

IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

A. D. 1990

(Civil)

Suit No. 25 of 1988

BETWEEN:

COLIN TUTT

PLAINTIFF

AND

ROOSEVELT NICHOLLS

and

ALGIE MAYNARD

DEFENDANTS

Before The Honourable Mr. Justice Lloyd G. Williams, Q.C.

(IN COURT).

Appearances:

Lillian Benjamin for the Plaintiff
Henry Browne for the first-named Defendant
Second-named Defendant not appearing

1989, July 12.

1990 Jan

REASONS FOR DECISION

Oral Judgment was delivered in this matter on the 12th day of July, 1989. I now set out my reasons for the decision.

The plaintiff's claim is against the defendants in negligence. The second-named defendant was not serve and did not appear at the hearing, accordingly the case proceeded against the first-named defendant alone.

On the 1st day of April, 1987 the plaintiff was driving his motor pick-up vehicle No. P 2254 along the main road in the vicinity of Needmust Estate. The second-named defendant was driving motor-vehicle No. P. 2520 owned by the first-named

/defendant....

defendant.

Both vehicles were approaching each other. The second defendant was not keeping a proper look out, the vehicle he was driving suddenly went across the road and collided with the plaintiff's vehicle. The plaintiff was driving his vehicle on his correct side of the road.

The fundamental question for consideration is whether the second-named defendant was the servant or agent of the first-named defendant at the material time, and whether the first-named defendant is vicariously liable for the negligence of the second-named defendant.

The learned Author of Bowstead On Agency, Fifteenth Edition, at page 1 defines agency as follows:-

"Agency is the relationship which exists between two persons one of whom expressly or impliedly consents that the other should represent him or act on his behalf, and, the other of whom similarly consents to represent the former or so to act".

The first-named defendant engaged the services of the second-named defendant to instal a water-pump in his vehicle. He requested that the second-named defendant drive the vehicle to see if it was in proper working order after having installed the said water-pump. The first-named defendant now seeks to avoid responsibility by saying he did not authorise and direct the second-named defendant to drive the vehicle for the purpose of testing same after he had installed the water-pump.

I was informed by Counsel that the second-named defendant is no longer in the Federation and this might explain why this course is now being adopted by the first-named defendant.

I totally reject the evidence of the first-named defendant that he did not request the second-named defendant to drive his vehicle so as to test it.

I accept the evidence of the plaintiff that the first-named defendant told him at the scene of the accident that Algie Maynard had fitted a new water pump to the mini mope and Algie asked him if he could take it for a ride, he told me he reluctantly agreed".

/Yet....

Yet the first-named defendant in his evidence denied that he had told the plaintiff that. The first-named defendant went further and said that he was not aware that Algie Maynard had driven his vehicle and that he had not given him the keys for the vehicle. I do not believe the first-named defendant with regard to this. In my opinion when he told the plaintiff what the plaintiff said he told him about Algie Maynard driving the vehicle, as early as at that moment he was trying to create an escape route and avoid his responsibility.

Wherever there is a conflict between the evidence of the plaintiff and that of the first-named defendant, I accept the evidence of the plaintiff in preference to that of the first-named defendant.

I do not accept that the first-named defendant did not give the keys of his vehicle to the second-named defendant or authorised same to be handed over to him for the purpose of testing the vehicle. I so find as a fact and I reject any evidence to the contrary.

In my judgment the first-named defendant authorised, requested and directed Algie Maynard to instal the water-pump, and to test the vehicle after he had done so to see if it was in proper working order, that Algie Maynard acted accordingly and that it was while he was carrying out those instructions that the accident occurred; and I so find.

In the absence of Maynard the first-named defendant now seeks to say that he had not authorised Maynard to drive his vehicle or instruct him to test same. I reject both these contentions and find to the contrary.

I find that the collision occurred solely as a result of the negligence of the second-named defendant. The first-named defendant is therefore vicariously liable for the acts of the second-named defendant who in the circumstances of the case and on the totality of the evidence was either the servant or agent of the first-named defendant.

However, in my judgment on the evidence in this case the second-named defendant was the agent of the first-named defendant and I so find as a matter of law. It really does not matter for

/practical....

practical purposes whether the second-named defendant was the servant or agent of the first-named defendant, in either capacity the first-named defendant's liability with respect to any injury or damage caused to third parties is the same.

I reject totally any suggestion that the second-named defendant was on a frolic of his own or that he was an independent contractor.

The agent in this case had the authority to act on behalf of the principal and did so act and this constitutes a power to affect the legal obligation of the principal with respect to third parties.

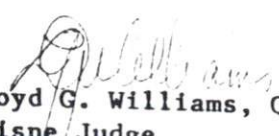
Special damages was agreed at \$16,802.00.

Judgment for the plaintiff on the claim against the first defendant -

Special damages	\$16,802.00
General damages	<u>4,000.00</u>
Total	\$20,802.00

and costs to be agreed or taxed.

Order accordingly.


Lloyd G. Williams, Q.C.
Puisne Judge

11th January, 1990