

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.523 OF 1998

BETWEEN:

SYDNEY 'TONY' CLARKE

Plaintiff

and

BENEDICT CHARLES

Defendant

Appearances:

Joseph Delves for the Plaintiff
Graham Bollars for the Defendant

2000: November 1, 28

JUDGMENT

- [1] **MITCHELL, J:** This was a running down action. At the beginning of the trial it was agreed that the only issue before the Court at this stage was who was liable for the accident. The question of damages would await the outcome of the trial on that issue and would be brought up subsequently on a Summons for Assessment of Damages.
- [2] Giving evidence for the Plaintiff was the Plaintiff himself, and John Dodds and Junior Douglas, who were friends of the Plaintiff travelling with him in his van at the time of the accident. The Defendant gave all the evidence on his own behalf.
- [3] The evidence reveals that on 24 January 1998 the Plaintiff was driving his van T866 down the Long Stretch at Arnos Vale. The Plaintiff was driving out of Kingstown taking 6 friends to Calliaqua. As the Plaintiff passed "Pork City", where

barbeque pork is sold, he was approaching the T-junction with the entrance to the Arnos Vale Playing Field. At this point the road is barely 2 lanes wide; there is a deep drain and a wall to the left and shops and other buildings to the right. Although the speed limit for a van in that area is 20 mph, the Plaintiff testified that he was travelling at about 40-45 mph. Less than 100 ft past the barbeque shop, there was a bus stop on the opposite side of the road with a bus stopped at it.

[4] The Defendant had just driven his motor car, coming from the opposite direction to the Plaintiff, and paused behind the parked bus in front of him on his side of the road. The Defendant was under the impression that the lane on the right was empty, and pulled out into it to overtake the bus. As he did so, he realised that the Plaintiff's van was speeding towards him. After he had passed the parked bus, the Defendant instinctively served back into his lane. The Plaintiff, at that time only a short distance away from the Defendant's vehicle, was unable to stop to avoid a collision. He slammed on his brakes, and half-skidded, half-swerved into the Defendant's lane on the right. The Plaintiff appears to have expected the Defendant to see what he had done and hoped that the Defendant would continue driving in the Plaintiff's lane to avoid a collision. The Defendant instead, as we have seen, no doubt expecting the Plaintiff to keep in his lane, had instinctively swerved to the left, back into his lane.

[5] I do not believe the Plaintiff that the Defendant was speeding; the Defendant had stopped behind a parked bus and was trying to get past it to continue on his way. He could not have been travelling very fast. Nor do I believe the Defendant as he testified that he was driving innocently along on his side of the road when the Plaintiff for no particular reason slammed on his brakes and skidded over onto his side of the road and collided into him. I believe that when the Defendant was overtaking the parked bus the Plaintiff was about 50 feet away from him (the average of the 40 feet given by the Plaintiff and the 60 feet given by the Defendant). Given the speed of the Plaintiff, and the short distance between the two vehicles, there was hardly enough time for either one of the drivers to think.

The brake impression left on the road and traversing from the Plaintiff's side of the road to the point of impact was about 30'. I do not believe the Defendant's explanation that the reason why the van skidded to the right and collided with him was that the brakes on only one side of the van were working. I believe that the Plaintiff did deliberately pull to the right while pressing on the brakes in an attempt to avoid the accident.

[6] The Plaintiff was clearly guilty of the traffic offence of speeding. However, he has not been charged with any such offence before this court. There is a counterclaim against him for causing the accident by failing to keep any proper look out and driving too fast in the circumstances. The questions for the Court to determine in this case as between the two parties may be posed as follows: was the speed at which the Plaintiff was travelling down his lane on the Arnos Vale Long Stretch the principal cause of the accident so that he should be found to have been in breach of his duty of care to the Defendant, making him liable in the tort of negligence? Or, was the Plaintiff's decision to swerve from his side of the road onto the Defendant's side of the road, in a futile attempt to create a clear passage for the Defendant's vehicle which was then wrongfully obstructing his own clear passage, an error of judgement which caused or contributed to the accident in circumstances that make the Plaintiff liable to the Defendant in negligence? Or, was the Defendant's error in coming out onto the Plaintiff's side of the road in order to overtake a parked bus when the Plaintiff was approaching him and it was unsafe for the Defendant so to have done, a breach of the duty of care owed by the Defendant and such as to make him liable either partly or in whole for the accident?

[7] On first blush, the fact that the accident occurred over on the Defendant's side of the road, a place where strictly the Plaintiff had no business to be, might seem to make the Plaintiff the driver principally in the wrong. The Plaintiff in answer relies on the judgment of the Jamaican Court of Appeal in the Caymanian case of **Frank Coleman v Donald McDonald and Carol Smith (1979) 28 WIR, 137**. That case

is of persuasive authority in this court. It was a case where a young couple on a motor-bike driving within the speed limit approached a bend in the road. A car driven by the Appellant came out of a nearby car park on to the main road intending to go in the opposite direction to that in which the motor-cycle was proceeding. The manoeuvre intended by the Appellant involved coming out of the car park and turning right, across the path of the approaching motor-cycle. Driving on the main road, the motor-cyclist had prior right of way over the Appellant who was emerging from the car park, and this was increased or strengthened by the Appellant's intended turn to the right, across the path of the approaching motor-cycle. It was clearly his duty not to come out until it was safe to do so having regard to the traffic on the main road. The collision occurred on the right hand side of the road for the motor-cyclist when he swerved to his right to avoid the collision, the Appellant's car apparently just in the process of straightening up after turning right and trying to reach its left before the motor-cyclist passed. The Appellant only saw the approaching motor-cycle when he came out into the main road. He had attempted to get out of its way by accelerating to complete his turn and to get on his proper side of the road leaving the other side of the road clear for the approaching motor-cycle. To his surprise, it came over in his direction and hit him after he had already straightened up on his side of the road. At the trial at first instance the Appellant was found liable for the collision and he appealed the decision. It was held by the Court of Appeal of Jamaica, applying the rule in **The Bywell Castle (1879) 4 PD, 219**, in rejecting the appeal that

"The Appellant, the second Defendant, had created by his negligence a position of extreme danger for the oncoming motor cyclist, and the latter was not to blame if in the agony of the moment he had not manoeuvred with perfect skill and presence of mind."

- [8] Applying the above principles to the facts in our case, I find that the excessive speed at which the Plaintiff was travelling was not a cause of this accident. The Plaintiff was entitled to expect that, regardless of his speed, a vehicle coming in

the opposite direction would not swerve out into his lane effectively blocking the road. The law places a duty on the Defendant not to overtake a parked vehicle blocking his lane, thereby taking the risk of obstructing the lane for oncoming traffic, unless he is certain that it is safe so to do. He cannot assume that oncoming traffic is travelling within the speed limit; he must observe the oncoming traffic and make a judgement as to whether he can safely manoeuvre out onto the wrong side of the road given the actual speed of the oncoming traffic. If he miscalculates the speed of the oncoming traffic, or the length of time that it will take him to get safely back onto his side of the road, or simply does not see the oncoming traffic, and an accident occurs as a result, he risks being responsible for the loss and damage caused in the collision. Applying the principal in **The Bywell Castle**, I find that the Plaintiff, having been placed by the Defendant in a position of extreme danger, is not to be blamed for doing something wrong and swerving out of the way of the oncoming Defendant and onto the wrong side of the road. The Defendant was the sole cause of the accident.

- [9] Given the findings above, there will be judgement for the Plaintiff for damages to be assessed and for his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge