

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 0537/2002

Between

FABIAN JAGROOP

Claimant

VS

**(1) CLARENCE JOHANNE
(2) PAUL RUDOLPH**

Defendants

Appearances:

Mrs. E. Greene Ernest for Claimant
Mrs. M. Anthony Desire for Defendants

2004: April 20, 26

ORAL JUDGEMENT

Introduction

1. **Edwards J:** The Claimant Mr. Fabian Jagroop, was driving his Toyota motor car registered PC 5657, southerly along the left side of the Dennergy bye pass road, on the 5th February 2000 at about 12:05pm.

2. Approaching the Mole Road Junction to his left, he observed a Toyota pickup registered FAR 1109 approaching from the opposite direction on its correct driving side.
3. This pick-up was driven by the 1st Defendant Mr. Clarence Johanne.
4. The 2nd Defendant Mr. Paul Rudolph, who is the owner of this pick-up, and employer of Mr. Johanne, was a passenger in the pick-up.
5. There is conflicting evidence as to whether the pick-up gave a right indication that it was turning into Mole Road.
6. While Mr. Johanne was turning into Mole Road he caused Mr. Jagroop to brake suddenly. After leaving a brake impression of 72 feet, the car's left front fender and front bumper, hit the left rear wheel of the pick-up with significant force, after the front of the pick-up had already entered Mole Road. The point of impact is undisputed.
7. There were no other motor vehicles traveling northerly or southerly at the time of the accident.
8. It was not disputed that Mr. Johanne slowed down and did not stop to observe the approach of the car. Mr. Jagroop admitted that he knew that this Junction was frequently used by vehicles, and that he was approaching it.
9. Having heard the evidence of only 2 witnesses Mr. Jagroop and Mr. Johanne, I find the following facts:-

(a) *Mr. Jagroop was traveling at about 30-40 mph before he began braking.*

(b) *Mr. Johanne did indicate his intention to turn right into Mole Road*

before he began turning.

- (c) *Despite the slope and dip of the Dennergy bye pass road to the southern side of the Junction, the car was within Mr. Johanne's visibility before he began turning right.*
- (d) *There was gravel on the southern surface of the road near the junction at the time of the accident.*

The Law

- 10. Sections 34(11), 34(16) and 34(17) 6 of the Motor Vehicles and road Traffic Regulations No. 20 of 1995 (The Regulations) direct drivers of motor vehicles to comply with the following Rules:

“(11) He shall not proceed from one road into another ... 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.

(16) He shall not negligently or willfully prevent, hinder or interrupt the free passage of any vehicle...

(17) A driver shall: -

(b) When turning across traffic or turning to the right, slow down and make the appropriate traffic signal.”

- 11. The law also imposes a duty on the driver of a motor vehicle to take such action as is necessary to avoid an accident, notwithstanding the breach or negligent driving of another motor vehicle driver.
- 12. Since the point of collision was on Mr. Jagroop's driving side of the road, this gives rise to the inference that Mr. Johanne is to be blamed for the accident.

13. The primary issue therefore is whether or not Mr. Johanne has discharged the evidential burden of showing that the accident was not caused through his fault.
14. The extent of Mr. Johanne's liability is dependant upon the degree of his success in discharging this burden.

The Issues

15. Based on the relevant provisions identified in Section 34 of the Regulations, Mr. Johanne before performing his maneuver was under a duty to calculate and determine:
 - (a) *the distance any oncoming traffic was away from the junction,*
 - (b) *the speed at which this traffic was approaching, and*
 - (c) *whether or not oncoming traffic was near enough to cause risk of an accident.*
16. Once Mr. Johanne decided to cross over to Mr. Jagroop's side of the road, he should have proceeded out of the right of way of Mr. Jagroop's oncoming car as quickly as possible.
17. By reference to the speed at which Mr. Jagroop was traveling, the length of the brake impression, and Mr. Jagroop's admitted failure to take other evasive action prior to the collision, Mr. Johanne sought to establish that the accident was caused wholly or partly through the fault of Mr. Jagroop, notwithstanding the point of impact.
18. Under cross examination Mr. Johanne said that he did not and could not have seen Mr. Jagroop's car approaching because of the slope and the dip in the road southerly to the junction by the New Police Station.

19. On the other hand Mr. Jagroop's evidence was that before he got to the slope, he saw Mr. Johanne's pick-up approaching him from the time it was on the bridge over 70 feet away. I accept Mr. Jagroop's evidence. I find that had Mr. Johanne been driving with due care and attention, when he was on the bridge, he should have noticed that Mr. Jagroop's car was approaching the Mole Road Junction.
20. When Mr. Johanne reached by the Junction, he should have then made calculations on the basis of the speed of Mr. Jagroop's car, and the distance away it was from him. Instead of stopping, and making these calculations, Mr. Johanne proceeded to cross Mr. Jagroop's side of the road without making sure that it was safe for him to do so. He admitted that it was only after he had begun the manoeuvre and was on Mr. Jagroop's side of the road that he saw the car, heard the screech of brakes, and heard Mr. Jagroop's horn sounding. He then attempted to increase his speed at that point. But only the front of the pick-up made it into Mole Road, the pick-up back was still in the path of Mr. Jagroop. Mr. Johanne has therefore not discharged his burden since it is obvious that he was obstructing the passage of Mr. Jagroop. He was in breach of his duty to take care.
21. Apart from applying his brakes and blowing his horn, Mr. Jagroop did nothing else to avoid the collision.
22. He contended that he could do nothing else, that he did not swerve to his right to avoid the collision because he was not sure what Mr. Johanne was doing. He did not agree that the effective cause of the accident was that he was driving too fast.
23. Given the length of the brake impression, the absence of other vehicles on the road at the time of the accident, and the point of impact, and the damage to the vehicles, I reject Mr. Jagroop's assertions that Mr. Johanne placed him in an unavoidable dilemma by suddenly cutting across his path without indication. Despite the submissions of Counsel for Claimant, I find that he was approaching the Junction with excessive speed in all the circumstances.

24. I agree with the submissions of Counsel for Defendant, and I find that there was adequate time and space at the disposal of Mr. Jagroop to avoid the collision. In the absence of evidence that the gravel on the road affected his ability to stop or swerve to his right, he had ample space to pass behind the pick-up without colliding with it.
25. Although Mr. Jagroop reduced his speed and blew his horn, he cannot be absolved from blame. He should have driven in such a manner and at such a speed that if in breach of his duty Mr. Johanne allowed his pick-up to remain as an obstruction on Mr. Jagroop's side of the road, Mr. Jagroop would be able to stop or pass without colliding with it.
26. I find therefore that in this respect Mr. Jagroop 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

27. It is true that every driver has a legitimate expectation that the other drivers on the road will do what it is their duty to do, and that they will observe the rules regulating traffic on the road (**Toronto Railway Co. vs King** [1908] AC 260 P.C.)
28. This expectation should serve to reduce the duty of care that Mr. Jagroop had towards the traffic approaching him. It means therefore that the provisions in Sections 34(11), 34(16) and 34(17) (b) of the Regulations have the effect of lightening Mr. Jagroop's duty of care.
29. It was said by Scott L.J. in **Sparks v Edward Ash Ltd.** [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."

30. In considering the degree of culpability of the parties, it is important therefore that I take into account Mr. Jagroop's legitimate expectation that Mr. Johanne would keep to his proper side of the road, and that if he came over to Mr. Jagroop's side of the road, he would not allow his pick-up to become an obstruction on that side.
31. In all the circumstances therefore, I have concluded that Mr. Johanne was more to blame, for the collision, though the accident was caused by the fault of both drivers.
32. The proportion of fault I have attributed to the parties is 60% for Mr. Johanne and 40% for Mr. Jagroop.
33. Since Mr. Rudolph is the owner of the pick-up and at the time of the accident Mr. Johanne was his servant, Mr. Rudolph is liable for any negligence on the part of Mr. Johanne.
34. In light of Article 989D (2) of the Civil Code of St. Lucia the damages recoverable by Claimant will be reduced by 40% and the Defendant's Damages recoverable on the Counterclaim will be reduced by 60%.
35. I therefore enter Judgment for the Claimant against Defendant on the Claim, and the damages recoverable will be reduced by 40%.
36. I also enter Judgment for the Defendant against the Claimant on the Counter Claim and the damages recoverable will be reduced by 60%.

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OLA MAE EDWARDS
High Court Judge

Dated this 4th day of May, 2004