

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 14 OF 2000

BETWEEN:

CARLOS JOHN

Claimant

And

**PEARLINE MARKS
KARL MARKS**

Defendants

Appearances:

Mr. Richard Williams for the Claimant

Mr. Ronald Birch-Smith and Mr. Graham Bollers for the Defendants

11th February 2002
25th March 2002

JUDGMENT

- (1) BRUCE-LYLE, J.: This was a running down action in which the defendant has counterclaimed against the claimant. Both counsel at the outset agreed that the issue of quantum, if any, should be brought up at a later stage for assessment of damages in Chambers. The only issue before the Court was that of liability.

- (2) The facts as I found them are as follows. On the 13th day of July, 1999 the plaintiff's servant or agent Roger John was driving along the Fountain highway travelling in the direction of Kingstown when he was involved in a collision with Motor Vehicle P 9156 owned by the first-named Defendant Pearlina Marks and driven by the second-named Defendant Karl Marks. The claimants' witness

Roger John stated that he lived at Belair and is a minivan driver. On 13th July 1999 he worked for the claimant Carlos John, by driving his minivan H 6300. He was proceeding to the mechanic to get a seat for the van fixed. He was driving from the direction of Belair and proceeding in the direction of Kingstown. On reaching in the vicinity of Carlos Maloney's business place near the gas station on the Fountain stretch of the Vigie Highway where his mechanic had his place of business, he looked behind him using the rear view mirror, and then he started to move over to the right side of the road to access the mechanic's shop. He further stated that he used the right exterior mirror and the rear interior mirror, before deciding to move across from the left side of the road to the right side of the road, and that when he looked in those two mirrors he did not notice any vehicle behind him. He looked ahead of him and there was nothing approaching him on the stretch. He then indicated to move to the right.

- (3) As he was about to come to a standstill in front of the mechanic's yard, he heard a screeching of tyres coming from behind him, and before he could ascertain what was making the screeching noise he felt an impact which lunged the vehicle he was driving forward onto a bank and then onto its side.
- (4) I further found that the accident occurred at around midday and he was struck by a green vehicle which was also travelling towards town and driven by the second named defendant Karl Marks.
- (5) The defendant Karl Marks who was the only witness for the defendants' case was driving on 13th July 1999 from La Croix to Arnos Vale at about 11:30 a.m. While on the Fountain stretch on the Vigie Highway in the vicinity of the Shell Gas Station he noticed a passenger van travelling in the same direction down the stretch, and in front of him, and that there were no other vehicles traveling either in front of him or behind him. The van was travelling slowly in front of him going down the road, as if to come to a stop. The defendant started to overtake the van, which was at the same time beginning to move to the right side of the

- road. There was a collision on the right hand side of the road. The collision occurred with the rear of the van. I also found as a fact that the road in the area where the collision occurred is a clear, straight stretch of about 600 ft to 800 ft. Both the claimant's vehicle and defendant's vehicle were extensively damaged.
- (6) This accident was investigated by the police and measurements were taken which resulted in the prosecution of the defendant in the Magistrates Court for an offence which this Court was not told of. But what the witness for the claimant told this Court in consequence, was the brake marks of 60 ft left by the defendants' vehicle. The witness for the claimant said he was doing about 5 mph to 10 mph. The defendant Karl Marks himself stated in his evidence to the Court that he was under the impression that the claimant's vehicle was slowing or stopping to pick up passengers. The claimant's witness has stated that when he looked in the rearview mirror before moving across the road he was then doing about 25 mph to 30 mph and saw nothing on the road behind him. He did not know where on the road the defendants car was because he did not see it. He denied crossing the road without exercising that duty of care demanded of him by other road users.
- (7) When re-examined by counsel, the claimant's witness stated that the mechanic's yard was perpendicular to the main road with an entrance about 8 ft wide. He further stated that if one had to turn into the mechanic's yard directly, one would have to stay on the left side of the road and turn directly across the road into the yard. He explained that if he had done that Mr. Marks' vehicle would have struck him on the right side of his vehicle, but in this case Mr. Marks' vehicle struck him on the left rear of his vehicle while he was at a standstill to check to see if there was space in the mechanic's yard. Interestingly Mr. Marks said he struck the claimant's vehicle on the right rear of his vehicle or van.
- (8) I find from the evidence, that that stretch of road or highway is a busy stretch of road that feeds Kingstown with commuters coming from the Mesopotamia valley

and its environs. Apart from being a busy stretch, there is habitation in the form of residents at houses on the left side of the road and places of business on the right side of the road if one is driving towards Kingstown. It was to the right side of the road and to one of the business places, that the claimant's witness was proceeding to. Having put that into perspective I now have to juxtapose the claimant's version of events with that of the defendants. I have already fully ventilated the version of the plaintiff.

- (9) The defendant's version simply put was that he saw the claimant's van about 140 ft in front of him, and that he knew the area well. The van was traveling slowly in front of him going down the road in the same direction as he was going, and in his words "It was like it was about to come to a stop." He said he blew his horn, indicated, and then started to overtake the van, by moving more to the right of the road, as the van was more to the left of the road. He said he thought the van was picking up passengers. Whilst overtaking this van, the van made a sudden right turn, without any indication either by hand signals or electronically. He said he was alongside the van at this stage, and he applied his brakes, and both his vehicle and the van collided on the right hand side of the road. The defendant then said that the van was slightly in front of him when it pulled over to the right; then he said the van was about 20 ft to 30 ft ahead of his vehicle when it pulled over to the right. Defendant described the road as a clear stretch for a distance of 600 ft to 800 ft. I agree with him.
- (10) The defendant basically repeated his story as to how the accident happened under cross-examination but insisted that he hit the claimant's vehicle more on the right tail light section. He admitted leaving about 50 ft to 60 ft of brakes impression on the road. His car was damaged on its left front side. He then told the Court that he was doing between 50 mph to 60 mph before the impact. He admitted not knowing what the speed limit for that area was. Under intense cross-examination and after a series of somersaults, the defendant admitted hitting the van more to the left of the rear. He admitted also that the claimant's vehicle would have had

to go across the road to turn into the mechanic's yard directly and if that is what had happened, he would have hit the van on its right side. He also stated that he considered traveling at between 50 mph and 60 mph as fast.

- (11) I find the evidence of the defendant under examination-in-chief and cross-examination very compelling against his case. If one were to believe his story, then it meant that the damage to the claimant's vehicle would have occurred to its right side. Here we have the claimant stating that the damage to his van was to its left rear and the defendant stating that he hit the van to its right tail light section. Then we have the admission of the defendant under cross-examination that it was the left rear section of the van that he hit. Looking at this evidence in its entirety, I am more inclined to accept the claimant's version, that the damage to his van was to its left rear section.
- (12) I also find the defendant's version of events hard to accept especially considering the telling admissions he made in his evidence under cross-examination. I have already stated that if I accept his version, then the damage to the vehicle of the claimant should have been to its right side. I do not accept his version of events especially in view of his somersaulting and contradictory evidence.
- (13) Learned Counsel for the defendant Mr. Grahame Bollers in his submissions to the Court referred the Court to the judgment of Mitchell, J in the case of Ray De Freitas and Joffre Venner Civil Suit No. 228 of 1996 (St. Vincent High Court). I wish to state that that case is not binding on this Court, neither is it persuasive. It is not persuasive because the facts and circumstances are not similar to this instant case even though it involved a vehicle switching lanes thereby causing an accident.
- (14) Counsel for the Defendant also relied on the case of Clark v Wakelin QBD [1965] and the judgment of Roskill, J. I have to say that I am not at all persuaded by that judgment either, for the simple reason that even though that case involved

circumstances similar to the present case with specific regard as to how the accident happened, I do not find any instances of any delay in coming to trial to necessitate witnesses having to reconstruct what happened with hindsight. I found the plaintiff's evidence to be very straightforward, and convincing. On the other hand, the defendant's evidence left much to be desired. If anything his evidence was fraught with contradictions and a lot of shifting of facts.

- (15) In the circumstances I find for the plaintiff in this case on the issue of liability. Damages are to be assessed with costs, and the defendants' counterclaim is dismissed accordingly.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE