

SAINT LUCIA

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

CLAIM NO. 558 of 1997

BETWEEN:

MORRIS GUSTAVE

Claimant

and

(1) JOHN JEREMIE
(2) RICKY ADONIS

Defendants

Appearances:

Mr. Kenneth Monplaisir QC for the Claimant

Non-appearance of Ms. Cybelle Cenac for the Defendants.

Non-appearance of Defendants

2004: January 20

NEGLIGENCE ARISING OUT OF MOTOR VEHICULAR ACCIDENT...DEFENDANT NOT
COMPLYING WITH CASE MANAGEMENT ORDER...DEFENDANT NOT SHOWING UP
FOR TRIAL..MATTER PROCEEDED WITH...DAMAGES AWARDED TO CLAIMANT

JUDGMENT

1. HARIPRASHAD-CHARLES J: This is a claim and a counterclaim arising out of a road traffic accident which occurred at about 10.30 a.m. on the morning of 28th December 1996. Mr. Morris Gustave, a retired engineer was driving his motor car along the Corinth Road in a southerly direction when a motor omnibus owned by Mr. John Jeremie and driven by Mr. Ricky Adonis traveling in the opposite direction collided with Mr. Gustave's car.
2. As a result of the accident, the Police arrived at the scene. Police Constable 247 Alexander was assigned to conduct investigations into this accident. He took measurements in the

presence of both drivers who gave different points of impact. From the measurements taken, Officer Alexander concluded that Mr. Adonis was responsible for the accident because he was traveling at a fast speed and failed to keep to his left and proper side of the road. Consequently, Mr. Adonis was charged for driving without due care and attention. The outcome of that case was unavailable to this court.

3. Subsequently, Mr. Gustave instituted a Writ of Summons indorsed with Statement of Claim alleging negligence on the part of Mr. Adonis as servant or agent of Mr. Jeremie. In his particulars of negligence, he alleged that Mr. Adonis:
 - (1) Drove too fast.
 - (2) Failed to apply his brakes in time or at all or so to steer or control his motor omnibus as to avoid the said accident.
 - (3) Failed to keep any or any proper look out or to observe or heed the presence or approach of the claimant.
 - (4) Failed to give any or any proper warning of his approach or of his intention to drive on to the said major road.
4. Mr. Gustave also alleged that he suffered personal injuries and has to be hospitalized for a day.
5. The Defendants filed their defence filed on 20th March 1998. They denied negligence on their part and alleged that the collision was caused or contributed to by the negligence of Mr. Gustave in that he:
 - (1) Drove on the right or wrong side of the road while traveling from Grande Riviere towards Castries on the Grande Riviere/ Corinth road.
 - (2) Without giving any proper warning, he veered to his right side of the road and into the path of the Defendant's oncoming vehicle from the opposite direction.
 - (3) Drove too fast.
 - (4) Failed to apply his brakes in time or at all or so to steer or control his motor car as to avoid the accident.

- (5) Failed to keep a proper look out or to observe the Defendant's said vehicle on the said road.
6. Mr. Jeremie and Mr. Adonis then counterclaimed for \$14,754.83.
7. On 23rd October 1998, at a hearing of Summons for Directions, Mitchell J. ordered that the matter be given a speedy hearing. No speedy or any hearing took place until 24th June 2003 when the matter was scheduled for a Case Management Conference. At that hearing both Mr. Kenneth Monplaisir, Q.C. for the Claimant and Ms. Cybelle Cenac for the Defendants were present. Directions were given and trial of the action was fixed for 27th October 2003. On that date, Ms. John, Associate Counsel in the Chambers of Monplaisir and Company was present. Ms. Cenac was absent. So were the Defendants. Ms. John requested an adjournment because Mr. Morris who is in his seventies, was ill and out of state. She further informed the Court that Mr. Morris' wife had recently passed away. Suffice it to say, the Defendants had not complied with the Case Management Order. The matter was adjourned for 20th January 2004. There was an express provision in the Order for Ms. Cenac to be served with a notice of the adjourned date. This was done.
8. On 20th January 2004, Mr. Gustave and his Counsel were present. Both Mr. Jeremie and Mr. Adonis were absent. Conspicuously absent was their Attorney. Mr. Monplaisir, Q.C. applied to strike out the counterclaim in accordance with Part 26.3 (1)(a) of the Rules. He also applied to proceed with the claim as filed by Mr. Gustave.
9. As the two Defendants have offered no evidence, the preponderance of evidence is in favour of Mr. Gustave.
10. In his statement of claim, Mr. Gustave claimed special damages of \$9,950.00 as well as general damages. In terms of general damages, Mr. Gustave stated that he became unconscious as a result of the accident and regained consciousness on his way to the hospital. He was treated and discharged the same day. While he had no broken bones, his body was stiff and painful and as such, he was unable to work for more than two weeks.

11. Mr. Monplaisir in his skeleton arguments, submitted that damages should be awarded for 2 weeks loss of earnings and for pain and suffering as follows:

(a) Two weeks loss of earnings	\$1,500.00
(b) Pain and suffering	\$5,000.00
TOTAL GENERAL DAMAGES	\$6,500.00

12. I consider this award to be reasonable in the circumstances.

13. In the result, I enter judgment for the Claimant, Morris Gustave as follows:

(a) Special damages	\$9,950.00
(b) General damages	\$6,500.00
(c) Prescribed Costs	\$4,935.00

14. The issue of interest did not arise before judgment. However, I will order that the Defendants must pay the interest at the rate of 6% per annum on the amount of \$16,450.00 (special damages + general damages) from the date of judgment to the date of payment.

15. The counterclaim filed on 20th March 1998 stands dismissed.

INDRA HARIPRASHAD-CHARLES
High Court Judge