SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO: 690 OF 1993

BETWEEN

MARTIN CALISTE

Plaintiffs

vs

GEORGE KISNER

Defendant

Appearances:

Ms. Cybille Cenac for the Plaintiff
Mr. Nicholas John for the Defendant

2001: May 31

JUDGMENT

[1] **Saunders J**: This is a straightforward motor vehicle collision case. The Plaintiff claims that he was travelling along the La Resource Highway from east to west when he saw the Defendant coming towards him on the wrong side of the road. The Plaintiff says that he kept to his left, that is the southern side of the road. Despite his efforts to avoid a collision the Defendant's vehicle struck his vehicle on that southern half of the road.

[2] The Defendant's version of events is that he was coming from a westerly direction. He saw the Plaintiff at a stand-still at a pre-school on the northern side of the road. The plaintiff had stopped there to allow some

pre-schoolers to alight from the Plaintiff's vehicle. The children came off the vehicle and the Plaintiff, instead of waiting for the Defendant's vehicle to pass by, drove off into the road, into the path of the Defendant. This maneouvre caused the Defendant to bear to the Defendant's right in order to avoid a collision, but notwithstanding this the collision still occurred.

[3] A police officer took some measurements at the scene. These measurements were admitted into evidence. The police officer was not called as a witness however. The measurements taken are difficult to comprehend. They only helped us to the extent of affirming that the accident occurred on the southern half of the road, six feet from the southern extremity of the road. The measurements also confirm that the Plaintiff was travelling towards the west and the Defendant was travelling towards the east. Beyond those facts the measurements are not very reliable.

[4] The Court therefore was faced with deciding this case on the basis of the respective testimonies of the Plaintiff, the driver of one of the vehicles, and the Defendant, the driver of the other vehicle involved in the collision. I listened carefully to both sides and saw them demonstrate how the collision occurred with the help of some toy vehicles helpfully provided by counsel for the defendant.

[5] The version of the Plaintiff appears to me to be the more probable. The Defendant's story just does not add up. He said he saw the Plaintiff at a standstill and also saw pre-schoolers alight and get into the preschool. Given the length of the road in question and the fact that he would have been in motion while seeing all of this, he would have had more than ample time safely to pass beyond the plaintiff's vehicle before the plaintiff moved off. I think that it is very improbable that he could have seen the plaintiff's vehicle at a standstill and the accident could nevertheless occur on the southern side of the road.

[6] The defendant's report of the accident to his insurance company was admitted into evidence. The defendant did not there make any mention of having seen the plaintiff's vehicle at a standstill or of having seen pre-schoolers alight from the vehicle. The impression given in that report was that the defendant was in motion when he saw the Plaintiff’s vehicle also in motion coming toward him. This conflicts with his evidence before this court.

[7] I think that it is more likely that the accident occurred in the way described by the plaintiff. Immediately prior to the collision the plaintiff was indeed travelling on his proper side of the road and the Defendant was not travelling on the Defendant’s proper side. This was the fundamental cause of the collision.

[8] Significantly, the Defendant was prosecuted by the police. In his evidence before me he explained this by alleging that the police did not like him, that the police officer had something against him. I am sure he would have put that before the Magistrate as well and the Magistrate would have heard all this evidence. Yet, the Magistrate also came to a finding that he was negligent. Nothing has been advanced before me to come to a different view. I have come to the same conclusion.

[9] I will give judgment for the Plaintiff. I would dismiss the defendant's counterclaim. As far as the Plaintiff's claim for damages is concerned, the Plaintiff claimed for the total loss of his vehicle. I must state here that regrettably neither Counsel addressed the Court on the issue of damages. Nor did any of the respective witness statements deal with that important issue. The documents which were admitted, do suggest that the Plaintiff's vehicle was a write-off. It is fortunate for Counsel for the Plaintiff that those documents so reveal or there would have been in this case absolutely no evidence of a vital ingredient of negligence, namely the extent of the damage. The admitted documents also indicate that the plaintiff's vehicle was worth $9,000.00 at the time of the collision. The Plaintiff also claims wrecker fees of $175.00 and seven days loss of use at $150.00. I would allow the former but the latter are not recoverable. You cannot get loss of use where there is a total loss.

[10] I will give judgment to the Plaintiff in the sum of Nine Thousand One Hundred and Seventy-five dollars ($9,175.00). Prior to the addresses from each Counsel I asked them each to give me an estimate as to the costs incurred. The plaintiff's counsel thought that if the plaintiff succeeded the plaintiff merited costs in the sum of $4,000.00. The defendant's counsel thought that if the defendant succeeded the defendant should recover costs of $5,000.00. I have listened to these estimates and I would fix the costs payable to the plaintiff in the sum of $3500.00. There will therefore be judgment to the Plaintiff in the sum of $9,175.00 plus costs of $3,500.00.

Adrian D. Saunders
High Court Judge