

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 218 OF 1993

BETWEEN:

HONEY BUN BAKERY LTD.

PLAINTIFF

AND

COLTON HACKSHAW

ANTHONY MOORE

DEFENDANTS

Appearances:

Miss Mira Commissiong for Plaintiff
Mr. Richard Williams for 1st named defendant
2nd named defendant unrepresented

2000: September 20, 28, October 2, December 20

- [1] **ADAMS J.** By writ filed on 19th May, 1993 the plaintiff sued the two defendants for negligence allegedly arising in relation to a motor accident, when a collision took place between the plaintiff vehicle bearing registration number T 9955 and motor vehicle H 8942 admittedly owned by the first named defendant hereinafter called Hackshaw and the second named defendant hereinafter called (Moore).
- [2] No defence having been entered by Moore judgment in default of such entry was ordered on the 14th day of July, 1993.
- [3] On the 1st day of April 2000 the evidence against the defendant Hackshaw was duly led but was not continued until the 28th September, 2000 when the taking of evidence was concluded. At the September

hearing both defendants were present and they both testified for the reasons given in the ensuing paragraph.

- [4] Counsel for the plaintiff explained that since she had reason to believe that Hackshaw might not be available for the September hearing she had in fact subpoenaed the defendant Moore. He was put in the witness box, and cross-examined by Mr. Richard Williams on behalf of his client Hackshaw.
- [5] Was the defendant Hackshaw to incur any liability on the facts presented at the hearing? I find that he was -
- [6] Hackshaw admitted that on the 21st of January 1993 i.e the day before the accident he had gone to Owia, the 22nd day of January 1993 being a holiday. He admitted that the defendant Moore who did mechanical work, had worked on his (Hackshaws) motor car from time to time.
- [7] Hackshaw testified that he never knew him (Moore) to have a drivers licence but that on the 21st day of January he had employed Moore for the purpose of repairing his brakes.
- [8] I accepted the evidence sworn to by Moore that Hackshaw had in fact borrowed Moore vehicle to take his family to Owia and that during that time the defendant Moore was expressly or impliedly called upon by his "employer" Hackshaw to drive the latters vehicle since Moores function was to test that vehicles brakes. I find the inference irresistible that to execute the function of repairs to the brakes inevitably involved impliedly or express by authority to drive the relevant vehicle in this case the one owned by Hackshaw.
- [9] The authority of *Gurrucharran V Racharie* 1968 11 W.I.R. 443 cited by counsel for the plaintiff, provides an analysis of the concept as to how liability may be incurred by an owner of a vehicle when such vehicle is negligently involved in an accident and being driven at the time by someone else. In dealing with the concept Sloby C said:

"The law is that the owner of a vehicle is liable for negligence of the driver if the driver is his servant, or even though the driver was not the owners servant, if the driver had the owners authority express or implied to drive the car on the owners behalf.

- [10] I move on now to the question of damages-
- [11] Evidence of special damages was led by the plaintiff through the witness Yvonne Williams and Mrs. Hoyte. The cost of repairing and towing the vehicle substantiated by documents from Joyette Auto Collision Works and Auto Supplies Ltd. indicating expenditure of \$19,496.57.
- [13] The loss of the use of the plaintiffs vehicle gave rise to a further sum of damages, based on this principle, an owner of a chattel who is wrongfully deprived of its use may recover damages for loss of use even if no out of pocket expenses are incurred or the chattel would not have been used during the time that the owner is deprived of its use. (*See Caxtor Publishing Co. - Sutherland Publishing Company*) - 1938 4 A.E.R p 389.
- [14] I accepted the evidence provided in respect of the loss of use of the plaintiffs vehicle and qualified as being the amount of twenty nine (29) days at one hundred dollars per day.
- [15] The cost of towing the vehicle I accepted as being three hundred and eighty dollars.
- [16] The total amount of damages to be paid to the plaintiff would be twenty two thousand seven hundred and seventy six dollars and fifty seven cents.

[17] Costs will be paid by the defendant to the plaintiff to be taxed of not agreed.

ODEL ADAMS
High Court Judge