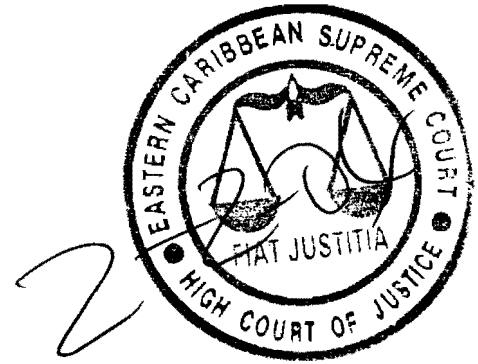


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 272 OF 1998



BETWEEN:

**KENUTE GEORGE (by his mother
and next friend, Diana George)**

Claimant

and

**DWIGHT CHARLES
NORMAN DUKE**

Defendants

Appearances:

Mr. Cecil Williams for the Claimant

Mr. Ronald Burch-Smith for the First Defendant Dwight Charles, instructed by Solicitor Mr. Grahame Bollers

2003: April 1

2004: February 2

JUDGMENT

- [1] **BRUCE-LYLE, J:-** At the beginning of this trial counsel for the first defendant Dwight Charles, Mr. Ronald Burch-Smith informed the court, that by a court order made in Chambers prior to this matter being fixed for trial, he was to withdraw as solicitor for the second defendant Norman Duke. Further to that, a summons was issued by the court for Norman Duke's attendance to court at trial, to give evidence on behalf of the defence. Unfortunately, he said, the summons could not be served on Norman Duke as he had left the State. He also informed the court that his client Dwight Charles was also not in court and he was not in a position to tell the court where Dwight Charles was, as he did not know, but nevertheless he was ready to make representations on his behalf at the trial. I ruled that the trial commence.

- [2] The claimant Kenute George then gave evidence, after which he was cross-examined by counsel for Dwight Charles, and then re-examined by his counsel Mr. Cecil Blazer Williams. That signified the case for the Claimant. The defence called one witness Corporal No. 573 Sigmund Allen of the Royal St. Vincent and the Grenadines Police Force. He was also cross-examined by counsel for the claimant, Mr. Cecil Blazer Williams and then re-examined. That signified the case for the defendant Dwight Charles. Submissions were then heard.
- [3] The facts as I found them, briefly, are as follows – Kenute George, the claimant who lives at Sion Hill with his parents, was on the 30th January 1998 a student at the Kingstown Preparatory School and aged 8 years old. At the time of trial he was 13 years old and a student of the St. Martins Secondary School. He said he knew Dwight Charles to be the owner of motor van PA 428 which was on the day in question being driven by Norman Duke. Kenute George further stated that on the day in question 30th January 1998, he was crossing the road from Music Centre on Back Street, Kingstown, to Gonsalves Liquors to see his mother who worked there. Prior to that, himself and his friend Jelani Hinds had visited Jelani's father at the Hinds Building.
- [4] In accordance with his witness statement which he identified to the Court and which he certified as being true and correct, he said it was after school, with school children milling all about the place; but he was specifically with Jelani his friend. He said Jelani crossed the road first. He saw no vehicle approaching so he also crossed the road, behind of Jelani. He said whilst crossing he did not see any vehicle approaching, specifically PA 428. He did not know what happened after that, and came to at the hospital. He suffered a scar on the right side of his face and cuts and bruises on his hand. This led to him being admitted to the said hospital where he was attended to by doctors. Then his mother took him overseas to see doctors.
- [5] Under cross-examination Kenute George stated that there were no school friends with himself and Jelani at the time, and neither were they accompanied by adults. He stated that Jelani's father worked at the Hinds building. It was when they came out of the Hinds

Building further down the road from where he attempted to cross the road that they decided to go to Gonsalves Liquors. This would have entailed crossing the road by way of a pedestrian crossing at the Kentucky Fried Chicken business area. But they did not do this. They crossed the road somewhere before this particular pedestrian crossing.

[6] It is interesting to note, that from the Hinds building, they could also have availed themselves of a pedestrian crossing which would have taken them across the road to the National Commercial Bank building and to the side of the road where Gonsalves Liquors was located, providing a safer alternative.

[7] Be that as it may, on crossing the road Kenute George collided with motor van PA 428 thereby sustaining the injuries he referred to in his evidence in chief. He further testified that a few months after the incident he spoke to Corporal Allen, who made notes during the said conversation, and that he does not remember telling him that he was crossing from the southern lane of Back Street at Kids Plus Store to the northern lane where The Music Centre is located. He said at the time of speaking to Corporal Allen his memory then was better than it was on the day of the trial.

[8] He further testified under cross-examination that it was around 3:30 p.m., after school, and that traffic on Back Street was not heavy. He said it would have taken him 15 seconds to cross that area of Back Street and that he did not see PA 428 whilst crossing even though he had looked in the direction PA 428 would have been coming from.

[9] He said before the accident he had no disabilities physically, but after the accident he suffered bruises to his head, legs and arms but no broken bones. He cannot say which part of his body the van hit, but the bruises suffered were on the right side of his body with none on the left side of his body. He then stated surprisingly that the accident was his fault.

[10] Under re-examination he said he looked left and right before he crossed the road and did not see any vehicle approaching. He then denied that he caused the accident.

- [11] This signified the case for the claimant. The defence then called one witness Corporal 573 Allen of the Royal Saint Vincent and the Grenadines Police Force.
- [12] His evidence was to the effect that he investigated a motor vehicle accident report on 20th January 1998 at about 3:25 p.m. on Grenville Street, Kingstown, in the vicinity of Sid's pub. On visiting the scene he met PA 428 parked in the left lane on the southern side of the said street, facing a westerly direction. He then interviewed a young boy who had been injured in that accident. He also interviewed the driver of PA 428 Norman Duke of Buccament and made notes of these interviews. Duke was interviewed in the presence of claimant's mother.
- [13] Duke's version of the events was that he was driving PA 428 from Vinsave towards Lowmans Leeward using Back Street or Grenville Street, and traveling at a speed of 15 mph because there was a long line of traffic ahead of him. On approaching Sid's Pub on Grenville Street, there were quite a number of vehicles parked on the left side of the street. He said he saw a child run from between two of the parked vehicles, in front of his van and he quickly applied his brakes, but to no avail as the front of his vehicle struck the child on the right side making him fall to the ground in front of the van which skidded on for a distance with the child trapped under the bumper.
- [14] According to Corporal Allen, Kenute George also stated that his friend Jelani Hinds and himself were coming from school and were on Back Street. On reaching Kids Plus Store they decided to cross the road. He said Jelani went across the road first and he went behind of him, because he did not see any approaching vehicles. He said they began by running from between two parked vehicles. It was while he was crossing from between the two parked vehicles when he was struck by PA 428 on his right side knocking him to the ground.
- [15] Corporal Allen said he took measurements; to my mind the most crucial areas of the measurements are as follows:-

- (a) Point of impact to where PA 428 stopped as pointed out by both parties – 22 ft 10 ins
- (b) Point of impact to where child fell – 27 ft
- (c) From where driver first saw child to point of impact – 9 ft 9 ins.

This basically was the case for the defendant.

ANALYSIS OF EVIDENCE

[16] This is a claim for negligence based on speeding and driving in an unsafe manner. I am afraid to say the evidence of the claimant does not support this especially in view of Corporal Allen's evidence as to what the claimant told him at the scene, which conflicts with the claimant's own testimony as per his witness statement and in court, which I have taken the liberty of expounding on earlier in this judgment.

[17] The claimant himself admits that they did not use the pedestrian crossings available to them, but instead chose to dart from between two parked vehicles as is the usual practice of school children walking in that area of town after school and after 3:00 p.m. Learned counsel for the defence Mr. Ronald Burch-Smith asked the court to take judicial notice of the amount of traffic that is bound to be on that road at that hour of the day, and I might add, including pedestrians, mainly school children. I agree entirely with this observation.

[18] I even go further to say that it is the usual practice for these school children to be darting across the road from in between parked vehicles, and creating a hazard for vehicle drivers. I agree with Mr. Ronald Burch-Smith when he says the claimant Kenute George did not maintain a proper lookout.

[19] Whilst I agree with learned counsel for the claimant Mr. Cecil Williams that the defendant Norman Duke owed a special duty of care towards school children at that time of the day, I do not agree with him when he says that if Kenute George saw no vehicle before he crossed it meant that PA 428 was traveling faster than the 15 mph that Duke alluded to Corporal Allen.

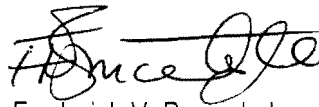
[20] Having a special duty of care to school children on the road, does not mean school children are allowed to cross the road at any point, and in a careless manner when there were two pedestrian crossing they could have availed themselves of, and providing a safer alternative. I believe defendant Duke's version of events as juxtaposed to that of the claimant. It is my view that the claimant did not maintain a proper lookout before he crossed the road, compounded by the fact that as Jelani Hinds had crossed the road, he thought it safe for him to cross also and from between two parked vehicles.

[21] The fact that the defendant's vehicle skidded for 22 feet 10 ins is neither here nor there if one accepts that the van was traveling at 15 mph and the defendant only saw the claimant when he was 9 ft 9 ins away. There is no evidence as to whether the claimant was 9 ft 9 ins away on the side of the road or whether he was 9 ft 9 ins away from the van, but in the road attempting to cross. It is my view on a balance of probabilities and having regard to all the circumstances of the case, that the defendant Duke saw the claimant Kenute George when he was on the side of the road between the two parked cars at a distance of 9 ft 9 ins. By the time Kenute darted into the road that distance would have been considerably reduced or shortened. Hitting a pedestrian at a distance of less than 9 ft, whilst traveling at 15 mph, which I do not consider to be excessive having regard to all the circumstances existing at the time, could have in all probability resulted in the skidding of the vehicle for that length of 22 ft 10 ins as stated by Corporal Allen in his measurements.

[22] It is interesting to note that Kenute George under cross-examination admitted the accident was his fault, but on re-examination did a somersault and denied the accident was his fault. All this goes to his credibility, which I am not inclined to believe.

ORDER

[23] On a balance of probabilities therefore, and having regard to all the circumstances and facts of this case, I dismiss the claimant's claim and find in favour of the defendant. The claimant is to pay the defendants' costs in the sum of \$2,000.00.

A handwritten signature in black ink, appearing to read 'F. Bruce-Lyle', with a stylized flourish at the end.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE