

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. 439 of 2001

BETWEEN:

ALBERT ISEMBERT

Claimant

and

SAMSON ALBERTINE

Defendant

Appearances:

Mr. Mark Maragh for the Claimant

Ms. Esther Greene- Ernest for the Defendant.

2003: June 04
June 06

NEGLIGENCE ARISING OUT OF MOTOR VEHICULAR ACCIDENT...BOTH PARTIES
PROSECUTED FOR CARELESS DRIVING...CRIMINAL MATTERS STILL PENDING IN
MAGISTRATE COURT...CONTRIBUTORY NEGLIGENCE...DAMAGES

JUDGMENT

1. **HARIPRASHAD-CHARLES:** On the morning of 22nd January 2002 there was a road traffic accident at the junction of Nelson Mandela Drive and an unnamed minor road leading into the Choc cemetery at Vigie. Albert Isembert was driving his white Toyota dump truck slowly along the Nelson Mandela Drive. He was turning right into the cemetery. He failed to indicate and or give any warning of his intention to do so. Mr. Samson Albertine was driving his red sports car along the said road heading west in the direction of George Charles Airport. He was going to visit a friend at Vigie. He attempted to overtake the dump truck at the junction. The vehicles were in collision.

2. The two drivers' account of the reasons for the collision were not strikingly different. The red car had collided with the dump truck from the rear as it was overtaking it at the mouth of the junction. After the collision, the red car spun around hitting a culvert which was located on the minor road. The culvert got broken and the car continued spinning and stopped about 71 feet away from where the truck had stopped. The 5-ton dump truck spun around almost 180 degrees before it came to a complete halt with its front facing a westward direction. Both vehicles were extensively damaged. In fact, both vehicles were totally wrecked.
3. On 9th May 2002, Mr. Isembert commenced these proceedings claiming special damages of nearly \$40,000.00. Mr. Albertine then counterclaimed for \$14,800.00 and alleged negligence on the part of Mr. Isembert. Mr. Albertine's defence filed on 5th August 2002, denied negligence and he pleaded that the collision was caused solely by or contributed by the negligence of Mr. Isembert. Each side relied on particulars of negligence in standard form. Damages for personal injuries were pleaded by both sides but at the trial, neither party pursued it and it is quite understandable. Neither driver sustained any significant injury. Mr. Isembert had a laceration to his right arm with glass embedded therein. Mr. Albertine sustained two lacerations to his lower left arm.
4. It is common ground that the accident took place on a bright sunny morning when traffic was not heavy. It is also common ground that Mr. Isembert was turning right into the cemetery and that he was driving a defective vehicle within the meaning of the Motor Vehicles and Road Traffic Act of St. Lucia. The truck had no right side mirror and the right rear indicator light was non-functional. It is established that Mr. Albertine overtook at a junction which was uncontrolled in that there was no notice or road sign. But in St. Lucia the law is that a driver cannot overtake at a junction.
5. The Police were informed of the accident and arrived shortly thereafter. P.C. 247 Alexander was the investigating officer and he took measurements. He proceeded to obtain oral statements from each driver as to how the accident occurred. Mr. Isembert said that he was driving towards the direction of the airport. He indicated to turn right into the cemetery. He heard a sound and then he saw Mr. Albertine's car collided with his truck. Mr. Albertine said

that he was traveling towards the direction of the airport in his vehicle. A green car overtook his car and he was in the process of overtaking the truck when his vehicle was pushed off the road. Officer Alexander next proceeded to examine the vehicles. He found that the truck did not have a right rear view mirror and the right rear indicator was non-functional. He also found that visibility was impaired from the driver's seat in the cab because the rear view windscreen was tinted. Officer Alexander was called as an independent witness to testify and in my judgment, he was forthright, unhesitating and honest in his evidence. I therefore accepted his evidence as truthful. Indeed, his evidence corroborated to a significant extent the evidence of both drivers.

6. Both drivers were served with notices of intended prosecution and later prosecuted for careless driving. The matters are still pending in the Magistrate Court. The outcome of those criminal cases would have been of some assistance to the court. The cases were scheduled to be heard a week ago but were adjourned. It is unlikely that they will be heard very soon.
7. Against this background, both Counsel conceded and accepted negligence on the part of both drivers. The sole issue for my determination is apportionment of damages. Mr. Maragh for the claimant submitted that Mr. Allbertine was more at fault because not only was he overtaking at a junction but also at a pedestrian crossing and that he was speeding. The police found no evidence of speed. He next submitted that Mr. Albertine failed to blow his horn to alert the other driver of his presence on the road. Mr. Maragh attributed blameworthiness to Mr. Albertine at 75%. On the other hand, Ms. Ernest urged the court to find that Mr. Isembert was the creator of his own misfortune. It was he who set in motion the whole train of events. He carelessly and blatantly disregarded the law in that he drove a defective truck when he was fully aware that the truck had no right rear view mirror and non-functional right rear indicators.
8. It is accepted that Mr. Isembert is guilty of contributory negligence such as to reduce damages. As Denning L.J. said in *Jones v. Livox Quarries Ltd. [1952] 2 Q.B. 608 at page 615:*

"Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as

a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

9. The negligence of Mr. Isembert is that he failed to indicate that he was turning right. He failed to give any warning of his right turn. He was driving without a right side mirror and non-functional right rear indicator. In short, he was driving a defective 9-year old dump truck. I therefore find that the damage is partly the result of his own fault, and the damages recoverable by him fall to be reduced accordingly.
10. Mr. Albertine was also negligent in overtaking at a junction and in failing to give any or adequate warning of his approach. He blew his horn, albeit, too late when the collision had already occurred. As a driver and a mechanic, he should have known that it is contrary to law to overtake at a junction.
11. In my judgment, both drivers are equally at fault. I therefore assess blameworthiness equally between them.

Quantum of Damages

12. Mr. Isembert claims an aggregate of \$40,350.00. He claims \$10,000.00 for the hiring of a substitute vehicle. He was unable to prove that he paid \$10,000.00. His receipts totaled \$7,000.00. He hired the substitute vehicle from his brother, Innocent Isembert. Mrs. Ernest raised her eyebrows. But as a contractor, Mr. Isembert is bound to require a vehicle to perform his duties. I do not consider \$100.00 per day as representing an exaggerated figure. I think that it is immaterial from whom he rented a substitute vehicle. On the contrary, I think that he mitigated his loss by hiring a vehicle of a lesser standard to perform his work. I would therefore award him the sum of \$7,000.00 as shown from the receipts he supplied. The total award to Mr. Isembert will be \$37,350.00 less 50 % making an award of \$18,675.00.
13. Mr. Albertine claims the aggregate of \$14,800.00. Mr. Maragh extensively cross-examined him on the value of a 13-year old car. From the evidence, the car appears to be in immaculate working condition. It is a sports car. Antoine Monrose, a mechanic by trade, recognized by the Insurance Council of St. Lucia assessed the pre-accident value of the car at \$15,000.00 less

salvage value of \$2,000.00. The value of the car is therefore \$13,000.00. Unfortunately, Mr. Monroe did not avail himself for cross-examination. Despite that, I do not find any compelling reason to reject the value as assessed by Mr. Monroe. The total award to Mr. Albertine will be \$14,300.00 and not \$14,800.00 as counterclaimed. His blameworthiness is assessed at 50% thereby reducing damages by 50%. The global award to him is \$7,150.00.

14. The most prudent thing to do is to offset the damages. I have therefore undertaken to do so by simple subtraction. In the result, my order will be:

- (1) Judgment for the claimant in the sum of \$11,525.00.
- (2) Interest at the rate of 6% per annum from 1st May 2002 to the date of payment.
- (3) No Order as to Costs.

Indra hariprashad-Charles
High Court Judge