

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: 516 OF 2002

BETWEEN:

LINDA BLACK

Claimant

v

**FINISHING & FURNISHING COMPANY LIMITED
ORBIL MAYERS**

Defendants

Appearances:

Mr. Samuel Commissiong with Ms. Suzanne Commissiong for the Claimant

Mr. Joseph Delves for the Defendants

2003: November 7

2004: April 30

JUDGMENT

[1] **BLENMAN, J:** This is a claim by Mrs. Linda Black (Mrs. Black) against Finishing and Furnishing Company Ltd (Finishing Ltd) and Mr. Orbil Mayers for damages arising out of a motor vehicular accident which occurred on 6th August 1999 at Arnos Vale in the vicinity of C.K. Greaves in the States of Saint Vincent and the Grenadines.

[2] Ms. Black is the owner of Toyota Mark II car number PC 222 which she permits her son Mr. Barry De Santos to drive on her behalf. Mr. Orbilus Mayers (Mr. Mayers), the son of Mr. Orbil Mayers was driving the Toyota Dyna lorry number TD 361, at about 2:50 p.m., owned by his employers Finishing Ltd and heading to Kingstown when the vehicle collided with the Toyota car driven by Mr. De Santos. Mrs. Black's car was damaged and she claims special damages in the sum of \$13,125.00 and general damages against both Finishing Ltd and Mr. Orbil Mayers together with

costs. The bonnet, fender, grill, headlamps, indicators and bumper, were among some of the parts damaged. As a result she was inconvenienced and could not use her vehicle for several days and seeks to be compensated for this loss.

[3] Finishing Ltd filed a defence denying liability and counterclaimed for damages against Mrs. Black alleging that the accident was caused solely or contributed to by the negligence of Mr. Barry De Santos. He failed to keep a proper lookout on the road before turning and that he turned from the western lane unto the eastern lane when it was unsafe to do so. Minimal damage was done to his vehicle and he has not particularized his losses.

[4] The claim proceeded on the question of who was liable for the accident. Mrs. Black contends that Mr. Mayers is solely responsible for the accident since he was reckless, drove too fast and failed to manage and control his vehicle so as to avoid the collision. He was reckless. Finishing Ltd and Mr. Orbil Mayers did not pursue their counterclaim but vigorously defended Mrs. Black's claim against them.

[5] The two drivers gave very different versions of how the accident occurred. However, there is agreement that the accident occurred in the vicinity of C.K. Greaves Supermarket. On the southern and opposite side of the road there is an unpaved shoulder of the road which is also used as a parking lot. A little way from this unpaved shoulder there is a small parlour from which there is clear vision for about 200 feet east.

[6] Mr. De Santos testified that at the time of the accident Mr. De Santos was 17 years old and had been driving since he was 9 years old but not on the road. Having recently obtained his driver's licence, on the day in question he was driving his vehicle at about 20 miles per hour heading from town and intending to enter the car park near C.K. Greaves. He changed his mind since that car park was full and decided to park in the lot on the southern part of the road opposite to C.K. Greaves. He drove in his correct lane, stopped his vehicle and since the road was clear of vehicular traffic he signaled to turn to go to the opposite side of the road to park. There was no oncoming traffic so he crossed into the southern lane to park whereupon Mr. Mayer's vehicle came at a tremendous speed and collided with the car while it was already halfway off the road. The

front wheels of his car were on the unpaved shoulder of the southern part of the road at the time of the collision.

[7] There was no need for him to stop the vehicle he stated in cross-examination. He later said that the road had vehicular traffic so he stopped his vehicle to await the passing of the oncoming traffic and when the traffic subsided he proceeded to cross his lane onto the other side of the road in order to park. He was adamant that the accident occurred in the parking lot about 3 inches from the edge of the road and not on Mr. Mayer's lane. The accident was not a surprise to him since he saw Mr. Mayers coming at "break neck speed", of about 100 miles per hour. The accident could not have been avoided based on the great speed at which Mr. Mayer's vehicle was traveling. The lorry made loud screeching sounds from its brakes and tires before the collision. At that time he was on the southern side of the road and saw the lorry which was about 300 feet away. He could have seen about 200 feet away and did not misjudge the situation. He chose to park on the opposite side of the road because the parking lot on his side of the road was under repairs. Later he said that the parking lot by C.K. Greaves was full. While he saw the vehicle speeding coming towards him he could not do anything to avert the collision but hold on to the steering wheel of his vehicle. The police were informed of the accident and a few minutes later Police Constable James arrived and investigated the matter in the presence of both drivers who gave him their side of the story as to how the accident occurred.

[8] Mr. Orbilus Mayers, the director of Finishing, alleged that he was driving the lorry in his proper lane at approximately 20 to 25 miles per hour heading to Kingstown and was alone. As he approached the C.K. Greaves Supermarket in Arnos Vale he was still on the southern side of the road and the traffic was not heavy. The car Mr. De Santos was driving was coming towards him in his lane and suddenly turned across his lane as if to go into the parking lot on the southern side of the road. The collision between the vehicles took place at the middle of his lane.

[9] Mr. Mayers testified in cross-examination that the first time he saw the car on that day it was about 40 to 50 feet away and that he had a clear view of the road for approximately 150 feet. When he first saw the car, it was on its proper hand and this was before it started to turn. Suddenly, the car started to turn when it was about 30 to 40 feet away. Immediately he sensed danger and tried to

pull more left off the road in order to avoid the collision since it was impossible for the lorry to pass behind the car which by now was across its lane. In fact, the entire front of the car was in his lane and its back was near to the middle of the road. He was unable to avoid the collision even though he applied brakes and pulled to his left. He agreed that the brakes impression of 48 feet indicates that he was trying to stop his vehicle from that distance. He maintained that the collision of the vehicles occurred in the middle of his lane.

[10] P.C. James testified that on 6th August 1999 he visited the scene of the accident, spoke to the drivers and took measurements in their presence. He prepared a report that was admitted into evidence. The report stated that the width of the road is 24 feet and the road is divided into two lanes each measuring 12 feet. The point of impact is 3 inches away from the edge of the road on Mr. Mayer's side. Ms. Black's vehicle is 14 feet 5 inches long. The right front wheel of the lorry was 15 feet 3 inches from the centre lane and its right rear wheel was 15 feet away from the centre. In the presence and hearing of each other Mr. De Santos told him that he was crossing to the other lane to park on the opposite side of the road when his vehicle was hit by the truck. Whereas Mr. Mayers said that he was traveling at about 20 – 30 miles per hour when Mr. De Santos' car suddenly pulled towards his lorry causing him to veer to the left in order to avoid the collision. He observed tire impressions on the road which came from the lorry. The left impression was 48 feet and the right impression was 16 feet. The tire impressions from the lorry were to the left and continued off the road in a manner consistent with its pulling away. He had a clear view from the parlour to the public works which is about 300 feet away.

[11] Mr. Sam Commissioning learned counsel submitted that Mr. Mayers was reckless in his driving since he was speeding and must have been traveling in excess of the speed limit. He referred the Court to Bingham's Motor Claim Cases 10th Edition 1994 at page 72 where it is stated that the stopping distance in perfect condition is stated in circumstances where the driver is traveling at a speed of 20 miles per hour, 20 feet of thinking distance and 20 feet of stopping distance – the overall stopping distance 40 feet. There is no dispute that the tire impression for Mr. Mayer's lorry was 48 feet; therefore it must be that Mr. Mayer's misrepresented the speed at which he was traveling. Mr. Commissioning further asserted that the reason why he swerved into the car is because he was speeding and could not stop nor control his vehicle. Had he been traveling at 20 to 25 miles per

hour he ought to have seen the motor car long before he testified he did since there is a clear view on the road to about 400 feet. Mr. Mayers failed to take the necessary defensive action to avert the collision and caused the accident since if the court accepted that he sensed danger when he was 30 to 40 feet away, why was there tire impressions of 48 feet, why didn't he stop?

[12] Learned Counsel, Mr. Joseph Delves, submitted that Mr. De Santos is solely responsible for the accident. He drove the vehicle across Mr. Mayers' lane when it was unsafe to do so and blocked the lorry's path. Counsel argued that it could not be true that De Santos had seen the lorry when it was over 300 feet away and the car was already partly in the parked area; for if he had seen the lorry when it was at such a great distance away he ought to have been able to make it safely into the parking lot without incident. Rather, he had completely misjudged the situation. Further, based on his evidence that he saw Mr. Mayers' vehicle coming at great speed and did nothing to move the car out of its way, by itself is an indication of Mr. De Santos' negligence. In fact, he caused the accident by stopping his car at that point.

[13] Mr. Delves disputes that his client was traveling at over 100 miles per hour and asks the court to accept that he was traveling at about 20 – 30 miles per hour as he testified. While he recognizes that there is a dispute as to the point of impact, he submits that if the Court accepts that the collision occurred 3 inches away from the southern side of the road, this finding would be in favour of Mr. Mayers. There is no doubt that Mayers took corrective measures which any reasonable, prudent driver would by pulling away to avoid the accident, the skid marks are supportive of this fact since they move from the middle of the road to the left.

[14] Finally, he submitted that since Mr. De Santos had created by negligence a position of extreme danger for oncoming lorry, he cannot blame Mr. Mayers for any miscalculation of judgment, if Mr. Mayers in the agony of the moment had not maneuvered with perfect skill and presence of mind. He placed reliance on **Frank Coleman v Donald McDonald (1979) 28 WIR 137**. In any event, even if the Court were to be of the view that Mr. Mayers' was speeding on the day in question, this alone is not indicative of carelessness and in the U.K. the stopping and thinking distances that are published have a statutory requirement for corroboration in circumstances where there are allegations of speeding.

- [15] Each party, having sued the other, they each have the burden of establishing a balance of probabilities that the other's agent or servant caused the accident.
- [16] The slightest error in judgment on the part of a driver is sufficient to ground a claim in negligence. Having reviewed the evidence, I am of the view that P.C. James' evidence was very helpful to the Court in its determination of the matter. I accept the veracity of his evidence which was uncontroverted. P.C. James was clear and forthright and simply presented the facts he observed in saying that the accident occurred slightly off the road on Mr. Mayers' side. He opined that in that area the traffic is very heavy and a driver's vision could be obscure if a bus is parked there. For what it is worth, both drivers were served with Notices of Intended Prosecution but later advised to file civil actions.
- [17] Based on the evidence, I find as a fact that Mr. De Santos crossed the road into Mr. Mayers' lane in an attempt to park on the southern side of the road and the collision occurred three inches away from the southern side of the road. The two vehicles collided despite the effort of Mr. Mayers to avoid. I am of the view that Mr. De Santos turned right across the lorry's lane, at a time when it was dangerous and unsafe to do so and he drove in a careless manner since he misjudged the situation. There is no doubt that Mr. Barry De Santos was negligent on the day in question, even though he did stop before crossing the road he failed to make a proper assessment of the state of the traffic. It was clearly his duty to cross the lane only when it was safe to do so. Mr. Mayers' evidence is more plausible than Mr. De Santos, as to how the accident occurred.
- [18] It is difficult to believe that Mr. Mayers was traveling at a speed of 20 to 25 miles per hour as he sought to persuade the Court. Had he been traveling at that speed he should have been able to bring his vehicle to a smooth stop in view of the fact that he first saw the car when it was about 40 to 50 feet away. If he was traveling at that speed he should have seen the vehicle when it was further away. He was traveling with more dispatch than 20 miles per hour and Mr. De Santos underestimated the speed at which the lorry was traveling when he crossed the road. However, Mr. Mayers was unable to bring his vehicle to a complete halt. It is difficult and risky to cross the lane, due to the fact that there is no traffic light to assist the driver. While I understand Mr.

Commissioning's submission that Mr. Mayers should have veered left and passed behind the vehicle, I do not accept that this was possible based on the fact that the car was blocking this entire lane. Mr. De Santos' unsafe negligent driving created the dangerous situation.

[19] There is no evidence of the speed limit in that area of Saint Vincent and the Grenadines and without more, I am unable to make a specific finding on the speed at which Mr. Mayers was traveling since the evidence on this point conflicts. In any event, even if he was speeding, this by itself is not a basis for civil liability. The court in **Barna v Hudes Merchandising Corporation (1962) Crim LR321** held that excessive speed may be an offence but without more is insufficient to ground an action for negligence.

[20] Lord Goddard CJ in **Simpson v Peat (1952) 1 All ER 477** stated at p. 449 that:

“Suppose a driver is confronted with a sudden emergency through no fault of his own, in an endeavour to avert a collision he swerves to his right, it is shown that had he swerved to the left the accident would not have happened. That is being wise after the event, and if the driver was in fact exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another and perhaps more highly skilled driver would have acted differently.”

I respectfully agree and adopt His Lordship's view.

[21] Mr. Barry De Santos' driving created the entire situation and placed Mr. Orbilus Mayers in a quandary as to what to do and the position so created was well within **Frank Coleman v Donald McDonald (1979) 28 WIR 137** or for that matter the situation in **Brandon v Osborne Garrett & Co (1924) 1 KB 548**. Accordingly, Mr. Orbilus Mayers is not to be blamed if in the agony of the moment he did not act with perfect skill and presence of mind.

[22] In the circumstances, I find that Mr. Barry De Santos was negligent and solely responsible for the accident. Ms. Linda Black's claim against Finishing and Furnishing Ltd and Orbil Mayers is dismissed with costs in the sum of \$7,000.00 to be paid by her to the Finishing and Furnishing Company Ltd and Mr. Orbil Mayers.

[23] I thank both learned counsel for their assistance.

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Louise Esther Blenman
HIGH COURT JUDGE