THE EASTERN CARIBBEAN SUPREME COURT

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV 36 / 2001

BETWEEN:

WAYNE GLOSTER

Claimant

and

JOHN ASHTON
AND
ST. VINCENT ELECTRICITY SERVICES LIMITED

Defendants

Appearances:

Mr. Richard Williams for the claimant
Mr. Olin Dennie for the first-named defendant
Miss Zhinga Horne for the second-named defendant

2002:November 26, 28

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JUDGMENT

ALLEYNE J.

[1] This is a claim by the claimant against the defendants for damages for negligence causing injury to the claimant. The claim arises out of an incident which took place on the Glebe Hill Road on the 28th January 1999, when the first named defendant, driving his 10 foot high dumper truck on which the claimant was riding in the back, drove the truck into a stay wire supporting a pole belonging to the second named defendant, causing the same to snap and collapse, whereby the electrical or other

wires on the pole fell into the truck and caused injury to the claimant. These facts are uncontroverted.

[2] The first named defendant, whose truck was not licensed or insured to carry passengers in the back, claims that the claimant was on the truck without his knowledge or consent. The claimant claims to the contrary. In his evidence the claimant asserts that the defendant, who worked on the same project as he did, and lived in the same community, habitually allowed him to drive on his vehicle to his home after work. The first named defendant formerly drove his father's pickup truck, and admits that he used to give the claimant a ride home on that vehicle, riding either in the cab or in the back, but that since he has the dumper he does not allow anyone to ride in the back. It is a telling fact, admitted by the first named defendant, that the claimant challenged him for an explanation of why he had told the claimant's Solicitor that he had not given him permission to ride on the truck on the day of the accident. In light of all the above I accept the evidence of the claimant that he was riding on the back of the truck with the consent of the first named defendant.

[3] The first named defendant, while admitting that he had in fact run into the stay wire causing the pole to collapse, says that he did not see the stay wire, and is therefore not guilty of negligence.

[4] The first named defendant says he was driving slowly. The claimant says he was driving at a moderate speed, neither slow nor fast. The second defendant's witness Lennox Morris, an Engineer employed by the second defendant, who, at the relevant time was responsible for the installation and maintenance of electricity poles, is of the opinion, expressed in his evidence, that the pole could only have been broken if the truck was being driven fast, or continued to drive after it hooked the stay wire. Be that as it may, I am satisfied that the pole was felled through the negligence of the first named defendant.

[5] The slightest lapse in attention on the part of a driver is sufficient to ground a claim in negligence. The fact that the first named defendant failed to see the stay wire, which was in front of him, at a height such that it snagged the top of his truck, on a straight road on which he had a substantial line of visibility to the wire, is in itself overwhelming evidence of negligence. The defendant says that the fact that the wire was covered with vine caused it to be invisible to him. Morris expressed the view that the presence of vines on the wire would enhance its visibility. I agree. I find the first named defendant guilty of negligence and liable on the claim.

[6] The second named defendant is sued on the basis that it is under a duty to users of the public road to provide a safe environment. Undoubtedly, the stay wire was at a height which caused a hazard to the truck driven by the first named defendant, and led to injury to the claimant.

[7] The road on which the incident happened is a by-road which was paved in concrete since about 1991. Before that, and at the time, in the late 1980's when the pole was erected, it was apparently only a footpath. Lennox Morris says that he was unaware that the road had been built and the track upgraded. That may well be so. That does not exonerate the second named defendant, his employer and a public utility company, supplier of electric power to the country, from its duty of care to users of the road.

[8] While the road in question is admittedly not a heavily travelled road, and few large trucks use the road, it is foreseeable that the road will be used, even if rarely, by a truck of the dimensions of the first defendant's. Indeed counsel for the second named defendant put it to the claimant that a Shell oil truck, and a cement truck, had passed on that road. I am entitled to assume that those suggestions were put on the basis of instructions given by the second named defendant.

[9] Mr. Morris admitted that the stay wire was not compliant with the accepted standard for that road, but offered the explanation that the second named defendant was not informed that the original footpath had been upgraded to a by-

road. That explanation, given the fact that the upgrade took place some 10 years ago, does not exonerate this public utility company from its responsibility to the public to provide installations which will not be a hazard to the public. The events that have happened were entirely foreseeable, and the second named defendant has failed in its duty of care to the claimant, resulting in this accident and injury to the claimant. The second named defendant is liable in damages for negligence and nuisance. It is no defence in the circumstances of this case that the relevant authorities never informed the second named defendant that the road was being upgraded, or that there were no previous complaints or reports of accidents caused by the location of the stay wire. Ten years after the event, the second named defendant knew, or ought to have known, of the dangerous situation of the stay wire. **Assie v Saskatchewan Telecommunication** [1978] 90 DLR (3d) 410 does not assist the second named defendant.

[10] The claimant admitted that he was standing at the back of the truck, and that this was a dangerous and risky thing to do. I find that he is guilty of contributory negligence, and contributed to the extent of 10% to his injuries and loss.

[11] As between the defendants, I find them liable each to the extent of 50% for the damages to which the claimant may be found to be entitled.

[12] There will be judgment for the claimant for damages to be assessed and for costs.

Brian G.K. Alleyne

Comment [BA2]: AT THE END OF JUDGMENT - after last paragraph, leave 4 clear lines and then type name of judge, right justified, bold and initial caps, press ENTER, and type the words "High Court Judge", right justified, intial caps

High Court Judge