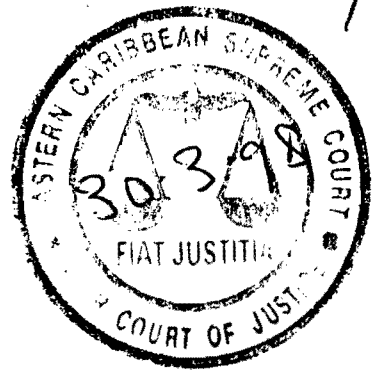


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO. 113 OF 1991



BETWEEN:

ROSABEL CHAMBERS acting by her mother and next friend
LINDA CHAMBERS
AND
LINDA CHAMBERS

PLAINTIFFS

AND

10 FRANK GOODING
AND
THE OWNERS OF THE SHIP MV ADMIRAL I

DEFENDANTS

Appearances:

Ms. Nicole Sylvester for the plaintiffs
Mr. Samuel Commissiong and
Ms. M. Commissiong for the defendants

November 5, 11, 28 and December 1, 2, 3 1997

Delivered March 30th, 1998

BAPTISTE J.

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JUDGMENT

This is a suit in negligence brought by the plaintiffs against the defendants in respect of personal injuries sustained by Rosabel Chambers while boarding and/or embarking on the ship MV Admiral I, on the 31st of March, 1989, at Bequia.

Paragraphs "1" to "4" of the plaintiffs statement of claim read as follows.

- "1. The First named Plaintiff is an infant and sues by her next friend who is also the second Plaintiff.
2. The first named Defendant was the captain of the MV Admiral I at the material time.
3. On 31st March, 1989 the First named Plaintiff sustained a lacerated wound to her lower left leg as a result of a defect on the MV Admiral I at the Port of embarkation as a passenger on the M V Admiral I.

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4. The said injury was caused by the negligent management of the said M V Admiral I.

PARTICULARS OF NEGLIGENCE

- (i) Failure to ensure that the point of embarkation was fit for entry and exit.
- (ii) Failure to keep the ship free from defects;
- (iii) Failure to repair and or maintain the ship;
- (iv) The Plaintiff will further rely on the matters set out in paragraph 3 hereof."

Paragraph 5 sets out the particulars of personal injuries and particulars of special damage of 10 \$445.60.

By paragraph 1 of their defence the defendants admit paragraphs 1 and 2 of the Statement of Claim.

Paragraph 2 of the defence states:

" The Defendants admit that the First-Named Plaintiff sustained a wound on her lower left leg on the date stated while a passenger on the ship M V Admiral I, but deny that the same was the result of any defect on the said ship as alleged or at all. The M V Admiral I is and was at all material times a good passenger boat in a sound state of repair. It has no known defects as alleged by the plaintiffs."

20 In paragraph 3 it is stated:

"The Defendants deny that the management of the said ship was negligent as alleged or at all. In so far as they are concerned the point of entry and exit on the M V Admiral I is free from defect and until particulars are given they are unable to say what defects are alleged against the second Named Defendants. The Defendants will rely on the plea of novus actus interveniens to show that the injuries referred to in paragraph 5 of the Statement of Claim were sustained as a result of the intervention of a third party and not through any negligence on the part of the Defendants."

In paragraph 4 of their Defence the defendants make no admission of the allegations in paragraph 5 of the Statement of Claim and deny the particulars of special damage and financial loss.

On the pleadings there is no dispute that Rosabel Chambers was injured on the MV Admiral I. The defendants however are denying that that injury was caused by any defect on the said ship or negligence in its management. They also rely on the plea of novus actus interveniens.

From the evidence I find as a fact that on Friday March 31, 1989 between 1 p.m. and 1:45 p.m. Rosabel Chambers, a seven year old paying passenger sustained an injury to her lower left leg when her left foot went into a hole on the ramp of the Admiral I which was moored at the Bequia wharf as she embarked on the Admiral I in the company of her mother for a journey to the island
10 of Saint Vincent.

The Admiral I provided a ferry service between the islands of Bequia and Saint Vincent. In 1988 it moved between 70 and 80 thousand people a year. In 1989 it moved move or less the same number. Person of all ages were carried on the ship. Around 1989 about 25 percent of the passengers carried were children. The children were of a varying ages. Most of the times children travel on the boat by themselves. Both adults and children would walk freely on the ramp.

In order for passengers and cargo to get on the Admiral I, they must enter it on the ramp. The ramp is a gangway that allows passengers and cargo to get on the ship. It is made of steel and is twelve feet long and nine feet wide. When the ship is in motion the ramp is held in place by a
20 hook and a crane. It is drawn up. When the ramp is lowered the same hook and crane is used. The ramp is lowered to the wharf and the hook from the centre of the ramp is removed from the centre of the ramp to normally the right side. The hook is connected to a hole in the centre of the ramp. The side of the hole is four inches by four inches square. There is a piece of one inch steel bar coming across the hole. It is four inches long. There were no signs or notices indicating the presence of the hole.

The Admiral 1 was bought in 1986 and sold in 1995. Until 31st March, 1989 no injuries were sustained on the ship. At the time the injuries were sustained the captain of the ship was Frank Gooding, the first named defendant.

The issue in this cause is whether the defendants are liable in negligence for the injuries
30 sustained by the first named plaintiff. There are several requirements which must exist before the defendants can be liable in negligence:

- (1) The existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness.

- (2) Careless behaviour by the defendants i.e. that they failed to measure up to the standard and scope set by law.
- (3) A causal connection between the defendants' careless conduct and the damage.
- (4) Foreseeability that such conduct would have inflicted on the particular plaintiff the particular kind of damage of which she complains.

It cannot be doubted that the defendants owed a duty of care to the first named plaintiff. A carrier of passengers owe a duty to take reasonable care for the safety of his passengers. A defendant will be regarded as in breach of a duty of care if his conduct falls below the standard
10 required by law. The standard normally set is that of a reasonable and prudent man. The standard of care required is what would be reasonable in the circumstances - what conduct is reasonably required in the particular circumstances.

The gravamen of the plaintiffs complaint is the presence of the hole in the ramp into which descended the foot of Rosabel Chambers as a result of which she sustained injuries. Learned counsel for the plaintiff's submitted "From the evidence it is a fact that the ramp is the only place one can enter or exit the motor vessel and as such there is a duty cast upon the defendants to ensure that the ramp is free from any danger or defect or hole in the ramp that could be a danger to passengers entering the motor vessel." I agree. Counsel also submitted that it was the duty of the defendants to ensure at all times that passengers coming and going unto the motor vessel
20 were made aware of the presence of the hole by adequate warning notices or stationing a person by the hole.

The evidence is that there were no notices or warning and no one was stationed at the hole. It would appear that that hole on the ramp was not that visible. Rosabel Chambers said: "when I went on the ramp I could not see that hole. There was no sign or notice on the boat." Cardon Shortt said "I did not observe the hole. There was no sign or notice indicating that the hole was there." Verlina Dublin who testified that her daughter's foot went into that same hole that day, just before Rosabel's foot went in said "I did not notice that hole before my daughter's foot went in it. I did not see any sign or notice warning of that hole." Her daughter was then five years old. Verlina stated that she had travelled on the Admiral I about four times before the accident
30 and she never saw the hole. Cameron Lloyd testifying on behalf of the defendants stated in cross-examination: "I noticed the hole when her [Rosabel] foot was in it. I did not notice it before."

In the circumstances did the defendants, by not covering the hole, or posting warning signs or notices indicating the presence of the hole or otherwise alerting passengers to the presence of the

hole, fail to measure up to the standard and scope set by law? The standard of care is what would be reasonable in the circumstances.

The defendants deny negligence and state that the hole had been in its present location since 1986, and people and children of every sort had walked without an incident until the plaintiff's. They pointed to the fact that the number of passengers travelling on the Admiral I in 1989 was seventy to eighty thousand with about 25% of that number being children and before the day of the incident there had never been an incident of injury. Learned counsel for the defendant submitted that this showed clearly that the hole was not dangerous and it posed problems only for reckless irresponsible persons.

10 Elvis Goodwin testified that the entry of the ship was safe for passengers. Further, he was not aware of a defect in the ship that would make it unsafe to carry passengers. The ship was checked every year by the Harbour Master and every two years it went into dry dock.

With respect to the hole, Elvis Gooding said:

"It is not possible to cover that hole because it would not stay there. It is not possible to put something on the hole and then remove it. We did not find it necessary to put a sign or notice warning passengers of that hole."

Continuing in cross-examination he stated:

"The hole is two feet from the entrance of the ramp. We could not cover the hole because it was there for a reason."

20 In cross-examination, he deposed that the device for hooking the ramp was left in the hole.

Learned counsel for the defendants submitted:

"The second defendant and its witnesses stated categorically that the ship was safe, well managed, free from defects and was incident-free until 1989. The accident of the plaintiff was an isolated incident because of Linda Chambers' carelessness in failing to look after her child for whom she had a heavy responsibility."

I conclude that if you have a ship carrying up to 80,000 passengers in 1989, 20,000 of that number being children of varying ages, it is incumbent upon those in control and management of the ship to take all reasonable steps to ensure that the means of access to the ship is safe.

30 Consequently if there is a hole in the ramp of the ship, that ramp being the only means of ingress and egress to the ship, of such a dimension so as to allow the admission of a child's foot, that hole would prima facie constitute a danger. A duty is hence cast upon the Captain and owners of the ship to take reasonable steps to ensure that damage is not caused to the users of the ship by

that hole. Reasonable steps would at the minimum include the placement of notices warning of the presence of the hole or the taking of other precautions to ensure that passengers are not damaged by the hole. The absence of such constituted negligence on the part of the defendants.

The fact that prior to March 31, 1989 there was no incident does not in my view avail the defendants. The very fact that up to 20,000 children of varying ages travelled annually on the ship provides additional reason to ensure that reasonable steps are taken to render the access to the ship safe. In the circumstances I do not think it is competent upon the defendants to blame the plaintiffs for what happened.

Linda Chambers in her evidence said:

10 "I told Mr. Gooding [Frank] that Rosabel foot went down the hole. He said to me if her eyes is blind if she couldn't see the hole there. I said to him she is just a child..."

It will be remembered that many witnesses testified that before the incident they did not observe the hole on the ramp.

The onus of proof on the balance of probabilities that the defendants have been careless falls upon the plaintiff. I am satisfied that the plaintiffs have discharged that onus. Since damage is the gist of liability in negligence, it is essential that the plaintiff should establish that careless conduct of the defendants caused the damage. The plaintiffs in the instant case have established that. Further, the damage caused to Rosabel Chambers was of such a kind as the defendants
20 should have foreseen. The injury Rosabel sustained being soft tissue injury to the left ankle and lacerations on her left leg.

The defendants have also pleaded *novus actus interveniens*. *Novus actus interveniens* is properly a question of causation. Yet sometimes it appears to be treated as a defence. The defendant will not be found answerable for consequences found to result from a *nova causa intervenien*, as there would have been a break in the chain of causation. The *novus actus* must constitute an event of such impact that it rightly obliterates the wrongdoing of the defendant.

In the circumstances of the case it is necessary to consider the intervening conduct of the third party, as the evidence is that persons intervened to release Rosabel's foot from the hole.

In examination-in-chief Rosabel said:

30 "... about five seconds after I went on the ramp my foot went down in a hole ... I was in great pain. People started gathering around arguing ... There was a guy whose name I do not know. I don't know what he did but my foot was released."

Kingsley Hackshaw stated:

"I was not the first person to get to the little girl. There were a lot of passengers there. I can't remember how many. When I got to the girl I helped her to get her foot out. Cameron helped me to get her foot out of the hole. To get her foot out, her foot had to go back down in the hole, turn it and take it out. The people around were trying to get the foot out. They were trying to pull her out."

Learned counsel for the defendants submitted the following:

10 "The second defendant admitted that the plaintiff was injured but states that the injury was caused when Kingsley Hackshaw and Cameron Lloyd were trying to remove her foot from the hole. They did so crudely and inexpertly."

I hold that the conduct in trying to release Rosabel's foot was a reasonable response to the danger which had befallen her and was readily foreseeable. The act could not be said to eclipse the wrongdoing of the defendants.

The law is that a deliberate act of rescue will never constitute a novus actus. The defendant will not be allowed to absolve himself from responsibility for the consequences of a danger which he had created. Rescue may be an act of "conscious volition" but it is a normal, reasonable and definable response to another's plight. "The cry of distress is a summons for relief." (See Clerk and Lindsell on Torts 17th edition paragraphs 2 - 33).

20 Rosabel cried out in distress because of the danger which had befallen her. This cry acted as a summons for relief as those who heard her cry and/or saw what happened responded at once to the emergency that had been created. There was a deliberate act of rescue on their part. In the circumstances I hold that the defendants cannot avail themselves of the plea of novus actus interveniens.

In his address learned counsel for the defendants dealt with some procedural matters. He submitted:

30 "that the first defendant is not a proper party to these proceedings. He is not the owner nor one of the owners. No allegations have been made against him apart from those in paragraph 2 of the Statement of Claim that he was the captain of the MV Admiral I nor has any evidence been led against him that he did or omitted to do any act or omission which caused the alleged loss and damage to the plaintiff. We therefore ask that the case against him be dismissed with costs."

Learned counsel for the plaintiffs submitted that there is no merit in such a submission for the following among other reasons:

1. If the objection is being taken that the proper parties are not before the Court it should be taken as soon as possible and not sprung upon the Court as a surprise.

2. The defendant is the captain of the Admiral I on which the infant plaintiff incurred damages. The Captain as master of a ship is the person who has the control and management of the ship, and is answerable for any accidents or damages to passengers or other persons on the ship.

I entirely agree with learned counsel for the plaintiffs.

3. The captain in law is the servant of the owners and his negligence is the owner's negligence and the owners are vicariously liable as well. This is a matter of law.

I agree with learned counsel for the plaintiffs

Learned counsel for the defendants also submitted that the owner of the MV Admiral I is the Admiralty Transport Company Limited which is not a party to the proceedings. The proper defendant is that company which is not before the Court. No order can be made against it unless it has been given the right to be heard.

In reply learned counsel for the plaintiffs submitted that :

"Counsel cannot be serious about advancing such a proposition since he has entered appearance for the defendants one of which is the owners of the MV Admiral I ..."

Counsel also referred to Order 15 rule 6 of the Rules of the Supreme Court which deals with misjoinder and non-joinder of parties. Counsel also submitted that there is no need to add any new party to this action, the proper parties are before the Court. The issues raised in the pleadings in this matter can be fully adjudicated upon between the parties before the Court.

Learned counsel for the defendants also submitted that Linda Chambers in her own right has no place in this suit. Her daughter Rosabel has and her mother is acting herein on her behalf. Linda Chambers has made no allegation in the pleadings against anybody.

Learned counsel for the plaintiffs submitted in reply:

"In so far as special damages incurred in respect of injuries sustained by first named plaintiff these were incurred by her mother, the second named plaintiff.

And in these circumstances amount to consequential loss suffered by the second named plaintiff which she is entitled to claim."

Counsel also referred to Precedents Atkins Court Forms 2nd edition, Vol. 29, forms 30, 31, 32, 33 and 34. Counsel noted that in the above precedents the only claim made by the adult plaintiff was for special damages incurred on behalf of the infant. Further this is a general practice of law

and pleadings which is followed in common law jurisdictions. Counsel submitted that the second named plaintiff is a proper and necessary party to this action.

I hold that all the parties to this suit are necessary and proper parties.

On the question of damages learned counsel for the plaintiff submitted that the plaintiff is entitled to damages on the High Court scale for pain and suffering incurred and a reasonable sum that the plaintiff is entitled to for general damages, is the sum of \$12,000.00.

Learned counsel for the defendants submitted that the injuries were not serious in themselves, no medical certificate was tendered in evidence and it was not possible to have a current assessment of the plaintiff's injuries. The plaintiff appeared to be a normal child with no permanent defect, 10 and damages if awarded can only be modest and well below the magisterial jurisdictions of \$5,000.00.

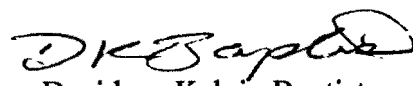
In assessing general damages the considerations which have to be borne in mind are:

- (a) the nature and extent of the injuries sustained;
- (b) the nature and gravity of the resulting physical disability;
- (c) pain and suffering;
- (d) loss of amenities;
- (e) the prospects to which pecuniary prospects were affected.

In the instant case the relevant considerations are the nature and extent of the injuries sustained and pain and suffering. Rosabel Chambers sustained soft tissue injury to the left ankle and 20 lacerations on her left leg. There is no evidence of any physical disability, loss of amenities or impairment of pecuniary prospects. In fact, none of these were alleged.

In the circumstances of the case, I consider that a reasonable sum for general damages would be \$6,000.00. Special damage has been proven at \$445.60.

Judgment is entered for the plaintiffs and it is ordered that the defendants pay the plaintiffs the sum of \$6,445.60 in damages and costs to be taxed if not agreed.


Davidson Kelvin Baptiste
High Court Judge (Ag.)