

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

SAINT LUCIA

CLAIM NO. SLUHCV2000/0763

BETWEEN:

(1) THOMAS JAMES
(2) THERESA JAMES

Claimants

and

WINDY JOSEPH

Defendant

Appearances:

Ms. Isabella O. Shillingford for the Claimants

Mr. Michael St. Catherine for the Defendant

2003: October 10,15,23
November 04

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On the 29th May 1997 at about 5.00 p.m., Theresa James was driving a Mitsubishi Gallant motorcar owned by her husband, Thomas James along the Belle Vue/Desruisseaux road in Desruisseaux, a rural community on the east coast of Saint Lucia. Mr. Windy Joseph was driving his Honda motorcar along the Desruisseaux Highroad in a westerly direction. As Mrs. James approached the Blanchard/Desruisseaux junction, she negotiated a right turn in an easterly direction unto the Desruisseaux Highroad. The two vehicles were involved in a collision.

2. The accident occurred on a bright and clear afternoon. The road was pitched and in good condition with no potholes, gravel or sand. There is usually not much traffic on that road. On the day in question, there were no other vehicles on the road.
3. After the collision, the Honda motorcar ended up in a drain in the right side of the road facing north. Mrs. James ended up almost in the junction. Both vehicles were extensively damaged beyond repair. Fortunately, neither party suffered any physical injury although Mrs. James alleged that she suffered great shock.
4. On 31st July 2000, Mrs. James instituted these proceedings claiming special damages of \$45,120.00. Mr. Joseph then counterclaimed for nearly \$27,000.00 and alleged that the collision was caused by the negligence on the part of Mrs. James. Each side relied on particulars of negligence in standard form. In her particulars of negligence, Mrs. James alleged, among other things that Mr. Joseph:
 - (i) Failed to keep any or any proper look out or to heed the presence of vehicular traffic on the said road at all.
 - (ii) Failed to give any or any proper warning of his approach to prevent colliding with her vehicle which was on the said road and
 - (iii) Failed to keep to his left and proper side of the road to avoid a head on collision with the other vehicle.
5. In his particulars of negligence, Mr. Joseph alleged, among other things that Mrs. James:
 - (i) Failed to keep any or any proper look out or to heed the presence of vehicular traffic on the said road.
 - (ii) Failed to stop at the Blanchard/Desruisseaux junction and emerged onto the said Highroad without first ascertaining or ensuring that it was safe to do so and
 - (iii) Turned or attempted to turn from a minor road onto the Blanchard/ Desruisseaux Highroad when it was dangerous to do so.
6. The two drivers' accounts of how the accident occurred are radically different. Mrs. James says the accident was all Mr. Joseph's fault and has sued him for damages. Mr. Joseph says it was

all Mrs. James' fault. At the trial, I heard evidence from both of them. Mrs. James brought three witnesses including the investigating officer, P.C. 279 Charles Bernard to substantiate her claim.

7. Mrs. James' evidence was that she was driving along the Belle Vue Road. She stopped at the Blanchard/ Desruisseaux junction. She looked left, right and left again in order to ensure that the road was clear before she negotiated a complete right turn in an easterly direction towards her home at Anse Gerre. Suddenly, she saw a car driven by Mr. Joseph propelling down the hill. Mr. Joseph's car went out of control swaying on the road and then it ran into the front of her vehicle with a great impact. As a result of a head-on collision, extensive irreparable damage was done to her bonnet, headlamps, windscreen and other parts of her vehicle.
8. Mr. Joseph's evidence was that he was driving along the Desruisseaux Highroad. He was proceeding straight in a westerly direction. On approaching the Blanchard/ Desruisseaux junction, he suddenly saw a white Mitsubishi Gallant driven by Mrs. James came from a side road with great speed unto the Desruisseaux Highroad colliding with his vehicle. The vehicle never stopped at the junction. He tried to pull away to avoid the collision but it was too late.
9. The Police were called to the scene and arrived shortly thereafter. Officer Bernard was the investigating officer. He proceeded to obtain brief oral statements from each driver as to how the accident occurred. Mrs. James said that she came from west. She had already positioned facing south at the junction. The other car came and hit her. After the impact, her car went back. Mr. Joseph said that he was coming down. He did not see the car. He heard a noise and his car hit the wall. Officer Alexander next proceeded to take measurements. The drivers did not agree to the point of impact and as a result, two points of impact were identified. Other relevant measurements were taken in the presence of both drivers. After the measurements were taken, Officer Bernard verbally informed both drivers that they were likely to be prosecuted for careless driving. Subsequently, Mr. Joseph was prosecuted for careless driving. The criminal charge was dismissed for want of prosecution in the Traffic Court.

10. This is a civil action for negligence wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court and having had the opportunity to visit the scene of the accident, I found the evidence of Mrs. James and her witnesses, in particular Officer Bernard to be more plausible. I could not say the same for Mr. Joseph. Under cross-examination, he maintained that he was on his left and proper side of the road. However, the point of impact as indicated by him showed that he was in Mrs. James' lane. I came to the conclusion that neither party was truthful about the real point of impact. I am more inclined to accept the area where the debris was found to be where the collision took place. That area also represents where Mrs. James' vehicle was positioned when the police arrived at the scene shortly after the collision. As I see it, the scenario of events as it unfolded itself on the afternoon in question was that Mr. Joseph was driving his motorcar along the Desruisseaux Highroad and he failed to keep to his left and proper side of the road to avoid the collision. I do not believe him when he stated that he pulled away to avoid the accident. In my opinion, if he had pulled away to avoid the accident, it would have been more prudent to pull to his left than to the right into the path of Mrs. James. I therefore find Mr. Joseph to be negligent on the day in question.

11. Although not specifically pleaded, the only question that appears to me to be capable of debate is whether Mrs. James is guilty of contributory negligence such as to reduce damages. As Denning L.J. said in *Jones v. Livox Quarries Ltd.*¹:

"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."

12. The negligence alleged by Mr. Joseph is that Mrs. James failed to stop at the Blanchard/ Desruisseaux junction and emerged unto the Highroad which is a major road without first ascertaining or ensuring that it was safe to do so. He next alleged that Mrs. James failed to have any sufficient regard for other traffic that was on the road. As far as I can see, Mrs.

¹ [1952] 2Q.B. 608 at 615

James injudiciously came out of a minor road onto the Blanchard/ Desruisseaux Highroad and failed to keep a proper lookout or to have sufficient regard for any other vehicle which might reasonably be on the said road.

13. It is trite law that when a driver is coming out of a minor road onto a major road, it is his duty to ensure that the road is clear before proceeding onto the major road. Mrs. James' failure to do so constitutes negligence.
14. The remaining issue for my determination is apportionment of damages. Neither Counsel argued contributory negligence so I am left to do my own apportionment.
15. The negligence of Mr. Joseph is that he failed to keep to his left and proper side of the road. 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.
16. Mrs. James turned from a minor road onto a major road when it was unsafe and dangerous so to do. As an experienced driver, she should have known that it is contrary to law to do so at a junction.
17. In my judgment, both drivers are equally at fault. I therefore assess blameworthiness equally between them.

Quantum of Damages

18. Mrs. James claims an aggregate of \$45, 120.00 as particularized in her statement of claim. She brought Mr. Peter Jallim, the mechanic to substantiate her claim. Mr. Jallim's evidence remains wholly uncontradicted. The total award to Mrs. James will be \$45,120.00 less 50 % making an award of \$22,560.00.
19. Mr. Joseph claims an aggregate of \$27,000.92. He was not cross-examined by Ms. Shillingford, Counsel for Mrs. James. The total award to Mr. Joseph will be \$27,000.32.as counterclaimed. His blameworthiness is assessed at 50% thereby reducing damages by 50%. The global award to him is \$13,500.16.

20. 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 claimants in the sum of \$9,059.84.
- (2) Interest at the rate of 6% per annum from 31st July 2000 to the date of payment.
- (3) No Order as to Costs.

Indra Hariprashad-Charles

High Court Judge