

SAINT LUCIA:

#017

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D.1990

SUIT NO.142 OF 1989

BETWEEN:

SIMON J. RICHARDS

Plaintiff

and

ADOLPHUS BONNIE CLARKE

Defendant

J U D G M E N T

delivered by

Hon. Justice A.N.J.MATTHEW

05 JUL 1990

MAY 11, 1990.

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Plaintiff

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Defendant

Mr. H. Giraudy for Plaintiff
Mr. K. Foster for Defendant

1990: April 3 and 26;
May 2 and 11.

J U D G M E N T

MATTHEW J.

By a writ of summons indorsed with statement of claim and filed on April 14, 1989, the Plaintiff as Administrator of the Estate of Angela Agatha Richards, deceased, brought this action against the Defendant for the benefit of the Estate of the deceased and for the benefit of the dependants of the deceased.

The Plaintiff in his statement of claim alleged that on May 18, 1986, about 2.30 a.m. on St.Jude High Road the Deceased was a passenger in the Defendant's car and he so negligently drove the motor vehicle so as to cause it to collide with a service pole implanted in the gravel and grass verge of the said high road and causing the instantaneous death of the Deceased.

At paragraph 14 of the statement of claim the Plaintiff alleged

as follows:

"14. The Defendant was negligent in that he:

- a) drove while his capacity therefor was impaired by the effects of alcoholic drink;
- b) drove at excessive speed;
- c) failed to apply brakes in time or at all to avoid colliding with the said service pole;
- d) drove on his right and improper side, off the tarmac and on the gravel and grass verge of the said High Road;
- e) failed to keep a proper look-out."

At paragraph 15 of the statement of claim the Plaintiff pleaded "res ipsa loquitur" as follows:

"15. The Plaintiff pleads "res ipsa loquitur" , based upon the following facts:

- 1) the Defendant was in control of motor car No. P.A.949 at the time of the collision;
- 2) the said motor car collided with the aforementioned service pole;
- 3) the said service pole was implanted in the gravel and grass verge of the aforementioned High Road on the left hand driving side of the defendant;
- 4) the said motor car split into two parts upon colliding with the said service pole, indicating that the Defendant drove at excessive speed;
- 5) THE DECEASED's death was instantaneous, indicating impact of great force engendered by driving of excessive speed."

The Defendant entered appearance on April 20,1989, and filed his defence on June 1, 1989.

In his defence the Defendant denied that he was negligent as alleged in paragraphs 7 and 14 of the statement of claim and alleged:

"that it was the Deceased who caused her own hurt by assaulting him with blows to his head and body, jumping on him thereby causing him to lose control. The vehicle suddenly accelerated and swerved away from some cows which were lying on the road."

At paragraph 3 of his defence the Defendant contended that the doctrine of "res ipsa loquitur" did not apply. The Defendant made a counterclaim asking for general damages for the damage to his car and for personal injuries sustained. I am not sure that the Defendant pursued the counterclaim at the trial for although he gave evidence of the cost his car which was eight days old at the time of the accident and that he presently suffers from persistent headaches, his Counsel did not refer to the counterclaim during his thirty minute final address. Counsel however asked me to consider the contributory negligence of the Deceased in the unlikely event that I were to find that it was the Defendant's excessive speed which was the cause of the accident.

A reply and defence to counter-claim was filed by the Plaintiff on June 20, 1989, and a request for hearing on July 7, 1989.

At the trial Simon J. Richards, Leonard Myers, Hilary Lewis, Inspector Winston Bastien and Inspector Peter John gave evidence for the Plaintiff. The Defendant gave evidence and called Primrose Bledman as his only witness.

None of the Plaintiff's witness gave direct evidence as to how the accident occurred. Simon Richards was the father of the deceased and he tendered in evidence Letters of Administration of the Estate of the late Angel Agatha Richards who died on May 18, 1986. He also produced a bill of \$3,749.00 for funeral expenses

as well as a document from Marigot Bay Resort where Angela was employed indicating that she earned \$873.00 monthly. The Plaintiff stated that out of her monthly salary Angela contributed \$300.00 to the upkeep of the home. At the time of her death Angela was 21 years old. Under cross-examination he stated that Angela resided at his home boarding and lodging there.

Leonard Myers stated that as a result of a telephone call which he received on May 18, 1986, he and others left Castries and went to the scene of the accident on St.Jude's road at Vieux-Fort and there he saw a car smashed up and broken in two parts. He said the car was cut across the sides and was close to an electric pole and off the road. He stated that he saw a pair of lady's shoes in the car on the floor of the front passenger seat. He later went to the mortuary where he saw Angela's dead body.

The evidence of Hilary Lewis, a cousin of Angela, is similar to that of Myers. He too left Castries for the scene of the accident in the same car as Myers and he also saw the car split into two parts and near to a lamp post and off the road and he also saw his cousin's dead body at the mortuary.

Inspector John, police photographer, took five photographs of the scene of the accident and one of the Defendant as he lay at the hospital. He tendered the six photographs in evidence.

The Plaintiff's main witness was Inspector Bastien who conducted investigations. He stated that he was a member of the Royal St.Lucia Police Force for 21 years and had been attached to the traffic department for over 15 years. He stated that he received

a report on May 18, 1986, and at 2.30 a.m. he went to the scene of the accident where he saw a motor car off the pitched surface of the road. He said the car was cut in half with the rear portion of the car resting on the off side of the front portion. He also observed deep scrapings on the electric pole near to the car. He stated that the car was cut in two halves directly behind the two front seats. He said he later went to St.Jude hospital where he saw the Defendant who had a swollen face and injuries. He said Defendant was being attended to by a doctor. He said the Defendant told him he was the driver of the car in question that is, P.A.949, and when he asked the Defendant how the accident occurred, he told him that he was driving from the direction of St.Jude to the direction of Vieux Fort and the lights of an on-coming vehicle dazzled him and that caused his vehicle to run off the road. He also saw Angela's dead body at the mortuary. He stated that this was his first experience of such a damage to a car after a collision. He stated that on May 21, 1986, he went to the Defendant's home to get a statement from him and Defendant stated that he was not able to give a statement then as he had problems with his head and would call him later. He stated that on Monday, June 16, 1986, about 10.25 a.m. himself, Defendant, Mr. Primrose Bledman, who was then the Defendant's legal adviser, and P.C.186 Charlery went to the scene of the accident where he took measurements in the presence of the Defendant who agreed to the measurements taken. He stated that there the Defendant told him again that the cause of the accident was the dazzling by the lights of the on-coming vehicle on the

night in question. He stated that Defendant showed him the point on the road at which he began to run off the road.

He stated that the edges of the road in certain parts were broken and he wrote down the measurements in his pocket book. As regards those measurements he stated that the width of the road in the area was 20' 8" and that the electric pole was 15' 3" from the side of the road. He stated also that the car was 22' 4" from the pole on the same side of the road. He did not have that measurement recorded but he estimated that from the point where the Defendant showed him the car began to go off the road to the electric pole was a distance of 25 yards.

He stated that the Defendant did not tell him that Angela attacked him and struck him on the head and body and thereby caused him to lose control of the car. Neither did Defendant ever tell him that there were cows lying on the road and he had to swerve away from them.

When he was cross-examined he stated that he had taken a statement in writing from the Defendant and had it in a file which he had passed to his superior officer. He stated that he could not recall not giving the evidence of the dazzling light at the preliminary inquiry connected with the incident. He stated he was not sure if he said so at Court but the Defendant did tell him so at the hospital. He stated that on the scene of the accident on June 16, he could not recall that the Defendant's legal adviser stopped him when he sought from the Defendant an explanation of the cause of the accident.

He stated that he remembered the Magistrate dismissing the case as a result of a no case submission.

When he was re-examined he stated that the car appeared to him to have been a new car immediately before the accident.

Bledman's evidence is to the effect that on June 16, 1986, on the scene of the accident he stopped the Defendant from giving any explanation to Inspector Bastien as to the cause of the accident and that Bastien did not pursue the matter neither did the Defendant volunteer any explanation. He further stated that at the preliminary inquiry in October 1986, he was present and did not recall any evidence of an on-coming car dazzling the Defendant being given to the Court. He stated that no evidence was produced in the Court as to the cause of the accident and as a result the Defendant was discharged.

When he was cross-examined he stated he was not present while the Defendant was at the St.Jude Hospital, neither did he recollect Inspector Bastien being asked about the cause of the accident.

The Defendant stated that he was a company director who lives at Summersdale. He stated that Angela Richards was his girlfriend and he saw her on May 18, 1986, at Vieux-Fort at a Carnival Queen Show that was taking place at a factory shell. He said that when he met her on that night they spoke for a while and she told him when he was leaving he should call her. He stated that when he was about to leave he called her and they proceeded to his car, a Honda Prevost, eight days old. He stated they were going to

sleep at Vieux Fort. Whilst driving, he said, they had an argument concerning his getting married to his wife and Angela just jumped on him and that caused the car to get uncontrollable. He stated he got a skid. He also said there was nothing in the road in front of him and from the time the car skidded he knew nothing again till the next day. He stated that he received a swollen face, scratches to his hands, his mouth and his head and there were bits of glass in his head from the windscreen. He stated that periodically he forgets a lot and he gets some persistent headaches.

He was cross-examined most lengthily. He stated that he was driving at a moderate speed about thirty miles per hour. He said while he was driving Angela just reached across and grabbed him. He said: "She put one arm around my shoulder and the left arm over both of my hands which were on the steering wheel. The deceased was as tall as me and of the same size..... As a result of she doing that the car got uncontrollable when I was trying to get her away from me..... It happened so fast that I did not have time to apply my brakes.I have seen cars after collisions. I cannot say I have seen one like mine before. My lawyer wrote my defence for me. May be I did not tell my lawyer I got a skid so that is why it is not in the defence. I considered the skid an important cause of the accident.

I had already passed the cows when Angela jumped on me. The cows had nothing to do with the accident. I have that in my defence.

There was no other car coming or going. I never told Inspector Bastien a car dazzled me. He was either mistaken or deliberately lying.

What caused the accident is Angela's arm around my shoulder and the other arm on my two arms which were on the steering wheel. Yet in my defence I say she was hitting me on my head and my body. I was completely sober on that night. I had not taken alcohol or drugs. My mind was completely free."

In his closing address learned Counsel for the Defendant submitted that the doctrine of "res ipsa loquitur" did not apply. Counsel referred to paragraph 14 of the statement of claim and submitted that there the Plaintiff was alleging negligence and was therefore implying that he had the required evidence at his disposal. Counsel submitted therefore that if those are his allegations he is in a position to prove negligence and therefore cannot rely on the doctrine.

I think this is a sound submission although it does not destroy the Plaintiff's case if for the reason only that the doctrine of "res ipsa loquitur" is no more than a rule of evidence and states no principle of law.

It may be that paragraph 14 exhibits a faulty pleading in that the Plaintiff could not himself produce evidence to support what he pleaded in his statement of claim on April 14, 1989, and was merely on a fishing expedition. Paragraph 14 has five subparagraphs. The first alleged that the Defendant drove while his

capacity was impaired by the effects of alcoholic drinks. The Plaintiff produced not a shred of evidence to support that pleading. He sought to get it from the Defendant who denied he had taken alcohol or drugs. The second sub-paragraph states that Defendant drove at excessive speed. There is no direct evidence that Defendant was speeding. This is only a conclusion which Plaintiff can ask the Court to reach having regard to the circumstances of the case. The third sub-paragraph alleges that Defendant failed to apply brakes. Plaintiff had no direct evidence to support that and that was likewise a conclusion he was asking the Court to reach until the Defendant admitted that things happened so fast he had no time to apply brakes. The fourth sub-paragraph should really have been deleted following the amendments which Plaintiff asked to be made to paragraphs 7 and 15(3) of the statement of claim; the effects of which were to correct the Plaintiff's wrong impression that the Defendant was driving on the right and proper side of the road.

The fifth sub-paragraph states that the Defendant failed to keep a proper look-out and again the Plaintiff has produced no evidence of that. A Plaintiff ought not to plead matters which he is unable to prove.

So in essence all the Plaintiff could allege was that Angela Richards who was in the car driven by the Defendant came to her death as a result of the car, an eight day old car, a new car, running off the road to a distance of 25 yards and colliding with an electric pole 15' 3" from the side of the road and that the impact was such as to cause the car to split across into two

parts and the rear portion coming to rest on the off side of the first portion; and that was negligence on the principle of the "res ipsa loquitur".

I have regard to the law stated at paragraphs 975-980 of the Fourteenth Edition of Clerk and Lindsell on Torts in relation to the doctrine of "res ipsa loquitur". I need only refer again to the classic statement of the circumstances where the doctrine applies in the words of ERLE C.J.:

"There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the Defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the Defendant that the accident arose from want of care."

In this case the car was under the sole management and control of the Defendant. Cars driving on the public roads with due care and attention do not run off the roads and hit electric poles located off the roads.

I refer also to a portion of paragraph 978 at the top of page 599 as follows:

"The mere occurrence of an accident on a highway is no evidence of negligence on the part of a person in control of a vehicle involved in the accident. Where, however, a bolting horse runs down a person in broad daylight, there is prima facie a presumption of negligence. Similarly, where a car ran on to the pavement and hit a pedestrian in the back.....there was evidence to go to a jury of negligence on the part of the driver."

Paragraphs 5-64 and 5-65 of the Seventh Edition of Charlesworth

and Percy on Negligence are also helpful in the relation of the doctrine of "res ipsa loquitur" to highway cases. Paragraph 5-65 is as follows:

"When a motor vehicle, which was under the control of the Defendant or his servant, had overturned for no apparent cause, while being driven along the highway, that fact alone was held to be evidence of negligence against the Defendant. Likewise, was the fact that the vehicle had left the road and had fallen down an embankment. The result was the same where such a vehicle got onto the footpath and there knocked down a lamp post or other erection, or a pedestrian, and where it had projected over the footpath and knocked down a pedestrian."

I find the facts of this case are in *pari materia* and the doctrine of "res ipsa loquitur" is very pertinent. Having found that the Defendant was in sole control of the thing that did the damage and the happening is such that it could only have resulted from negligence, the Defendant can only excuse liability by proving that he was not negligent. I now pass on to consider the evidence of the Defendant.

There is an issue in this case as to whether or not the Defendant told Inspector Bastien that the cause of the accident was due to the dazzling lights of a car approaching him on the night in question. Inspector Bastien stated that it was at the hospital in the early hours of the morning that the Defendant told him so at a time when he was being examined by a doctor.

Later in the day Inspector John took photographs including a photograph of the Defendant. It is clear that the Defendant received serious injuries to his face and the Court must of

necessity be left in doubt as to whether or not the Defendant was in a condition to make any statement to the Officer. The Inspector also stated that the Defendant repeated this explanation on Monday, June 16, 1986, on the St.Jude high road. This was vigorously challenged by Mr.Bledman and it was because of this challenge that Mr.Bledman who had begun as Counsel with Mr. Foster ceased to take further part in the proceedings. The Inspector was unsure whether he had given such evidence at the preliminary inquiry in respect of a charge of manslaughter against the Defendant arising from the incident. Mr.Bledman however was sure he did not; and that was the reason why the Magistrate dismissed the preliminary inquiry. I believe Mr. Bledman that the Inspector gave no such evidence and the Court must ask itself if he had such evidence why did he not give it? On the totality of the evidence I have come to the conclusion that the Defendant did not tell Inspector Bastien that the lights of an on-coming car had dazzled him and that was how the accident occurred.

But the matter does not end here. Mr. Bledman stated that when Inspector Bastien, on Monday, June 16, 1986, asked the Defendant for the cause of the accident, he stopped the Defendant from answering. In Court the Defendant stated in part that the cause of the accident was a skid and in part the cause of the accident was the fact that Angela had jumped on him. The question to be asked is if the Defendant had these explanations on June 16, 1986, why did he not tell the police? That was almost one month after the accident and he had remained in hospital for only four

days. He was certainly well enough to help the Inspector with measurements. Why should I believe him that the cause was blows he received to his head and body when he says that for the first time on June 1, 1989, when he filed his defence?

Why should I believe his explanation of a skid when he says this for the first time at the trial on May 2, 1990? Why did he not mention the skid in his defence? I do not believe the Defendant that he had any skid on the day in question.

In paragraph 1 of his defence he states that Angela caused her own hurt by assaulting him with blows to his head and body, jumping on him thereby causing him to lose control; that the vehicle suddenly accelerated and swerved away from some cows which were lying on the road. When he was cross-examined as to what exactly Angela had done he stated that she jumped on him by placing one arm around his right shoulder and the other arm over his two arms which were holding the steering wheel. He gave no evidence that Angela gave him blows to the head and body.

I do not believe the Defendant that Angela ever assaulted him by giving him blows on the head and body nor by placing her arms over his shoulder and hands.

When the Defendant gave evidence in chief he stated that there was nothing in his way at the time of the accident but in his defence he had pleaded that the cows lying on the road had, to some extent, contributed to the accident. It was only when he

was cross-examined that he stated he had already passed the cows when Angela jumped on him and so the cows had nothing to do with the accident. I do not believe there were any cows on the road on the night in question.

I have seen the photographs of the wrecked car and it is incredible that such could be the result of a crash of a new motor car. The wreck could only be the result of a violent impact of a car which was travelling at extremely excessive speed and coming into contact with the electric pole. I find that the Defendant is the sole cause of the accident and is therefore liable to the Plaintiff.

As is customary in this jurisdiction, I received no assistance from Counsel in respect of the principles pertaining to damages in this case. I gather, however, that the Plaintiff is bringing these proceedings under Articles 609 and 988 of the Civil Code although no where does he specifically say so.

In the cases of Veronica Auguste v Tyrone Maynard, Suit No.440 of 1984 decided on September 30,1986; and Edma Auguste v Attorney General, Suit No.24 of 1978, decided on November 12,1986, I sought to set out the legal principles in respect of damages arising from these two causes of action. I do not propose to reiterate them here but I shall use those two decisions as a guide for this one.

As I did in Veronica Auguste's case, I will first deal with the dependency action under Article 988 of the Civil Code. The Plaintiff, in paragraph 3 of his statement of claim alleged that

the Plaintiff and his seven other children were dependants of Angela. At paragraph 4 of his defence, the Defendant alleged that none of the eight persons were dependants. But as I have stated neither Counsel assisted the Court in this respect. Sub-section (3) of Article 988 of the Civil Code makes it clear that any action under the article shall be for the benefit of a wife or husband or a parent and child of the deceased person hence it is only Simon Richards who can be regarded as a dependant. I must find the value of the dependency and the general method of assessment for so doing is to find a multiplicand and multiply this figure by an appropriate multiplier. There is evidence that Angela was 21 at the time of her death and she then earned a salary of \$873.50 a month. From that she gave her father \$300.00 a month according to his own evidence. But under cross-examination he admitted that Angel boarded and lodged at home so it follows that some of that \$300 was used on her. I have regard to the fact that Angela worked at Marigot Bay Resort which is approximately seven miles away from Castries. So it is most probable that Angela spent periods away from home while at work. In the circumstances I would assess the monthly dependency at \$200 a month at the time of her death. It appears to me that things would remain the same up to now when the matter is being tried.

Having regard to the contingencies of life, for example, increased salary or the likelihood of her marriage and therefore leaving her father's home I find that the amount of that dependency would be lessened in the future and perhaps would be

in the region of \$100.00 a month.

In respect of the appropriate multiplier, I would have to consider the number of years of the anticipated dependency. In this regard, I would need to consider not only the expectation of life of Angela who was young and healthy but also the expectation of the life of her father. There is no evidence of his age. He appears to me to be in or about the age of 60 years. The dependency would come to an end after Angela got married or formed a permanent association and have children.

In *SPITTLE v BUNNEY* 1988 3 AER 1031 where a child three and a half years old had lost her mother who took care of her the Court of Appeal held that they would not interfere with a multiplier of 11 although on the high side.

I would adopt a multiplier of 9 in the circumstances. For the first 5 years I would find the dependency to be $\$200 \times 12 \times 5 = \$12,000$; and for the next 4 years a dependency of $\$100 \times 12 \times 4 = \$4,800$, making a total of \$16,800 under the dependency action.

Paragraph 10 of Article 988 permits an award of damages for funeral expenses of the deceased person. The guiding principle under this head is that the amount must be reasonable. The Plaintiff has claimed a sum of \$3,749.00 for burial expenses and has produced a bill from Crick's Funeral Services Ltd. for the exact sum. I think he is entitled to it and I so order.

I now turn to the survival action under Article 609 of the Civil

Code. Under this head I award the conventional award for loss of expectation of life in the sum of \$1,750.00. I pass on to consider an award for the "lost years". The Deceased was admitted by the Defendant to be quite healthy. She was 21 years at the time of her death. I would therefore apply a multiplier of 14 in this case. For the first five years I would find that the Deceased would spend 85 per cent of her net earnings on herself. I make allowances for an increase in salary and I would use a monthly sum of \$1,000. This means the amount for the "lost years" for the first five years would be $\$150 \times 12 \times 5 = \$9,000$.

For the next 9 years I assess that the Deceased would spend less on herself whilst she was married or in a permanent association. I estimate she would spend 75 per cent of her salary on herself leaving 25 per cent to be used for the calculation of that later period. The amount for the next 9 years would therefore be $\$250 \times 12 \times 9 = \$27,000$.

As I mentioned in Veronica Auguste's case the Plaintiff cannot recover the full amount under the dependency action and the full amount under the survival action.

Under the dependency action the Plaintiff, as dependant, would be entitled to \$16,800. Under the survival action the Estate of the Deceased would be entitled to \$36,000 plus \$1,750 = \$37,750. According to Article 569 of the Civil Code the Plaintiff would be entitled to one-half of the damages under the survival action, that is, \$18,875. Since that amount is greater than the sum to

which he is entitled under the dependency action, I make no award to him under Article 98B in accordance with the principle enunciated in GAMMELL v WILSON 1980 2 AER 557.

I therefore order that the Defendant pay to the Plaintiff General damages of \$37,750 and Special damages of \$3,749 making a total of \$41,499.00 and the Plaintiff's costs to be taxed or otherwise agreed.

The Defendant's counterclaim is dismissed.

A.N.J.MATTHEW
Puisne Judge.