

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2002/0537

BETWEEN

ANTONIO FLAVIUS
DAVID LOUIS

Claimants

and

IGNATIUS FLAVIUS
KENWIN WALTER

Defendants

Appearances:

Mr. D. Theodore for Claimants

Mr. Mark Maragh for Defendants

2004: October 11, 12

ORAL JUDGEMENT

Introduction

- [1] **EDWARDS J:** The Claimant Mr. Antonio Flavius was driving his Diahatsu Small Highjet Van registered PC 6503, southerly along his extreme left side of the Pierrot Highway towards Vieux-Fort, on Friday the 24th March 2000 at about 5:00 p.m.

- [2] His son Mr. David Louis, the 2nd Claimant, was a passenger in the front of the van.

- [3] In the vicinity of a private driveway which forms a junction with the main road on the eastern side, an accident occurred between Mr. Flavius's van and a Toyota Corolla Motor Car registered HA 4050.

- [4] The car is owned by the first Defendant Mr. Ignatius Flavius. At the time of the accident it was being driven by the 2nd Defendant Mr. Kenwin Walter.

- [5] There is conflicting evidence as to how this accident happened, where on the road the 2 vehicles collided, and the speed at which Mr. A. Flavius was driving the van at the time of the collision.

- [6] There is also conflicting evidence as to whether another motor vehicle was near that vicinity approaching from Vieux-Fort immediately before the collision took place.

- [7] Mr. A. Flavius and Mr. Louis testified that their van was traveling on its left side of the road at about 20 – 25 mph., when the car suddenly emerged from the driveway onto the road and across the van's path, when the van was about 17 to 20 ft away from it.

- [8] Despite the evasive action taken by Mr. A. Flavius to avoid the accident, the collision took place. Their evidence was that Mr. A. Flavius swerved to the right away from the moving car and the 2 vehicles collided on the right hand side of the road, a little lower down from the southern side of the entrance to the driveway. The 2 Claimants disagree as to where on the right side of the road was the point of impact.

- [9] Mr. A. Flavius said it was closer to the edge of the right side of the road. His son Mr. Louis said it was nearer towards the middle of the road but on the right side.
- [10] Mr. A. Flavius testified that it was the right side chauffeur door of the car that collided with the van's left side front. He disagreed with Counsel Mr. Maragh that it was the right side of the car that hit the left side of the van.
- [11] Mr. Louis's evidence was that it was the driver's door to the right side of the car that collided with the left front wheel and left front door of the van.
- [12] They both testified that after the collision the van's left wheel stuck, causing the van's back to flip forward and capsize on its right side. The van then slid on its right side along the road for some distance, and ended up on the left side of the road, with its front facing north. The Police report states this distance measured 37ft 6".
- [13] On the other hand, Mr. Kenwin Walter and his front seat passenger Ms. Brigitte Hemmelmann testified, that having had a visibility of about 100 yards or 90 meters to their right, while the car was at the junction of the driveway and main road, Mr. Walter drove out onto the main road and turned to the south on his left side of the road when it was safe for him to do so.
- [14] Their evidence was that Mr. Kenwin Walter had completed his left turn and had driven about 20 to 25 feet along the main road at a speed of 10 – 15 mph., when the van came from behind at a great speed, pulled alongside the car as if attempting to overtake the car, then veered to its left, and hit the car on its right side with a glancing blow.
- [15] Mr. Walter said that when the van was about to overtake his car another vehicle approached from Vieux-Fort. That the collision occurred immediately as the oncoming vehicle had passed him. Ms. Hemmelmann, Mr. Antonio Flavius and Mr. Louis have all denied that there was any approaching car coming from Vieux-Fort direction.

- [16] Mr. Walter veered off the road into the ditch on the left side of the road facing Vieux-Fort after the impact.
- [17] The case for the Defendants was supported by 7 photographs taken by Mr. Walter at the scene of the accident. All of the witnesses have referred to photograph No. 1 in their testimony concerning the position of the point of impact.
- [18] There was also the Police report which the parties relied on.
- [19] I have not accepted the contents of the Police report in its entirety, as some of the information is either inaccurate, unclear, or confusing, and the witnesses have disputed some of the measurements that the Police took at the scene of the accident.
- [20] I have accepted the unchallenged information in it regarding the damage to both vehicles. It states that the van had damage to the entire right side, entire front including windscreen and back door. The car had damage to the right front fender, right end of front bumper, right door mirror, right rear fender and front door.
- [21] Having heard the evidence of the witness, and taking into account the damages to the vehicles, the downhill slope of the road, the photographs, particularly photograph No. 1 and the submissions of both Counsel I find the following facts:
- (a) Mr. Antonio Flavius was traveling at a speed more than 20 – 25 mph. which was an excessive speed in all the circumstances.
 - (b) Mr. Kenwin Walter emerged from the driveway across the path of the approaching van when it was unsafe for him to do so.
 - (c) Mr. A. Flavius took evasive action by veering to his right. The left front side of his van while the van was still in motion was hit by the right front door area of the car with a glancing blow as the car maneuvered to make its left turn southerly along the main road.
 - (d) The impact occurred on the right side of the road and the van flipped over while it was on the right side of the road. Photograph No. 1 clearly shows that

the scratch marks on the road surface which Mr. Walter agrees were caused by the van, started on the right side of the road.

- (e) It is probable therefore that the van was on the right side of the road in a diagonal position with its front towards the center of the road near to where the scratch marks on the surface of the road began.
- (f) It is highly probable also that the debris in photograph “**BH 1**” was deposited and scattered while the van was in the process of flipping and sliding diagonally across the road.

The Law

[22] Section 34 (II) and (17) of the Motor Vehicles and Road Traffic Regulations 1995 states –

“Every driver of a motor vehicle shall comply with the following rules:

(II) He shall not. . . proceed from one road into another road, or drive from a place which is not a road unless he can do so without obstructing any other traffic on the road, and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto”.

“ (17) A driver shall – when. . . coming from any private road or place to any public road, slow down and make the appropriate traffic signal”.

[23] The law imposes a duty on a driver of a motor vehicle to take such action as is necessary to avoid an accident, notwithstanding the breach of negligent driving of another motor vehicle driver.

[24] It is obvious that Mr. Walter was obstructing the passage of Mr. A. Flavius that afternoon when he came out from the driveway. Mr. Walter was therefore in breach of his duty to calculate and determine, (a) the distance any oncoming traffic was away from the junction, (b) the speed at which such traffic was approaching, and (c) whether or not oncoming traffic was near enough to cause risk of accident.

- [25] Apart from swerving to his right Mr. A. Flavius admitted that he did not apply his brakes . Neither did he blow his horn. There were no motor vehicles behind him or anywhere else in that area.
- [26] Had Mr. Flavius been driving at a reduced speed, and had he taken other evasive action by applying his brakes and blowing his horn, he may have been able to avoid colliding with Mr. Walter's car despite the dilemma Mr. Walter had put him in.
- [27] I find therefore that in this respect Mr. A. Flavius was also in breach of his duty of care. He did not take all the action available to him to avoid the accident.

Contributory Negligence

- [28] Every driver has a legitimate expectation that other drivers on the road will do what it is their duty to do, and that they will observe the rules of regulating traffic on the Road: **Toronto Railway Co –vs- King** [1908] AC. 260 P.C.
- [29] This expectation should serve to reduce the duty of care that Mr. A. Flavius had towards Mr. Walter while he was emerging from the driveway. It means therefore that Section 34 (II) and (17) of the R.T. Regulations have the effect of lightening Mr. Flavius' duty of care.
- [30] It was said by Scott L.J. in **Sparks –vs- Edwards Ash Limited** [1943]K.B. 243 at page 231 that the meaning of the statutory lightening of the duty to take care is that a driver is ***“free from the burden of anxiety and care involved in having to depend on being perpetually on the look out for approaching traffic”***.
- [31] In all the circumstances therefore, I have concluded that Mr. Walter was more blameworthy for the collision, though both driver's contributed to it.
- [32] The proportion of fault I have attributed is 70% to Mr. Walter and 30% for Mr. A. Flavius.

- [33] Since Mr. Ignatius Flavius is the owner of the car, in the absence of any opposing evidence from him the law regards him as being liable for the consequences of Mr. Walter's negligence.
- [34] In light of Article 989 D (2) of the Civil Code of St. Lucia, the damages recoverable by the Claimants will be reduced by 30% and the Defendants' damages recoverable on the Counter Claim will be reduced by 70%.
- [35] I therefore enter Judgment for Claimants against the Defendants on the Claim and the damages recoverable will be reduced by 30%.
- [36] I also enter Judgment for Defendants against the 1st Claimant Mr. Antonio Flavius on the Counter Claim, and the damages recoverable will be reduced by 70%.

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OLA MAE EDWARDS
High Court Judge

Dated this 18th day of October, 2004