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SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

NO.: 372 of 1992

BETWEEN: KENNETH GLASGOW
AND
KENRICK THOMAS
STEPHEN BROWNE

EASTERN CARIBBEAN COURT OF JUSTICE

PLAINTIFF

DEFENDANTS

APPEARANCES:

Mr. Arthur Williams for the Plaintiff.

Mr. Samuel Commissiong for the Defendants.

13th October, 1997

Delivered 6th November, 1997

BAPTISTE J.

JUDGMENT

On the 25th of May, 1992 a traffic accident occurred at Diamond involving two trucks, T1773 and T3024. The Plaintiff was the owner of T1773 which at the time of the accident, was being driven by Bernard Smith. The second Defendant was the driver of T3024, which was owned by the first Defendant. As a result of the accident, T1773 sustained damage to its cab which resulted in the cab having to be replaced. The Plaintiff has filed this suit against the Defendants alleging negligence and claiming \$7,750.00 in special damages and costs. There was no independent eye-witness to the accident and both parties give fundamentally different versions as to the cause of the accident. The only common thread running through the evidence is that a collision occurred between these two vehicles.

Mr. Bernard Smith testified in examination-in-chief as follows:

"On 25th May, 1992 I know Mr. Glasgow owned a truck, T1773. I was driving the truck on 25th May, 1992. I was driving it on the Diamond Beach. While driving on my way from the beach, as I approached the Diamond Highway, I noticed a next truck was reversing on my left. I stopped. I saw the driver fixing his mirror while reversing. He reversed straight into my cab. He destroyed the left side of the cab. I can't remember number of the truck. The driver was Mr. Stephen Browne. I came out of the truck. I spoke to the driver. He said he did

not see me. He was fixing his mirror. I asked him what he was going to do. He said he has to call the owner. The owner was Mr. Thomas."

In examination-in-chief the second Defendant stated as follows:

"About 10:15 a.m. that morning I was coming from Argyle in the direction of Kingstown. I was intending to go to Diamond. I did not go to Diamond Beach because T1773 and my truck could not pass on the same road. The road was not wide enough. I pulled out on the left side of the road. I stopped because both of us could not pass. I went down twenty to twenty-five yards from the gap. I never reversed when I got to that point. I was at a standstill. After I stand still I gave him a chance to come out. I waited for him to come out. When I looked in my left side mirror I saw his front pass coming on the right side of the road, that is the highway. In the meantime I there waiting. I received the lash. While there waiting he pulled on the right side and then as he approached the main road, passed my left side coming to the right, a vehicle approached him coming from the opposite direction. He pulled back to get away from the vehicle and applied his brakes to stop. His two wheels locked and his truck came on me. The left side of his front came into the right of the tail of my truck."

He further stated that after the accident he spoke to Bernard Smith and told him that the truck is not his and he has to get to the owner. He denied telling Bernard Smith that he was responsible for the accident or that he was looking through his left mirror.

I found the Plaintiff to be a more credible witness than the second-named Defendant and I accept the Plaintiff's version of how the accident occurred. The Plaintiff gave his evidence in a frank and convincing manner. The Defendant on the other hand did not appear convincing and I do not believe his version of the accident. The second Defendant's explanation of the Plaintiff pulling back his vehicle to get away from an approaching vehicle, applying his brakes and his wheels locking thus causing the accident, I consider to be evidence of convenience. It being a matter of convenience for him to place a third vehicle at the scene.

The reaction of the two drivers immediately following the accident gives more credence to the version of the Plaintiff. The Plaintiff deposed to having come out of the truck and speaking to the second-named Defendant, who said that he did not see the Plaintiff, he was fixing the mirror. The Plaintiff testified to asking him what was he going to do, to which he said he has to call the owner.

The second Defendant testified to speaking to the Plaintiff after the accident. He stated that the truck was not his and he has to get to the owner. Bearing in mind that no damage was done to the Defendant's truck, his statement is, to say the least, puzzling. This is not the statement

would expect from someone who had nothing to do with the accident. On the other hand, why would the Plaintiff ask the second Defendant what was he going to do if he, the second Defendant, had nothing to do with the accident, again taking into account the fact that there was no damage done to the Defendant's truck.

Some of his evidence in cross-examination further convinces me as to where liability lies. He said:

"The conductor was making noise with me. I told him is not my truck I have to get the owner."

"I could not accept liability because the truck is not mine."

I conclude that the second-named Defendant was responsible for the accident as he negligently reversed his vehicle onto the Plaintiff's vehicle. The damage done to the Plaintiff's vehicle is not, in my opinion, inconsistent with that liability.

The Plaintiff has led sufficient evidence in proof of special damage and I accept that evidence.

The first-named Defendant stated that the damaged cab had some value. He placed a value of \$1,500.00 on the damaged cab and stated that it was never returned to him. The first-named Defendant also stated that it would be better to replace the cab than to repair it, and \$5,000.00 is reasonable for the cab.

I enter judgment for the Plaintiff and order that the Defendants pay the Plaintiff the sum of \$7,750.00 in damages with costs to be taxed if not agreed. It is also ordered that the Plaintiff pay to the first-named Defendant the sum of \$1,500.00, the value of the damaged cab. The Defendant therefore is to pay the Plaintiff \$6,250.00.


Davidson Kelvin Baptiste
High Court Judge (Ag.)