

SAINT LUCIA

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

CLAIM NO. SLUHCV2000/0793

BETWEEN:

(1) MARTINA AUGUSTIN
(2) DWAYNE AUGUSTIN

Claimants

and

(1) HESS OIL ST.LUCIA LIMITED
(2) MATTHEW MATHURIN

Defendants

Appearances:

Mrs. Claire Greene-Malaykhan for the Claimants
Mr. Anthony McNamara, QC for the Defendants

2003: September 22
September 29

**NEGLIGENCE ARISING OUT OF MOTOR VEHICULAR ACCIDENT...CLAIMANTS' VEHICLE A
WRITE-OFF...DAMAGES**

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This is a claim and a counterclaim arising out of a road traffic accident which occurred at about 6.50 a.m. on the morning of 6th August 2000. Mr. Dwayne Augustin was driving a Mitsubishi Lancer GLX motorcar along the Ti Rocher Road heading East in the direction of Babonneau to visit a delinquent client. Mr. Matthew Mathurin was driving a Toyota motor pickup, owned by his employers, Hess Oil St. Lucia Limited (Hess Oil). He left his home at Babonneau and was heading to work along the Ti Rocher/ Old Victoria Road in a westerly direction. The vehicles were in collision.

2. Mr. Augustin suffered a blow to his knee and was immediately taken to Victoria Hospital for treatment. In fact, it was at Victoria Hospital that Sergeant 483 Gaston, the investigating officer spoke to him and he gave a statement. However, the injury was not serious enough to warrant his hospitalization or to pursue a personal injury claim. The motorcar belonging to Mr. Augustin's mother, Ms. Martina Augustin was damaged beyond repair. In other words, it was a write-off. The vehicle belonging to Hess Oil sustained damage to the front grill, bumper, bonnet, lights and surrounding area.
3. Mr. Augustin says the accident was all Mr. Mathurin's fault and on 9th August 2000, he commenced these proceedings claiming special damages of nearly \$32,000.00 against Mr. Mathurin and Hess Oil. Mr. Mathurin then counterclaimed for \$5,100.00 and alleged negligence on the part of Mr. Augustin. Mr. Mathurin's defence filed on 6th February 2001 denied negligence and pleaded that the collision was caused by the negligence of Mr. Augustin. Each side relied on particulars of negligence in standard form.
4. The two drivers' account of the reasons for the collision are strikingly different. Mr. Augustin gave evidence that he was travelling on his left and proper side of the road when he noticed a white Toyota 4 x 4 pick up speeding towards him from the opposite direction. He said that the pick up was travelling at about 40 to 45 miles per hour. The road was a bit narrow about 16 feet wide and winding. He came to a stop in an attempt to avoid the pick up from hitting his vehicle but the pick up could not stop because it was driving too fast
5. Mr. Mathurin's evidence was that he was travelling in the opposite direction at approximately 25 miles per hour and he was on the left hand side of the road. At a point a short distance from the bend which swung to the left as he faced it, he saw a vehicle coming around the bend towards him at great speed and that vehicle came on his side of the road as it was taking the bend. Mr. Mathurin said that there was a very large pothole approximately 6 to 7 feet wide in Mr. Augustin's lane. As he saw the motorcar approaching him, he stopped completely in his left and proper lane. The motorcar came in his lane in an effort to avoid the pothole and having passed the pothole, Mr. Augustin tried to get back to his left and proper side of the road but was already upon him.

6. After the collision, the motorcar drifted over the drain on the left facing East and on to a wall. The pick up spun around and across the road facing in a Southerly direction and continued some distance down the road in an easterly direction.
7. The Police were informed of the accident and arrived shortly thereafter. Sergeant 483 Bernard Gaston, then a police constable was assigned to investigate the accident. He stated that whilst travelling along the Ti Rocher road, he saw two vehicles stationary on the road in opposite direction to each other. The two vehicles had what appeared to be fresh external damage to them. He made inquiries and Mr. Mathurin told him that he was the driver of the pick up. The driver of the other vehicle was not on the scene. Sergeant Gaston said that Mr. Mathurin gave him an explanation of how the accident occurred. He proceeded to mark out with orange spray paint, the position of the wheels of both vehicles, the point of impact shown by Mr. Mathurin and the tyre impressions seen on the road. Sergeant Gaston then proceeded to Victoria Hospital where he met Mr. Augustin and spoke to him.
8. On Friday, 14th August 2003, Sergeant Gaston revisited the scene along with Mr. Augustin and Mr. Mathurin. Both drivers agreed with the orange markings which were still there and very conspicuous. He proceeded to take measurements in the presence of the drivers. On completion, they agreed with the measurements – Exhibit DA7.
9. Each driver was served with a notice of intended prosecution for driving without due care and attention. Upon completion of his investigation, Mr. Mathurin was prosecuted for driving without due care and attention. The matter was dismissed for want of prosecution in the Traffic Court.
10. It is always difficult to decide a case like this one where there is diametrically opposed evidence and disagreement on the point of impact. The case is therefore reduced to one person's word against another and the evidence of the investigating officer.
11. On a balance of probabilities, I preferred the evidence adduced by Mr. Augustin. I believe that he rode the pothole and he was not in Mr. Mathurin's lane. On the contrary, I believe that Mr.

Mathurin negotiated the bend with some speed as is shown by the brake impression of 43 feet 5 inches running in a westerly direction. From the measurements taken by the police, Mr. Mathurin first saw the oncoming vehicle at a distance of 75 feet 8 inches which should have given him ample time to slow down or stop or swerve in order to avoid the collision had it not been for the speed at which he was travelling. It seems to me also that Mr. Mathurin deliberately misled the court when he stated that his vehicle was damaged on the right front bumper when Exhibit TK 3 tendered by Mr. Thomas Kane shows that the damage to the pick up was to the front right and left, for example, front grill, right front park lamp, left front park lamp, front bumper, right head lamp, left head lamp, right head lamp surround, left head lamp surround, right front indicator lamp (bumper), left front indicator lamp (bumper) and the emblem grill.

12. Having analyzed the evidence led in this case including the unchallenged measurements taken by the investigating officer, I therefore find Mr. Mathurin liable for the accident. I reject his defence that the collision was caused by the negligence of Mr. Augustin.
13. I now turn to the question of damages. Mr. Augustin claims special damages of \$31,900.00. This is unchallenged by the other side.
14. Accordingly, there will be judgment for the Claimants against the Defendants jointly or severally for the sum of \$31,900.00 and costs as agreed at \$5,000.00. I will dismiss the Defendants' counterclaim.

INDRA HARIPRASHAD-CHARLES
High Court Judge