

SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

No: 594 of 1994

Between:

JOSEPH CHARLES LEWIS

Plaintiff

and

HIBISCUS LIMITED
DANIEL ALBERT

Defendants

Appearances:

Mr. Alvin St.Clair for the Plaintiff

Mr. Mark Maragh for the Defendants

1999: March 16 and 18.

JUDGMENT

ALLEN J.

The Plaintiff is claiming that an accident which occurred on the Gros Islet Main road in the vicinity of the Windjammer Gap on the 26th day of June 1993, when there was a collision between his Lincoln Town Car and a vehicle owned by the first Defendant and driven by the second Defendant, was caused solely by the negligent driving of the second Defendant. The Defendants, on the other hand, contend that the Plaintiff's negligent driving caused the accident; they have therefore counterclaimed and in their defence and counterclaim they have pleaded in the alternative that there was contradictory negligence.

Nothing else is heard in this case about the first Defendant save that this company was the owner of the car that the second Defendant was driving.

The Plaintiffs' evidence is that he was driving towards Castries from Gros Islet, and driving in the front passenger seat of his Lincoln, which was a left-hand-drive vehicle, was his friend that he has known for 30 years.

He had just moved out from behind a bus having signalled for the benefit of vehicles behind him that he was doing so. Suddenly, his passenger alerted him of a vehicle coming towards them almost in the middle of the road. The vehicle tried to pull brakes but it was going too fast and collided with his car. The

airbag in his car blew up and covered himself and his passenger and when he got out of the car they never saw the driver of the vehicle which had collided with his car and never saw him at any time afterwards until the day of trial. He could not properly describe the other vehicle but was certain it was not a car; it was some kind of pickup truck.

Under cross-examination, he stated that he was driving from the Rex St. Lucian Hotel and after some shifting he admitted that he had beer with his dinner. He said that it was not true that he behaved badly at the scene and had to be warned by the investigating officers to behave himself.

Nicholas Joseph gave evidence. He was the sole passenger in the Plaintiff's car. His evidence is that on their way from Gros Islet shortly before eleven o'clock at night a mini-bus which was travelling ahead of them drove on to the hard shoulder of the road.

The Plaintiff signaled that he was moving out from behind it and after travelling about fifty feet [50'] he saw the Defendants' vehicle coming towards them. At the same time there was a damaged bus ahead of them on the right side of the road partly in a ditch with its rear portion on the road. He alerted the Plaintiff but the words hardly came from his mouth when the car which was coming at a terrific speed struck the car in which he was a passenger.

When cross-examined, he said that after the accident the driver left the scene; the police came and was looking for him but he was nowhere to be found. Himself and the Plaintiff were coming from a drive. They were just driving around. That was the case for the Plaintiff.

The evidence of the second Defendant is that he was driving a four-door Hyundai car owned by Hibiscus Limited on the way to Gros islet to pick up his mother where he had left her at a wedding reception and promised to collect her before midnight. Shortly before reaching the Windjammer gap, there was a red nine-seater van partly in the drain and partly in the road as if it was involved in an accident. On the opposite side facing Castries there were three parked vans partly on the road. As he approached the red van he saw the bright lights of an oncoming vehicle. He dimmed his lights three times and the on-coming vehicle

still kept its bright lights on. He slowed down and that was all he knew for a while. His car was struck and he went blank for a few seconds, sat up and went blank again for another short while. When he caught himself he came out and stood with his head leaning on his damaged car and immediately to his right was a black Lincoln at an angle in the road. The Police came and asked for the drivers. He went up to the Officer who took measurements in the presence of both drivers. He pointed out the damage to his car to the investigating officers. There was damage to his right fender, right bumper, radiator, front grill and the right side of his car, and the windshield was broken. The Police asked both drivers to come down to the station. He went the next morning but does not know if the Plaintiff went.

Under cross-examination he repeated that he had agreed to pick up his mother at midnight and that the accident took place about 11 o'clock. He was now not certain that the oncoming vehicle had its bright lights on but it appeared that way and the beam never changed as he flashed his lights from high beam to low beam. He agreed that he veered slightly into the road to pass the damaged vehicle, then he slowed down. When it was put to him, he agreed that it was not prudent to drive on when the oncoming lights affected his eyes, but said that he was not driving fast and that he further reduced his speed.

Gabriel Joseph is a retired Police Officer. On the 26th June 1993 he was still in the Police Force and was stationed at Gros Islet Police Station. He reached the scene of this accident about 10 minutes after receiving the report. On reaching there, he saw Motor Car 6210, the Plaintiff's car, more or less across the road facing Castries and 5597, that is, the car the second Defendant was driving, was on the left, facing Gros Islet.

The second Defendant told him in the presence of the Plaintiff that he was driving towards Gros islet and there was a number of vehicles parked on the right side of the road, as he reached alongside the parked vehicles, a black car came from behind the last vehicle with its bright lights on; he applied brakes but he was too close and the two vehicles collided. The Plaintiff's account was that he saw a vehicle coming towards him in the centre of the road, he stopped and the

vehicle ran into his car. He took measurements in the presence of both drivers and recorded them, but could not find his notebook. As a result of his investigation he wrote a report and in it recommended that the Plaintiff, Joseph Lewis, be charged with careless driving. This report was admitted in evidence as [Ex G.J.1]

The Officer went on to say that he had to warn the Plaintiff to behave himself because of his improper conduct at the scene of the accident. The accident he said was investigated by himself and 323 Charles. He agreed that measurements were crucial but that he was only told yesterday that he was required to give evidence and could not find his notebook.

He said that it was completely untrue that he was looking around for the second Defendant and could not find him. In fact, it was the 2nd Defendant who first spoke to him as he arrived on the scene.

By the court: *Did you know the second Defendant before the accident?*

Answer: *No Sir, I had never seen him before.*

I have no doubt that the evidence of the retired Police Officer is impartial and truthful.

The way the Court views this accident is that if driving at night the passenger in the Plaintiff's car had to alert him of an on-coming vehicle and as he put it in evidence, *the accident happened before the words could leave his mouth*, the Plaintiff's method of driving must be called into question. When one considers that from his own evidence, he was coming out from behind a vehicle that was stationary and that his car was a left-hand five, the irresistible conclusion is that he proceeded when it was unsafe to do so, and/or maneuvered his car incompetently.

The second Defendant, on the other hand, admitted that his side was partially blocked by the damaged van on the road. Again, looking at the evidence that he himself has given, it should not have been necessary to dim his lights three times nor did it matter whether the oncoming vehicle had its light on high beam or low beam. As soon as the lights blinded his eyes he should have

assumed an absolutely safe position on the road and got ready to come to a complete stop.

The conclusion I have reached on the totality of the evidence therefore, is that the Plaintiff and the second Defendant were equally to blame for this accident.

There will be judgment against the second Defendant for 50% of the damages proven on assessment and judgment for the Defendants on their counterclaim against the Plaintiff for 50% of the damages proven on assessment.

The Plaintiff's claim against the first Defendant is dismissed with no order as to costs.

Each Counsel is allowed 50% of his costs to be taxed if not agreed.


KENNETH ALLEN Q.C. OBE
High Court Judge (Ag.)