to believe the Claimant on this issue if there was confirmation from an independent source – from say his conductor who strangely left the scene immediately after, not for the hospital but to his home because he had a headache. Strange to say the least.

[17] Frankly speaking, I do not believe either of the witnesses for the Claimant or Defendant. Their credibility left much to be desired. I reject their evidence in its totality. Answering the second limb of the two issues for the Court to decide I would say that both drivers were partly responsible for the collision.

ORDER:

[18] Looking at the nature and circumstances of this whole issue and on a balance of probabilities I find both drivers partly responsible for the collision. I would put the extent of

liability for each driver at 60% for the Defendant and 40% for the Claimant. Damages and costs to be assessed by the Learned Master of the Supreme Court.

A handwritten signature in black ink, appearing to read "F. Bruce-Lyle", written over a horizontal dotted line.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE