

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV2001/0586

BETWEEN:

TREVOR LOUIS

Claimant

AND

(1) LINCOLN ST. OMER  
(2) WINDWARD ISLANDS BANANA DEVELOPMENT AND EXPORTING CO. LTD.

Defendants

AND

SENTINEL SECURITY COMPANY LIMITED

Ancillary Defendant

**Appearances:**

George Charlemagne for the Claimant  
First Defendant absent and unrepresented  
Diana Thomas for Second Defendant  
Leandra Verneuil for the Ancillary Defendant

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2005: July: 11, 15

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**JUDGMENT**

**Introduction**

[1] At about 2.15 am on Saturday 23 December 2000 the Claimant was involved in a road accident on the Gros Islet highway near Choc. The cause of the accident was that the

First Defendant, who was driving a Honda vehicle reg PC2193 belonging to his employers the Second Defendants, made what the Claimant describes as an “injudicious right turn” and collided with the Claimant’s vehicle. A default judgment was entered against the First Defendant on 25 October 2001 and he has played no further part in the proceedings. The Second Defendants say that the accident was caused by the Claimant’s negligence and say that the First Defendant should not have been driving vehicle reg PC2193 and was not acting in the course of his employment when the accident occurred. They have also claimed an indemnity from the Ancillary Defendants, who provided them with a security service, on the basis that they wrongly released the keys to vehicle reg PC2193 to the First Defendant.

[2] The issues are therefore these:

- (1) whether the accident was caused by the negligence of the First Defendant;
- (2) whether he was acting in the course of his employment with the Second Defendants when it occurred so as to make them vicariously liable for his negligence;
- (3) whether the Ancillary Defendants acted in breach of their duties to the Second Defendant in allowing the First Defendant to take vehicle reg PC2193;
- (4) whether such breach caused the Second Defendants to be liable to the Claimant such that they should be entitled to an indemnity;
- (5) the proper figure for damages.

### **First Defendant's negligence**

- [3] The Claimant and PC Noel both gave evidence to the effect that the accident was caused by the First Defendant's negligence. They were not cross-examined about the cause of the accident and I can therefore only find that the accident was indeed caused entirely by the First Defendant's negligence.

### **Vicarious liability**

- [4] Ms Edwin, the Second Defendants' company secretary, gave evidence (which I accept) that the First Defendant was a shipping clerk and was authorised to drive a vehicle reg 2095 on company business only and not vehicle reg PC2193 which was a vehicle provided for the exclusive use of Eardley Barrett who was the certification manager of the Second Defendants. Norman Bernard, another employee of the Second Defendants, gave evidence (which I also accept) that he drove with Mr Barrett to the airport in the afternoon of 22 December 2000 in vehicle reg PC2193 dropped Mr. Barrett off and returned the vehicle to the Second Defendants compound in the early evening. He gave the keys to the guard on duty and told him that they should be passed only to the Second Defendants administrative secretary Maggie. It is clear from the reports obtained by the Ancillary Defendants from the security men on duty that night (see trial bundle at pp 90-92) that the First Defendant obtained those keys from the next guard on duty and left with vehicle reg PC2193 at about 8.00 pm before crashing it later that night.
- [5] On the basis of this evidence and the fact that the accident happened at 2.15 am I am quite satisfied that the First Defendant was not acting in the course of his employment

when the accident happened. It follows that the Second Defendants are not vicariously liable for the accident.

### **Ancillary Defendants' breach of duty**

[6] In the light of that conclusion this issue and the next do not strictly arise. In case I am wrong on the vicarious liability issue, however, I should indicate that in my view the evidence establishes that the Ancillary Defendants' staff acted in breach of duty or negligently in releasing the keys of vehicle reg PC2193 to the First Defendant in the face of Mr Bernard's express instructions to their guard Jerimiah Emmanuel, that they should be passed only to Maggie, even though no specific written instructions as to who was allowed to take which vehicles had been issued to them by the Second Defendants previously.

### **Causation**

[7] However, Ms Verneuil for the Ancillary Defendants made the point that the putative damage suffered by the Second Defendants (namely liability to the Claimant for the First Defendant's negligent driving) was too remote a consequence of that breach of duty or negligence to give rise to any liability to indemnify. I think there is considerable force in this point and it would have led me to reject the ancillary claim in any event. It is one thing to be responsible for an unauthorised taking of a vehicle and another to be liable for every piece of negligent driving by the taker of the vehicle thereafter.

### **Damages**

[8] Although he was thrown through the windscreen, happily the Claimant suffered only minor injuries in the accident. He had lacerations over the scalp and left shoulder, a

ligamentous injury to his left thumb, a sprain in his shoulder region and a laceration of his left forearm from which a piece of glass had to be removed under local anaesthetic. The injuries healed after four weeks without complications and he was off work for only six weeks. Mr Charlemagne for the Claimant suggested that he should be awarded \$67,000 in respect of pain, suffering and loss of amenity for these injuries. This seems to me totally excessive. The proper figure in my judgment is no more than \$7,500.

- [9] As for special damages, although the Claimant was unable to work for six weeks he told me he was paid during this period and he has therefore suffered no loss in this respect. He claimed \$11,360 for the damage to his vehicle. However, the mechanic who inspected the vehicle had said that it was a write-off worth \$10,000 (\$12,600 less \$2,600 for salvage: see p101 of trial bundle) and the Claimant only produced receipts to a value of \$6,225. Given that I was generally quite sceptical of the Claimant's evidence I therefore propose to award him only \$6,225 under this head. He also claimed a sum of \$4,500 for the rental of a car for 30 days. This was supported by a receipt dated 23 December 2000 (the same day as the accident) which was made out to Ronald Augier (from whom the Claimant said he rented the car) and not to the Defendant himself. Both those matters led to doubts about this claim. Furthermore the Claimant said he had rented the car because he needed it for his "business" which he later said involved picking up his children from school, which was not very convincing given the time of year. I also note that his lawyers were claiming only \$2,250 under this head in a letter of 9 March 2001. Overall I reject the claim for car rental. I will accept the claim for medical expenses which is put at \$692.

[10] The total sum I will award is therefore \$14,417 (7,500 + 6,225 + 692). I will add interest to this sum at 6% for 4 ½ years which gives a total of \$18,309.

**Result**

[11] There shall be judgment for the Claimant against the First Defendant in the sum of \$18,309. The claim against the Second Defendant is dismissed as is the ancillary claim. I will hear the parties on costs.

**Murray Shanks**

**HIGH COURT JUDGE (Ag)**