SAINT LUCIA

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 462 of 1993
BETWEEN:

1. GREGOR CRICK
2. NEW INDIA ASSURANCE CO. LTD

Plaintiffs

and

1. ANDREW SIMON
2. JOHN PHILGENCE
3. UNITED ASSURANCE CO. LTD

Defendants

Consolidated with
Suit No. 480 of 1993
BETWEEN: LUCIUS FELIX

Plaintiff

and

1. GREGOR CRICK
2. NEW INDIA ASSURANCE CO. LTD
3. ANDREW SIMON
4. JOHN PHILGENCE
5. UNITED ASSURANCE CO. LTD

Defendants

And
Suit No. 481 of 1993
BETWEEN: ANGELA HIPPOLYTE

Plaintiff

and

1. GREGOR CRICK
2. NEW INDIA ASSURANCE CO. LTD
3. ANDREW SIMON
4. JOHN PHILGENCE
5. UNITED ASSURANCE CO. LTD

Defendants

And
Suit No. 482 of 1993
BETWEEN: HERBERT REGIS

Plaintiff

and

1. HEIR OR EXECUTOR OF REMY PLACIDE
2. GREGOR CRICK

Defendants

And
Suit No. 483 of 1993
BETWEEN: **HERBERT REGIS**

Plaintiff

and

1. ANDREW SIMON
2. JOHN PHILGENCE
3. PHILGENCE TRANSPORT SERVICES

Defendants

And
Suit No. 484 of 1993
BETWEEN: **1. LUCY CHANDLER**
2. TYRONE LOUIS HUNTE

Plaintiffs

and

1. ANDREW SIMON
2. JOHN PHILGENCE
3. PHILGENCE TRANSPORT SERVICES

Defendants

And
Suit No. 490 of 1993
BETWEEN: **GREGOR CRICK**

Plaintiff

and

1. ANDREW SIMON
2. JOHN PHILGENCE

Defendants

Mr V. John for Gregor Crick.
Mrs S. Lewis for New India Assurance Co. Ltd, and Angela Hippolyte.
Mr. P. Husbands Q.C. and Mr. W. Hinkson for Herbert Regis.
Mr. W. Hinkson for Lucy Chandler and Tyrone Louis Hunte.
Messrs V. Cooper, A. McNamara and P. Foster for Andrew Simon, John Philgence, Philgence Transport Services and United Assurance Co. Ltd.
Lucius Felix in Person.

1994: October 10, 11 and 24

JUDGMENT

MATTHEW J.

These seven actions were ordered to be consolidated on March 30, 1994.

The actions arise out of a motor vehicle accident which took place on the Praslin/Mon Repos road on July 28, 1990 between an omnibus HA 624 and a container lorry TA 1961. The bus was travelling from Castries to Vieux Fort with a load of passengers and the lorry which was empty was travelling from Vieux Fort to Castries. At the time of the accident the bus was going up hill and the lorry was travelling down hill. Two persons died one of which was the driver of HA 624. At the trial the following persons gave evidence on oath :-

1. Lucella Joseph;
2. Lucius Felix;
3. Tyrone Louis Hunte;
4. Andrew Simon, driver of lorry TA 1961;
5. Hamilton Edwin, Ex Police Inspector;
6. Sergeant Raymond Clairsant;
7. Lucas Joseph;
8. Angella Hippolyte;
9. Joseph Prevale, Ag. Superintendent of Police;
10. Herbert Regis;
11. Gregor Crick; and
12. John Philgence, owner of TA 1961.

Basically there are two versions as to how the accident occurred. Andrew Simon, and Lucas Joseph who was travelling with him, gave one version and Lucella Joseph and Tyrone Louis Hunte who were travelling in the omnibus gave another version.

Ex Inspector Edwin and Acting Superintendent of Police Joseph Prevale tendered reports of the accident which were quited similar. Sergeant Clairsant gave evidence of what he saw when he went to the scene of the accident.

The other witness do not assist as I how the accident occurred. Andrew Simon and Lucas Joseph say that the bus was driving on its right side of the road and therefore on the lorry's proper side. Simon said he saw the bus about 40 feet away travelling towards him very fast. He said he was driving at about 25-30 miles per hour and his foot was on the brakes but he could not stop his 27 feet long container lorry before the collision.

I should mention here that Sergeant Clairsant who visited the scene after the accident found the bus parked diagonally across the road in the left lane of one driving from Vieux Fort to Castries. He saw the lorry on the same side but in the bushes. The police reports state that the lorry was found 66 feet away from the point of impact and 43 feet and five inches from the edge of the road.

Lucella Joseph who was seated next to the driver of the omnibus

stated that he was driving about 30 to 40 miles per hour and he was driving on the left side of the road facing Vieux Fort. She said she was deep in thought and just became aware of a big lorry in front of the omnibus she was travelling on. She said the omnibus was still on the left side and she did not see or hear the crash and the next thing she became aware of was that she was on a pick-up van which took her to St. Judes hospital to be nursed. When she was cross-examined she said she was not that deep in thought that she could not see where the driver of the omnibus was going. She said she was not in a position to say whether the driver of the omnibus was always on his side when taking a bend or whether he had crossed over by a few inches. Later still under cross-examination she said she was sure the omnibus was on the left hand side. According to Lucella the accident occurred after the omnibus had passed a long stretch and then a bend and was just about to climb a hill.

Tyrone Hunte supports Lucella that the omnibus was on its left side and the lorry was on the same side as it approached them. He said further that at the last moment the lorry tried to get back to its left and proper side and his driver tried to go further left and there was the collision. He said the omnibus turned across the road and the truck continued and landed in the bushes. This witness underwent a testing cross-examination by Mr. McNamara. It was suggested to him that if he sat at the back of the bus and there were four or five rows of persons ahead of him he could not

see properly. He denied this and said most of the people were asleep. I should say that there is some evidence of this for Lucius Felix and Angella Hippolyte who are Plaintiffs in these cases said they were asleep when the accident occurred.
Hunte in evidence stated that the omnibus was travelling at about 40 - 45 miles per hour. He was attacked because at a preliminary inquiry concerning this incident he might have told the Magistrate the speed of the bus was 50 - 60 miles per hour. He went on to say he was not sure of the speed and would say something else the next day. He also admitted he might have told the learned Magistrate that the omnibus had a wheel over the center line of the road.

Lucella Joseph is not a party to these proceedings and she has nothing to gain or lose. I regard her as an independent witness. She is a nurse by profession and appears to be quite intelligent. I saw her demeanor in the witness stand and I accept her as a witness of truth. She was unshaken under cross-examination.

I believe Tyrone Hunte and Lucella Joseph that the lorry was on it's wrong side of the road just immediately before the accident and I find as a fact that was the main cause of the accident exacerbated by the lorry's speed driving down hill in excess of the speed limit of 15 miles per hour for that kind of vehicle on that road.

I believe Lucella must have been shocked to see this huge lorry, 27

feet long, and three to four feet higher than the omnibus according to Lucas Joseph in front of the omnibus in which she was travelling. I accept the evidence of Hunte that he had a clear view of the road and the driver of the lorry did try to get back to his correct side of the road, but was late in doing so.

It has been suggested that because of the length of the lorry it would inevitably have to veer to its right to negotiate a left hand corner. This is too easy to appreciate and must be the reason for the lorry finding itself in the position where Lucella and Hunte saw it.

Andrew Simon did not appear to be a witness of truth. On several occasions he said that on the day after the accident he did not tell the police anything and did not show them the point of impact. Sergeant Clairsant stated on oath that on the said day Simon did show P.C. Jn Baptiste a point of impact in the center of the road, inches from the center line but in his driving lane. I prefer to believe Sergeant Clairsant.

However, when he was crossed-examined by Mr. John Simon said the point of impact was in the center of his lane. That of course would be different to the point of impact in the police report.

When Lucas Joseph gave evidence in answer to the court he said that Philgence is his boss and at the time of the accident he was

working for him as a driver, but Simon when cross-examined by Mrs. Lewis would have the Court believe that at the time of the accident Lucas Joseph was a driver who worked with the City Council.

I reject the evidence of Andrew Simon and Lucas Joseph that the bus was on their side of the road when the accident occurred. It is inconceivable that Simon had his foot on the brakes and saw the bus 40 feet away and could not stop and /or control his vehicle. I believe it was his lack of control caused by excessive speed that got his lorry off the road. I do not believe a glancing blow by the bus could throw this long and heavy vehicle out of course.

And how is it possible that the bus would remain on the spot after the accident as Lucas Joseph would have us believe when he was cross-examined by Mrs. Lewis, and the lorry travel 66 feet away?

I believe the 24 feet brake impression is evidence of Simon's excessive speed before the collision and his attempt to bring his vehicle under control.

It is not without passing notice that Lucas Joseph stated under cross-examination by Mr. Hinkson:-

> "I feel that this vehicle going down hill at Mon Repos should go a slower speed than 25 - 30 miles per hour."

The evidence of Lucella Joseph and Tyrone Hunte explain how the lorry being first on its wrong side and in its attempt to cross over to its correct lane would come into collision with the omnibus and throw it in Simon's lane and thereafter being unable to stop after the impact got itself into the bushes.

The road at the point of impact was 22' 7" wide and therefore large enough for both vehicles to pass if the drivers wereving carefully, at moderate speed, and on their correct sides of the road. In this case only one driver was able to show the point of impact for the other driver died on the same day of the accident. The midpoint of the road would allow 11 feet 3 1/2 inches for each lane. The measurements taken seem to indicate that the point of impact was 1 1/2 inches from the center of the road as shown by Simon. Clairsant saw debris in the center of the road and he said the debris and where Simon pointed out was almost in the same area.

What this shows is he contact was almost in the center of the road but as I have said I find as a fact that the lorry was on its wrong side immediately before the collision and it may be that this put the deceased driver in a state of panic as Mr. Hinkson suggested. Even if it is a fact that one wheel of the omnibus was over the center line, I find that Simon's lorry was much further away on the wrong side of the road and it was the main cause of the accident.

However, there is no doubt in my mind that Remy Placide deceased,

driver of the omnibus was not driving within the speed limit and I believe Lucella Joseph that his speed ranged between 30 and 40 miles per hour. When Lucella was cross-examined by Mr. Husbands she said:-

> "I was sitting next to the driver. I was watching the speedometer. That is how I say the driver was driving between 30 and 40 miles per hour".

I prefer to rely on her evidence in respect of speed rather than that of Hunte who was only estimating and it may not be too fair to discredit a person who says a certain speed was between 50 and 60 miles per hour and then later estimate that speed as between 40 and 45 miles per hour when he was judging that speed sitting at the rear of the moving vehicle.

Be that as it may both Lucella Joseph and Tyrone Hunte put Placide's speed well over the speed limit soon after he had negotiated a bend. It may be that if the Deceased was driving at the speed required by law for this part of the island and as far left as possible the accident might have been avoided or minimized.

This was an extraordinary case for at the close of the evidence I heard six addresses from learned counsel. Mr. Cooper addressed on contributory negligence. He referred to paragraphs 964 at 965 of

Volume 23 of the Second edition of Halsbury's Laws of England and to the case SWADLING v COOPER 1931 AC 1. which is referred to in paragraph 964.

In that case an accident occurred when a cyclist was killed when he drove from a side road into the main road and came into contact with the Defendant's motor car. His widow brought an action under Lord Campbell's Act for damages for the loss of her husband. The Judge directed the jury that if they found that the Defendant was negligent in such a way as to cause the accident, but that the Deceased man was guilty of contributory negligence so that both parties were substantially to blame for the accident, they should find a verdict for the Defendant, and that the question was, whose negligence was it that substantially caused the accident. The jury found for the Defendant.

The Court of Appeal ordered a new trial on the ground of misdirection, in that the Judge omitted to direct the jury that if, though both were negligent, the Defendant could by reasonable care, after the accident of the Deceased man, have avoided the negligence, they should find for the Plaintiff.

The House of Lords reversed the decision of the Court of Appeal holding that the Judge had sufficiently explained to the jury the law applicable to the facts.

Paragraph 964 and the Court of Appeal lay emphasis on the last opportunity rule.

The Second Edition of the Laws of Halsbury was published between 1931 and 1942, the third edition between 1952 and 1964; and the fourth between 1973 and 1987.

Paragraph 69 of Volume 34 of the Fourth edition of Halsbury's Laws of England state:-

> "In order to establish contributory negligence the Defendant has to prove the Plaintiff's negligence was a cause of the harm which he has suffered in consequence of the Defendant's negligence. The question is not who had the last opportunity of avoiding the mischief but whose act caused the harm. The question must be dealt with broadly and upon common sense principles. Where a clear line can be drawn, the subsequent negligence is the only one to be considered, however, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the person secondly negligent might invoke the prior negligence as being part of the cause of the damage so as to make it a case of apportionment. The test in whether the Plaintiff in the ordinary plain common sense of the business contributed to the damage".

Reduction of damages for contributory negligence is dealt with in a separate chapter of McGregor on Damages, Fourteenth edition. The chapter is chapter 5 and it states that it was the Law Reform (Contributory Negligence) Act 1945 which by allowing apportionment of damages for the first time at common law in cases of contributory negligence brought such cases from the category concerning existence of liability into that concerning extent.

The ambulatory povision of Article 917 of the Civil Code would seem to incorporate that law into our system.

At the commencement of the case I was handed a document by Mr. Husbands who stated that Counsel on all sides had agreed to it and in his final address Mr McNamara reiterated his consent. I marked the document "A". The document gave a very brief precise of the facts and then it stated that the issues were liability and damages. This is all quite straight forward. Under liability it stated:-

> "Who was responsible for the fatal accident? Was the driver of the omnibus solely to blame or was the driver of the lorry the sole cause of the accident? Or was the accident the fault of both drivers, and if so, in what degree?"

It seems to me that from that document all Counsel are in agreement with the modern law of contributory negligence and apportionment.

In my judgment the driver of the omnibus was 30 per cent liable for the accident and the driver of the container lorry 70 per cent liable for the accident.

I must now pass on to consider the damages.

Suit 462 of 1993

In his closing address Mr McNamara submitted that since the insurance company had paid Gregor Crick for his omnibus he could not claim that amount again from his clients. He said there was the aspect of subrogation. Counsel might have been focussing on Suit 490 of 1993. If he is correct then he cannot deny New India Assurance Co. Ltd which is the second Plaintiff in this case from recovering under the principles of subrogation. I admitted into evidence as GC4 a valuation of HA 624. It was valued at $35,640 on January 12, 1990 and I would assess the value at the date of the accident to be $35,000.

The liability of the Defendants would be 70 per cent of that sum amounting to $24,500.

The Defendants are ordered to pay New India Assurance Co. Ltd $24,500 and the Plaintiff's costs to be agreed or taxed.

Suit 480 of 1993

This is a claim by Lucius Felix for personal injuries against five Defendants. Felix was a passenger on the omnibus. He suffered abrasions and superficial lacerations over the left knee region and a fracture of the left femur. He was in severe pain and discomfort and was admitted to hospital where he remained for 14 days. He was treated surgically by the insertion of a kuntscher nail and Dr. Richardson estimated that he would be unable to work for 16 weeks. The nail was to be extracted after a year but it was not anticipated that there would be later complications although he would be left with two permanent surgical scars on his left thigh and buttock. He tendered in evidence bills from St. Jude's hospital.

For pain and suffering, present , past and future I award the Plaintiff $15,000. I award him special damages for loss of earnings for 16 weeks. He earned $250.00 a fortnight so this would come up to $2,000. I award for hospital expenses the sum of $2,372.70.

My order is that the Defendants pay the Plaintiff general damages of $15,000 and special damages of $4,372.70 making a total of $19,372.70 and the Plaintiff's costs to be agreed or taxed.

Defendants 1 and 2 are to pay 30 per cent and Defendants 3,4 and 5

are to pay 70 per cent of the Plaintiff's damages. The counterclaim must be dismissed.

Suit 481 of 1993

This is a case by Angella Hippolyte for personal injuries against five Defendants. She too was a passenger in the omnibus. She said she suffered injures to her right knee, a split to the front of her head an another to the left side of her head. She saw a dentist and a surgeon as a result of the accident. She said her insurance company paid the dentist $2,500 but she could not produce a receipt.

The dentist found that there was evidence of a displaced fracture of the left angle of the mandible and he diagnosed jaw joint pain which was preventing her jaw from opening. He was of the view that there may be some osteo - arthritic changes in her jaw joints in the future.

Dr Soni did not find neurological abnormalities. He said there was an ugly scar on the left side of her chin which would be permanent.

She remained in hospital for six days. For pain and suffering, present, past and future I award the Plaintiff $25,000. I also award the dentist's fees in the sum of $2,500.

My order is that the Defendants pay the Plaintiff general damages of $25,000; special damages of $2,500 amounting to a total of $27,500 and the Plaintiff's costs to be taxed or agreed.

Defendants 1 and 2 are to pay 30 per cent and Defendants 3, 4 and 5 are to pay 70 per cent of the Plaintiffs' damages.

Hence again the counterclaim must be dismissed.

Suits 482 of 1993 and 483 of 1993

These two actions were brought by Herbert Regis as Personal Representative of Hamilton Regis deceased under Articles 609 and 988 of the Civil Code. The dependency action is for the benefit of the Deceased's children, namely:-

1. Milton born April 24, 1986; and
2. Leanne born September 17, 1989.

The Parties seem to have agreed upon a multiplicand late in the proceedings and after all the witnesses had given evidence. Mr Husbands leading for the Plaintiff, asked to amend the two statements of claim to allege that the Deceased paid the sum of

$200 monthly for the maintenance of each child. There were no objections and the amendments were granted. The multiplicand would therefore be $4,800.

It is only left for me to apply an appropriate multiplier in accordance with the principles enunciated in VERONICA AUGUSTE V MAYNARD a case I decided a few years ago and which was cited by Mr John. I also reminded myself of my recent judgment in DAVID MYERS V JOHN MURIEL which was also cited.

Having regard to all the uncertainties and contingencies of life and to the fact that the Plaintiff will be receiving a capital sum payable now I shall apply a multiple of 12.

The Defendants are ordered to pay the Plaintiff under the dependency action the sum of $57,600.

It seems to me that the Parties had also agreed to a large extent on the amount that should be awarded under the survival action. Mr Husbands agreed with Counsel on the other side that $100 a month would be the correct figure. The starting point of the multiplicand would therefore be $1,200. The Deceased was 27 years old when he died and he was a customs officer in permanent employment with the Government of Saint Lucia. He was unmarried and had been in the service for 9 years. I believe his salary would have increased from time to time and so I should increase the

multiplicand over all to $1,500. There is no evidence that he was in poor health and having regard to the Myers case, I use a multiplier of 13 making a total of $19,500. I also award the conventional sum of $3,000 for loss of expectation of life.

The Defendants are ordered to pay the Plaintiff under the survival action for the benefit of the Estate sum of $22,500.

The Defendants are also ordered to pay the Plaintiff's costs to be agreed or otherwise taxed.

The Defendants in Suit 482 of 1993 are to pay 30 per cent of the Plaintiffs damages and the Defendants in Suit 483 of 1993 are to pay 70 per cent of the Plaintiff's damages.

The counterclaim in Suit 483 of 1993 against Herbert Harris must of necessity be dismissed.

484 of 1993

This is a suit by Lucy Chandler and Tyrone Louis Hunte for personal injures against three Defendants. Lucy Chandler did not appear at the trial and no evidence was tendered on her behalf. Hunte stated that his left wrisk was broken and he still has a pin inserted within. He said his left leg was also all cut up. He said at the time of the accident he worked at the OECS as a driver and earned

approximately $900.00 a month. He tendered in evidence a medical certificate by Dr. Richardson St. Rose.

The report indicates that Hunte, suffered scattered abrasions over his body and a displaced fracture of his left radius. The doctor stated that he was in much pain and discomfort.

The fracture was treated surgically on July 30, 1990 and it was reduced and fixed with plate and screws and he was discharged from hospital on August 1, 1990. The doctor stated that as a result of his injuries he would suffer from a temporary partial disability of 50 per cent for 4 months.

I award the Plaintiff, Hunte general damages for pain and suffering $15,000 and special damages for loss of earnings for 4 months at $900 making a total of $3,600 and his costs to be agreed or taxed.

The Defendants are to pay 70 per cent of the Plaintiff's damages.

490 of 1993

This is a suit on behalf of the estate of Remy Placide deceased and for the behalf of his three dependents against three Defendants.

The dependency action are for the Deceased's three children, namely,

Wren born December 26, 1985,

Steven born February 24, 1986, and

Vernicia born November 1, 1989.

Gregor Crick stated that the Deceased gave $200 to $300 a month for the maintenance of the three children. Assuming it to be $300 the multiplicand would be $3,600. Using a multiple of 12 as I did in respect of the Regis children that amount would be $43,200.

Under the survival action I would award the conventional sum of $3,000 for loss of expectation of life. I would also allow the $4,000 pleaded as funeral expenses. I now have to find a suitable multiplicand and multiplier for the remainder of the award to the estate. The only evidence available is that the Deceased earned $500 a month and out of that he gave $300 for maintenance of the children. He lived at his parents and did not pay for anything else since he worked with his father and the $500 was not what would be paid to a stranger. So the Deceased would have a balance of $200. He would probably spend $100 a month on drinks and cigarettes leaving a balance of $100. There is no indication as to whether that sum would increase or decrease. I leave the multiplicand at $1,200. The deceased was 23 years when he died and I use a multiplier of 14 making a total of $16,800.

The Defendants are ordered to pay the Plaintiff 70 per cent of $43,200 under the dependency action and 70 per cent of $23,800

under the survival action.

The Defendants have counter claimed. Although there is no pleading of the special damages, John Philgence was allowed to give evidence of repairs to his lorry which he put in the vicinity of $25,000. He was cross-examined and he admitted not being able to produce one document to support his claim although he had to buy parts for the repairs. In the circumstances I assess the cost for repairs at $15,000. The Plaintiff is to pay John Philgence 30 per cent of that amount.

The costs on the claim and counterclaim are to be agreed or otherwise taxed.

A.N.J. MATTHEW
Puisne Judge