

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 507 OF 1998

BETWEEN:

**ST. VINCENT AND THE GRENADINES
MARKETING CORPORATION**

Claimant

and

MURRAY MATTHEWS

JUNIOR MATTHEWS

Defendants

Appearances:

Mr. Ronald Birch-Smith and Mr. Grahame Bollers for the Claimant

Mr. Richard Williams for the Defendant

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4th March 2002
29th May 2002
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[1] **BRUCE-LYLE, J.** This was running down action in which the Defendant has counterclaimed against the Claimant. Both Counsel and the Court agreed at the outset, that the issue of quantum of damages if any, should be brought up at a later stage for assessment in Chambers. It was agreed that the only issue for trial was that of liability.

[2] Having heard evidence from three witnesses for the Claimant and one from the Defendant, I found the following facts:

The Claimant is a Statutory Corporation incorporated pursuant to the Saint Vincent and the Grenadines Marketing Corporation Act, Chapter 74 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 and was at all material times the owner of Motor Vehicle T9935.

- [3] The First named Defendant Murray Mathews of Greggs, St. Vincent and the Grenadines was at all material times the owner of Motor Vehicle H2119. The Second named Defendant Junior Matthews also of Greggs, St. Vincent and the Grenadines was at all material times employed by the First named Defendant as driver of mini van H2119.
- [4] On Sunday 26th July 1998, the Claimants motor vehicle was being driven by Alston James from Mesopotamia along the Maroon Hill Road towards Greggs. Alston James encountered H2119 coming towards him from the opposite direction. There was a collision of both vehicles resulting in damage to both vehicles.
- [5] I also found as a fact that the road in the area where the accident happened up Maroon Hill, had about three sharp corners like an “S” Shape, and in the exact vicinity of the accident the road was narrow, but generally two vehicles could have passed with extreme caution. There was a slight bend in that area with overhanging grass on the right side of the road going up. The grass was about 10 ft. in height. There was a broken bank on the left hand side of the road. This bank overlooked a banana field.
- [6] A retaining wall was built in that area after the accident to repair that broken bank. To my mind this broken bank would be key to resolving the issues surrounding this accident or collision.
- [7] The Plaintiffs case simply put was that as he was driving or proceeding from Mesopotamia along the Maroon Hill Road towards Greggs he saw H2119 coming towards him from the opposite direction travelling at between 40 mph to 50 mph on the wrong side of the road. This witness Alston James for the Claimant said he brought his vehicle T9935 to a halt, but

the van H2119 driven by Junior Matthews the Second named Defendant, collided with his pick-up T9935, as a result of Junior Matthews failing and neglecting to control the van H2119. He insisted that the collision was caused by the negligent driving of Junior Matthews, the Second-named Defendant who was also the servant and/or agent of the First named Defendant.

[8] According to the Claimant he was driving at about 10 mph to 15 mph before he came to a halt. He was about 20 ft. away from the said corner when he saw the Defendants minivan approaching. He said further that on seeing this he pulled to the extreme left of the road, because the bus was coming towards his vehicle, and in the centre of the road. This witness said that he had time to pull to the extreme left of the road, halt his vehicle and say something to Mr. Prince, a passenger in his vehicle before the minivan collided with his vehicle.

[9] Mr. Alston James, further told the Court that he was driving a left hand drive pick-up, with Mr. Prince in the front right passenger seat of the vehicle. He described where the accident happened as having several corners forming an "S" shape. He said, "it is a very sharp corner", which he used regularly every day. He also stated that from both directions one could see around the corner. He said as the van approached he could see the driver, who had earphones in his ear.

[10] Mr. James further said that as the van approached, he pulled to the extreme left and slowed down to a halt. The van then came on and hit into the right hand side of his vehicle, from the front right door to the rear right door. He further stated that after the accident he realized that his left front wheel was off the road and hanging over the bank. His right front wheel was on the road, and so was his left rear wheel. But the right rear wheel was off the pitch. He stated firmly that in his view the mini van caused the collision, by being in the centre of the road and thereby hitting his vehicle, and that there was nothing more he could have done to prevent the accident. He identified the driver of the minivan in Court as the Second named Defendant Junior Matthews.

- [11] Under Cross Examination this witness Alston James told the Court that he was purchasing Dasheens from Farmers in that area on the day in question. He had just delivered a load of Dasheens to Kingstown and was on his way to Greggs, Chapmans, and Lauders to supervise another group of workers. He stated that even though he saw the driver of the mini van with earphones in his ears, he did not hear any music coming from the van. This is in direct contrast with what he had stated in his witness statement which forms part of the record at this trial, and in which he had deposed to hearing loud music coming from the mini van. He however insisted that what was in the statement was the truth. Be that as it may, whether he heard loud music coming from the van or not, and whether he stopped his vehicle or his vehicle came to a stop does not detract from his evidence as was sought by the Learned Counsel for the Defendants. He did however state that the Defendants mini van stopped about 15 feet away from the point of impact after the collision. He stated further that Police came at the scene to take measurements.
- [12] By and large this witness maintained his story in its very material aspects. Of particular importance was this piece of testimony "The road broke away a good while before the accident. It narrowed the road. Two vehicles could still have passed there. Since the road broke away, it was not necessary for vehicles going to Chapmans to stop to allow opposite vehicles to pass. I never saw that happen. It's a fact that my vehicle almost went over the bank. A truck and a car could pass freely. The bank was broken away, but the pitch itself was not broken away".
- [13] The next witness for the Claimant Mr. Kerwyn Prince, who was also an employee of the Claimant at the time of the accident, stated that they were on their way home from work when they were involved in the accident. That was the only difference between his testimony and that of Alston James. Other than that his testimony was on all fours with that of Alston James. Under cross examination he was also confronted with his witness statement which forms part of the record in this trial in which he had stated that there was loud music coming from the van at the time of the collision. He said he could not recall telling his Counsel so. Be that as it may, I again find that piece of evidence to be neither here nor there in determining liability.

- [14] Of significance again is this witness testimony that “Two vehicles could pass where the accident happened. Two trucks could pass the area where the accident occurred. I know the road well. I have never seen vehicles going towards Chapmans stop to allow vehicles going to town to pass. Two vehicles could pass on that side of the road. It was not for Mr. James to stop for the Minivan to pass. The Minivan was speeding”.
- [15] This signified the close of the Claimants case. The Defendants case simply put through the Second named Defendant Junior Matthews, was that on the afternoon of 26th July, 1998 he was proceeding from home towards Kingstown. He gave his home as Greggs, St. Vincent. He was proceeding to town to pick up the Police Band and to transport them to a function. He was driving an 18-seater minibus. On reaching the corner at Maroon Hill he saw the Claimants pick-up coming towards him, so he applied his brakes and pulled more to the left of the road. He further stated that despite those manoeuvres the pick-up still hit into the side of his van.
- [16] This witness further stated that at the time he was driving at between 20 mph to 25 mph. He also stated that because the road to Mr. James’ left had broken away, it caused Mr. James vehicle to be more to his Defendants side of the road. He described the bank that had broken away as a “steep bank”, and that two vehicles could not pass side by side in that area because of the breakaway of the bank. He also denied wearing any earphones whilst driving that day. He also categorically denied that he was speeding that day.
- [17] Mr. Matthews further stated that at no time did Mr. Alston James stop his vehicle before the collision, and that his van’s rear end was close to Mr. James vehicles rear end after the collision – about 10 ft. from the point of impact. His, Defendants vehicle was 7 ft. from the point of impact. He denied being responsible for the accident, and that he could not have gone any more to the left of the road than he did.
- [18] Under cross-examination this Defendant stuck to his story, in examination in chief and added that the accident happened so fast that he had no time to stop. He insisted it was Mr. James’ pick up truck that crashed into his van.

- [19] There was testimony from Police Constable No. 24 Andrew Johnson, who even though called on to testify by the Claimant, gave evidence of an independent nature. He stated that in July of 1998 he was stationed at the Mesopotamia Police Station, and was on duty on Sunday 26th July 1998 when he was summoned to investigate a report of a traffic accident at about 2:30 p.m. He proceeded to the scene of the accident at Maroon Hill public road. At the scene, this witness stated that he saw Motor Vehicle H2119 driven by Junior Matthews of Greggs and Motor Vehicle T9935 driven by Alston James of Chapmans.
- [20] This witness testified to the effect that the width of the road at the point of impact was a mere 12 ft. The width of T9935 belonging to the Plaintiff was 5 ft. 4ins, and that of H2119 driven by Junior Matthews was 5 ft. 7 ins. This left a clearance of 1 ft. 11 ins. This to my mind was very little space for two vehicles to manoeuvre properly having regard to the nature of the road and movement of the two vehicles. In short, there was bound to be some touching of the vehicles if neither of them proceeded with caution. Apart from this the other thing of importance as narrated by this witness was the fact that neither of the vehicles stopped at the points of impact as pointed out by both drivers, and that he did not measure the distance between both points of impact, and the points of impact to the respective vehicles.
- [21] This witness then concluded his testimony under cross-examination by saying "I did not charge anybody for any offence that day. I passed on the file for further directions. I did not recommend any prosecution. I believed that it was carelessness on the part of both drivers that caused the accident. Depending on the size of the vehicle I would say a 12 ft. wide road is narrow".
- [22] I find that testimony from the Police Constable Andrew Johnson to be very compelling against both parties to this Suit. At the early stage of this judgement I alluded to the fact that the broken bank on the Plaintiffs side of the road would be very significant in determining liability. I agree with Constable Andrew Johnson when he says that

carelessness on the part of both drivers was the cause of the accident. Infact the Plaintiffs driver Mr. James was lucky not to have gone over the bank that day. I do not agree with Alston James nor Kerwyn Prince when they said that two vehicles could pass on that portion of the road and that they had never seen vehicles going towards Chapmans stop to allow vehicles going to town to pass. That must have been before the bank on Mr. James' side of the road broke away. After the bank broke away it would definitely have been precarious to have two vehicles that size passing side by side in that area of the accident.

[23] I therefore hold, having considered all aspects of this case, and on behalf of probabilities that the Plaintiffs claim be dismissed as against the Defendants. The Defendants counterclaim against the Plaintiff is also dismissed and each party is to bear their own costs.

Frederick V. Bruce-Lyle
High Court Judge