

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 277 OF 1993

BETWEEN:

EDDEION BALLANTYNE

Claimant

and

DONALD JOHN

Defendant

Appearances:

Ronald Marks for the Plaintiff

Samuel Commissiong for the Defendant

2001: September 25, December 12

2002: January 14

JUDGMENT

[1] **MITCHELL, J:** This was a running down action. It involved a difference of opinion as to whether or not the owner of an overturned vehicle, whose vehicle was up-righted by passers-by and which vehicle in the process of being so up-righted rolled over onto a bystander and injured him, was liable for the injuries caused.

[2] By a specially endorsed writ issued on 22 June 1993, the Claimant claimed that on 12 April 1993 at Rouge Hill, in Owia, in St Vincent, H.2960 owned by the Defendant had as a result of an accident overturned; that it was at the time resting on its hood with its 4 wheels in the air; that the Defendant and his agents negligently turned the vehicle back on to its wheels thereby causing the vehicle to roll down on the public road; and that in the process of rolling the vehicle collided with the Claimant causing him serious injuries. The Claimant pleaded as

particulars of negligence the failure of the Defendant and his agents to see that the vehicle did not get out of control, and, additionally, the Claimant relied on the doctrine of *res ipsa loquitur*.

[3] By his defence filed on 6 July 1993, the Defendant pleaded that there had been an accident on the day in question; that the Claimant had not been in the vehicle nor had he been injured in the accident; that the vehicle had come to a complete stop before the Claimant had come to the scene of the accident; that the Defendant himself had sustained broken ribs and bruises and had been taken to the Kingstown General Hospital; that bystanders in their zeal to clear the road for traffic to flow voluntarily moved the vehicle; that the Defendant requested no one to move his vehicle nor authorised anyone to move the vehicle; that the Claimant failed to get out of the way while the vehicle was being moved; that the defence of *volenti non fit injuria* applied; that the persons who moved the vehicle were not his agents; and that he was not in any way responsible for their acts and omissions.

[4] The request for hearing was filed on 29 September 1993, and the case has been ready for hearing ever since. It appears to have first come up for trial on 25 September 2001, and the evidence lasted less than half a day. The only issue before the court was liability, it having earlier been directed that the question of quantum, if any, would be dealt with at a later stage on an application for assessment of damages.

[5] The facts as I find them are as follows. On 12 April 1993 the Claimant was walking on the main road to Owia. The road to Owia is constructed on a series of very steep hills. He came upon the van of the Defendant lying on its side in the road. The overturned van was on the road partway up one of these steep hills, and the Claimant was approaching the spot from below. When the Claimant walked up the steep road and arrived close to the spot where the vehicle was lying on its side, he heard a loud shout. As he looked up, he saw the vehicle on its wheels a few feet from him and rolling towards him. The bumper of the vehicle

squashed him against the embankment and then rolled away from him. He was seriously injured and his left leg had eventually to be amputated at a Hospital in Trinidad. The Claimant had no clear idea what happened with the vehicle before it hit him. He had no idea who turned over the van. He did not even know how the van came to be turned over onto its wheels. He did not know who all were the persons who assisted in putting the vehicle back on to its wheels. He did not see or speak to the Defendant prior to or at the time of his injury. He did not tie the Defendant to the cause of his injury.

[6] The Claimant called as his witness Anthony Osmond. Anthony Osmond is a labourer from Sandy Hill. He testified that he had been one of the passers-by who saw the beginning of the incident that caused the accident. He described how the vehicle had first stalled at the top of the hill, rolled backwards onto a car, and then turned over and tumbled down the road. He described the rescuing of the driver and the 18 passengers from the overturned van in terms that made him undoubtedly an eyewitness. He was one of those who assisted, at the request of the Defendant, in turning the vehicle back on to its wheels prior to its rolling away and injuring the Claimant. The Defendant's recollection that he testified to was that he had been knocked unconscious in the accident and that he had never asked persons to put his van back onto its wheels, and that when he left the scene the van was still overturned. At the conclusion of his testimony, his counsel requested an adjournment to be able to bring a witness. A hoax bomb-threat earlier in the day at the courthouse had caused his witness to leave the grounds of the courthouse. When the matter resumed on 12 December, the witness still did not appear. The Defendant closed his case, and closing arguments were presented in writing later that day.

[7] The whole case as to the liability of the Defendant hinges on whether I believe the Defendant that he was unconscious and never requested the passers-by to assist him in righting his overturned vehicle, or whether I believe Anthony Osmond to the contrary. In the event, I did not believe the version of the incident as recollected

by the Defendant. I do not believe that he was unconscious at the time as he claimed. He gave detailed evidence as to what happened during the rolling of the van and immediately after the van had come to a stop, and he could not have done so if he had been knocked unconscious during the rolling. He produced no eyewitness as to his state of well being at the time, or as to how the passers-by came to assist him and his passengers. The Claimant, on the other hand, produced a credible witness as to the circumstances that surrounded the rolling of the Defendant's vehicle back onto him. The Claimant was not a lettered man. However, I consider that he gave his evidence calmly and confidently, even when he was confused by a question, and I have no reason to doubt him. I accept his assertion that the Defendant stayed on the spot long enough to request assistance from other passers-by in up-righting his overturned vehicle before he was taken to the Hospital. I am satisfied that the Claimant was a mere passer-by and was not voluntarily assisting in any dangerous activity that could bring the *volenti* defence into play. His injuries were caused by the negligence of the defendant and the passers-by that he recruited in attempting to return the vehicle to its wheels without proper precautions or equipment. They turned the vehicle over from its side onto its wheels, on a steep slope, with the vehicle's brakes and clutch in a state that caused the vehicle inevitably to roll onto the Claimant. Any person on the road, such as the Claimant was, on that hill, below the spot where the vehicle was being turned back onto its wheels, was at risk if the overturning was not done carefully and safely, of being injured by the vehicle. The Defendant should have realised that to get passers-by to turn his vehicle onto its wheels on a hill such as the Owia hill was a very dangerous thing to do without proper care and, possibly, restraining equipment. He must bear full responsibility for any harm coming to any person injured in that manoeuvre.

[8] There will accordingly be judgment for the Claimant for damages to be assessed and costs.

I D MITCHELL, QC
High Court Judge