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ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO.: 152 of 1995

BETWEEN:

RAYMOND T. KNIGHTS -

PLAINTIFF

V

THELMA BAILEY -

DEFENDANT

Ms. N. Sylvester for the Plaintiff.
V. Cuffy Esq. for the Defendant.

Mitchell J.

JUDGMENT

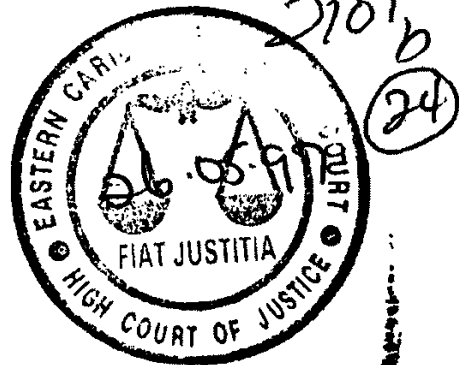
This is a running down case. By a Writ of Summons specially endorsed with a Statement of Claim filed in the Registry of the Supreme Court in St Vincent and the Grenadines on 24 April 1995 the Plaintiff seeks compensation for loss and damage caused to him in a traffic accident on 25 June 1991. His claim is that on that date he was driving his vehicle P4216 along the Windward Highway from Kingstown to Arnos Vale. In the vicinity of Casson Hill he saw the Defendant's vehicle H9824 try to pass a parked vehicle at a fast speed and it ran into the Plaintiff's vehicle. It is alleged that the collision was caused by the negligent driving of the Defendant's vehicle by the Defendant's servant or agent. The Plaintiff alleges that the Defendant's vehicle overtook a parked vehicle when it was unsafe so to do and caused the Plaintiff loss and damage. Damaged were the right fender, right front door, right back door, and right side mirror. The following Particulars of Special Damage were pleaded:

- (a) cost of mirror and door \$1,381.71;
- (b) cost of repairs \$796.00;
- (c) loss of use \$500.00;
- (d) excess \$500.00; and
- (e) depreciation \$340.00.

The Plaintiff claimed the special damages and general damages.

By a Defence filed on 4 July 1995 the Defendant denies that the collision was caused by the negligent driving of her servant or agent, and denies all the particulars of negligence and of special damage. The matter has been ready for hearing since the Request for Hearing filed on 29 February 1996.

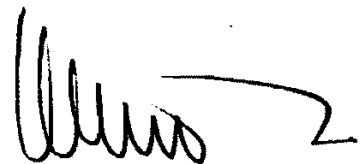
The matter came on for trial on 20 May 1997. The Plaintiff gave evidence which was not seriously challenged. It was about 1am in the morning during Carnival when he was driving home from his work as a supervisor at the Vinlec electricity plant. As he was driving along the



main road to Arnos Vale there was a vehicle parked ahead of him on the other side of the main road. He saw a silver van passing the parked vehicle and coming towards him. He realized there was not enough room for the oncoming vehicle to pass the parked vehicle and his vehicle if he continued on his right of way. He pulled aside and stopped his vehicle. The oncoming silver passenger bus came onto his side of the road to overtake the parked vehicle and ran into the right hand side of his vehicle. He gave evidence of the damage done to his vehicle and his loss of use for 5 days causing him to have to rent a vehicle for EC\$100.00 per day. His mechanic gave evidence of the repairs and the cost of parts and workmanship which were very reasonable. The Plaintiff went to see the Defendant who he says told him that she would repair his vehicle if he brought it to her. He says that when he told her that he would prefer to have his mechanic repair his vehicle she told him that she would see him in court. She denies that he ever came to see her or that she ever offered to repair his vehicle. It also appears that the driver of her bus on that night shortly after the accident emigrated to Trinidad and has not come back to St Vincent. I do not believe the Defendant that no one ever reported the accident to her, or that the first time she is seeing the Plaintiff is on the day of trial. I believe her when she admits on cross-examination that on the day in question the driver in question was in her employ. I do not believe her that the driver never told her about the accident. I believe that the Defendant is hoping that the emigration of her driver to Trinidad, and the resulting failure of the Police to bring a careless driving case arising out of the accident, will hopefully translate into a similar failure of the Plaintiff to obtain compensation for the damage done to the Plaintiff by her employee bus driver.

Counsel for the Defendant has submitted that the failure of the Plaintiff to name the driver of the Defendant's vehicle is fatal to the Plaintiff's case. If there is to be vicarious liability then there must be a name of a person through whom the Defendant could be liable. Counsel for the Plaintiff submits that the admission of the Defendant that the driver of the vehicle at the time in question was her employee is sufficient.

I accept that the unknown driver who has now emigrated to Trinidad was employed by the Defendant on the night in question to drive her passenger bus for hire. I do not accept that failure by the Plaintiff to know the name is fatal. I also accept that the accident was entirely caused by his negligent driving. I award the Plaintiff the cost of his mirror and door of \$1,381.71; cost of repairs of \$796.00 and loss of use of \$500.00. I also award the Plaintiff general damages of \$2,500.00 and costs to be taxed if not agreed.



Ian D. Mitchell, Q.C.
High Court Judge (Ag)

26th May 1997