ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 600 OF 1997

BETWEEN:

ENOS BULZE

Plaintiff

and

ELLIOT BURGIN

Defendant

Appearances:

A Williams Esq for the Plaintiff
S Commissiong Esq for the Defendant

2000: April 5,10

JUDGMENT

[1] MITCHELL, J: This is a running down action. The only issue dealt with at the trial was liability. By consent, the issue of quantum, if any, was adjourned to be brought up on a summons for assessment of damages.

[2] The pleadings commenced with a writ endorsed with a statement of claim issued on 17 December 1997. It alleged that the Plaintiff had been pushing a coconut cart on the Bay Street near the old meat market when the Defendant drove his motor vehicle so negligently that the Plaintiff was struck and knocked down. The particulars of negligence were

1. Failing to keep any or any proper look out or to observe and heed the Plaintiff;

2. Driving too fast;
3. Failing to apply his brakes in time or at all or so to steer and control his vehicle as to avoid the said collision;
4. Failing to give any or any sufficient warning of his approach.

[3] By a defence filed on 19 February 1998, the Defendant denied that he had been driving negligently. The Bay Street at 4.50 pm was enjoying the rush hour and was busy with vehicular traffic and pedestrians. It was impossible for any vehicle to travel quickly on that street. The Defendant had been carefully watching both sides of his vehicle as he inched his way at a snail's pace on the busy Bay Street. He had been sounding his horn as he drove. He claimed that the Plaintiff had been negligent. The Plaintiff like so many of his kind was reckless as to his own safety. The Plaintiff was injured because he negligently and without warning made a sudden and unexpected left turn in a crowded street thereby exposing his right foot to the wheels of the Defendant's vehicle. The particulars of negligence were itemized as

1. Pushing a baggage hand-cart through a very busy street full of vehicles and human traffic;
2. Reckless as to his own safety by turning south or left as if to enter the old slaughter house thereby slowing his own pace without any or any sufficient waning thereby causing the car to collide with his foot.

[4] The only witnesses were the Plaintiff and the Defendant who each gave evidence on their own behalf. There were no independent witnesses, and the police measurements were not put in evidence due, no doubt, to the way in which they were taken. They were taken after the Plaintiff had been taken to the Hospital, and in his absence. The facts as I find them are as follows.

[5] On the day in question between 4.50 pm and 5.10 pm, the Plaintiff was pushing his handcart filled with coconuts, which he was cutting and selling to passersby,

along the Bay Street. The Bay Street was and is a one-way street. The Plaintiff was going with the flow of traffic. There was a line of street vendors on the pavement along the south or left hand side lf the stream of traffic. The Bay Street at that time of day is filled with pedestrians walking in both directions. They walk mainly in the street, as vendors obstruct the pavement. Merchants and shoppers use men pushing handcarts to do their business along this street. The handcarts are pushed in both directions, with and against traffic. They are handled with great dexterity, weaving in and out of traffic, darting from side to side of the street in between the pedestrians and slow-moving traffic as the business of their employers dictate. This Plaintiff on this occasion was pushing his handcart in a steady direction down the extreme left of the street. He had been selling cut coconuts as he pushed his handcart several hundred yards from the Customs House to where the incident occurred. The street was about 30 feet wide, occupied on both sides by streams of pedestrians, and, towards the center of the street by two, at that time imaginary, unmarked, lanes of traffic. Vehicles intending to go straight or to turn right used the right hand lane. Vehicles intending to go straight or to turn left used the left hand lane. The Plaintiff was pushing his handcart in the restricted space between the line of street vendors and pedestrians on the left side of the street and the line of vehicles using the left lane. The faster moving vehicles driving in the left lane had to pass close to the Plaintiff as they overtook him. When the Plaintiff came to the entrance to the old meat market or butcher stall on the left side of the street, he turned his handcart sharply to the left to enter it. As he did so, the Defendant's vehicle was about to pass the Plaintiff. The left bumper or fender of the vehicle struck the right buttock of the Plaintiff and, immediately after, the left front wheel ran over the Plaintiff's right foot fracturing several bones in the foot. I accept that as the Plaintiff turned left, the handle of the cart would have stuck out into the closely adjacent lane of traffic and pulled the Plaintiff's right side a few inches out into the traffic. This brought him into contact with the left front fender and his right foot under the left front wheel of the Defendant's vehicle. When the Plaintiff gave evidence at about 10 am in the morning he had already, as he admitted, "had a drink" for the day. He denied that

he had had a drink the day of the accident. Whether or not he had had a drink, I do not find that the drink contributed to the cause of the accident. I do not find that the Plaintiff stumbled as testified to by the Defendant. I do not find that the Defendant was speeding as testified to by the Plaintiff. The Defendant was following the line of vehicles in his lane and driving at the speed of the line, sometimes stopping, sometimes moving forward, with the line of vehicles as is normal in rush hour traffic. He was glancing front, right and left, at the pedestrians, vehicles, and carts on the street about him. His car was a right hand drive vehicle. He first saw the Plaintiff in the street in front of him on his left side when his vehicle was only 4 or 5 feet behind him. The real cause of the collision was two-fold. First, the Defendant was driving too close to the Plaintiff as he was about to overtake him and did not observe him until it was too late to take evasive action. The Defendant did not see the Plaintiff at the moment of the collision, he was glancing to the right and left. He testified he only heard it. His head was turned away at just the wrong time. Second, the Plaintiff gave no indication he was turning left. He turned suddenly. The turning of his cart brought him a few inches out into the street which was a few inches too many. The Plaintiff should have taken more care for himself, and looked at the lane of traffic behind him before he turned the handcart. He must have known that turning his handcart sharply to the left would push him a few inches to the right, out towards the nearby lane of traffic. If he had looked back before turning he would have realized that the Defendant was too close to him to allow him to turn. The Plaintiff was in charge of a vehicle as defined by the Road Traffic Act. All the road traffic regulations that apply to cars apply equally to hand carts. If the Plaintiff had signaled in good time his intention to turn left, as was his obligation under the Road Traffic Act regulations, but as no hand cart pusher ever does, then the Defendant would have been able to take evasive action. There was no credible evidence that the Defendant was speeding or failed to apply his brakes in time. I do not believe that the Defendant was blowing his horn as he drove his car up the street in rush hour traffic. But he did fail to observe the Plaintiff and to so steer his

car as to avoid the collision. I do not believe that the Defendant accepted full liability for the accident either by his words or by his deeds after the accident.

[6] In the circumstances, I find the Defendant liable to the Plaintiff in negligence. The Plaintiff contributed to his injuries equally by his own negligence. The Plaintiff will be entitled to one half of his damages and one half of his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge