

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO. 124 OF 1992



BETWEEN:

COSMORE DENNIE

PLAINTIFF

AND

LOUIS WILLIAMS

DEFENDANT

Samuel Commissiong for the Plaintiff

Nicole Sylvester and Ms Mayers for the Defendant

1998: May 5, 6, 81

1998: October 5 1

JUDGMENT

BAPTISTE J.

On the 22nd of July, 1991 at about 7:25 a.m. a collision occurred on Bay Street in Kingstown involving a vehicle owned and driven by the plaintiff and one owned and driven by the defendant. The plaintiff was driving his vehicle on Bay Street at about 25 miles per hour, heading towards the Grenadines Wharf to pick up someone. Bay Street, which is a major road was at the time free from human and vehicular traffic. The defendant had driven his vehicle along Sharpe Street en route to his work place. Sharpe Street is a minor road and it adjoins Bay Street. There was and is a stop line on Sharpe Street where it adjoins Bay Street. The defendant would have to travel across Bay Street to get to his work place. While both vehicles were on Bay Street a collision occurred. The width of Bay Street in the area of the collision is 40 feet. The collision occurred on the right side of the road. The point of impact being 14 feet 8 inches from the right side of the road.

The plaintiff's version of events is consistent with his case as pleaded. The plaintiff testified that as he approached the intersection of Bay Street and Sharpe street the defendant's vehicle came out of Sharpe Street without stopping. He took evasive action by swinging towards the Port Yard side (the right side) of the street.

He was almost past when his left rear door and side door was hit. This pushed the back of his car causing it to spin resulting in a 180 degrees turn.

The defendant's evidence is that on the 22nd July, 1991 at 7:20 a.m. he was driving his car along Sharpe Street. On reaching the intersection of Sharpe and Bay Streets, he stopped his vehicle, looked left, then right, then left again. This was done because he had to cross Bay Street to get to his work place. Having observed that Bay Street was free from human and vehicular traffic he proceeded to cross the road. He was a little more than half of the width of the road when the plaintiff's vehicle crossed in front of him in a very fast manner and crashed into the front of his vehicle. The plaintiff was driving on the wrong side of the road.

It is evident that the version of events as deposed to by the plaintiff and the defendant cannot both be true. The court has to make a finding on the fundamental issues of fact in this case, which are:

- (1) whether the defendant emerged from Sharpe Street a minor road unto Bay Street a major road without stopping.
- (2) Whether the defendant drove from Sharpe Street into Bay Street when it was unsafe to do so.
- (3) Whether the plaintiff was driving his vehicle on the wrong side of the road.
- (4) Whether the plaintiff was driving at an excessive speed.

On a close examination of the evidence and having regard to the case as pleaded, I am inclined to accept the evidence of the plaintiff as to how the accident occurred. I have considered the manner and demeanour of the litigants and the plaintiff impresses me as the more credible witness. I consider him to be a witness of truth who gave his evidence frankly.

In cross examination he readily admitted that he was driving beyond the speed limit. He said: "I was not driving leisurely, I had to get to the airport at a specific time. That was part of the reason I was exceeding the speed limit."

The defendant did not always show that frankness with his answers. In response to a question put in cross examination he said: "A vehicle exiting from a minor road unto a major road must accordingly give way to traffic on the major road." When asked by Mr Commissiong what he meant by accordingly, he made a feeble attempt to explain by saying: "If a vehicle is coming out of a minor road and

one is coming from the major road and one is coming from a major road to the said minor road, that's why I said accordingly."

The defendant stated that in 1991, there was no stop line at the intersection, there is one at present. The evidence of Police Constable Francis, who investigated the collision, and which I accept is that there was a stop line there in 1991.

The defendant stated that he took all precaution before he crossed Bay Street. Yet when he saw the plaintiff's vehicle it was exactly in front of his vehicle, crossing his vehicle. This was a person who said in cross examination: "I had a clear view of what was happening on Bay Street. I could see about 150 to 160 yards down Bay Street." He further stated that he had not seen any vehicle at all and he first appreciated the presence of the plaintiff's car when the plaintiff was crossing his car. That evidence in my view illustrates a great deal of inattentiveness on the part of the defendant in relation to traffic on the road.

In cross examination the plaintiff stated that when he first saw the defendant's vehicle, it was 60 feet. He took evasive action by curving his vehicle towards the Port or right side of the road. This to my mind undoubtedly explains the point of impact occurring on the right side of the road.

Mr Commissiong in his address noted that only the left front side of the defendant's vehicle was damaged. He submitted that when the defendant's car collided with the plaintiff's car, it must have been at an angle. He argued that the first point of contact being the left rear door of the plaintiff, showed that the plaintiff's car had already passed the danger point or was swerving to avoid what appeared to be a certain collision. Counsel submitted that the nature of the damage is the best indication of how the accident happened, and the damage to the plaintiff's car is the smoking gun evidence in this case. Further, the damage is in favour of the plaintiff's case. I agree with learned counsel that the damage done favours the plaintiff's case. It is also consistent with the plaintiff's explanation as to how the accident occurred.

Ms Sylvester for the defendant submitted inter alia, that the plaintiff was driving too fast in the circumstances and he failed and or refused to stop so as to avoid the accident. As far as speed is concerned, in the circumstances of the case I do not find the plaintiff's speed to be excessive, nor do I consider his speed of 25 miles per hour in and of itself to constitute negligence. With respect to stopping, the plaintiff stated that he took evasive action when he realised that the defendant was not stopping. In my opinion the defendant's action created a sudden emergency for the plaintiff, who faced with an emergency situation, did the best he could to avoid the collision.

On the issue of contributory negligence, it is for the defendant to satisfy the Court that the plaintiff's act or omission has contributed in some degree to the accident. In the instant case, the defendant has not satisfied that onus.

In his address learned counsel for the plaintiff Mr Commissiong submitted that the defendant's case as pleaded states nothing. The parties must be bound by their pleadings. Paragraph 4 adds nothing to the pleading. Paragraph 3 cannot be prayed in aid in terms of paragraph 5 and paragraph 5 does not explain how the accident happened. Paragraphs 2,3,4, and 5 of the amended Defence and Counterclaim are reproduced below:

- "2. Save that the Defendant admits the collision referred to therein, paragraph 2 of the statement of claim is denied.
3. The said accident was caused or contributed to by the negligence of the Plaintiff.

PARTICULARS

- (a) Failing to have any or any sufficient regard for traffic regulations.
 - (b) Driving at a speed which was too fast in the circumstances.
 - (c) Driving on the wrong side of the road.
 - (d) Failing to stop, slow down, to swerve or in any other way so to manage or control his said motor car so as to avoid the said collision.
 - (e) Failing to keep any or any proper look out or to have any or any sufficient regard for the Plaintiff's car.
 - (f) Failing to have any or any sufficient regard for the safety of the users of the said road.
 - (g) Failing to stop or to wait in the road until the Defendant passed him in safety before turning or attempting to turn to his left.
 - (h) Causing his car to collide with the Defendant's car.
4. The alleged loss and damage are denied.

COUNTERCLAIM

5. The Defendant repeats paragraph 3 hereof, and says that by reason of the matter therein set out he has suffered loss and damage.

PARTICULARS

- (a) Repairs to Car \$3,638.29 ...
(b) Excess damages \$500.00".

Counsel seems to be lamenting the near demise of the art of pleadings. A pleading is a party's written statement of the facts on which he relies for his claim or defence. The object of pleadings is well known. As long ago as 1868 Phillimore J. said:

"[The pleadings] are not to be considered as constituting a game of skill between the advocates. They ought to be so framed as not only to assist the party in the statement of his case but the Court in its investigation of the truth between the litigants".

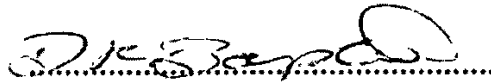
I consider this statement to be as pertinent today as it was in 1868.

Earlier in my judgment I indicated what I considered to be the fundamental issues of fact in the instant case. Paying regard to all the circumstances of the case including the credibility of the litigants having seen and heard them and on analysing the facts, I accept the plaintiff's account of the accident as more credible and probable than that of the defendant. Accordingly, I find as a fact that the defendant negligently emerged from Sharpe Street, a minor road into Bay Street, a major road without stopping and at a time when it was unsafe to do so. The plaintiff was at the time driving his vehicle on the left or correct side of Bay Street, at 25 miles per hour, a speed which was not excessive in the circumstances. The careless act of the defendant created an emergency situation for the plaintiff who was forced to take evasive action by swerving to the right in an effort to avoid the collision. The defendant's car collided with the plaintiff's car thus causing loss and damage. I find that in the circumstances of the case there was a breach by the defendant of the duty of care cast upon him which resulted in the collision with the subsequent damage and loss. I find the defendant to be wholly and solely liable in negligence for the accident. The plaintiff was not negligent nor contributed in any way to the accident.

The plaintiff has proven his special damage of \$6715.85 as particularised and pleaded and is also awarded \$1,000.00 in general damages.

It is ordered that:

- (1) Judgment is entered for the plaintiff with costs.
- (2) The defendant's counterclaim is dismissed with costs.
- (3) The defendant is to pay the plaintiff \$7,715.85 in damages.
- (4) The defendant to pay costs to be taxed if not agreed.



Davidson Kelvin Baptiste
HIGH COURT JUDGE (Ag.)