

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 830 OF 1996

BETWEEN:

(1) WINMARK LIMITED
(2) DAVID MATHURIN

Claimants

and

HENRY AUGUSTIN

Defendant

Appearances:

Mr. Rhory McNamara for the Claimants.
Mr. Dexter Theodore for the Defendant.

2002: January 14
January 17

NEGLIGENCE ARISING OUT OF MOTOR VEHICULAR
ACCIDENT...DAMAGES....CONTRIBUTORY NEGLIGENCE

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** This is a running down action. At about 6.30 p.m. on Saturday 30th day of October 1993, the Second-named Claimant was driving vehicle Registration No. TA 3881 belonging to his employer, Winmark Limited along the Gros Islet Highway towards Castries when he was involved in a collision with another vehicle, Registration No. TA 1714 driven by the Defendant, Henry Augustin. On 23rd day of September 1996, some three years after the accident, the Claimant issued a writ against

the Defendant claiming damages allegedly caused by the negligent driving of the Defendant.

[2] In their Particulars of Negligence the Second-named Claimant alleges that the said collision was caused by the negligence of the Defendant by:

- (1) Failing to stop at a major road.
- (2) Failing to comply with a traffic sign to wit: "STOP".
- (3) Failing to keep a proper lookout or to have sufficient regard for any other vehicle which may reasonably be on the said road.
- (4) Driving at a speed which was excessive in all the circumstances of the case.
- (5) Failing to stop, slow down, swerve or in any other way as to control the said motor vehicle and avoiding colliding with the Second-named Claimant.

[3] The Defendant by his defence alleges that the said collision was caused either wholly or in part by the negligence of the Second-named Claimant who was:

- (1) Driving too fast.
- (2) Failing to give any or any proper warning of his approach.
- (3) Failing to keep any or any proper look out or to observe or heed the presence or approach of the Defendant.
- (4) Failing to apply his brakes in time or at all or so to steer or control his said vehicle so as to avoid the said collision.
- (5) Driving on the wrong side of the road.

[4] David Mathurin, the Second-named Claimant gave evidence in support of his case and called one witness, a co-worker, Cleus Simon who alleged that he was standing in the tray of the vehicle when the accident occurred. The police were summoned to the scene but for some incomprehensible reason, adequate measurements were not taken. Suffice it to say, neither driver was criminally prosecuted.

[5] The Second-named Claimant testified that he was driving at about 20 to 25 miles per hour and as he was approaching the Gros Islet intersection, he could see the lights of a vehicle which had stopped at the intersection. There was a bus slightly beyond the Gros Islet

intersection facing in a southward direction picking up passengers. The bus was partly in the Second-named Claimant's lane and partly on the side of the road. There was another vehicle approaching from the south heading in a northerly direction on the opposite side of the road. Suddenly and without warning, the Defendant pulled out of the Gros Islet Gap onto the major road. According to Mathurin, he immediately applied the brakes and swerved to the opposite side of the road to avoid hitting the Defendant's vehicle broadside. Because of the vehicle approaching from the other direction, he could not swerve fully out of the way.

[6] The Second-named Claimant's testimony was supported substantially by his witness, Cleus Simon.

[7] The Defendant gave evidence and his version of what occurred on that fateful evening is almost diametrically opposed to that told by the Second-named Claimant. He called no witness and testified thus:

"When I got to its junction with the Castries-Gros Islet Highway I stopped and looked right, left, then right again. Observing that no vehicle was approaching in any direction I turned right (south) into the Castries-Gros Islet Highway. I was heading to the gas station to fill up. As I approached the bus stop there was a bus facing south, with its indicator light flashing, indicating that the driver wished to pull right into the highway. I noticed that a vehicle was approaching me, traveling in a northerly direction. Rather than go around the bus which had its nose in the road, I flashed my headlights to him indicating that he could go ahead. Just at that moment I heard the sound of brakes from behind followed by a bang and something pushed my vehicle in the direction of the bus and a vehicle drove past my right side and came to a stop about 6 yards ahead of my vehicle. When I got out I observed that it was TA3881 driven by the Second-named Claimant that had collided with my vehicle and swerved out of control after the impact."

[8] This is a civil action for negligence wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour of, and the evidence given by the Second-named Claimant and his witness. They impressed me as witnesses of truth. I cannot say the same of the Defendant. Having also had the opportunity of visiting the locus, I am of the firm view that

the accident occurred at the point of impact as shown to me by the Second-named Claimant. As I see it, the scenario of events as it unfolded itself on the evening in question was that the Defendant injudiciously came out of a minor road onto the Gros-Islet Highway which is a major road and failed to keep a proper lookout or to have sufficient regard for any other vehicle which might reasonably be on the said road.

[9] And it is trite law that when a driver is coming out of a minor road onto a major road, it is his duty to ensure that the road is clear before proceeding onto the major road. His failure to do so constitutes negligence.

[10] The only question that appears to me to be capable of debate is whether the Second-named Claimant is guilty of contributory negligence such as to reduce damages. As Denning L.J. said in *Jones v. Livox Quarries Ltd.* [1952] 2 Q.B. 608 at page 615:-

"Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

[11] The negligence alleged by the Defendant is that the Second-named Claimant was, inter alia driving too fast and he failed to apply his brakes in time or at all so as to avoid the accident. The question is whether the Second-named Claimant was guilty of a want of reasonable care in doing what he did. He testified that he did not "jam" his brakes because he was conscious of the fact that there were passengers in the back tray of his vehicle. He stated that he swerved to the opposite side of the road so as to avoid hitting the Defendant's vehicle broadside.

[12] Mr. Dexter Theodore for the Defendant argued trenchantly that the Second-named Claimant was driving in excess in the speed limit in an area designated a 'town' and that he was under the influence of alcohol. I must say that that I find this argument unattractive in light of the evidence adduced in this case. I found great force in the submissions made

by Mr. Rhory McNamara and agree with much of what was said. Indeed, for much of the hearing I was of the view that the Defendant's case, although fully in accord with the merits as I see them, could not be sustained in principle.

[13] In my judgment, the Defendant is solely responsible for the accident. As an experienced driver, he should have known that it is his duty to ensure that the course is clear before proceeding onto a major road.

[14] In their indorsed Writ of Summons, the Claimants claimed special damages which is particularized and totaled \$4,478.97. No evidence was adduced to counter the Claimants' claim. I would therefore enter Judgment for the Claimants in the following sums:

- (i) Special Damages of \$ 4,478.97 and
- (ii) Costs to the Claimants in the sum of \$1,500.00 to be paid no later than 30th day of April 2002.

INDRA HARIPRASHAD-CHARLES
High Court Judge