

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 138 OF 2000

BETWEEN:

MONA SASSINE

Claimant

V

**FRANKLYN BROWNE
OLANZO BROWNE**

Defendants

Appearances:

Mr. Samuel Commissiong and Ms. Suzanne Commissiong for the Claimant.
Mr. Richard Williams and Ms. Roxanne Knights for Defendants.

13th February 2002

12th April 2002

- (1) **Bruce-Lyle, J:** This was a running down action in which the defendant has counterclaimed against the Claimant. At the outset both counsel and the Court agreed that the issue of quantum of damages, if any, should be brought up at a later stage for assessment in Chambers. It was agreed that the only issue for trial was that of liability.

- (2) I found the facts as follows. On 15th February 1999 at approximately 5:20 p.m. the Claimant's daughter and witness Rania Sassine, was driving P 9046 along the Vigie Highway. She testified that she realized her fuel was low and so she turned around on the same Vigie Highway and proceeded in the direction of Kingstown,

but her main destination at that point was to access the Shell Petrol Station at Fountain on the same highway.

- (3) As she approached the second entrance to the said petrol station, she executed a right turn into the Station and at the same time felt an impact on the rear of the van she was driving, and then on the right side by the driver's door. The van spun around twice in the road and ended up in a gutter. The vehicle that struck her was a Mitsubishi L300 14 seater van, with registration number HC 665, and was being driven at the time by Mr. Olanzo Browne. The vehicle was owned by Franklyn Browne.
- (4) The damage to both vehicles was extensive, with both vehicles being declared write-offs. The vehicle driven by defendant Olanzo Browne collided with a lamp pole and also ended up in a gutter below the said lamp pole.
- (5) I also found as a fact that Olanzo Browne was subsequently found guilty of driving without due care and attention in the Calliaqua Magistrates' Court, sentenced to a fine of \$750 to be paid by September 10, 1999 or in default four months imprisonment and he was disqualified from holding or obtaining a drivers license for six months.
- (6) Even though witness Rania Sassine testified that she experienced pain mostly in her neck and back after the accident which persisted so much that she visited Dr. Isaacs on December 5, 2001 for unbearable pain in her neck, with difficulty sleeping, and standing for extended periods and doing domestic chores resulting in constant use of muscle pain relievers and ointments; this was not specifically claimed for in her writ filed to initiate this case on 23rd March 2000.
- (7) Also not in dispute was the fact that at the time of the accident the claimant's witness Rania Sassine was 18 years old and had obtained her drivers license about five to six months before the accident.

- (8) The plaintiff's case simply put was that in order to execute the right turn to access the gas station, she looked in her rear view mirror. She said she did not look in her side mirrors. When she looked in the rear view mirror there was no vehicle behind her so she began executing her right turn into the gas station. She indicated that she was turning right when the accident happened, and that the impact occurred as she was turning right. She described the impact as a scraping of the right side of her van and that the vehicle that struck her was also proceeding in the direction of Kingstown.
- (9) This witness went on to say that that portion of the road where the accident occurred had no center line marked, so she could not say how far on the right side of the road she was before she was struck, but that the road was basically straight. She further stated that to turn into the gas station from the road one would have to make a 90-degree turn. She stated that she had not completed this 90-degree turn when she was struck, but had made a turn of about less than 10 degrees when she was struck by the other vehicle. She then stated that she had made a turn of about 4 degrees when she was struck. She said she could estimate where the center of the road was and as far as she could see, she had not even entered the right lane of the road when she was struck.
- (10) This witness further stated that she had stopped and made sure that it was safe to do so before making the right turn and that she had on her indicator lights indicating to turn right, and also used her right hand to indicate that she was turning right. She then proceeded to demonstrate to the Court how she had indicated to turn right with her right hand. She was sure nothing was coming from the opposite direction or from behind her so she started to execute her right turn. It was at this point she was struck. She pointed out to the Court that her indicator lights were to the rear of her vehicle, one to either side of her vehicle, and that she had indicated long before she began to make the right turn.

- (11) She also pointed out that if the defendant's vehicle was alongside hers he would not have seen the indicator lights indicating to turn right and that she had exercised the necessary duty of care to other road users and could not be held responsible for the accident. She also stated that at the Magistrates' Court where the defendant faced a charge of driving without due care and attention, she did not remember the defendant telling the Magistrate that he was represented by Counsel, Mr. Olin Dennie. Under re-examination this witness again firmly stated that when she looked in the rear view mirror she could see all of the road behind her from one side of the road to the other, and was satisfied that before attempting to execute the right turn, she carried out all the safety precautions necessary and required which she had narrated to the Court in evidence.
- (12) Her witness Sheryl Anthony who resides at Clare Valley ably supported Rania Sassine's testimony. She happened to have been a passenger in the defendant's van on the day in question and gave her age as 27 years. She was positioned in the middle seat of the defendant's van which was proceeding to Kingstown from Calder. She stated that on reaching the area of the Fountain gas station, the defendant Olanzo Browne, whom she identified to the Court as the driver of the passenger van she was riding in, tried to overtake P9046 driven by Rania Sassine. She was shown a statement to which she had signed before her lawyer, Ms. Mira Commissiong. She declared in Court that that statement was true and correct.
- (13) This witness Sheryl Anthony went further to state that Rania Sassine's vehicle was in the center of the road as if it was turning into the gas station, and that there was a hump between the two entrances of the gas station, and that the gap between Rania Sassine's vehicle and the hump was too narrow for the defendant's vehicle to pass and she came to the conclusion that the defendant's vehicle could not overtake Sassine's vehicle, and it was at this point that the defendant's vehicle collided with Sassine's vehicle, and then ran into an electricity pole. The witness stated that she was thrown against the back of the seat in front of her and she hurt her chest, sustained a deep cut on her right side and hip, and for quite sometime

- after the accident her entire right arm was swollen and she could not eat solid food due to the severity of the injury to her lower lip. She very importantly stated that the defendant's vehicle was proceeding very fast at the time of the accident.
- (14) Under cross-examination this witness basically stuck to her evidence in Examination-in-chief and to the statement given to her counsel which forms part of the record. She stated that the road at the point of impact was wide enough to allow two passenger vans to pass side by side, leaving a space which the Court determined to be approximately 6 inches. She maintained that Sassine's vehicle was in the center of the road as if making a right turn into the gas station, and that that was the reason why there was not enough space for the defendant's vehicle to overtake.
- (15) I must say at this stage that I found this witness' evidence to be very crucial in determining exactly how the accident occurred and who was liable. This signified the case for the claimant.
- (16) The defendant then gave evidence on his own behalf and called no witnesses. His case simply put is as follows. He lived at Stubbs and was the driver of a mini-passenger van owned by Mr. Franklyn Browne the first defendant, who is also his brother. He stated that on the 15th February 1999 he was driving minivan HC 665 to Kingstown. On reaching the Fountain gas station, which is on a wide road, that is a major artery that feeds Kingstown from places like the Mesopotamia Valley, there was a small van in front of his van. He identified the driver of that small van as Ms. Sassine. He further stated that as there was no vehicle coming up the road in the opposite direction, he decided to pass or overtake this small van.
- (17) He further stated that he did not see that small van indicating to change direction; neither did he see any hand signals from the small van. He stated that as he was passing this small van, and as the front of his van had gone beyond the small van, he felt a lash in the back of his van. He stated that it was Sassine's van that hit his

- van. He was later charged by the police for driving without due care and attention, and stated that even though he had informed the presiding Magistrate of his being represented by counsel, Olin Dennie, who did not appear in Court for the case, the case was heard and he was found guilty of the offence and sentenced to a fine of \$700 and his driver's license suspended for 6 months. This witness then identified a witness statement, which he gave to his lawyer dated 10th December 2001 and which forms part of the record.
- (18) Under cross-examination there was a back and forth issue as to why counsel Mr. Dennie did not turn up for the defendant's case in the Magistrates' Court, and whether that particular case had been adjourned two or three times before trial. Suffice it to say that the Magistrate exercised his discretion to hear the case and found the defendant guilty. As to whether this exercise of discretion by the Magistrate was proper or not should not trouble me because both counsel agreed that there was no appeal pending against that decision by the Magistrate.
- (19) However, the defendant stated to the Court that at the time of the accident he had been driving for about 8 years, four of which was as a passenger van driver. He very interestingly stated that he would not agree that the Fountain road is a very busy road around 4:30 p.m. and 5:00 p.m. on a weekday, but that it is true to say that a lot of vehicles use that road from Mesopotamia, Gomea, Belair areas. I state at this stage, that I completely disagree with the defendant's position on this issue. On a weekday between the hours of 4:30 p.m. and 5:00 p.m. that road, the Vigie Highway, leading to Fountain and beyond is one of the busiest roads in this state, and any driver is expected to exercise a greater degree of duty and standard of care to other road users, than would otherwise be exercised at a different time or on a different road.
- (20) The defendant himself stated that he was on that day "hassling for passengers". He said he had to make sure the road was clear before overtaking, and make sure the vehicle in front of him had no indication to turn in front of him; and that is all

he was required to do before overtaking a vehicle. Of significance is the admission by the defendant that P.C. Gabriel gave evidence at the Magistrates' Court hearing, where he had stated that he saw Ms. Sassine signalling to turn right and that was the time the defendant tried to overtake. He also admitted that P.C. Gabriel had stated in his evidence at the Magistrates' Court that he was driving in a police vehicle behind of the defendant's vehicle when the accident occurred.

- (21) The defendant ended his testimony under cross-examination by stating categorically that he did not see Ms. Sassine indicate either electronically or by hand before turning into the gas station, and that he was paying attention to what was happening on the road. He did admit he was travelling at 45 miles per hour. This signified the case for the defense.
- (22) Having juxtaposed the claimant's evidence against that of the defendant's, I am left in no doubt and hold that the claimant's vehicle and defendant's vehicle did not execute their respective maneuvers at the same time. I find the evidence of Sheryl Anthony, a witness for the Claimant and a passenger for the defendant, very compelling against that of the defendant. Her evidence puts the claimant's story on a balance of probabilities, at a very believable level. I need not rehash her evidence, as I have done so already.
- (23) The defendant was under a duty of care to make sure that it was safe to overtake before doing so. From the evidence of Sheryl Anthony as to the position of the vehicles on the road, and the inference she drew with regard to the position of the Claimant's vehicle on the road, there is no doubt that the defendant tried to overtake when it was not prudent for him to have done so. I believe the claimant when she says she stopped, indicated both electronically and with hand signals, before attempting to execute her turn to the right. The evidence of Sheryl Anthony supports Ms. Sassine's evidence very materially. I do not find the claimant's actions on that day to have been negligent at all. Neither do I find the fact of her having obtained her drivers license a few months before the accident,

- to have had any bearing on the cause of the accident. It is clear the accident was caused by the reckless, negligent and imprudent driving of the defendant and I so find.
- (24) Turning to the question as to whether a criminal conviction is evidence of liability in a civil case, **s. 26 of the Evidence Act Cap. 158** clearly answers the question in the affirmative, and also clearly sets out the parameters for the acceptance of that kind of evidence in a civil proceeding. The defendant was found guilty in the Magistrates' Court, on his own admission in this Court, having been charged with driving without due care and attention, arising out of the facts pertaining to this matter before hand. On his own admissions before me, the evidence of P.C. Gabriel in the Magistrates' Court hearing was riveting as against his evidence. He was clearly "nailed to the cross" if one may be allowed to use that euphemism, by the evidence from P.C. Gabriel. To tell this Court that he tried to challenge those assertions by P.C. Gabriel, and does not remember the answers given to his challenges by P.C. Gabriel is but a feeble attempt to mislead the Court.
- (25) In fact, I do not see the Claimant's omission to look into her side view mirror as being fatal to her case. As she told the Court, on looking in her rear view mirror, she could see clearly behind her, and from one side of the road to the other, and that there was no vehicle behind her at the time. The defendant was doing 45 miles per hour as he claimed. His passenger, Sheryl Anthony stated that the defendant was driving very fast, and decided to overtake when it was not prudent to do so. Therein lies the answer to the cause of the accident. I find the defendant was solely to blame for the accident.
- (26) The defendant stated in his evidence, and it is not in dispute, that he was at the time driving the van for his brother, Franklyn Browne, who was the owner thereof. He also stated that at the time of the accident, he was "hassling for passengers". By extension therefore, and in view of these compelling admissions, and having regard to the law, I hold that the first defendant Olanzo Browne was

driving the said passenger van as a servant or agent of the second defendant, Franklyn Browne and I hold both of them liable for the accident, and to the claimant.

- (27) In the circumstances I find for the plaintiff against both defendants on the issue of liability, the defendant's counterclaim is dismissed; damages to be assessed with costs.

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Frederick V. Bruce-Lyle
HIGH COURT JUDGE