

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO. 569 OF 2001

YVETTE BARNWELL-WICKHAM - Claimant

VS

HARLEY CAMBRIDGE - Defendant

Appearances -:

Mr. Sam Commissiong for the Claimant

Ms. Samantha Robertson and Mr. Duane Daniel for the Defendant

.....
January 23rd 2003
March 6th 2003.
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JUDGEMENT

[1] **BRUCE-LYLE, J-:** By way of a claim form endorsed with a statement of case, the claimant commenced action in this matter against the defendant and claimed damages for negligence as a result of a motor vehicle accident which occurred on the 14th day of August 1999 on the Villa main road, and involving motor vehicle P3049 owned by the claimant and P7667 purportedly owned by the defendant. The damages claimed were compartmentalized in the following-:

- (1) special damages - \$10,254.20
 - (2) Loss of use for 21 days at \$100 per day
 - (3) General Damages
 - (4) Costs.
- [2] Briefly the claimants case was that she was the owner of a Toyota Corolla 1993 Model Motor Vehicle which carries the registration number P3049. This vehicle was comprehensively insured with St. Vincent Insurances Limited, under insurance policy MPC11695, and included the provisions of the motor vehicles Insurance (Third Party Risks) Act Cap. 354 of the Laws of Saint Vincent and the Grenadines, Revised Edition 1990.
- [3] The claimant averred in her Statement of Case that on the 14th August 1999 at about 1:30 a.m. on the Villa main road, this vehicle was involved in a motor vehicle accident with another vehicle P7667.
- [4] The claimant further averred that at the time of the collision, P3049 was being driven by Andreas Wickham, the claimants husband, and that he was driving it with his wife's permission and as her servant and/or agent.
- [5] The Claimant further alleged in her Statement of Case, that the other vehicle involved in the accident, P7667, was owned by the defendant. It was described as a racing car that had no ignition key. It is started by turning on three switches and pressing a button. It was not insured at the time of the accident, nor was it licensed at the time. P7667 was described as being a vehicle of the Toyota Starlet Model.
- [6] The claimant also averred, that immediately before the two vehicles collided, Andreas Wickham was driving P3049 along the Villa main road from Kingstown and the defendants vehicle was travelling in the opposite direction. The claimant went further to say that the defendant so negligently drove P7667 that he caused it to collide with the claimants vehicle P3049 causing damage to its front bumper, its right fender, right rear view mirror,

its right front tyre, right front door and related damage. The value of the damage to P3049 was pegged at \$8,534.20.

[7] The Claimant stated the particulars of Negligence on the part of the defendant to be -

(a) Driving an unlicensed and uninsured motor vehicle;

(b) Driving recklessly and at an uncontrollable speed.

[8] On the 6th March 2002, the Defendant filed a defence to the claim. In it he denied that he was the owner of P7667, but admitted that he did operate the said vehicle for the purposes of racing on a track. He however averred that the vehicle was neither registered, licensed, nor insured in his name. He categorically denied driving P7667 on the night in question when the collision occurred, and further denied all knowledge of the incident. He further stated that in fact P7667 was properly garaged at Sion Hill at his premises at the midnight on 13th August 1999. He further stated in his defence that he had retired for the night and slept until he was awoken by the Police on the morning of 14th August 1999, and duly informed of the collision by the Police.

[9] The Defendant therefore denied any knowledge, complicity, or involvement in the collision of the early hours of 14th August 1999, and stated categorically that he was not the driver and denied any corresponding negligence.

[10] The Defendant further averred in his defence that he conducted his own investigations into the matter and discovered that P7667 had been stolen by a third party, Othneil Sam, believed to have been residing in Stubbs, but who it later transpired has since left the country despite best endeavours by the defendant to inform the Police of Sam's imminent departure. The defendant further averred that at no time did he instruct or give Mr. Sam reason to believe that he may use the vehicle P7667, and that the vehicle had in fact been stolen, and therefore denied all consequent loss and damage suffered by the claimant.

- [11] He went on to state in his defence, that he himself had suffered the loss of use of P7667 which he used as a racing car, and has no redress with respect to compensation. He sincerely regretted the loss suffered by the claimant, though he maintained the he was not liable for the loss or damage suffered by the claimant.
- [12] The matter proceeded in accordance with the Civil Procedure Rules 2000 and came up for trial on the 23rd day of January 2003.
- [13] At the trial the claimants evidence was given or led through her husband Mr. Andreas Wickham, a Permanent Secretary with the Government of St. Vincent and the Grenadines and attached to the Ministry of Tourism and Culture. His witness statement signed and dated on the 17th December 2002 and filed on the 3rd day of January 2003 was tendered to the Court as his evidence-in-chief. He stated that the contents of the said witness statement were true and correct. The claimant relied on one other witness who testified on his behalf. This was Police Constable Parnel Browne.
- [14] The defendant then testified on his own behalf and called no witnesses. His testimony was also by way of his witness statement signed and filed on the 17th January 2003.
- [15] I must say at the outset that this is a very interesting case bordering on the unfortunate, if I may be allowed to say so. The evidence of Andreas Wickham basically was that on Saturday 14th August 1999 at about 1:30 a.m. he was driving P3049 from Kingstown towards his then home in Villa. He now lives at Dorsetshire Hill. He was alone in the vehicle. He stated that he was travelling behind an Ambulance, and was about 12 feet away from the Ambulance, and at a speed of about 35 miles per hour.
- [16] He stated that on approaching the entrance to Charlie Grecia's Residence at Villa, he saw the lights of a vehicle coming from the direction of Calliaqua (the opposite direction). He recognized this vehicle to be a car. He said this car swerved toward the right and he pulled more to his left, but this car still collided with the right front of his car damaging the front bumper, right fender, right front door, right front tyre and the right rear view mirror.

These damages were depicted in photographs contained in the Trial Bundle filed pursuant to this case.

[17] Mr. Wickham further stated in his witness statement that after the collision, when he got out of his car he did not see anyone in the vehicle that had collided with his. He gave the registration number of the other car as P7667. He later learnt that the vehicle was owned by the defendant Harley Cambridge of Sion Hill. He further stated that he also learnt that there were two persons in P7667 at the time of the collision. He further stated that on the night in question the road was not wet and neither was he intoxicated.

[18] He concluded by stating that he received a pound on his wrist and suffered a slight discomfort in the lower part of his neck, and that the Police came on the scene and PC 9 Browne took measurements. He also said that his licence was paid for the year ending 31st December 1999.

[19] Under Cross-Examination by Learned Counsel for the defendant Mr. Duane Daniel, Mr. Wickham stated that he did not get to see the two occupants of P7667 as it approached him before the collision. He stated further that he did not become unconscious after the collision, and that both vehicles were in close proximity to one another after the collision. He further stated that he alighted from his vehicle about one minute after the collision, but did not see anyone in the other vehicle, nor did he observe any persons running away from the vehicle P7667. He was told of these two persons running away from P7667 by someone who he could not recall. The identity of these two persons was not given to him he said. He reiterated that he saw no one in P7667. There was no re-examination of this witness by his Counsel.

[20] Police Constable Parnel Browne next took the stand on behalf of the claimant. On the 14th August 1999 he was stationed at Calliaqua Police Station. He stated that in the early hours of that day 14th August 1999 he investigated a motor vehicle accident at Villa. He said when he arrived at the scene at Villa he met no one, but he recognized one of the vehicles at the scene to be one owned by the Defendant Harley Cambridge of Sion Hill.

He could not remember the registration number of this vehicle at this point in time at the trial.

- [21] Constable Browne further stated that after spray painting the positions of the vehicles on the road, he proceeded to the home of the defendant. On arrival there he said, he called out the name of the defendant about five times, as the house was in darkness as it was about after 1:00 a.m. He further stated that a light went on in the house, and he recognized the face of the defendant Harley Cambridge at a window of the said house. He stated that he knew Harley Cambridge well. After a short conversation, whereby the defendant asked him why he was waking him up at that hour of the morning, the defendant came outside after about two or three minutes, and was bare backed and in short pants.
- [22] Constable Browne stated that he enquired of the defendant why he had ran away from the scene, to which the defendant replied "which scene?". On being informed by Constable Browne that he the Defendant knew he had been involved in an accident and ran away from the scene, the defendant denied that categorically and said he had been sleeping and someone might have stolen his vehicle and driven it away.
- [23] Constable Browne then patiently stated that at the scene of the crime he had observed what appeared to be blood and a couple of teeth from a mouth, in the front compartment of P7667. He said he informed Mr. Cambridge that if someone had stolen his vehicle, he would have to make a report to the Police, upon which Cambridge enquired of him where his car was. His answer to Cambridge was to the effect that the car was on the Villa public road. He Constable Browne then left the defendants residence.
- [24] This witness then stated to the Court that he was in regular contact with the defendant after this encounter and at no time on his enquiring, did the defendant tell him that he had been able to ascertain the person or persons who had stolen his car, and that he cannot recall the defendant later telling him who he found out had stolen his car. Interestingly this witness, a Police Officer, investigating a traffic accident, in these circumstances, did not make any note or notes of any of his conversations with the defendant. He further stated

that up until trial he could not remember the defendant telling him of who might have stolen his car.

[25] But he further stated that he carried out investigations into the matter, and from information he received, four men from Peruvian Vale were loitering in the Sion Hill area after a dance, but he did not get their names. He denied investigating any man, from any information given to him by the defendant.

[26] He stated that he did enquire of the defendant as to his movements on the night in question. He said Mr. Cambridge had stated that he went out with some friends earlier the said evening and got back home at around 8:00 p.m. where upon he remained at home for the rest of the night. He further stated that the defendant gave him the names of some of the friends he had been out with the preceding evening, but he could not remember the names. He recalled the name "Chiacheno", Monty Jack, but could not recall the names Bertram Joyette, Leacock or Gwynette, but he did say that the defendant told him he had gone to Diamond and then went to assist with the setting up of something somewhere else. He stated that he was absolutely certain that the defendant told him that he was back at home by 8:00 p.m. He denied that the defendant told him that he had received a visit from Monty Jack later that evening, or that he had taken Chiacheno Leacock home later that evening.

[27] Then in a sudden twist this witness stated that he now remembered the defendant mentioning the name Mrs. Gwynette Forde and that that is when the defendant told him that he had gone to do some technical work at Mrs. Forde between early evening and 8:00 p.m.

[28] This witness then stated that he knew that the defendant drives racing cars and that car racing is carried out at Diamond, but he did not know if car racing was carried out at Diamond that night. He stated that he was familiar with the defendants car that was involved in the accident in issue, and that he had seen the defendant driving that car before this night in question, but did not see him drive it often. He stated that on making

the necessary checks at the licensing department after the accident, he discovered that this vehicle P7667 was not licensed. He did admit though that he was informed by the Kingstown Police that the defendant made a report that someone had stolen his vehicle, but that the officers did not give him a name of the alleged car thief. But interestingly again he cannot remember the name of the officer who Cambridge made the report to at Kingstown Police Station. He stated that the officer asked him if the defendant mentioned any suspect to him, and that as far as he knew no suspect was mentioned.

[29] Under Cross-examination by Learned Counsel for the Defendant, Mr. Duane Daniel, this witness stated that he arrived at the defendants residence after 1:00 a.m. He said the report of the accident was made close to 1:00 a.m. He then basically stuck to his story given in examination-in-chief except to say that he did not see any cuts or abrasions, or any missing teeth on Mr. Cambridge the defendant, as he had a good view of him when he emerged from his house. He then interestingly again said that Cambridge seemed surprised that the vehicle was in an accident. He also stated that it was the defendant who mentioned to him about the four young men from Peruvian Vale loitering in the area of Sion Hill. Apart from maintaining what he had stated to the court in his examination-in-chief as I have stated earlier, with the other new information revealed in his cross-examination, this witness stated that he took a statement from the defendant sometime after 14th August 1999. He also stated in direct contradiction to what he had stated earlier in examination-in-chief, that he took some notes during his conversations with Cambridge, but he cannot remember where the notes are.

[30] The witness then said "I believe he committed the accident. I am sure that he said he arrived home at 8:00 p.m. He also said "I did make enquiries as to its (P7667) registration but cannot remember if it was registered under the name Harley Cambridge". He then concluded by saying "I am sure he is the owner even though I am not sure if he is the registered owner of the vehicle. He does not drive the vehicle often" Then in a sudden flip-flop the witness said "I had no reason to believe that what Mr. Cambridge told me that early morning of 14th August 1999 was incorrect.

[31] The only useful statement from this witness under re-examination was that he did not get any information that those four men from Peruvian Vale were near Defendants home at Sion Hill. This signified the close of the case for the Claimant.

[32] I have taken pains to rehash the whole of the evidence from Constable Parnell Browne in this judgment as in my view his evidence is very crucial in resolving the whole question of liability if any on the part of the defendant. Can his evidence be relied on? I will answer this question by setting out reasons.

(a) I find his evidence to be very contradictory when in-examination-in-chief he categorically told this Court that he took no notes of any of the conversations that he had with Mr. Cambridge, and then under cross-examination he makes a sudden turn and states "I took some notes during my conversations with Cambridge. I cannot remember where the notes are. I took it on a pad". I cannot fathom how an accident of this nature could have been investigated by a Police Officer without the taking of any notes, especially notes of the conversation he had with Cambridge on the very night of the accident, when he went to Cambridge home. And equally unfathomable is the view that if he took some notes of conversations on a pad, he cannot now remember where those notes are. To put it mildly I cannot believe Constable Browne on this score.

(b) Flowing from this premise, can I rely on Constable Browne's assertion that the defendant told him that he returned home at 8:00 p.m. earlier that evening and did not venture out of his house again until awakened by the Police? I say no. In the absence of any notes how can one rely on what this Constable has related to this Court on the issue of the time the defendant returned home, especially when it is not certain that he took any notes. And if it is not certain that he took any notes in view of his contradictory evidence on that issue, how can I rely on his certainty as to time. I find and hold that Constable Browne's evidence on this issue cannot be relied on.

- (c) In one vein Constable Browne tells the Court under Cross-examination “Mr. Cambridge seemed surprised that the vehicle was in an accident. Informed him where and when the accident took place”. Then again under Cross-Examination he again said “I believe he committed the accident”. Then at the end of the cross-examination he stated “ I had no reason to believe that what Mr. Cambridge told me that early morning of 14th August 1999 was in correct. So which version do I believe or rely on? I am more inclined, for the reasons stated earlier above, which clearly impinge on this witnesses credibility, to believe his last Statement under cross-examination where he stated that he had no reason to believe that what the defendant had told him that early morning of 14th August 1999 was incorrect. This again puts the claimants case in serious jeopardy. If the claimants own witness asserts that he believes the defendant, what effect does that have on the claimants case, except to render it unreliable.
- (d) Again to expose Constable Browne’s evidence for what it is, he states that he was informed by the Kingstown Police that the defendant made a report that someone had stolen his car, but that the officers did not give him a name as to the alleged car thief. He said he followed upon that information. Then he interestingly states that he cannot remember the officer who the defendant made the report to at Kingstown. Why does he choose to forget the pertinent pieces of evidence, but then expect the court to believe other pieces of evidence which he conveniently remembers.
- (e) The most telling piece of Constable Brownes testimony is where he states in examination-in-chief “I observed what appeared to be blood and a couple of teeth from a mouth in the front compartment of motor vehicle P7667”. Under Cross-Examination he states “there was blood at the scene and few teeth, about four teeth. I did not see any cuts or abrasions or any missing teeth on Mr. Cambridge. He was bare backed at the time. I had a good view. Mr. Cambridge seemed surprised that the vehicle was in an accident” How then does he conclude or make that Quantum leap to conclude that in his belief it was the defendant who was involved in the accident.

- [33] All those reasons or factors as stated above draw me to the inescapable conclusion that Constable Brownes evidence is manifestly unreliable. I now turn to the evidence of the defendant as per his witness statement and his evidence under cross-examination.
- [34] The defendant stated in his witness statement also tendered as his evidence-in-chief most of what Constable Browne had stated as regards his visit to his home in the early hours of 14th August 1999. That apart he stated that on the 13th August 1999 at about 7:00 p.m. he was engaged in the preparation of Sugar Mill Inn at Ratho Mill for a function which was scheduled to take place the next day. He stated that he was in the company of Chiacheno Leacock, Gwynette, Bertram Joyette and others. He said the preparations had him occupied until about 11:25 p.m.
- [35] He further stated that Chiacheno Leacock took him straight home that night where he arrived some minutes to midnight. He said at this point the vehicle P7667 was garaged at his home in Sion Hill; and as he was so exhausted from the day's activities he went to sleep. He was then awakened by P.C. Browne in the wee hours of the morning of 14th August 1999.
- [36] Apart from basically supporting PC Brownes evidence as to what transpired at his home, the defendant stated that sometime later operating on rumours, he found out that Mr. Othneil Sam was responsible for having stolen the motor vehicle, and he informed the Police of this. He said he mentioned this to PC Browne who informed him to notify the Central Police Station as the car was stolen from Sion Hill, which he did. He categorically denied being the driver of motor vehicle P7667 as alleged on the night of 13th August 1999 or the morning of 14th August 1999.
- [37] Under Cross-Examination, which I considered to be very relentless by Learned Counsel for the claimant Mr. Sam Commissiong, the defendant admitted he was the owner of motor vehicle P7667. It was never licensed nor insured. He said it was used for racing only and hence it not being even licensed or insured. He said it was normally kept at his house at Sion Hill. He usually took out a one day Insurance from Metrocint Insurance Company

whenever he was going to race the vehicle at Diamond or Penniston. He described it as a "demonstration insurance". He denied ever driving the said vehicle on the 13th August 1999, nor does he remember telling anyone that he drove the said vehicle that night. He admitted giving the Police a statement after the accident of 14th August 1999. He stated that he also remembered some tall light complexioned man asking him questions about the accident but he did not know his name.

[38] He said he remembers giving this man a statement but cannot remember signing that statement. Counsel then sought to contradict the defendants testimony from his witness statement with the purported statement taken by this man, Ex-Superintendent of Police Wright. Frankly speaking, I could not see the necessity for this as the answers sought from the defendant from this statement, were in complete contradiction to the evidence given by the claimants witness PC Browne, in specific regard to when the defendant arrived at home on the night in question. Apart from that this line of cross-examination did not in anyway discredit the defendants testimony. The defendant maintained his story under cross-examination, and was in no way shaken or discredited.

[39] The defendant went on to explain to the court who this person Othneil Sam was and his whereabouts. Under re-examination he told the court that the last time he saw his vehicle was when he got home that night just after midnight, he stated that from where the car was parked that night, it could have been pushed by three persons up the incline from his house.

[40] From the foregoing evidence, I find that there is no doubt that the defendant owned the car P7667 on the night of 14th August 1999. Whether he was indeed the registered owner or not is neither here nor there. The defendant himself has admitted at various stages of this matter that he was the owner of the said vehicle. I accept that fact. The major issue to resolve here is whether he drove the vehicle on the night in question, in which case he would be solely responsible for the damages to the claimants vehicle, or did he loan it or gave permission to someone or some persons to drive the vehicle that night, in which case he would be vicariously liable for the damages to the claimants car.

- [41] The defendant has stated that he at no time gave anyone permission to drive the car that night, and that if two persons emerged from his car and run away that night, he had no knowledge of those persons, and they would have been in possession of his car because they stole it. There is no evidence to suggest otherwise having looked at the whole of the evidence and I accept the defendants story on this score.
- [42] Did he drive the vehicle himself that night? Again looking at the claimants evidence, especially that of PC Browne and that purported to emanate from the investigating officer commissioned by the Insurance Company, whose viva voce evidence I did not have the benefit of receiving, and whose statement is not in evidence, except for portions of it being used unsuccessfully to contradict the defendant, I am inclined to hold that the defendant, on a balance of probabilities was not the driver of the vehicle P7667 when it collided with the claimants vehicle.
- [43] “He who asserts must prove”. The claimants have asserted, but in this case, on a balance of probabilities, the claimants have not proven. No one, not even Mr. Wickham, saw or identified the driver or occupant of P7667 at the scene. There is also no link between the two fleeing men from the scene with the accident. Apart from being the owner of the vehicle, there is no link between the defendant and the vehicle P7667 on the Villa public road., I think the matter ends there. On a balance of probabilities, and having regard to the whole of the evidence, I cannot find favour with the claimants claim. This was an unfortunate accident. The claimant has no doubt suffered loss, but so has the defendant. But the justice of the case demands that this claim be dismissed against the defendant and I so order.
- [44] I would also order that each party bears its own costs in relation to the Suit.

Frederick V. Bruce-Lyle
High Court Judge