

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 139 OF 2000

BETWEEN:

PAULA CHARLES

Claimant

and

ST CLAIR LEWIS

Defendant

Appearances:

Samuel Commissiong for the Claimant
Zhing Horne for the Defendant

2001: September 25,
2002: January 14

JUDGMENT

[1] **MITCHELL, J:** This was a running down action. The only issue before the court was liability, the question of quantum, if any, being left to be determined at a later stage. In a nut shell, the dispute was between two drivers in a one-way, multi lane highway when one of them who was speeding in his lane collided with the other who switched into his lane without seeing him.

[2] The action commenced on 23 March 2000 by the issue of a specially endorsed writ, the statement of claim of which was later amended. The Claimant claimed that on 30 January 2000 at about 12.30 am, her brother Godfrey Charles was driving her Toyota Starlet PB923 in the right or northern lane of Bay Street in Kingstown in a westerly direction; that on reaching the Harbour View Restaurant on Bay Street he indicated his intention to turn south into the parking lot just west

of the Financial Complex; that having satisfied himself that it was safe to do so, he switched from the northern to the southern lane on Bay Street, and, whilst PB923 was facing south in the southern lane, H3045 driven by the Defendant slammed into his left side and damaged it; that the damage was caused by the negligence of the Defendant, in particular, by his driving H3045 recklessly on a public road in the centre of Kingstown, driving it at a speed of 60-80 mph, driving it in a manner so as to make it uncontrollable, and driving it without regard to the presence of other motor vehicles on the road.

[3] The defence and counterclaim as filed on 10 October 2000 claimed that the collision was caused wholly by the negligence of the Claimant; in particular, by his switching from the right lane to the left lane when it was wholly unsafe to do so; by veering across the road without regard for oncoming traffic; by driving too fast; by failing to keep any or any proper look out and or to observe or heed the presence or approach of the Defendant; and by failing to apply his brakes or to steer or control his vehicle so as to avoid the collision. The Defendant counterclaimed for the damage caused to his vehicle.

[4] By a reply and defence to counterclaim filed on 2 November 2000 the Claimant denied that her brother, Godfrey Charles, had been driving negligently; she claimed that Godfrey Charles had been driving PB913 in a westerly direction along Bay Street when H3045 driven by the Defendant had negligently attempted to turn southerly into the south lane to enter the nearby parking lot; and that the accident was wholly caused by the negligence of the Defendant. This defence to counterclaim has been hastily drafted, and bore no resemblance to the original claim, or to the evidence given by the Claimant. It also pleads new and different particulars of the alleged negligence of the Defendant. In particular, it pleads that the Defendant was driving H3045 so recklessly behind PB913 that he could not bring it to a standstill without causing a motor vehicle accident; that he was driving it so fast that he rendered himself incapable of bringing it to a standstill without causing a motor vehicle accident; that he rendered motor vehicle H3045

uncontrollable thereby causing it to collide with PB913. The request for hearing was filed on 8 January 2001, and case management directions for exchange of documents were given by the Master on 26 January.

[5] Evidence was heard on 25 September 2001. Testifying were Godfrey Charles and Lawrence Russell for the Claimant. The Defendant did not appear, all attempts by his solicitor to contact him to notify him of the trial date having apparently failed. There was some suggestion that he had emigrated.

[6] The facts as I find them are as follows. The Bay Street in the city of Kingstown where the accident occurred is a very wide road. It runs alongside the city block that houses the Central Police Station. It was and is the principle thoroughfare through the city. It is well-known to every driver in St Vincent. It is one of the busiest roads in Kingstown. If one is leaving from the headquarters of the Government of St Vincent and the Grenadines, ie, from the Financial Complex, then, regardless of whether one wishes to drive to the Leeward side of the island or to the Windward side of the island, one is obliged to use the Bay Street at this juncture. At the present time, this part of the Bay Street is divided into 3 lanes at the beginning of the block, and the middle lane splitting into 2 lanes produces a total of 4 lanes immediately in front of the Police Station. At the time of the accident on 30 January 2000, there may have been only 2 lanes on the Bay Street, the witness was not sure, and, in any event, I find that the number of lanes at the time is not material. The Bay Street at this point is and was a one-way street and all lanes go in a westerly direction. There is no oncoming traffic. In so far as the evidence of the witnesses needs to be supplemented, the court takes notice of the notorious fact, well known to all drivers in the city of Kingstown, that one of the purposes of the lanes in question is to direct traffic, as it approaches the Police Station, to safely go in a number of possible directions. The right-hand lane took one then and still takes one now into Hillsborough Street and around the block that the Police Station is situated on. At present, since recent road works, there are two lanes that take a vehicle out of the Bay Street and along

Hillsborough Street and around the block. The one to the extreme right on Hillsborough street permits a further turn to the right on Halifax Street. This is the main road out of Kingstown to the Windward Side of the island. The left-hand lane on Hillsborough Street permits a turn to the left along Grenville Street in front of the Court House. This is the main road out of Kingstown to the Leeward Side of the Island. The left-hand lane on the Bay Street, before the turning into Hillsborough Street, presently permits traffic to continue past the Police Station and so on down the Lower Bay Street. That has been the position since the Public Market was opened in early 2001. For some years prior to that, during the construction phase of the Public Market, and that would have been the position at the time of the collision in question in January 2000, the left-hand lane on the Bay Street in front of the Public Market was blocked off for construction and did not then as it does now continue along the bay front of the city. At the time of the accident, both the left-hand and the right-hand lanes on the Bay Street took one around the Police Station. It was important to select one's lane well before the Police Station, depending on whether one was intending to go the Leeward or to the Windward side of the island. One of the decisions that a driver has to take early, if he intends to turn into the car park, is to take the southern lane not the northern lane. If a driver is in the northern lane on Bay Street as he approaches the Police Station, and decides at the last moment to turn into the car park, he must of necessity turn left almost at right angles across the Bay Street. This is what the Claimant's brother did in the early hours of the morning of the accident in question. He was driving in the lane that was selected by drivers intending to go around the Police Station to the right and so on in the general direction of the Leeward side of the island. He decided to turn left into the car park that is generally safely accessible only if one is driving in the left hand lane on the Bay Street in front of the Police Station.

- [7] A driver doing as the Claimant's brother did on the night in question and switching from the northern lane to the southern lane on the Bay Street does not have to be concerned at oncoming traffic, as there is none. The principal concern must be for

other road users coming up from behind. The turn to the left out of the right-hand lane must involve obstructing the free passage of traffic coming up from behind along the left-hand lane. In these circumstances, the principal duty rests on the driver proposing to switch lanes to ensure that it is safe to do so. The fact that the manoeuvre was proposed to have been done at night should have made it all the safer, given that there would have been headlights of any vehicle using any of the lanes behind visible in the rear-view mirror. In this case, there is no suggestion that the Defendant was driving at half past midnight without his headlights on. The Claimant's brother's explanation for not seeing the Defendant approaching his vehicle in the other lane and from behind is that the Defendant was speeding. The evidence he gave certainly suggests that the Defendant was driving his passenger van far in excess of the speed limit in the city. The Claimant's brother says that he indicated his intention to turn to the left across the Defendant's lane and in to the car park on the far left, and there is no one who testified to the contrary. But, does this protect him? Is a driver in the right-hand of two lanes permitted to indicate a left turn and then to drive out of his right-hand lane into the left-hand lane in front of traffic coming up in the left-hand lane? Is the driver in the left-hand lane at fault if he fails, due to his speed or to the weight of his vehicle or for any other reason, to give way when a right-hand lane driver indicates his intention to turn into the left-hand lane and who then swerves into the left-hand lane resulting in an accident? Is the fact that the left-hand lane driver was driving in excess of the speed limit a defence that can be raised by the right-hand lane driver who drove into the left-hand lane having failed to see the traffic in the right-hand lane? Other subsidiary questions that spring uninvited to mind include, does the fact that the Claimant brought the claim first give her an advantage over the Defendant? Should the fact that the Defendant has not turned up to testify on his own behalf be held against him?

- [8] In this case, there was only the evidence of the Claimant's brother and his witness. Where the evidence of the two conflict, I prefer the evidence of the witness. The Claimant's brother had been a licensed driver for only 4 months before the

accident, while the witness was a more experienced taxi-driver. The Defendant was driving his passenger van along a well-lit thoroughfare, with no vehicle in the lane in front of him, and at a time of the night when little or no traffic was to be expected in that street. The fact that he was speeding did not cause or contribute in any significant way to the accident. I find that the accident occurred almost immediately after the Claimant's brother swerved into the lane in front of the Defendant, as a result of his having failed to see the Defendant's van in his rear view mirrors. The duty of a driver using a highway that is divided into two lanes by a white line is to ensure that he does not switch lanes unless he has examined the road in front of him, to his sides, and behind him, to ensure that it is safe to do so. The primary duty of care is on the driver switching lanes, not on the driver who is sticking to his lane. The driver who is travelling along the highway in a lane with no traffic in front of him is entitled to expect that no other driver will come suddenly from a minor road or from another lane into his lane in front of him. That is the basic meaning of 'right of way.' The driver of a vehicle should usually drive at a speed that will permit him to stop well within the distance he can see is clear. The fact that the driver who is driving in his own lane is exceeding the speed limit is not conclusive of negligence on his part if he should collide with another vehicle. The question is always one of fact. He may be prosecuted for exceeding the speed limit if there is the evidence and if that is the wish of the prosecution department. But, the fact of his driving in excess of the speed limit in his own lane in the highway cannot be used to minimize the duty of the user of another lane in the highway to ensure that he does not carelessly cross into and obstruct the former's right of way. That is not to condone the breaking of the speed limit by the Defendant, nor to suggest that a sensible driver will not ensure that he drives so that no matter how careless the drivers about him, he will always leave room to manoeuvre to protect himself and other users of the highway.

- [9] It must be quite unusual for a Claimant in a running down case, where the Defendant does not turn up to testify on his own behalf, to fail to succeed. Usually, the facts are all in dispute, and the duty of the court is to assess the

evidence of the various witnesses and to come to a finding on the facts one way or the other. If the Claimant alone produces the all the facts, then the case should be all one way. In this case, however, for the reasons given, it seems clear to the court that the sole cause of the accident was the failure of the Claimant's brother to properly use his rear-view and side-wing mirrors and to observe the approaching headlights of the Defendant's vehicle before he swerved to the left across the lane that the Defendant was occupying. The series of collisions that occurred thereafter was as a result of this failure on the part of the Claimant's brother.

- [10] In the circumstances, the claim of the Claimant is dismissed. I have considered whether there ought not, given the above finding of facts, to be judgment for the Defendant on his counterclaim for damages to be assessed and for his costs. The proper answer is that, the burden of proof on his counterclaim being on the Defendant, and the Defendant having failed to present any evidence in proof of his claim, and his claim as a result not having been properly tested, he ought not to succeed. The counterclaim will therefore be dismissed as well. Each party will bear his or her own costs.

I D MITCHELL, QC
High Court Judge