

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 47 OF 2005

BETWEEN:

JEMARL RYAN

Claimant

V

SYLVENA DUBLIN

First Defendant

RODRICK "AMID" JOHN

Second Defendant

Appearances:

Mr. J. Martin for the Claimant

Mr. M. Malcolm for the second Defendant

No appearance by the First Defendant

2005: November 10, 17
December 9

DECISION

- [1] **THOM, J:** This is a claim for damages for personal injuries.
- [2] On January 25, 2005 the Claimant filed a claim in which he sought damages for injuries suffered on February 22, 2003 when a motor vehicle driven by the Second Defendant collided with him.
- [3] The First Defendant did not file an acknowledgement of service or a defence in this matter and made no appearance at the trial.
- [4] The First Defendant is the registered owner of motor vehicle registration No. HE 864.

- [5] The Second Defendant was the driver of the said motor vehicle No. HE 864 on the 22nd February 2003 when the collision occurred.
- [6] The Claimant gave evidence on his own behalf and called one witness Zela Quashie. The Second Defendant gave evidence on his own behalf.
- [7] The evidence of the Claimant is that on February 22, 2003 at about 6:30 p.m. he was walking along the Park Hill Public Road on the right side going to Colonarie. He was in the company of his two relatives Zela Quashie and Garcia Butler. He was walking in front and the two relatives were walking behind him. The two relatives were walking on the left side of the road. When he turned the corner of the road he saw the lights of a vehicle flash on "Marty Mack"s house. He turned around and saw a vehicle coming towards him. The vehicle struck him and he lost consciousness. When he regained consciousness he was at the Georgetown Hospital. He felt pain in his head, his right shoulder, chest and hand.
- [8] Under cross-examination by Mr. Malcolm the Claimant said he was walking on the left side of the road. He then changed his statement and said the right side of the road. His evidence under cross-examination did not differ from his evidence-in-chief. He denied he was playing on the road with his two relatives and that he ran across the road and collided with the vehicle.
- [9] The witness Zela Quashie testified that on February 22, 2003 at about 6:30 p.m. he was walking along the Park Hill Public Road with Garcia Butler and the Claimant. They were all walking on the right side of the road going towards Colonarie. The Claimant was in front and he and Garcia Butler were behind the Claimant. When they were at the corner of Marty Mack's he saw the lights of a vehicle flash on the wall and the bushes. As the vehicle came around the corner it moved from the left side of the road and collided with the Claimant who was on the right side of the road. The Claimant was thrown over the embankment and he landed in a plantain field below the embankment. He saw that the windscreen and the driver's side of the van were damaged.

- [10] Under cross-examination his evidence did not vary from his evidence-in-chief. He denied that he was playing with Garcia Butler and the Claimant on the road.
- [11] The Second Defendant testified that he was driving the said vehicle HE 864 on February 22, 2003 at about 6 p.m. He was employed by the First Defendant as a conductor on the said vehicle HE 864. The vehicle was controlled by the First Defendant and his son Felix Dublin. He was permitted by the First Defendant to drive the vehicle to get it washed after work. On February 22, 2003 the First Defendant's son Felix Dublin instructed him to wash the vehicle. He was driving at approximately 20 miles per hour. He was going to Three Rivers to wash down the van. He was not driving in a negligent manner. While driving he saw the Claimant and two male persons playing on the road. He blew his horn as he was driving pass, the two other male persons went to the left of the road and the Claimant who was on the right of the road tried to run across to the left side of the road and ran into the vehicle. The accident occurred because of the carelessness of the Claimant.
- [12] Under cross-examination by Mr. Martin, the Second Defendant admitted that he was an inexperienced driver, that he had no license to drive and that he was driving around the corner at about 20 miles per hour. He testified that the Claimant was playing in the middle of the road. The vehicle was a right hand drive vehicle. The driver's side was therefore the closest side to the middle of the road. The Claimant ran into the vehicle and the left side of the vehicle got damaged.
- [13] The issue to be determined in this case is whether the collision was caused solely by the negligence of the second Defendant or the Claimant or whether they both contributed to the collision and if they were both negligent to what extent each party is liable.
- [14] The evidence of the Claimant was supported by the witness Zela Quashie. There was only one inconsistency between the two testimonies. The Claimant said Zela Quashie and Garcia Butler who were behind him were walking on the left side of the road. The witness

Zela Quashie testified that he and Garcia Butler were walking on the right side of the road behind the Claimant.

[15] The Second Defendant gave two versions of how the collision occurred. In his examination-in-chief he stated that he was driving to Three Rivers when he saw the Claimant playing on the road with two other male persons. The Claimant was on the right side and tried to run across to the left side of the road and ran into the vehicle. This account is not consistent with the injuries the Claimant received, or the damage done to the vehicle as stated by the Second Defendant. The injuries the Claimant suffered were never challenged by the Second Defendant. If the vehicle was on the left side of the road and the Claimant was on the right side of the road and the Claimant ran from the right side to the left side then he would have collided with the right side of the vehicle unless the vehicle turned sideways on the road which the Second Defendant denied. The Second Defendant testified it was the left side of the vehicle that got damaged.

[16] Under cross-examination the second Defendant gave another account of how the collision occurred. He testified that the Claimant was playing in the middle of the road with two other males. He was driving towards Colonaire. The Claimant was closest to the driver side of the vehicle and he ran and collided with the vehicle and the left side of the vehicle got damaged. If the vehicle was on the left side of the road and the Claimant moved from the middle of the road to the right side then there would have been no collision unless the vehicle moved to the right side of the road also. If he moved to the left he would have collided with the right side or the front of the vehicle.

[17] The testimony of the witness Zela Quashie that the right side of the vehicle was damaged was not challenged in cross-examination. The testimony of the Claimant and the witness Zela Quashie on how the collision occurred is consistent with the injuries received and the damage to the vehicle. The Claimant and Zela Quashie testified that the Claimant was walking on the right side of the road; he saw the lights, turned around and was struck by the vehicle which was traveling in the same direction as he was going that is towards

Colonarie. The right side of the van was damaged; he was injured on the right shoulder, chest, head and hand.

[18] I do not believe the Second Defendant's testimony on how the collision occurred. He gave two versions. I believe the testimony of the Claimant and the witness Zela Quashie. The evidence was the same in examination-in-chief and under cross-examination. I find that the collision was solely as a result of the negligent driving of the Second Defendant, who was an unlicensed, inexperienced driver, driving around a corner at about 20 miles per hour.

[19] I enter judgment for the Claimant against the First and Second Defendants. Damages to be assessed. Costs to be prescribed costs.

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Gertel Thom
HIGH COURT JUDGE