

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO.: SLUHCV 1996/0715

BETWEEN

PETERSON CHEDDI

Claimant

and

(1) REGIS MARTYR
(2) MARTIN MARTYR

Defendants

Appearances:

Mr. Verna Gill for Claimant

Mr. Richard Fredrick and Mrs. Lydia Faisal for Defendant

2004: January 26
January 29

JUDGMENT

Introduction

[1] **EDWARDS J:** An accident occurred along the Micoud/Vieux Fort Highway on the 3rd
October 1995 between 7:30 pm and 8:00 p.m..

[2] The 2 vehicles involved in the collision were the minibus registration No. HA6531 driven by Claimant Mr. Peterson Cheddi; and motor truck TA6360 driven by the first Defendant Mr. Regis Martyr. The truck is owned by Mr. Martin Martyr second Defendant.

[3] Mr. Cheddi filed this Claim on the 9th August 1996 seeking damages for personal injuries and loss of earnings caused by this accident.

[4] The Martyrs counter claimed on the 28th July 1998 for the damage to the truck resulting in loss of use.

The Facts

[5] The truck laden with bananas weighing over 13800 lbs, was traveling slowly to the dock in a southerly direction along the flat, dry, pitch – surfaced unlit highway.

[6] Mr. Cheddi was driving in a northerly direction towards Micoud on his way home.

[7] The vehicles collided at a corner about three to four hundred yards from the Ti Rocher Junction. The right front end and right side of the minibus was extensively damaged. The right side tray of the truck was scraped from the center to the back wheel; and the right rear wheel was damaged, the axle was ripped out, the “U” clamp was broken, and the drive shaft was hanging down.

[8] There is conflicting evidence regarding the speed at which Mr. Cheddi was driving, the headlights on the truck, and the driving side of the road the truck occupied at the time of the accident.

[9] Mr. Cheddi alleges that Mr. Martyr was driving on the wrong side of the road and that the truck had improper lighting.

[10] Mr. Martyr contends that Mr. Cheddi was driving too fast, did not keep to the left, and failed to take adequate evasive action to avoid the accident.

[11] The exhibited statement of the Police Officer who investigated the accident
PC Octavius Mathurin, discloses the following –

- (a) Mr. Regis Martyr's explanation was - "I was traveling from North to South towards Vieux/Fort and on swinging the right hand corner I saw a vehicle coming at a high speed and it had bright lights. Then I heard it hit the truck, but I had pulled extreme left".
- (b) Mr. Cheddi explained - "On traveling from Vieux/Fort I saw the left hand corner towards Micoud. I saw the vehicle coming ahead with one headlamp and that was when we collided".
- (c) Most of the Debris, coming from the minibus, was on the left side of the road.
- (d) The point of impact shown by Mr. R. Martyr on the night of the accident was where the debris was.

- (e) The point of impact shown by Mr. Cheddi on the 1st January 1996 was 28 ft from the debris- point of impact shown by Mr. Martyr.

Findings of Facts

[12] Having assessed the evidence and considered the submissions of Counsel, Mr. Gill and Mr. Frederick, I find the following facts.

[13] The vehicles collided at the point where the broken glass and other debris from the minibus was most concentrated on the road.

[14] It is unclear from the evidence what was the width of the road in that area.

Although Cons Mathurin recorded it as 27 ft, his measurements from this point of impact to the right and left side of the road facing Micoud, were recorded as 14 ft 5 “ and 14 ft 7 “ or 11” respectively.

[15] Hence the measurements regarding the width of the road in the area is unreliable since it could either be 27 ft or 29 ft 2 “ or 29 ft 4 “.

[16] Although Cons Mathurin did not directly state that the debris was concentrated on the left side of road facing Micoud, I find that this is so, since the explanations given by the drivers of both vehicles and the fact that the heavily loaded truck was negotiating a right hand corner, makes it more probable that the truck had moved out to its right and was in the middle and partly over on its wrong side of the road at the time the collision occurred.

[17] The Police Officer took no measurements of the distance between the debris point of impact and where the mini bus ended up after the collision. This measurement would have been helpful in determining speed.

[18] The absence of this measurement however, does not prevent me from concluding that Mr. Cheddi was driving at a fast speed. Apart from Mr. R. Martyr's testimony, the fact that the bus was damaged to the extent where it was written off by the Insurers, coupled with Mr. Cheddi's inability to stop before the collision took place after applying his brakes, this leads me to conclude that he was traveling more than 35 mph and at an excessive speed.

[19] It is also clear to me from the explanation Mr. Cheddi gave the Police Officer and from his testimony that he took no measures to avoid the collision apart from applying his brakes. It appears to me that he could have swerved to his extreme left given the width of that highway and the average width of minibuses. He did not do so, he took no avoiding action.

[20] I therefore find on a balance of probabilities that both Mr. Cheddi and Mr. R. Martyr were negligent. They are both blame worthy for this accident. I must determine however their degree of fault, and apportion their liability accordingly.

[21] Having regard to the particular facts of this case and the well established contributory negligence principles, I apportion the liability of Mr. Cheddi as 40% and Mr. R. Matyr as 60%.

[22] Mr. Martin Martyr has admitted that Mr. R. Martyr was his servant and or agent, so he along with Mr. R. Martyr is 60% liable.

[23] I therefore enter judgment on the Claim for Claimant, in the sum of 60% of the damages and costs to be assessed.

[24] On the Counter Claim, I enter Judgment for the Defendants in the sum of 40% of the damages and costs to be assessed.

Assessment of Damages

[25] The law requires that I focus on all the relevant change in each party's circumstances which have been caused by the negligence of the other party.

[26] I must therefore consider the nature and extent of the injuries Mr. Cheddi sustained and the effect this has had on his health.

[27] The most important factors that I must take into account for Mr. Cheddi are –

- (a) His past pain and suffering.
- (b) Any future pain and suffering that he will experience.
- (c) Any curtailment in the full pleasures of living that the injury has produced.

[28] I am further required to fix the sum to be awarded for the total expenses that Mr. Cheddi has incurred, incidental to obtaining medical treatment for his injury up to the date of trial.

[29] I must also determine whether Mr. Cheddi should receive a sum for further medical expenses and if so, the amount that should be awarded.

[30] Regarding the Martyrs, and Mr. Cheddi, I must also fix the sum to be awarded for pecuniary loss, being the amount of money that has been spent or lost in consequence of the injury.

[31] My awards should reflect a reasonable and fair compensation based on all of these factors.

[32] In assessing the sum to be awarded for pain and suffering and loss of amenities, I must have regard to awards in comparable cases for similar injuries. Mr. Cheddi should receive fair and reasonable compensation consistent with the trend of awards in these comparable cases.

Nature, Extent and Effect of Mr. Cheddi's Injuries

[33] He was admitted in the St. Jude's Hospital on the 3rd October 1995.

[34] Dr. Cyril Shea attended to him and issued a medical report which has not been challenged. This report shows that Mr. Cheddi had a closed comminuted fracture of the shaft of his right femur, a brasion of his forehead, and a wound to his right ankle. He had a fracture of his cervical spine at the second cervical vertebra.

[35] He was put in traction for his femur fracture and surgery was subsequently done more than 10 days later, involving open reduction and internal fixation of his fractured femur.

[36] On the 31st October 1995 he was discharged from the hospital, wearing a cervical collar and bearing very minimal weight on his right leg. He was followed up at the Orthopaedic Clinic. On the 12th January 1996 the cervical collar was discontinued, and his right knee then had limitation of motion. He was placed on an exercise program and was advised to follow up in four weeks.

[37] There is no evidence that he received medical treatment after the 12th January 1996.

[38] Dr. Shea's Report discloses that usually intra-medullary femoral nails are removed at about one year post-operation. Apparently at time of surgery the internal fixation of the femur involved the use of intra-medullary femoral nails.

[39] Mr. Cheddi's testimony is that he suffered a lot of pain and wore neck brace for 3 months. He presently still walks with a limp.

[40] As a minibus driver earning an average of \$275.00 weekly, he was unable to work for 37 weeks.

[41] Mr. Cheddi was 29 years old at the date of the accident. He is now 37 years old.

Special Damages

[42] The special damages pleaded by Mr. Cheddi include an amount of \$5,740.30 for medical expenses Mr. Cheddi has provided documentary evidence to prove this.

[43] Mr. Cheddi has included an amount of \$10,400.00 for loss of earnings from the 3rd October 1995 to the 4th May 1996.

[44] The period pleaded is 31 weeks and loss of earnings for 31 weeks @ \$275.00 is \$8,525.00 and not \$10,400.00.

[45] Even though loss of earnings is always calculated on the basis of net earnings, there was no evidence from Mr. Cheddi concerning income tax payments or any other statutory deductions. Concerning this omission, I am mindful of the dictum of Ronald Luckloo J A in Heyliger vs Lakeram Deokaran (unreported) cited in Bibi Shamina and another vs Sampat Dyal and others (1993) 50 W.I.R. 239 at page 244 A-B.

(c. . . as the burden of proving the quantum of loss is on the Plaintiff, proof of all the factors necessary to arrive at the true quantification of the loss should necessarily fall on him. If tax is not to be deducted the burden should be on the Plaintiff to prove that factor just as it should be on him to prove the quantum of taxation if tax is deductible . . . It is the tax payer or potential taxpayer who should be able to say what quantum of tax if any is deductible from his income".

[46] In arriving at the figure for loss of earnings therefore, I will take into account the lack of evidence on the fiscal statutory deductions for St. Lucia and reduce the amount of the sum for loss of earnings by 25%.

[47] Consequently, the award of special damages is as follows for Mr. Cheddi –

Medical Expenses	=	\$5,740.30
For loss of earnings being		
31 weeks at \$275. per week	=	\$8,525.00
Less 25%	=	<u>\$2,131.25</u>
		\$6,393.75
	=	\$6,393.75
TOTAL SPECIAL DAMAGES		<u>\$12,134.05</u>

[48] The Damages claimed by the Martyrs are Special Damages, and the particulars pleaded are \$150.00 for Accident Report, cost of repairs being \$3,737.00 and loss of use for 30 days @ \$500.00 daily being \$15,000.00.

[49] The only document any evidence provided in support of these damages was an Estimate of Repairs dated 11th October 1995.

[50] The mechanic who fixed the truck testified that he had provided a receipt to the Martyrs for the repairs done.

[51] Counsel Mr. Frederick explained that any supporting documents that his clients may have given him regarding this case was misplaced as a result of a fire at his Chambers after the filing of the Counter Claim.

[52] I accept the evidence of Mr. Nicholas Christophe that he repaired the truck. He has not said at what cost. Relying on the Estimate of Repairs, it is fair and reasonable to allow a sum of \$2,990.00 for repairs to the truck, excluding repairs to the front fender which obviously was not caused by the accident.

[53] Mr. Martin Martyr testified that the truck earned \$500.00 on average daily, without providing any documentary proof of this. I accept his explanation concerning the unavailability of parts, but I consider 30 days unreasonable.

[54] Since I allowed Mr. Cheddi's earnings without any documentary proof that he earns \$275.00 per week, I believe it is just and fair to allow a sum of \$400.00 daily on Mr. Martin Martyr's Counter Claim in the absence of any documentary evidence also. Similar considerations regarding fiscal statutory deductions must also apply.

[55] Consequently the Special Damages Allowed is as follows –

<i>Accident Report</i>			= \$ 150.00
<i>Cost of Repairs</i>			= \$2,990.00
<i>Loss of use for 20 days @ \$400.00 per day</i>	=	\$8,000.00	
<i>Less 25%</i>	=	<u>\$2,000.00</u>	
		\$6,000.00	= \$6,000.00
TOTAL SPECIAL DAMAGES			= \$9,140.00

General Damages

[56] Counsel Mr. Gill relied on the two follow cases as showing trends that this Court should be guided by in assessing Mr. Cheddi's damages for Pain and Suffering and Loss of Amenities.

- (i) **Mohammed vs Sackoor** H.C.A. No. 664 of 1979 Crane J. Judgment: 27th June 1982. **Journal of the Law Association of Trinidad and Tobago**. Vol. 3. No.6 at page 98. A 52 years old woman received a whiplash injury for which she was hospitalized for 1 week and treated as an outpatient on about 20 occasions. She had to wear a neck brace and continued to suffer pain in her chest and arm and from her neck to her seat. She could not hold things a her left hand and could no longer enjoy sea bathing or kneel for prayers. She had to discontinue working as a president of a woman's group. She could not do housework for 6 months. General damages was assessed at Trinidad and Tobago \$20,500.00 for pain suffering and loss of amenities.
- (ii) **John vs Maharaj (T&T)** Georges J. Judgment 7th May 1974 **Daley on Damages** published 1976. For a compound fracture of the shaft of the right femur and a subsequent re-fracture caused from a fall directly resulting from the original injury, the 46 years old Plaintiff received treatment for the re-fracture which involved the insertion of a steel rod in the marrow cavity and bone grafting. Consequently the Plaintiff could barely bend his knee. His earning capacity as a mason was reduced from \$10.00 a day to \$7.00 day. General Damages of Trinidad and Tobago \$8,000.00 were awarded.

[57] Bearing in mind the trends in these 2 cases, and distinguishing the facts regarding the injuries and their effects on those Plaintiffs from Mr. Cheddi's case, I must award one total indivisible sum.

[58] I have taken into account all the relevant factors relating to inflationary and the current value of past awards in Trinidad and Tobago.

[59] In light of the fact that Mr. Cheddi has not proven that he has suffered any loss of amenities, or that he will incur future medical expenses, in my opinion the amount of \$38,000.00 is fair and reasonable compensation.

[60] The awards are therefore summarize as follows for Mr. Cheddi.

(a)	<i>Special Damages</i>	=	<i>\$12,134.05</i>
	<i>General Damages</i>	=	<i>\$38,00.00</i>
	<i>TOTAL</i>	=	<i>\$50,134.05</i>
	<i>Less 40% of \$50,134.05</i>	=	<i>\$20,053.62</i>
		=	<i>\$30,080.43</i>

(b) The interest on Special Damages is 2 ½% from the 3rd October 1995 to the 29th January 2004.

(c) The interest on the General Damages is 5% from the 9th August 1996 to the 29th January 2004.

(d) **Costs** of \$9,020.11 under Part 65.5 Appendix A of Civil Procedure Rules 2000 Less 48% being \$3,608.04 = **\$5,412.07**

[61] The award for Mr. Regis and Martin Martyr is as follows –

(a)	<i>Special Damages</i>	=	<i>\$9,140.00</i>
	<i>Less 60% of \$9,140.00</i>	=	<i>\$5,484.00</i>
			<i>\$3,656.00</i>

- (b) The interest on Special damages is 2 ½% from 28th July 1998 to the 29th January 2004.
- (c) **Costs** of \$996.80 under Part 65.5 Appendix A Less 60% being \$598.08 = **\$398.72**

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OLA MAE EDWARDS
High Court Judge

Dated this day of February, 2004