

SAINT LUCIA

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

CLAIM NO. SLUHCV2001/0907

BETWEEN:

DAVID MONLOUIS

Claimant

and

(1) GEORGE FREDERICK
(2) CLAUDIUS JOSEPH

Defendants

Appearances:

Mr. Alvin St. Clair for the Claimant

Mrs. Michelle Anthony-Desir for the Defendants

2003: September 29
October 07,10

NEGLIGENCE ARISING OUT OF MOTOR VEHICULAR ACCIDENT...WAS NO. 1
DEFENDANT THE SERVANT OR AGENT OF NO. 2 DEFENDANT...WAS VEHICLE
STOLEN OR DRIVEN WITHOUT CONSENT OF OWNER...DAMAGES...ISSUE OF
COSTS

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 7th October 2003, I gave an oral judgment dismissing the Claimant's claim and indicated that the reasons for my decision would be reduced into writing subsequently. The following represents my reasoned judgment.
2. Around 7.30 p.m. on the 25th February 2001, David Montoute was driving his motorcar along the Castries/ Gros Islet Highway in a southerly direction towards Castries. On reaching the Monplaisir Gap, he saw another motor vehicle, Registration No. PA 8293 travelling ahead of him in the same southerly direction towards Castries. Raymonius Alfred was the driver of that vehicle. Mr. Monlouis then noticed motor vehicle, Registration

Number HC 7038 which was travelling in the opposite direction towards Gros Islet, leave its proper side of the road, collided firstly with Mr. Alfred's vehicle and then with his vehicle. The First Defendant, Mr. George Frederick was the driver of that vehicle. The Second Defendant, Mr. Claudius Joseph was the owner of the vehicle. After the collision, Mr. Monlouis' vehicle spun out of control and off the road. Mr. Monlouis' head came into contact with some part of the vehicle and he lost consciousness. He was taken to Victoria Hospital, treated and sent home the same day.

3. As a result of the accident, Mr. Monlouis' vehicle was damaged beyond repair. In other words, it was a write-off. Subsequently, Mr. Monlouis issued this claim against the two Defendants claiming:
 - (i) That Mr. Frederick was wholly responsible for the accident and
 - (ii) That at the time of the accident, Mr. Frederick was acting as the servant and/or agent of Mr. Claudius Joseph and as such, Mr. Joseph is vicariously liable for the actions of Mr. Frederick.
4. It is accepted that Mr. Frederick was the driver of vehicle HC 7038 which collided firstly with Mr. Alfred's vehicle and then with Mr. Monlouis' vehicle. It is accepted that Mr. Joseph is the owner of vehicle HC 7038. It is undisputed that Mr. Frederick drove Mr. Joseph's vehicle in a careless manner and was wholly responsible for the collision. In fact, Mr. Frederick was prosecuted in the Traffic Court for driving without due care and attention and was found guilty and sentenced accordingly.
5. The sole issue which falls to be determined is whether Mr. Frederick was the servant and/or agent of Mr. Joseph? In his defence, Mr. Joseph denied that Mr. Frederick was his servant and/or agent or that he was driving the motor vehicle with his authority or permission. Mr. Joseph stated that at the time of the accident, his motor vehicle was in the care and possession of David Abrams who was his authorized driver.
6. Mr. Monlouis' evidence is that after the Claim Form was served on both Defendants, his lawyer received a note signed by an individual who called himself George Frederick stating

that he was given permission by Mr. Joseph to drive his vehicle on the day in question. He further stated that the defence by Mr. Joseph that Mr. Frederick was not his authorized driver is incorrect and misleading. At the trial, Mr. Monloius called two other witnesses to testify on his behalf including Mr. Peter Wilson who was a passenger in the vehicle at the time of the accident. Undoubtedly, the principal witness was Mr. Frederick himself. Mr. Frederick alleged that on the day in question, he was the authorized driver of Mr. Joseph and that he was doing so for reward. He stated that Mr. Joseph met him by the sea and asked him to drive the vehicle during the day for him. He then drove Mr. Joseph to Castries and returned to Gros Islet. On his way up, he collided with Mr. Monloius' vehicle. Under intense cross-examination by Mrs. Anthony-Desir, Mr. Frederick stated:

"I don't know who Claudius Joseph is. I don't know his name.... Mr. Joseph employed me to drive for him for one day. I worked for one day and I was involved in the accident. I met someone called Claudius Joseph who gave me his van from 7.00 a.m. Mr. Joseph said that he will pick up the van at 5.00 p.m. I drove the van between 9.00 a.m. and 9.30 a.m. On my way back, I had the accident. I couldn't recall the time. I had the accident in the morning....The next day, I was arrested by the police in connection with the accident...."

7. Mr. Joseph gave evidence. He asserted that David Abrams was his sole authorized driver and Abrams had the vehicle in his possession from the night before. When cross-examined by Mr. St. Clair as to why he did not press criminal charges against Mr. Frederick if his vehicle was stolen or if Mr. Frederick drove it without his consent, Mr. Joseph said:

"When Miss Semper and I were investigating, we made arrangements to see who is the George Frederick. When I saw who George Frederick is, I saw a lost cause. I saw he looked like a vagrant. I know that filing any charges against Mr. Frederick that I was wasting my time. I saw his run-down house. It is a shack. You could see through and through- no windows, no doors. I knew that I will get nothing from Mr. Frederick."

8. Mr. Joseph called Mr. Semper, the Insurance Claims Supervisor with Eastern Caribbean Insurance Limited to testify on his behalf. She deposed that her Insurance Company is the insurer for Mr. Joseph in respect of his motor omnibus, Registration Number HC7038. Ms. Semper stated that on 1st June 2001, Mr. Joseph and herself proceeded to Gros Islet

Police Station. On arrival there, they met with P.C. 623 Jeremie who was the investigating officer. They met Mr. George Frederick and in the presence of Officer Jeremie, Mr. Frederick confirmed that he did not know nor ever seen Mr. Joseph before.

9. This is a civil action for negligence wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, and seeing and hearing the witnesses, I was much more impressed with the demeanour of, and the evidence given by Mr. Joseph and Ms. Semper. On the other hand, I found Mr. Frederick to be an unreliable and an untruthful witness. Indeed, he cannot even remember whether the accident occurred in the morning or in the night.
10. As a consequence, I have no doubt in my mind that on the day of the accident, Mr. Frederick was not the servant and or agent of Mr. Joseph. Indeed, Mr. Frederick did not even know and still does not know Mr. Joseph. His lawyer was most reluctant to ask him to point out Mr. Joseph in court. I will therefore dismiss the Claimant's claim with Costs.
11. The issue of costs was not fully ventilated before the Court at the date of the hearing. Both Counsel were subsequently requested to provide written submissions in this regard. Suffice it to say, neither complied. I am therefore left to exercise my discretion. I am guided by the Order of Master Cottle made on 24th January 2003 at the Case Management Conference. The Honourable Master ordered that Costs be Prescribed Costs. Part 65.5 deals with Prescribed Costs. Appendix B refers to the scale of prescribed costs. For a claim not exceeding \$30,000.00, as is the instant case, the fixed costs is \$9,000.00. In the exercise of my discretionary powers under Part 65.5 (4)(a), I may award a proportion only of such sum having taken into account the matters set out in rule 64.6(5) and (6). Having done so, I shall order Mr. Monlouis to pay the Costs of \$3,000.00 to the Second Defendant, Mr. Claudius Joseph.

INDRA HARIPRASHAD-CHARLES

High Court Judge

