

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 215 OF 1998

BETWEEN:

**RANDY OLIVER (by his mother
and next friend Patricia Oliver**

Claimant

and

**GODWIN KEIR
LENNOX PARSONS**

Defendants

Appearances:

Mr. Victor Cuffy for Claimant

Mr. Richard Williams for Defendants

2002, March 26
2002, November 1

JUDGMENT

[1] **Bruce-Lyle, J:** By a Writ of Summons dated the 22nd April 1998 and filed on the 11th May 1998, the Claimant by his Statement of Claim claimed as special damages \$136.00, being the total for cost of medical report, transportation expenses – Barrouallie to Kingstown (return) – (hospital treatment), hospital fees (x-ray and one day's admission), medication; general damages and costs arising out of injury to the Claimant Randy Oliver occasioned by the negligent driving of the defendant Godwin Keir, who was the driver of the vehicle, registration number H 2264, which was owned by the second-named Defendant, Lennox Parsons.

[2] The actual particulars of the claim are that the Claimant was at the material time 3 years of age and had initiated action by his mother and next friend Patricia Oliver of Barrouallie. That the first-named Defendant at the material time, on 30th January 1997, was the driver of motor vehicle registration number H 2264, with the second-named Defendant Lennox

- Parsons being the owner. That on the 30th January 1997 at Keartons the first-named Defendant drove the said motor vehicle H 2264 so negligently as to cause it to collide with the young Claimant, causing him physical injury and pain, and putting him by way of his parents into loss and expense.
- [3] The Claimant sustained a swollen and painful deformed left leg and was admitted to the Kingstown General Hospital with a displaced comminuted fracture of the mid shaft of the left tibia.
- [4] The Claimant also alleged the Defendant's negligence to be:
- (1) driving on a public road without due care and attention
 - (2) failing to steer his vehicle so as to avoid colliding with the Claimant
 - (3) failing to keep any proper lookout, or any at all, and not taking heed of the Claimant standing off the road;
 - (4) running off the road and into the Claimant.
- [5] The Claimant also averred that the first-named Defendant was criminally prosecuted by the Police in the Barrouallie Magistrates Court on the subject of the said collision on the Claimant and was found guilty.
- [6] The Defendants entered an appearance in the matter and the matter proceeded in accordance with the Rules of the Supreme Court 1970 and CPR 2000 and finally came up for trial on the 26th March 2002.
- [7] At the trial learned counsel for the Claimant applied to the Court to amend the Statement of Claim to read "Keartons" instead of "Barrouallie". There were no objections from Mr. Richard Williams, learned counsel for the Defendants, and the application was allowed by the Court. The Claimant, Randy Oliver, now eight years old gave evidence. The Court ascertained from and satisfied itself that this witness despite his tender age understood the nature of taking an oath and telling the truth. He was allowed to testify on oath.

- [8] Basically, his evidence was to the effect that he lived at Kearton's Village, and attends the Barrouallie Anglican School. He remembered having an accident with a van, which resulted in him suffering a broken leg, his left leg. He was taken to the hospital but cannot remember what was done to his leg at the hospital. He testified that he suffered a lot of pain when his leg broke, but does not feel any pain now in that same leg. When cross-examined the Claimant stated that he does not remember how the accident happened, then stated that the accident happened at Connell's shop at Keartons. He stated that he does not remember who was looking after him that day, but that he went to the shop with Meldine. He described Meldine as a big person but was not related to him.
- [9] The Claimant went on further to say that he had two sisters and no brothers. One sister was older than him and the other sister was younger than him. He stated that his older sister was not at Connell's shop with him that day. He denied that he was running across the road when his foot got broken. He stated that the van did not hit Meldine; he said Meldine was coming out of the shop when he was hit by the van. He said the van hit him next to the shop gate and further stated that it was the side of the van that hit him, that is the side of the van where the door is. There was no re-examination of this witness.
- [10] Next to testify on behalf of the Claimant was his mother Patricia Oliver, a resident of Keartons Village. She stated that she recalled her son, the Claimant, being involved in an accident on 30th January 1997, as a result of which he was hospitalized at the Kingstown General Hospital, and had a cast placed on his left leg. She stated that her son remained in the hospital from that day Thursday 30th January 1997 until the Saturday following. A medical report was issued from the doctor, which was admitted into evidence as Exhibit P.O. 1. She stated that she paid \$50 for that report to the doctor. She also testified that she had to visit her son at the hospital which incurred her transportation expenses of \$25. X-rays done to the Claimant's leg also cost her \$26 she stated, and she also told the Court that she had to spend \$35 on medication. She stated that Randy was in pain and crying when his leg got broken, and that he was 3 years old at the time of the accident. She stated that he attends school at present and that as far as she is concerned Randy's leg is a little bent.

- [11] Under cross-examination this witness identified the medical report and admitted that the doctor said Randy was expected to recover fully. She told the Court that Meldine Nicholas was with Randy on the day of the accident. She stated that she knew Connell's shop. She described the road in that vicinity as about 25 feet from the shop. She did not know if the Police visited the scene. There was also no re-examination of this witness.
- [12] The Claimant's learned counsel sought to call Vereena Thomas as a witness. This was disallowed by the Court after objections from Learned Counsel for the Defendants on the grounds that this witness had been sitting in the public gallery, inside the court room, during the testimony of the Claimant and his witness. This signified the close of the Claimant's case.
- [13] The defence opened their case and called the first-named Defendant Godwin Keir and one other witness to testify. Godwin Keir testified as follows; that he was a resident of New Prospect and a minibus operator. He stated that he remembered an incident between himself and Randy Oliver on 30th January 1997. He said on the day mentioned he was driving H 2264 owned by Lennox Parsons, the second-named Defendant. He was working for Lennox Parsons that day. He further stated that he saw Randy at Connell's shop. He estimated the shop door to the road to be about 12 feet. He further testified that when he first saw Randy he was standing next to the door of the shop with someone, whom he did not know but whom he assumed was looking after Randy.
- [14] This witness said he traveled down the road to the phone booth where the vans usually made a turn to head back to Kingstown. He made the turn and moved off going back to town. He described this turning as about 20 feet from Connell's shop. He stated that before he executed this turn he saw Randy's caretaker holding a small child in her arms, with Randy by her side holding onto her dress. He then stated that as he was proceeding past the shop he heard a sound like something had struck on the side of the van. He immediately stopped the van, he said, and came out of the van. He stated that he heard

the sound from the front left door of the van. He stated that when he came out of the van he saw Randy lying in the drain, with the caretaker still standing by the door of the shop.

[15] He further stated that it was at this time that the caretaker came to speak to him. He described the drain as being 8 feet from the shop door. He admitted he was charged by the Police and taken to the Barrouallie Magistrates Court where he initially pleaded not guilty. He subsequently changed his plea to guilty and explained to the Magistrate that the child had run into the van.

[16] Under cross-examination he identified Vereena Nicholas who was sitting in the Courtroom as having given evidence in the matter at the Magistrates Court. It was on the second adjourned date of the case he pleaded guilty to the offence. He admitted that after the accident Vereena Nicholas came to him and after picking Randy from the drain said to him, "Look what you have done to my grandson." This witness said he drove Vereena and Randy to the clinic in Barrouallie. He insisted the shop door was 8 feet from the drain and that vehicles turned in that area to go back to Kingstown, he described it as a wide gap. He did not agree that he was not paying attention to pedestrians on the sidewalk and struck the Claimant in the process. He denied the Claimant was crying from pain while in the drain and also did not agree that the child would have been killed if he ran across the road. This witness also described his van as a right hand drive vehicle, with the conductor seated to the left sliding door of the van. He denied the phone booth was near the drain where Randy was found lying after the collision. He also denied driving close to the shop door thereby striking the Claimant.

[17] Under re-examination, this witness testified that at the time of the collision he did not see Vereena Nicholas, but saw her after, ten minutes after the accident. He then stated that Vereena was in Court on the second occasion the matter came up for hearing at the Barrouallie Magistrates Court, where she took the oath to begin her evidence. He stated that before she commenced her evidence, he changed his plea to guilty.

- [18] Witness for the defendants Clairmont Stephens also testified. He described himself as a labourer presently. He stated that on the 30th January 1997 he was working on a van with Godwin Keir, the first named Defendant. He stated the owner of the van as Lennox Parsons. He further stated that on the day mentioned the van was involved in an accident with a little boy at Kcartons. This was when the van was on its way to Kingstown. He stated that he was seated on the left side of the van, which was right hand driven. He further stated that he was looking straight ahead for passengers when he heard something knock or hit on the left side of the van in the front area.
- [19] When the driver stopped the van, he said, he looked out and saw a little boy on the ground. The boy was assisted by others including himself and taken to the clinic. He stated categorically that before the collision he did not see the little boy, and that the first time he saw the little boy was when he was lying on the ground. After the collision he said, he saw a lady with two small children. After a conversation between himself and the lady the little boy was taken to the Clinic. He insisted that it was the left side of the van the boy got into contact with and further described the road as a straight road and that there was a gap from the main road leading to Connell's shop.
- [20] Under cross-examination this witness maintained his story and also added that he saw Vereena Nicholas on the scene afterwards, who identified the little boy as her grandson. He also stated that the little boy was crying and insisted that the boy was not in any drain. On being re-examined this witness stated that he knew what a drain was, and that there was a drain about a foot deep to the side of the road. This signified the close of the case for the defendants.
- [21] Having reviewed the evidence adduced by both parties to this suit, I find as a fact that on the 30th January 1997 the first named Defendant Godwin Keir was the driver of H 2264, which was owned by the second named Defendant Lennox Parsons. I also find as a fact that the said van, which was right hand driven, was involved in a collision with the Claimant Randy Oliver at Kcartons Village, and that the Claimant was then a little boy of three years of age. I also find as a fact that at the time of the collision the said van was proceeding up

the road from Keartons phone booth in the direction of Kingstown and passing by Connell's shop, which is on the side of the main road. I also find that there is a gap from the main road to Connell's shop from where the Claimant and his caretaker had visited and were exiting from when the accident happened.

[22] What this Court has to determine, on a balance of probabilities, and having regard to all the circumstances of the case, is whether the accident was caused by the negligent driving of the first named Defendant Godwin Keir, which would render the second named Defendant vicariously liable, as it is admitted and not in dispute that Godwin Keir was working for the owner of the van Lennox Parsons on the day in question, which had taken him to Barrouallie to drop and then to pick up passengers; or whether the Claimant was wholly responsible for the accident having allegedly left the side of his caretaker who was still in the shop and ran out of the gap onto the road thereby hitting the van on its side.

[23] I would say from the outset that if the van had hit the Claimant from the front directly, the Claimant would not be alive today or would have suffered more serious injuries than occurred. I am inclined to believe and do hold that the collision with the Claimant was to the front side (left) of the van.

[24] Looking at the evidence as adduced by the defence, it is clear that on the day in question, the Defendant (first named) was working the van on behalf of the second named Defendant Lennox Parsons. This is evident in the first Defendant's evidence and also that of his witness, that they were touting for passengers having dropped passengers at Keartons, and then proceeding to turn around at the Keartons telephone booth to proceed to Kingstown. As the witness for the Defendants said in his evidence, "I was looking straight ahead for passengers and I heard like something knock on the left door of the front of the van."

[25] The Defendant Godwin Keir himself said in his evidence , "On that day I was driving H 2264 owned by Mr. Lennox Parsons. I was working for him that day." This clearly renders

the second named Defendant vicariously liable to pay damages if the first Defendant is found liable.

[26] Having thus said, is the first Defendant liable for this accident by way of negligent driving? This Defendant Godwin Keir himself has admitted to pleading guilty in the Magistrates Court in relation to this case. Learned Counsel for the Defendant in his address to the Court submitted that there is no evidence adduced by the Claimant as to the nature of the offence the Defendant pleaded guilty to at the Barrouallie Magistrates Court and whether it had any relation to this suit. It is clear from the evidence of the Defendant that this case in the Magistrates Court had a definite bearing on this case, when he admitted under cross-examination that it was when Vereena Nicholas, the grandmother of the Claimant was about to give evidence in the Magistrates Court, that he changed his plea to guilty. Vereena Nicholas from the evidence adduced by the Defendant Godwin Keir, came to the scene of the accident soon after it had occurred and made herself known as the grandmother of the Claimant to the Defendant and spoke to the Defendant concerning the accident. I am satisfied and do hold that the proceedings in the Magistrates Court, at which the Defendant pleaded guilty, had a direct bearing on this suit by way of the offence to which the Defendant had been charged and his plea of guilty.

[27] Looking at the evidence adduced by the Claimant, he states, "It is not true to say I was running across the road when I got my foot broke. The van did not hit Meldine too. She was coming out of the shop when the van hit me. The van hit me next to the shop gate. The side of the van hit me....." I have already held that it was the side of the van that collided with the Claimant. The Claimant has categorically stated that he was standing by the shop gate when the van hit him.

[28] From the evidence of the Defendant and his witness both of them were looking straight ahead of them on a straight road. Nowhere in their evidence did they state that they looked straight ahead on the road and also to the sides of the road when proceeding towards and past Connell's shop on their way up to Kingstown. There is no doubt in my mind that that area of Keartons where the bus turned at the phone booth is a relatively

busy area in Keartons Village. There is evidence that there were at least two shops in that vicinity, one operated by the Claimant's grandmother. Would it not have been prudent for the Defendant to have paid attention also to the sides of the road whilst proceeding, to avoid hitting pedestrians? There is no evidence that the Defendant Godwin Keir did this. As far as he was concerned, the road was straight and therefore he looked straight ahead of him and nothing else. I am even more convinced that if the Claimant had ran into the side of the van his injuries would have been even more serious than just a broken left leg.

[29] Coupled with this, there are contradictions in the versions given by the Defendant Godwin Keir and his witness Clairmont Stephens. Keir stated that the Claimant ended up in a drain by the side of the road, and Stephens stated that the Claimant was lying on the ground by the side of the road and not in the drain. All this coupled with the fact that the Defendant pleaded guilty in relation to this case in the Magistrates Court; and looking at all the circumstances of the case on a balance of probabilities, I am inclined to hold that on the day in question, Godwin Keir did not observe the requisite standard and duty of care in relation to other road users and thereby collided with the Claimant causing him to suffer a broken leg.

[30] There is no doubt in my mind that the Claimant suffered pain from this injury. For the Defendant to tell the Court that the Claimant was just lying in the drain and not crying, in clear contradiction with the evidence of his witness who stated that the Claimant was crying whilst lying on the ground is just an attempt to mislead the Court. I cannot comprehend a three-year old child involved in an accident of this nature, and suffering a broken leg not crying out in pain. I cannot believe the Defendant's story on this score.

[31] In evidence is a medical report – Exhibit P.O. 1 tendered in evidence by the Claimant's mother Patricia Oliver. It describes the injury as a "swollen painful deformed left leg. X-rays of the leg showed a slightly displaced comminuted fracture of the mid-shaft of the left tibia." On management of the injury the doctor Charles D. Woods stated in his report, "Randy Oliver is expected to recover fully from his injury." The Claimant is seeking damages for pain and suffering; for the injuries sustained and for special damages.

[32] Learned Counsel for the Defence in no way challenged the claim for special damages. Even though no receipts were tendered in support of the various claims under this head, I am inclined to accept this claim in view of what is stated in the doctor's report, which would not have been issued free of charge. I therefore allow the claim for special damages in the total amount of \$136.00 dollars.

[33] Turning to the issue of pain and suffering, there is also no doubt in my mind that the Claimant suffered a certain degree of pain. The doctor's report stated that the Claimant presented with "a swollen, painful deformed left leg." One cannot imagine an injury of this nature being suffered by a three-year old. The doctor goes on to say that the management of the injury included the patient's leg being splinted and admittance to the Paediatric Ward, with a complete cast being placed on the leg, with the patient being discharged on the 1st February 1997. The Claimant himself testified that he feels no pain in the leg now, which is indicative of a full recovery as expected by the doctor. Taking all these factors into consideration, and the absence of any evidence as to how long the Claimant experienced pain, and for how long the cast remained on his leg, I would award the sum of \$2,500 for pain and suffering. Looking at the nature of the injury itself, I would say it was not a serious, life-threatening injury. The doctor Charles Woods stated in his report that x-rays of the leg showed a 'slightly displaced comminuted fracture of the mid-shaft of the left tibia' and that the Claimant "was expected to make a full recovery". From the evidence the Claimant has fully recovered. There is no evidence to the contrary. I would award a sum of \$2,000 for the injury sustained.

CONCLUSION

[34] I therefore hold that the Defendants are to pay to the Claimant the sum of \$136 as special damages, the sum of \$4,500 as general damages plus costs in the sum of \$2,000.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE

