

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT TO JUSTICE

NO. 397 of 1992

BETWEEN:

PHILLIP BERNARD

PLAINTIFF

AND

WINSTON HOYTE

DEFENDANT



Mr. S. Commissiong and Ms. M. Commissiong for the plaintiff.  
Mr. J. A. Delves for the defendant.

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19th November, 1997  
Delivered 2nd December, 1997

BAPTISTE J.

#### JUDGMENT

This is a case in negligence and bailment brought by the plaintiff consequent upon the damage to his motor vehicle P979 occasioned by an accident on the Arnos Vale road while the said vehicle was being driven by the defendant.

The facts reveal that the defendant is an auto mechanic and auto technician specialising in fuel injectors and auto electric. He has been a mechanic for about sixteen years. The plaintiff is a seaman and the owner of a Honda CRX. The fuel injectors were sticking so the plaintiff took his 20 Honda to the defendant to have it repaired. That was sometime in 1992.

There is a dispute between the parties as to what instructions the plaintiff gave the defendant. The plaintiff stated that he gave the defendant a specific instruction not to drive the car, and at the time of delivery, other than the small problem with the engine, the car was in excellent condition. The defendant testified that the plaintiff never told him not to drive the car. He posited that it was not possible to solve the problem without driving the car and from his mechanical experience it cannot be determined whether a vehicle had power unless it is road tested. The defendant further explained that after the plaintiff explained his problems with the vehicle he (the plaintiff) asked him to drive it to see the problem, to which the defendant replied that he could not drive it on the day in question as he was busy but would drive it on the 30 following day.

On this matter I find the evidence of the defendant to be more credible and as such I accept his evidence and reject the evidence of the plaintiff.

The defendant stated that he attended to the problem with the fuel injectors and discovered that there was another problem, this time with the exhaust of the vehicle. The defendant testified that the engine check light was coming on and this was due to the exhaust of the vehicle. He therefore took the car to Universal Mufflers at Fountain after speaking to the plaintiff's mother. The defendant had earlier testified that the plaintiff told him that he could contact his mother about anything concerning the car and had given the defendant his mother's telephone number. While returning from the Universal Muffler shop the defendant was involved in a collision with 40 another vehicle on the Arnos Vale road. I accept the evidence of the defendant and hold that the evidence does not support a conclusion that the defendant was on a frolic of his own at the time of the collision.

The critical questions are: Did the defendant as bailee of the car breach the duty of care he owed to the plaintiff as bailor? Was the defendant guilty of negligence?

It is the duty of the bailee to take reasonable care to keep the goods safe. If the goods are damaged while in his possession he is liable unless he can show, and the burden is on him to show that the loss or damage occurred without any neglect or default or misconduct on his part.

In describing how the collision occurred the defendant testified in examination in chief as follows:-

50 "I was driving from the muffler shop on my way back to Kingstown. I was on the seaward side i.e. the southern side. Another vehicle was on the opposite side coming from Kingstown. He turned to go down into the airport. That is when the accident took place. I had the right of way. He did not stop to allow me to pass. He simply hurried across and caused the collision. As a result the car was damaged."

In cross examination the defendant deposed:

"The accident happened just before mid-day. The entry to the airport is a fairly busy place. On that stretch of land there is a very clear view of the road. I first saw the other driver a couple feet from the bottom of the Arnos Vale exit. His vehicle was on the main road. I first saw him after I left the exit of the airport. I don't know the distance from the exit to entry of the airport. It is roughly 35 to 40 feet. I was driving at 45 km. I am not sure what was the speed of the other driver. The speed limit is 20 to 35 m.p.h. I do not know the speed limit. I don't agree that 45 km per hour is pretty fast driving on that part of the road. When I saw him

I applied brakes and start slowing the vehicle down. I succeeded in bringing the vehicle to a stand still. I can't recall how far away from him I was when I stopped. ... I had the right of way. I stopped because I realised that the other driver turned to come down in Arnos Vale. I did not see any indicator. I had no idea that he was going to turn to the airport .. my vehicle was hit while it was moving."

70 Patsy Barker gave evidence on behalf of the defendant. The essence of her evidence was that she was standing on the airport wall awaiting someone. The defendant passed in his car and tooted his horn. She looked in the direction in which the defendant was going. A vehicle coming from Kingstown turned in the vicinity of the airport and the two vehicles collided. She testified that she did not see any indicator on the other vehicle.

I accept the evidence of the defendant and Patsy Barker as to the cause of the accident. I find that on the day in question the defendant was driving the Honda CRX on the Arnos Vale public road going towards Kingstown when another vehicle travelling in the opposite direction turned in the vicinity of the airport without giving any indication to the defendant, thereby causing the collision in the lane of the defendant.

80 Reference was made to the second schedule of the Motor Vehicles and Road Traffic Act Cap. 355, which deals with speed limits. The defendant had stated that he was driving at 45 km. This is equivalent to 30 miles per hour. In paragraph 1 of the second schedule, the speed limit within a number of towns and villages is set out. Arnos Vale is not mentioned therein. It appears therefore that Arnos Vale falls in the second schedule and the speed limit pertinent to the area would be 30 miles per hour. I hold that the defendant was driving within the legal speed limit.

In the circumstances of the case after evaluating the evidence I hold that the damage to the vehicle was caused without any neglect or default on the part of the defendant and as such he was not in breach of his duty to take reasonable care of the vehicle. Further the defendant has satisfied the court on a balance of probabilities that there was no negligence on his part. I find 90 that the overwhelming cause of the accident was the deliberate act of negligent driving by the other driver in that had it not been for that driver's negligent act in turning across the defendant at the time in the manner he did the accident would not have happened.

It is accordingly ordered that the plaintiff's claim is dismissed. Costs to be taxed if not agreed.



Davidson Kelvin Baptiste  
High Court Judge (Ag.)