

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 212 OF 1999

BETWEEN:

THOMAS RAMAGE

Plaintiff

and

ROSEMAN ADAMS

First Defendant

LYNDEN NEVERSON

Second Defendant

Appearances:

Richard Williams for the Plaintiff

Bertram Commissiong Q.C with Mira Commissiong for the Defendants

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2001: July 24 and 31
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JUDGMENT

- [1] WEBSTER, J. (*acting*). On the 20th September, 1998 a traffic accident occurred along the Clifton public road in Union Island on a corner known as Bajan Corner, involving a pedal cycle owned and ridden by the Plaintiff, and a motor van owned by the First Defendant and driven by the Second Defendant as the servant or agent of the First Defendant. Bajan Corner curves to the right and slopes downward coming from Clifton. The Plaintiff was riding his pedal cycle down the road from Clifton towards Ashton. In negotiating the corner the pedal cycle collided with the van driven by the Second Defendant which was travelling in the opposite direction from Ashton to Clifton.

- [2] The Plaintiff's case is that he was riding down the hill keeping to his left side of the road and holding the brakes of the pedal cycle when the Second Defendant's van came around the corner at a rapid speed and collided into the pedal cycle on the Plaintiff's side of the road. The Plaintiff suffered severe injuries including a broken leg. He was taken to health centre in Union after the accident, and then to the Kingstown General Hospital where he was hospitalised until early December.
- [3] The Defendant's case is that he was driving up the hill towards Clifton on his left hand side of the road when the Plaintiff came around the corner on his pedal cycle at a fast speed, rode over unto the Second Defendant's side of the road and collided into the right portion of the front of the van. By the time of the collision the van was stationary and it rolled backwards about two feet after the collision.
- [4] Corporal of Police Rawlson Ambris (now Sargeant Ambris) investigated the accident. He testified at the trial as a witness for the Plaintiff. His evidence is that he visited the scene with the Second Defendant the day after the accident, and took measurements that were pointed out to him by the Second Defendant. The Plaintiff was not present because he was in the hospital. The Plaintiff visited the scene with Sargeant Ambris on the 10th of December and pointed out certain measurements to him. Sargeant Ambris gave evidence of both sets of measurements. The only common measurement between the Plaintiff and the second Defendant is that the road is approximately 21 feet wide at the point of impact. The Second Defendant pointed out the point of impact as being 10 feet from the left side of the road going towards Clifton, that is, 10 feet from the side of the road on which he was travelling. The Plaintiff pointed out the point of impact as being 4 feet from the left side of the road going from Clifton to Ashton, that is, 4 feet from the left side of the road on which he was travelling. There is therefore a substantial difference between the parties as to where on the road the collision took place. As in most running down cases, the other measurements are helpful in determining the position of the point of impact. The measurements pointed out by the Second Defendant indicate that the van rolled back from the point of impact by approximately 9 feet, and that it was substantially over the imaginary centre line, and mainly on the right hand side, some 4 to 5 feet from the edge of the road.

His evidence is that the van rolled back 2 feet from the point of impact. If this evidence is accepted it means that in rolling back 2 feet from the point of impact the van moved from his left side of the road to be substantially on the right hand side of the road. This is at best quite remarkable. Even if I accept the evidence of Sergeant Ambris that the Second Defendant pointed out a rolling back distance of 9 feet from the point of impact on the left side of the road, it is still a little difficult to see how the van could have moved from one side of the road to the other in such a short distance. Sergeant Ambris also give evidence that there was a bloodstain that he estimated to be approximately 4 feet from the side of the road on which the Plaintiff was riding. This is a strong indication of the point of impact. However, Sergeant Ambris did not help matters when he told the Court that there was broken glass which was in the area that the Second Defendant pointed out as the point of impact, and then followed that up shortly after by saying that the debris was more on the Plaintiff's side of the road. But the most compelling evidence of where the accident happened came from the Second Defendant himself when he was being cross-examined by Counsel for the Plaintiff. The relevant evidence is as follows:

"I know Bajan corner have a lot of accidents. I know what it is to cut a corner. I cut the corner because the bicycle was coming towards me. I could not see around Bajan corner on the day in question. I did not start cutting the corner after I saw the Plaintiff. I am not saying I pulled to the right when I saw him. I cut the corner because it is a dangerous corner. It is prudent to keep to one's side on a dangerous corner instead of cutting it".

And later:

"I did not cut the corner to strike the Plaintiff".

In response to a responsible question from his Counsel in re-examination the Second Defendant said

"I know the difference between driving around a corner and cutting it".

- [5] I find on the totality of the evidence that the Plaintiff was riding his pedal cycle at a reasonable speed going towards Ashton when the Second Defendant, who was coming in the opposite direction, cut the corner at Bajan Corner and thereby struck the Plaintiff on the Plaintiff's side of the road. The Second Defendant is entirely to blame for the accident. It may be for this reason that the First Defendant was prepared to make an offer of a payment to the Plaintiff *"to finish this"*.

[6] There will be judgment for the Plaintiff with damages to be assessed. The Defendant's Counterclaim is dismissed. The Plaintiff will have his costs of the claim and counterclaim.

Paul Webster
High Court Judge (*Ag.*)