

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. 80/1998
Consolidated with
CLAIM No. 521 of 1999

BETWEEN:

MARY ANNA ALEXANDER

Claimant

and

AUGUSTIN DETERVILLE

Defendant

AND

EARLAN ALEXANDER by his Tutrix MARY ANNA ALEXANDER
(appointed by Order of the Court dated 30th June 1999)

Claimant

and

AUGUSTIN DETERVILLE

Defendant

Appearances:

Mr. Callistus Vern Gill for the Claimant

Mr. Alvin St. Clair for the Defendant.

2003: November 04

2004: February 17

PERSONAL INJURIES AS A RESULT OF ACCIDENT INVOLVING MOTOR OMNIBUS
AND HORSE...HORSE DIED ON SPOT...PASSENGERS INJURED...WAS
DEFENDANT NEGLIGENT? DID HE EXERCISE DUE CARE IN THE
CIRCUMSTANCES?...DID HE TAKE EVASIVE MEASURES?... DAMAGES

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This consolidated claim arose as a result of an accident between a motor omnibus owned and driven by Mr. Augustin Deterville and a horse on Friday, 25th October 1996 at about 1.30 in the afternoon along the Castries-John Compton Highway near Marisule. The two claimants, Ms. Mary Anna Alexander and her minor son, Earlan Alexander were passengers on board Mr. Deterville's minibus. As a result of the accident, they both sustained injuries.
2. On 3rd February 1998 and 9th July 1999 respectively, Ms. Alexander instituted these proceedings against Mr. Deterville claiming damages for injuries which she and her son, Earlan sustained as a result of the negligent driving of Mr. Deterville.
3. After much delay and while the Claimants obtained default judgments against Mr. Deterville, he filed a defence. The gist of his defence was that he was not negligent. He alleged that the collision occurred as a result of the horse bolting against the side of his minibus and that it was inevitable notwithstanding the exercise of all reasonable care by him. Mr. Deterville next alleged that he was driving his minibus on his left and proper side of the road between 30 - 35 m.p.h.
4. The sole issue to be determined at this trial is whether Mr. Deterville was negligent on the day in question.

The Evidence

5. Ms. Alexander testified that on Friday, 25th October 1996 at about 1. 30 p.m. she picked up Earlan from music lessons and boarded Mr. Deterville's minibus on Lower Darling Road in the City of Castries en route to her home at Bois d' Orange, Gros Islet. She was seated in the back seat of the vehicle and did not remember the bus ride. When they got to Marisule, she remembered someone saying "a horse." The next thing she knew was that she was in Victoria Hospital. Under cross-examination, she embellished her evidence and stated that she had problems with the manner in which Mr. Deterville was driving.

6. Earlan was 10 years old on the date of the accident. He was seated at the back of the bus. He graphically recalled that Mr. Deterville was driving fast. In his oral testimony, he stated:

“I remembered the driver driving fast and trying to beat all the lights. When he got by the lights by J.Q. Charles at La Clery, he overtook a line of vehicles and went through the light whilst it was on yellow. The driver seemed to drive fast all the way. When we got near Marisule, I heard someone say “watch out for the horse.” I did not feel him slow down at all. I then heard glass shatter and found myself at the front of the vehicle directly behind the driver’s seat. I saw black. I don’t know what happened then.”

7. The Alexanders called as their witness Mr. Francis Butcher. He worked at the Windjammer Landing Resort as a houseman. He also was a passenger on board Mr. Deterville’s vehicle. He was seated directly behind the driver. In giving his oral testimony, he recollected:

“After the vehicle passed Glace Gas Station, I leaned to my left to take money out of my pocket. At the time, I was able to see through the windscreen of the vehicle as I was looking between the two front seats. I saw a horse with a rider crossing the road from the right side of the road facing the direction of Gros Islet towards the entrance of East Winds gap which was on the other side of the road. The next thing I knew is that our vehicle had collided with the horse.”

8. Mr. Butcher testified that although he is not a driver, he observed that Mr. Deterville had some speed at the time of the accident because he hit the horse so hard that it died on the spot and he completely lost control of the vehicle which ended up in a drain on the left side of the road facing Gros Islet. Mr. Butcher alleged that Mr. Deterville did not try to stop or pull away from the horse.
9. Mr. St. Clair appearing as Counsel for Mr. Deterville extensively cross-examined Mr. Francis who admitted that he did not see Mr. Deterville driving to beat the yellow lights, overtaking a line of vehicles or ‘zig-zagging’ on the road. He however remembered that Mr. Deterville was driving at about 50 - 55 m.p.h.
10. Mr. Deterville gave evidence. He testified that he noticed a horse with a rider to the right side of the road facing the direction of Gros Islet. He was driving at 20 – 25 m.p.h. when

- the rider and the horse just bolted across the road and came into contact with his omnibus. The horse was hit on its head. Mr. Deterville alleged that he tried to apply brakes but to no avail, as the action was sudden and unavoidable.
11. Many passengers were injured in this accident. One passenger got stuck and had to be cut out by the Fire Department. Eventually, the ambulance came and they were taken to Victoria Hospital.
 12. Mr. Deterville did not call any witness or witnesses to support his account of the collision. He did not call any passengers on board his vehicle to say that he was driving with extreme caution on the day of question. Indeed, he does not have to do that since he did not institute these proceedings. The Claimants must prove their case on a balance of probabilities.
 13. It is always difficult to decide a case like this based entirely on factual evidence. But on a balance of probabilities, I preferred the evidence of the Claimants and their witness, Mr. Butcher.
 14. On the basis of the evidence, I make the following relevant findings of fact

Relevant Findings of Fact

15. On the question of whether Mr. Deterville was driving over the speed limit on the day in question, I preferred the Claimants' evidence simply because it seemed more likely that if he was not, the resulting injuries would not have been so serious. Mr. Deterville himself testified that one of the passengers on board his vehicle got stuck and had to be cut out by the Fire Service Department. Then, the horse died on the stop. In short, I came to the ineluctable conclusion that Mr. Deterville could not have been driving at 20- 25 miles per hour as he indicated in his witness statement or 30- 35 m.p.h. as he alleged in his defence. I should point out that it is trite law that speeding in itself cannot ground negligence.

16. Next, there is the issue of whether Mr. Deterville took any avoiding action. Mr. St. Clair argued that Mr. Deterville was taken by surprise and what he did was what any reasonable driver would have done in the circumstances. In short, he could and did not take any avoiding action.
17. There was some rather inappropriate cross-examination from Mr. St. Clair that Earlan was too young to be a credible witness and therefore his account of the accident should be discredited. I do not find so. I believed Earlan. He impressed me as a witness of candour. I find that his evidence corroborated the evidence of Mr. Francis on the issue of speed and whether Mr. Deterville took any avoiding action. While neither Mr. Francis nor Earlan were drivers, I do not think that only a driver could say whether a vehicle was being driven fast or not. I also find it difficult to comprehend how a horse with a rider would suddenly bolt across the road at peak hour of the day. More plausible is the evidence of the Alexanders and their witness.
18. Both Mr. St. Clair and Mr. Gill supplied a generous number of judicial authorities to substantiate their submissions. I do not think that I need to pontificate on all of them except to say that the law is settled on the issue raised in this case. In *Blyth v Birmingham Water Works Co.*¹, negligence is defined as:
- “The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulates the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”
19. In my view, Mr. Deterville did not do what a prudent and reasonable driver would have done in the circumstances. He failed to take any avoiding action. He could have stopped, slowed down or swerved in order to avoid the accident. I conclude that because of the speed he was driving, he could not have taken any avoiding actions.
20. In my judgment, the accident was solely caused by the neglect of Mr. Deterville and he is liable for the damages suffered by the Alexanders.

¹ (1856) 11 Ex Ch 781

21. The amount of damages claimed by the Alexanders is not disputed. In fact, it is in concord with the law on the subject.

Particulars of Injuries

22. Ms. Alexander, a teacher by profession was admitted to Victoria Hospital on 25th October 1996. She had mild tenderness to her neck - a whip lash injury. Her abdomen was soft but tender especially in the left upper quadrant. Ultrasound examination confirmed a ruptured spleen. At surgery, her spleen was removed and a small portion of it reimplanted into the greater omentum. She made a good recovery and was discharged on 30th October 1996. Because of her asplenic state she will be susceptible to overwhelming sepsis for the rest of her life but especially for the next three years and needs to be on prophylactic antibiotics. The case law seems to suggest that for an injury of this nature, an amount of \$17,000.00 is reasonable in the circumstances. The case of *Hoyte v Kirpalani*² was referred to by Mr. Gill.

23. Earlan lost consciousness as a result of the accident. He regained consciousness in the ambulance on the way to the hospital. He sustained a 2 cm laceration over the mid-sagittal area of the head and an abrasion to his arm. He received five stitches. As a result of the injuries, he missed school for 2 weeks. An amount of \$4,000.00 seemed adequate.

Conclusion

24. My Order will therefore be as follows:

(a) Mary Anna Alexander:

(i)	Special Damages	\$7,518.91
(ii)	General Damages	\$17,000.00
	TOTAL DAMAGES	\$24,518.91

(b) Earlan Alexander

General Damages	\$4,000.00
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² Civil Suit No. 69 of 1966 (unreported) (Trinidad & Tobago)

25. In respect of interest, I can do better but to adopt with gratitude the pronouncements made by Singh J.A. in *Fenton Auguste v Francis Neptune*.³ For general damages, there will be interest at the rate of 6% per annum from the date of the service of the Writs to the date of trial, that is, 4th November 2003. Interest on special damages will be at the rate of 3% per annum from the date of the accident to the date of trial.
26. There will be interest on the global award from today's date to the date of payment.
27. Sir Dennis Byron, Chief Justice in the recent judgments of *Rochamel Construction Limited v National Insurance Corporation*⁴ and *Saint Lucia Furnishings Limited v Saint Lucia Co-operative Bank Limited et al*⁵ laid down some guidelines in dealing with Costs in accordance with the Rules.
28. The issue of costs has not been canvassed before this Court. However, at Case Management Conference, the Learned Master ordered that Costs will be prescribed Costs.
29. In the circumstances, I will order that Mr. Deterville do pay the Costs of \$4,000.00.

INDRA HARIPRASHAD-CHARLES
High Court Judge

³ Civil Appeal No. 6 of 1996 (unreported) Saint Lucia

⁴ Civil Appeal No. 10 of 2003 (unreported) Saint Lucia

⁵ Civil Appeal No. 15 of 2003 (unreported) Saint Lucia