

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 537 OF 2001

BETWEEN:

EDMOND THOMAS

Claimant

and

**MAVIS LEWIS
JEFF LEWIS**

Defendants

Appearances:

Mr. Samuel Commissiong for Claimant

Mr. Arthur Williams for Defendants

2003: January 21
2003: September 24th

JUDGMENT

[1] **BRUCE-LYLE, J:** On Saturday 10th February 2001 at approximately 10:45 a.m. the Claimant Edmond Thomas was driving H 6891, a 1992 model Toyota Crown saloon car, of which he was the registered owner, and which he used as a taxi. He proceeded from Kingstown towards Cane Garden via the Frenches by-pass.

[2] The first defendant Mavis Lewis, is the registered owner of H 2420, a 1998 Toyota Hiace passenger van. The second defendant Jeff Lewis was permitted to drive the said passenger van, and was so driving it from Sion Hill area to Kingstown via the Richmond Hill public road, as the first defendant's servant and/or agent.

[3] On approaching the junction of Richmond Hill main road and the Frenches by-pass, the two vehicles collided – the front middle to right side of the passenger van collided with the right side of the claimant's vehicle thereby causing damage from its right front door to its right rear door. From all indications both vehicles were extensively damaged – the claimant in his statement of claim listed his damaged vehicle to the tune of \$20,373.92, whilst the defendants listed their damaged vehicle to the tune of \$4,610.95 in their counter-claim.

[4] From the claimant's evidence the salient areas of negligence on the part of the second defendant were:

- (a) driving into the claimant's vehicles lane when it was not safe to do so, and when, by reason of the presence and approach of the claimant's car, it was dangerous so to do
- (b) overtaking a stationary vehicle when it was unsafe to do so
- (c) driving on the wrong side of the road, among other acts of negligence.

[5] And from the defendant's evidence the salient areas or particulars of negligence of the claimant can be itemized as:

- (a) driving from a minor road onto a major road when it was unsafe so to do and without regard for traffic on the major road
- (b) failing to give any or any proper warning of his approach of his intention to drive onto the said major road.

EVIDENCE

[6] The Claimant gave evidence on his own behalf by way of a witness statement and some evidence elicited in evidence in chief by his counsel. He was then cross-examined by learned Counsel for the defendant, and then called one witness Mr. Abraham Hazelwood, who was also cross-examined by the defence.

[7] The crux of the claimant's evidence was that as he was coming up the Frenches by-pass road and to the junction with the Richmond Hill main road, there was one vehicle RB 8 in

front of him and at a standstill. He said there were also vehicles behind him at the said junction, and there were also vehicles coming down Sion Hill but none going up Sion Hill. The claimant stated that he moved onto the main road to turn right to go up towards Sion Hill, but did this only when traffic proceeding down Sion Hill to Kingstown on the said Richmond Hill main road had stopped. He said as these vehicles coming down from Sion Hill stopped, RB8 drove out from the by-pass junction onto the main road.

[8] The claimant said at this point he hesitated but the driver of the lead vehicle coming down from Sion Hill who had stopped, signaled to him the claimant to come out from the by-pass also. It was when he was coming out of the by-pass that the collision occurred with the vehicle driven by the second defendant.

[9] Under cross-examination the claimant admitted that he emerged from a minor road into a major road, and that traffic on the major road had the right of way. But then he went on to say that the second defendant's vehicle, which collided with his overtook the vehicles that had stopped in the direction from Sion Hill, to let him proceed from the by-pass. He further stated that the accident happened on his left hand side of the road. He insisted he was given right of way to come out. He denied just driving out from the by-pass onto the main road. He put the blame for the collision squarely on the second defendant who he said was supposed to assess the traffic ahead of him on the main road before proceeding to overtake. The claimant ended his evidence by saying that he did look to see that the traffic was clear before he emerged from the by-pass, after he was told to come out from the by-pass.

[10] The claimant's witness Abraham Hazelwood told the Court, that on the day in question he was the driver of the Government mail van. He identified his witness statement and certified the contents of it to be true and correct. When cross-examined this witness stated that he worked at the airport, but did not know the claimant before the accident. He insisted that he was driving on the Richmond Hill main road that day and saw the accident, but left twenty minutes or so after the accident, and there was no police there then. What he did say of importance was that he had stopped on the main road, and other vehicles

came to a stop behind him. He saw the black car at the junction, and it was the only car that came out of the junction when he stopped. In his witness statement he said it was at this point that a minivan which was somewhere behind his vehicle overtook his car and collided with the said black car.

- [11] The defendant's case centered mainly on the evidence of the second defendant Jeff Lewis. The first defendant Mavis Lewis in her witness statement only alluded to being the registered owner of passenger van H 2420 which was involved in the accident in issue, and that the said motor vehicle was driven by her son, the second defendant when the said accident occurred. This therefore means that should I find in favour of the claimant the first defendant would be held to be vicariously liable for the actions of the second defendant, he being her servant or agent at the material time.
- [12] The second defendant Jeff Lewis then gave evidence via his witness statement which formed the basis of his evidence in chief, and also certain questions put to him by learned Counsel for the defence. The gist of his witness statement was to the effect that on the 10th February 2001 at about 10:30 a.m. he was driving a Toyota Hiace Van registered number H 2420 along the Sion Hill major road going towards Kingstown, and that he was proceeding at about 20 m.p.h. to 25 m.p.h., whilst transporting passengers to Kingstown.
- [13] Jeff Lewis went on to say that as he approached the Frenches by-pass road and got to it, motor vehicle registration number H 6891 driven by the claimant suddenly came out of that minor road and emerged onto the major road without first stopping. Jeff Lewis said on seeing this he pulled his vehicle to the right hand side of the road and applied his brakes so as to avoid colliding with the claimant's vehicle, but to no avail, as both vehicles collided.
- [14] He said it was the front of his van that collided with the right side of the claimant's vehicle, and that there was no vehicle directly in front of his vehicle, and the way ahead was clear. He insisted that there was no vehicle in front of his vehicle that had stopped to allow the

claimant's vehicle to come out of the Frenches minor road, and that the claimant's vehicle appeared out of nowhere.

[15] He described the area of the accident thus; that there was a big waste master garbage bin and a tree at the junction of the said Frenches by-pass road, and that the waste master garbage bin is positioned below the Sion Hill public road at the end of the Frenches by-pass road. There was also a tree located near to where the waste master garbage bin is located.

[16] Jeff Lewis then stated in his oral evidence to the court, that on the day in question, he did not see Abraham Hazelwood, the claimant's witness, at the accident scene, and that this was the first time he was seeing him, neither did he not see P 8126 stop in front of him that day, and that apart from the claimant's vehicle he did not see any other vehicle come out of the by-pass road.

[17] Under cross-examination Jeff Lewis basically stuck to his story in his evidence in chief except for the fact that he stated among other things that he had been driving for more than four years, but cannot remember the year he started driving, and that the collision with the claimant's vehicle was in the centre of the road as one went in the direction of Kingstown; that he did not know how wide the road was at the scene of the accident; that it was the right front part of his vehicle that was damaged – from the centre of the front to the right headlamp; and that the centre of the black car between the front door and the back (rear) door got damaged.

[18] As to how the collision actually occurred Jeff Lewis said that he hit the claimant's car at an angle, as it was coming out of the by-pass and that just before the collision his vehicle was moving and that he was 3 feet away from the junction when he first saw the claimant's vehicle with its front in the road. He insisted there was no vehicle in front of his vehicle, neither did he see a van in front of his vehicle, nor did he see any other vehicle apart from the claimant's vehicle come out of the by-pass. He also stated that after the collision he did not see any other vehicle emerge from the by-pass. Then in contradiction to what he

had stated in his evidence in chief, Jeff Lewis stated that he was driving at 30 m.p.h. to 35 m.p.h. whilst proceeding down the Sion Hill main road and that he did not know the speed limit for that area. He completely dismissed Mr. Hazelwood's evidence to the court as lies.

[19] Another area of the second defendant's evidence which I find to be quite significant is where he states that his vehicle created tyre impressions on the road, but that he did not know how long those impressions were, or if they were 31 feet long, but that he was present when the police took measurements, but he cannot remember, nor did he take a note of the measurements. Then he flip-flopped in his oral evidence and stated that when he applied his brakes he left tyre impressions of about 8 feet, but that he did not know how he made tyre impressions of 8 feet in length when he was driving at between 30 m.p.h. to 35 m.p.h. He also completely denied that he was overtaking other vehicles in front of him when the collision occurred, as he knew it was not right to overtake in that area.

[20] This signified the case for the defendants. The court then heard submissions.

[21] This case I would say turns on credibility issues and whose negligence, on a balance of probabilities, was responsible for the accident wholly or in part.

ANALYSIS OF EVIDENCE

[22] Crucial to this case is the evidence of Abraham Hazelwood. He is the only independent witness in this case. The essence of his evidence is that he did not see any other vehicle emerge from the Frenches gap, other than the claimant's vehicle. He said when he was 30 feet from the said gap he noticed a black car waiting at the intersection to come on to the main road, to turn right to go up to Sion Hill. The claimant had stated in his evidence that a vehicle in front of his had emerged from the Frenches gap before he positioned his vehicle at the gap in preparation to emerge onto the main road. My view on this is that the vehicle in front of the claimant's vehicle emerged before Abraham Hazelwood got to within 30 feet from the said gap and in all probability he did not see that first vehicle emerge from the gap, before he saw the claimant's vehicle.

- [23] Other than that area of contention between the evidence of the claimant and that of his witness Abraham Hazelwood, which I have resolved in favour of the claimant, the evidence from these two witnesses is supportive of one another in every material particular. I find as a fact that Abraham Hazelwood did indeed stop and signal to vehicles behind him on the main road to stop, to allow the claimant's vehicle to emerge from the Frenches gap. I also find, having found the evidence of Abraham Hazelwood to be credible, and in support of the claimant's story, that the second defendant emerged from behind the line of vehicles that had stopped behind the vehicle of Hazelwood, overtook all of them and in the process collided with the claimant's vehicle that was emerging onto the main road.
- [24] It is clear from the evidence of the claimant, and also that from the second defendant that the collision occurred right in the middle of the road. It is also clear that the claimant's vehicle having emerged from the gap, was positioned right across the main road, and had only just about began to turn right to go up to Sion Hill when the collision occurred. This is borne out by the areas of damage on the claimant's vehicle, and that of the vehicle driven by the second defendant. The claimant's vehicle was struck right in its center from the right front door area to the right rear door area.
- [25] I do not believe the second defendant when he says the claimant suddenly emerged from the gap, causing him to swerve to the right of the road and thereby colliding with the claimant's vehicle. I find his evidence difficult to believe. He could not even tell this court what length of tyre impressions he created on the road, even though he was present when the police took measurements. He could not say if the tyre impressions were 31 feet long. Then in another vein he talks of leaving tyre impressions of 8 feet long, when he was driving at a speed of 30 m.p.h. to 35 m.p.h. Even with regard to the speed at which the second defendant was traveling he left the court in confusion.
- [26] In his witness statement he says he was driving at between 20 m.p.h. to 25 m.p.h. Then under cross-examination he states that he was traveling at a speed of between 30 m.p.h. to 35 m.p.h. He does not even know the speed limit for that area.

[27] All told, and having regard to the findings made earlier in this judgment, and on a balance of probabilities, I believe the claimant's version of events. The defendant's version leaves me with a lot of doubts as to his credibility.

ORDER

[28] Having thus found I hold the second defendant to be wholly liable for the accident that occurred on the Richmond Hill main road on the 10th of February 2001 at about 10:30 a.m. due to his negligent driving. This means that the first defendant is also liable vicariously, the second defendant being his servant or agent at the time of the accident.

[29] I therefore order that the defendants do pay the claimant the sum of \$20,373.92 being damages claimed with interest at the rate of 6% per annum from the date of judgment until date of payment. The defendants will also pay the claimant's costs in the sum of \$7,000.

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Frederick Bruce-Lyle
HIGH COURT JUDGE