ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 228 OF 1996

BETWEEN:

RAY DEFREITAS

Plaintiff

and

JOFFRE VENNER

Defendant

Appearances:

G Bollers Esq for the Plaintiff
Ms P David for the Defendant

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2000: February 24, April 18, May 2
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JUDGMENT

[1] MITCHELL, J: This was a running down action. It was made more interesting than the norm in that the Defendant repudiated the document which he had signed at the time of the accident and in which he had admitted liability. He also counterclaimed against the Plaintiff. Both counsel agreed that the issue of quantum, if any, should be brought up at a later stage on a summons for assessment of damages in chambers. The only issue before the court was that of liability.

[2] The facts as I find them are as follows. The Plaintiff is an airline pilot of Villa in St Vincent. The Defendant is a music teacher employed by the Government of St Vincent and lives at Belvedere. In the early morning of 19 November 1995 the Defendant was driving his passenger van P 9700 from west to east down Halifax

Street in Kingstown in St Vincent. That is a one-way street. It was divided by a white line into 2 lanes, a northern one and a southern one. He was accompanied by 2 of his music pupils in their early 20s. He was driving them home from a concert. He was heading out of town to the Windward side of the island. That required that he drive on Halifax Street in the northern lane. As he approached the Bank of Nova Scotia, one of his pupils asked him to pull in to the bank so he could withdraw some money from his account using the Automatic Teller Machine outside the bank. The Bank was on the south of the street. That meant that the Defendant would have to move his van over from the northern lane to the southern lane of Halifax Street. The Defendant had three rear-view mirrors on his vehicle, one on either side, and one above the windshield. Coming up behind him, but in the southern lane, was the Plaintiff. The Plaintiff's headlights were on. The road was a long straight stretch behind the Defendant. There was no obstruction in the road for hundreds of feet behind the Defendant. The speed limit in town is 20 mph. The Plaintiff by his own admission was doing 40 mph, so his speed may even have been faster. He was thus admittedly driving in excess of the speed limit. The Defendant says he looked in his mirror and saw no one behind him. No matter how fast the Plaintiff was driving, his headlights were on. The street was clear and vision was uninterrupted. The Defendant would have seen him approaching if he had looked in any one of his mirrors. The Defendant was then just approaching the Bank of Nova Scotia. He swerved to the right to cross the southern lane to get into the parking area opposite the bank so his passenger could deal with the ATM. The Plaintiff, seeing the Defendant swerve into the lane in front of him, pressed on his brakes, but could not stop in time. He slammed into the rear of the Defendant's van, causing it to collide on the south with a pillar at the bank building, and then to swerve across the road and head back across the northern lane. Both the Plaintiff's car and the Defendant's van were declared write offs.

[3] When both vehicles came to a stop, the Plaintiff approached the Defendant. The Defendant immediately accepted that he had been in the wrong. He arranged for

a passing vehicle to take his young passengers to the Hospital. After about 45 minutes, the police arrived on the scene. The Defendant informed the police that he accepted that he was responsible for the accident. One of the police officers wrote out on a sheet of paper the following words:

> This is to certify that I Joffrey Venner of Belvedere have accepted liability for all damages done to motor car PA 309 driven by Ray DeFreitas of Villa by the vehicle I was driving P 9700 which occurred at Halifax Street in the area of the Singer Building about 1.15 am on 19th November 1995.

The document was signed by Joffre Venner and Ray DeFreitas and witnessed by PC.327. No measurements of the scene of the accident were taken by the police. The parties were allowed to depart about their business.

[4] The accident had occurred early on a Sunday morning. During the course of the Monday morning the Defendant went to his insurer to make a report as a preliminary to making a claim both for his own vehicle and for the Plaintiff's. When he explained to the insurance officer what had occurred, he was informed that he had been quite wrong to sign an acknowledgement of liability without the permission of his insurer. There was a possibility that, as a result, his insurer would not accept responsibility for any award concerning the Plaintiff's vehicle. The Defendant resiled on his admission of liability. The police were persuaded to take measurements at the scene of the accident later on the Monday morning. In due course, a summons was even issued by the police against the Plaintiff for the offence of dangerous driving. That summons was dismissed by the Magistrate.

[5] The Plaintiff subsequently issued a writ against the Defendant. By his amended statement of claim, he claimed $28,000.00, being the value of his vehicle, and general damages. The Defendant went to see his insurer's solicitors with the writ that he had been served with. On his instructions a defence and counterclaim were served. By his filed defence, the Defendant claimed that immediately on

switching lanes he felt a forceful impact on the rear of his vehicle. This was significantly different from the story he told at the trial. At the trial he testified that he had successfully switched lanes and was driving along the southern lane about to park on the side of the road when the Plaintiff drove up behind him and collided with him. I do not accept the story of the Defendant that he had crossed from the northern lane to the southern lane long before the collision, and was driving along the southern lane when the Plaintiff crashed into his rear. I find that the evidence and the Defendant's pleadings are more in accord than this version of events. The Defendant swerved into the path of the Plaintiff because he did not look into his rearview mirror. He did not expect any other vehicle to be on the road at 1.15 am on a Sunday morning, and momentarily became careless.

[6] At the trial, the Defendant repudiated his written admission of liability. He claimed that he only signed it because he was concerned about the passengers. They had been bruised and one of them had been bleeding from a cut. He was anxious to get to the hospital to see about their condition. He was not thinking clearly at the time, and the Plaintiff had been anxious that he should sign the document prepared by the police officer. It is clear from the Defendant's evidence that he understood that he was signing a document admitting liability for the accident and for the damages flowing from it. He testified that at the time he was under a great deal of stress. He now considers that the police officer should not have written out the document by which he admitted liability. In his view the police officer had not acted as a fair arbitrator in the matter. The officer should have taken the measurements instead of releasing the two drivers on his having accepted responsibility for the accident.

[7] What I find happened is that the Defendant accepted liability at the time of the accident because he recognized that his carelessness in not having first checked his mirror had been the cause of the accident. At the time of the admission, he was under no form of duress recognized at law. He knowingly and freely accepted responsibility for the accident. What caused him to repudiate the acceptance of

liability was the stance taken by his insurer when he came to report the accident. If he accepted liability, the insurance company might not pay any amount of compensation that might be awarded to the Plaintiff. It was vital for him to repudiate the acceptance of liability he had earlier made. That was all to it.

[8] The duty of a driver using a highway that is divided into lanes by a white line is to ensure that he does not switch lanes unless he has examined the road in front of him, to his sides, and behind him, to ensure it is safe to do so. The primary duty of care is on the driver switching lanes, not the driver who is sticking to his lane. The driver who is traveling along the highway in a lane with no traffic in front of him is entitled to expect that no driver will come from a minor road or from another lane into his lane in front of him. That is the basic meaning of having the "right of way." The fact that the driver who is driving in his own lane is exceeding the speed limit is neither here nor there. He may be prosecuted for exceeding the speed limit if there is the evidence and that is the wish of the police. But, his driving in excess of the speed limit cannot be used to minimize the duty of one user of the highway to ensure that he does not carelessly cross into and obstruct the right of way of another user of the highway. This is not to condone the breaking of the speed limit by the Plaintiff, nor to suggest that a sensible driver will not ensure he drives so that no matter how careless the drivers about him, he always leaves room to maneuver to protect himself and other users of the highway.

[9] In the circumstances, there will be judgment for the Plaintiff for damages to be assessed and his costs to be taxed if not agreed. The Defendant's counterclaim is dismissed.

I D MITCHELL, QC
High Court Judge