

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 81 OF 1997

BETWEEN

LUCY JOSEPH

Claimant

AND

SHAWN SALTIBUS

Defendant

Appearances:

Mr. A. Richelieu for the Claimant

Mrs. W. Louis-Harris for the Defendant

2002: June 19

2002: December 18

JUDGMENT

PEMBERTON J.

[1] The Court wishes to comment that its repeated requests for a site visit and a reconstruction of the events of the day, over the period September to date were not granted. In the Court's opinion, this has been beneficial to the determination of the case. The judgment is based solely on testimony given in Court.

- [2] On 19th March, 1995, there was a collision between a Suzuki Samurai Jeep registration number PA 6394 driven by the Claimant and a Honda Motor Vehicle, Registration number PA7400 driven by the Defendant. The site of the collision was along the Castries/Babonneau Highway.
- [3] The Claimant's case is that she was traveling along the said roadway at a speed of approximately 10 –15 miles per hour on her side of the road, and as she negotiated a corner along the road, she observed a red car coming at about the rate of 50 – 55 miles per hour in the opposite direction to which she was traveling. She was driving uphill. As she continued her journey, she suddenly felt an impact. Her car went out of control but she managed to bring her Jeep to a halt. When she alighted from the car she observed that her jeep had sustained some damage to the front bumper. The Police eventually arrived, took measurements and a statement from her. She then drove away from the scene of the accident. She produced no witnesses. Under cross-examination, the Claimant stated that she was the possessor of a driver's licence for a period of approximately 5 months.
- [4] The Defendant's case is that on the day in question he was traveling towards Castries on the said roadway. On reaching what he describes as a hair-pin bend in the road, he was traveling at about 1-2 miles per hour when he noticed the Claimant's vehicle. The Defendant states that the Claimant was accompanied by a gentleman. He observed that the Claimant's vehicle was positioned in what appeared to him to be the middle of the road, while she was negotiating the corner. He testified as well that the Claimant seemed to be struggling with the steering wheel. When he noticed this, he moved closer to the left side of his portion of the roadway, that is closer to a wall, bounded by a drain. The Defendant stated that he noticed that the Claimant was not moving to her side of the road, but continued along her path on his side of the road until the collision occurred between the two vehicles. Under cross-examination, the Defendant did not waver from his account. He stated that the Claimant was coming uphill and that the accident took place around a corner.
- [5] The Court heard evidence as well from the Investigating Officer. The value of his evidence lay in the measurements which he took. The officer was cross-examined extensively on the debris, but the Court states at the outset, that the parties did not evaluate this aspect of the evidence. The evidence of the Officer with respect to the measurements bears repeating:

- Width of Road at point of impact - 22 feet 4 inches.
- Point of impact shown by PA 6394 (Claimant) – 22 feet 9 inches.
- Point of impact shown by PA 7400 (Defendant) – 22 feet 9 inches.
- Distance between two points of impact – 10 feet 6 inches.
- Distance PA 6394 travel after impact – 34 feet 9 inches.
- Distance PA7400 travel after impact – 18 feet 1 inch.
- Measurement requested by PA7400 (Defendant)
 - re Distance left wheel of PA7400 to left side of the road facing north – 3 feet 3 inches.
 - From left skid mark of PA7400 to centre of road – 8 feet 6 inches.
- Measurement requested by PA6394 (Claimant)
 - From point of impact shown by PA7400 to left side of road facing South – 10 feet.
 - Length of PA7400 - 14 feet.
 - Width – 5 feet 6 inches
 - Length of PA6394 -10 feet 8 inches
 - Width – 4 feet 11 inches.

The Officer concluded that the Claimant herein should “have kept to her side of the road to avoid the accident”. The Court must mention at this time that the Claimant’s Witness Statement contained an allegation of impropriety of the Investigating Officer. That was not put to the Officer under cross-examination and the Court rejects that evidence.

[6] Article 985 of **THE CIVIL CODE OF SAINT LUCIA** provides:

Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.

Counsel for the Defendant referred the Court to the case of **NORTHROCK LTD. v JARDINE AND ANOTHER (1992) 44 W.I.R. 160** where at pages 161 – 162 the Court had this to say:

That in accordance with Articles 917(A) 1 and 1137, Article 985 fell to be interpreted in accordance with English laws and liability under that article fell to be proved in accordance with English rules of evidence. Accordingly in a claim based in negligence, it was necessary for the Plaintiff to prove that the Defendant owed the Plaintiff a duty of care, that the defendant was negligent or had acted in breach of that duty, and that the damage suffered was caused by that negligence or breach of duty.

The Court associates itself with this learning.

- [7] According to the authors of the seminal text **CHARLESWORTH & PERCY ON NEGLIGENCE (10th ed.) Sweet and Maxwell** at paragraph 9-200 under the rubric “**Rule of the Road**”

The rule of the road is that when two vehicles are approaching each other from opposite directions, each must go ‘on the left or near side of the road for the purpose of allowing’ the other to pass. Failure to observe this rule is *prima facie* evidence of negligence. ... While he is driving elsewhere on the road other than on his near side, should traffic approach and he is put in a position of having to act quickly in an emergency, as a result of which a collision occurs, he will be liable. This is because of his negligence in driving on the wrong side of the road.

On reading this extract, the matter ought to rest there. The Claimant alleges in her evidence as stated above that she noticed that the Defendant was driving at a speed of 50 –55 miles per hour immediately before the collision. What then was her responsibility as a fellow road user? The authors of the said text continue at paragraph 9 – 219 under the rubric “**Look out**”:

It is the duty of the driver ...of a vehicle to keep a good look out. Indeed a driver will be held negligent if he fails to notice in time

that the actions of another person have created a potential danger. He must look out for other traffic, which is expected to be on the road, whether in front or behind him or alongside him especially at crossroads, junctions and **bends**. ... failure to keep a proper look out (is) ... evidence of negligence.

[7] When one examines the evidence in totality, it appears to the Court that the measurements taken by the Investigating Officer, which remain unchallenged and the account of the accident as told by the Defendant give a more probable reconstruction of events. It does appear that the Claimant was, at the time of the collision more towards the Defendant's side of the road and did not react in time to avoid the collision.

[8] The Court therefore determines that on the evidence and on the balance of probability that the Claimant has not made out her claim in negligence against the Defendant. She must therefore bear full responsibility for the collision. The Defendant has on a balance of probabilities, made out his counterclaim against the Claimant. The Court could come to no other conclusion.

In the circumstances, **it is therefore ordered as follows:**

1. **That the Claimant's claim against the Defendant is hereby dismissed with costs to be paid by the Claimant to the Defendant.**
2. **That there be judgment for the Defendant on the Counterclaim as against the Claimant with costs to be paid by the Claimant to the Defendant.**
3. **That Assessment of Damages and determination of costs be adjourned to the sitting Judge in Chambers in the month of May on a date to be notified by the Court Office.**

It would be remiss of the Court not to commend Counsel for the Defendant on the presentations made not only in relation to the pre-trial documents and submissions, but also on her manner and efficiency in the conduct of the trial in the Court room.

The Court gratefully acknowledges the assistance of Counsel.

**Charmaine Pemberton
High Court Judge**

*Running Down Action – Rule of the Road – Responsibility of users of the road – Duty to keep proper look out – Burden of Proof
Civil Code of Saint Lucia – Article 985 – Applicability of English law to cases falling under that Article.*