

GRENADA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 48 OF 1996

BETWEEN:

WENCESLAUS FRANK

Plaintiff

and

CONRAD BAPTISTE

Defendant

Appearances:

Mr. K. Radix for Plaintiff.

Miss K. Noel for Defendant.

2001: January 22
February 05

JUDGMENT

- [1] **ST. PAUL, J.:** On 30th January, 1996 the Plaintiff filed a Writ of Summons claiming damages for personal injuries caused by the negligence of the Defendant in the town of St. George on 28th July, 1995. The Plaintiff claims special damages in the sum of \$12,940.00, general damages and costs.
- [2] The Plaintiff claims that on 28th July, 1995 he was on the sidewalk on Halifax Street in the city of St. George when he was struck and knocked down by motor vehicle No. T1292 which was owned and driven by the Defendant travelling along the said road in the direction of the intersection of Halifax and St. John Streets.
- [3] In his defence filed on 27th March, 1996 the Defendant denies that the Plaintiff while on the said sidewalk was struck and knocked down as alleged. He claims that suddenly and without consent the Plaintiff hopped onto the back of the said vehicle.

[4] It is interesting to note that the Defendant says at para 6 of his Defence:

"6. Further or in the alternative, with full knowledge of the risk of injury or damage to himself in taking such a ride, the Plaintiff voluntarily agreed to accept such risk, and to waive any claim in respect of injury or damage that might be occasioned to him. The Plaintiff is therefore not entitled to maintain his claim against the Defendant."

By this I take it to mean that the Plaintiff took the risk to hop onto the vehicle as alleged in (1) of the particulars of negligence.

[5] Further the Defendant said in (2) of the Particulars of Negligence:

"(2) Failed to take sufficient steps to avoid falling into the road."

[6] The Defendant seems confused as to the true nature of his defence. His evidence given on oath is an unexplainable departure from his defence as filed.

[7] After giving evidence about some unrelated incident on the night in question the Defendant went on to say:

"After the incident the Plaintiff came and held me on me right shoulder and ask me what happen. I said to him 'It seems a fight going on. I get a splinter by me eye.' After that me, me brother and he, the Plaintiff walk to Hillsborough Street in front of Farm and Garden Centre where my van was parked ... I went in on the driver side and my brother went in on the passenger side and the Plaintiff climbed the back. He went in the tray of the van. We live in the same area. We were on our way home. He was sitting in the left-hand corner of the van. After we got into the van I drove off towards fish market area. While driving we reach by Evans on Hillsborough Street my left wheel went down in the gutter, my tyre blow off and so the guy fall off the van... "

[8] In addition to completely changing his defence as filed he is totally confused as to the location and names of the streets in the area of the incident.

[9] I am of the view that the Plaintiff has proved his case on the balance of probability and is entitled to have judgment in his favour as follows:

(a) Special damages:

- (i) Loss of wages \$12,000.00TT;
- (ii) Loss of articles \$740.00EC;
- (iii) Hospital charges \$200.00EC.

[10] On the question of general damages the Plaintiff has suffered:

1. Jagged laceration to right parietal region of the skull;
2. 2 cm laceration to the left upper eyebrow;
3. Slight loss of skin laceration to right forearm;
4. Fracture of left tibia with 2 small abrasions.

[11] I accordingly award the sum of \$8,500.00 by way of general damages.

[12] Costs to the Plaintiff to be agreed or taxed.

L. K. St. Paul
High Court Judge