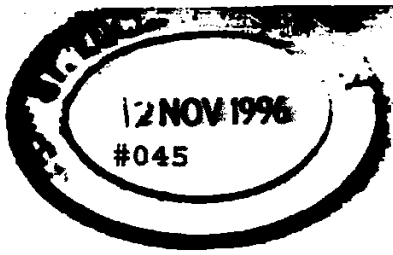


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SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996

Suit No. 510 of 1992

BETWEEN:

JAMES MASON trading as
ST. LUCIA NATIONAL DRIVING SCHOOL

Plaintiff

and

- 1. EVERARD RENEE trading as
RENEE'S CONSTRUCTION
- 2. ROBINSON SMALL

Defendants

Consolidated with Suit No. 2 of 1993

BETWEEN:

EVERARD RENEE trading as
RENEE'S CONSTRUCTION

Plaintiff

and

- 1. JAMES MASON trading as
ST. LUCIA NATIONAL DRIVING SCHOOL
- 2. CLEMENTIA EUGENE

Defendants

Mr. D. Theodore for St. Lucia National Driving School
Mr. A. McNamara for Renee Construction

1996: July 29;
October 9.

J U D G M E N T

MATTHEW J.

On October 16, 1992 James Mason trading as St. Lucia National Driving School filed a writ of summons indorsed with statement of claim asking for \$10,349.30 which he termed as special damages arising out of a motor accident between the Parties on August 21, 1990. The Defendants entered appearance on December 11, 1992 and filed their defence on January 1, 1993. The defence was a general

denial of liability and no counterclaim was set up. A reply and a request for hearing was filed on February 18, 1993 and March 2, 1993 respectively.

On January 6, 1993 Everard Renee trading as Renee's Construction filed a writ of summons indorsed with statement of claim in respect of the same accident and there he alleged negligence on the part of Clementia Eugene as the cause of the accident. In the particulars of negligence the Plaintiff stated among other things that the cause of the accident was the reversing of the motor vehicle registration No. 6339 and turning right across the road and across the path of Robinson Small.

Robinson Small was the driver of lorry registration number T3598 owned by Renee's Construction and Clementia Eugene was the driver of motor car registration number 6339 owned by the Saint Lucia National Driving School at the time of the accident.

Renee's construction claimed "special damages" in the amount of \$6,825.00. Appearance in this suit was entered on March 11, 1993 and a defence and counterclaim was filed on March 19, 1993.

On July 21, 1993 an order was made for the consolidation of both suits.

At the trial James Mason, P.C. Curtis Charles and David Fitz gave evidence for the St. Lucia National Driving School and Everard Renee and Robinson Small gave evidence for Renee's Construction.

The accident occurred on the Old Victoria Road not too far from the Green Parrot restaurant and near a "T" junction with that road. The Old Victoria Road runs from East to West with the Green Parrot close to the Western end and the Fort nearer the Eastern end. A minor road runs from North to South with the Southern end being the Old Victoria Road. The collision took place about five feet from

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five minutes and was in the process of bleeding the brakes with the help of another person pumping the brakes. I prefer the evidence of Mason.

Small has the audacity to tell this Court that he was not around when the police was taking the measurements but was underneath the truck. This in my view is a blatant lie and I prefer the evidence of Mason and P.C. Curtis Charles to the contrary.

Small has denied that he caused the police to take the measurements of 80 feet which represented the distance from where he said his brakes failed to the point of impact. The evidence of P.C. Charles is as follows:

"I measured from the place where driver told me his brakes gave way. Driver is Robinson Small. The explanation of Robinson Small was that his brakes gave way."

I prefer the evidence of P.C. Charles. Consequently, I do not accept the version of Robinson Small as to how the accident occurred.

On the other hand I was most impressed with the evidence of James Mason who stood up to cross-examination admirably and courteously. I believe his version as to the cause of the accident.

I find that the cause of the accident was not the obstruction created by the vehicle belonging to the driving school on the Old Victoria Road. Neither in its defence in suit 519 of 1992 nor in its statement of claim in suit 2 of 1993 did Renee's Construction set up such a pleading.

Rather, I find that the cause of the accident was that Small was unable to keep control of his car on the Old Victoria Road. The width of the road at the point of impact was 14 feet. If 5 feet was taken up by car 6339 and the width of the lorry was 7 feet

there was enough room for the lorry to pass comfortably.

I find that Small saw the car on the road a long way off and the obstruction was not sudden as he tried to say in evidence. I believe Mason when he said he saw the lorry about 100 feet away and this is an indication that if Small was paying attention he would have seen the car away at that distance.

In my view it is not at all imprudent that one should stop on the major road as in this case if she hears the noise of a vehicle and leaving enough room in the heat of the moment for the other vehicle to pass.

I find that Small's vehicle was defective, and not "effective" as the Saint Lucia National Driving School says in its pleading, and I find that Small knew of the defect. His conduct after the accident is not one of surprise. He told Mason and Clementia Eugene that he was sorry and soon after the police left the scene he goes under his lorry and does his "repairs" and in five minutes he is on the road again.

It is noticeable that soon after the accident Small does not throw any blame on Mason or Clementia and does not set up any defence of obstruction.

A further indication of knowledge of the defective brake is that according to P.C. Curtis Charles this truck is known for mechanical defects like brakes. In my judgment the defective brakes was no sudden occurrence due to a latent defect not discoverable by reasonable care on the part of Robinson Small.

I find as a fact that there was no damage to the truck or lorry registration number T3598 and I do not find that Clementia Eugene was contributorily negligent but that the sole cause of the accident was Robinson Small.

The "special damages" pleaded by the St. Lucia National Driving School has not been disputed. David Fitz who tendered evidence of the amounts was not cross-examined and learned Counsel for Renee's Construction in his final address stated that he had not challenged the values given in the exhibits.

I dismiss the claim brought in suit 2 of 1993 with no order as to costs and in respect of suit 519 of 1992 my order is that the

Defendants pay to the Plaintiff the sum of \$10,349.30 and the Plaintiff's costs to be agreed or taxed.

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A.N.J. MATTHEW
Puisne Judge