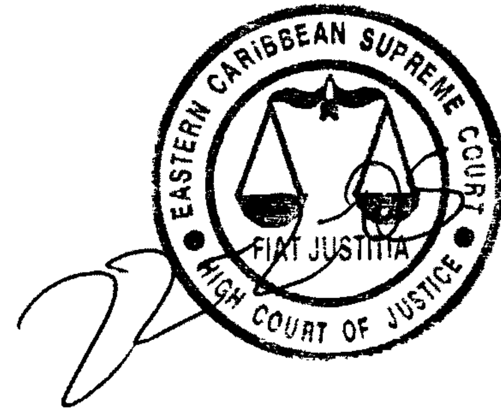


THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO: 549 OF 2000

BETWEEN:

YOLANDA RODNEY

Claimant

and

OSBORNE QUOW

Defendant

Appearances:
Mr. Richard O.F. Williams for the Claimant
Mr. Samuel Commissiong for the Defendant

2004: October 5
February 22

JUDGEMENT

[1] **BRUCE-LYLE, J:** On 26th December 1997, a day generally and popularly known as "Boxing Day," the defendant Osborne Quow, who was then the Deputy Commissioner of Police, had driven to Troumaca from Belisle Hill. He had with him in his vehicle, a suzuki vitara, one Curtis Rodney his good friend and some other persons. At Troumaca, they picked up one Selwyn Edwards at about 7:00 a.m. Then they hailed one Dennis Smith, a Justice of the Peace on their way up the Troumaca hill.

[2] According to the defendant, they did not come out of their vehicle to speak to Dennis Smith, but only shouted to him and continued on their way. They then

drove up a mountain bypass road and deposited Selwyn Edwards at the gap leading to his farm.

[3] The defendant and Curtis Rodney were at this time the only passengers in the defendant's vehicle. On their way back to Troumaca using this mountain bypass road, the defendant's vehicle went over the edge of the road on the right side, down an embankment and came to rest about 150 feet below the road. Passenger Curtis Rodney died as a result of this mishap.

[4] The claimant Yolanda Rodney now brings this claim against the defendant in her capacity as widow and administratrix of the estate of Curtis Rodney deceased. She brings this claim on behalf of the estate of the said deceased under the provisions of the Compensation for Injuries Act Cap 83 of the Revised Edition of the Laws of Saint Vincent and the Grenadines and under Common Law, against the defendant for causing the accident in which Curtis Rodney died, through negligence.

[5] In her claim, the claimant states the particulars of negligence as being

(a) Driving too close to the edge of the road

(b) Failing to keep the said motor vehicle on the public road

(c) Driving too fast

(d) Failing to apply his brakes in time or at all or failing to steer or control the said motor vehicle as to prevent it from running off the road

(e) The plaintiff will further rely on matters set out in paragraph 2 of the statement of claim as evidence of negligence. Paragraph 2 of the statement of claim states " On the 26th day of December 1997, the said deceased was a passenger in motor vehicle P260 traveling on the Rose Hall public road, and being driven by the defendant when the defendant drove in such a manner as to cause the said vehicle to go over an embankment."

[6] The claimant further averted that she would be relying on the Doctrine of Res Ipsa Loquitur to prove her case at trial, and that the said deceased was killed and thereby lost the normal expectation of life, and his estate and his dependants have thereby suffered loss and damage.

[7] The claim was brought under the Compensation for Injuries Act on behalf of the claimant who at the time of filing of this claim was 32 years old and widow of the deceased Curtis Rodney, and Curtland Rodney born on the 18th September 1989, an infant son of the deceased.

[8] It was also stated in the particulars pursuant to the statute that prior to his death the deceased was aged 36 years and was employed as a security guard with M. Moussa and Sons, earning a monthly salary of $600. He was the sole support of the claimant and the said child.

[9] The claimant also claimed special damages in the sum of $5,210 and also damages on behalf of the said dependants under the Compensation for Injuries Act: Damages for the said estate, costs and such further or other reliefs. The matter then proceeded in accordance with the Rules of the Supreme Court and finally came to trial.

[10] The claimant's evidence was by way of her witness statement filed on the 2nd of July 2003, which she identified in court. It is not in dispute that she was the wife of the deceased Curtis Rodney, and that there was a son Curtland Rodney born on the 18th September 1989 from that union. It is also not in dispute that on the 26th day of December 1997 the claimant's deceased husband was a passenger in motor vehicle P260 traveling on the Rose Hall public road, driven by the defendant Osborne Quow; and that the vehicle went over an embankment which resulted in the death of the deceased.

[11] From the claimant's witness statement, it was also not in dispute that her deceased husband was 36 years old at the time of his death, and was employed with M. Moussa and Sons earning a monthly salary of $600, and that her deceased husband was the sold supporter of her son and herself. She then went on to detail the expenses incurred for the funeral of her late husband and cost of applying for letters of administration.

[12] Most importantly the claimant stated in her witness statement that her late husband died as a result of the accident which was caused due to the negligence of the defendant, and also curtailed his normal expectation of life which has resulted in loss and damage to his estate and his dependants.

[13] Under cross-examination the claimant stated that on the 26th December 1997 she lived at Park Hill, but that they had no home of their own. As a result the deceased husband sometimes lived in Barrouallie, while she remained at Park Hill. She denied living with another man at Park Hill. She then told the Court that she knew the defendant but had never seen him with her late husband, even though he used to refer to the defendant as his good friend.

[14] Then she stated that at the time of the accident she was at Park Hill and did not know on her own that the defendant was driving fast on that day, neither did she know on her own that the defendant drove too close to the edge of the road or failed to keep his vehicle on the public road, or whether the defendant failed to apply his brakes. In short, she did not know how the accident actually took place even though she knew the road where it happened as a public road that is normally used by vehicles.

[15] When re-examined, the claimant stated that she went to the scene of the accident one week after the event. She then, accompanied by her mother and an in-law to the defendant, went to introduce herself to the defendant as the wife of the deceased. She said Mr. Quow commented that he did not know that Curtis the

deceased had a wife. She then stated which is not in dispute, that her late husband died as a result of the accident in the defendant's vehicle.

[16] The defendant's case was that on the day in question, 26th December 1997, he was driving on the Rose Hall Chateaubelair bypass road which is normally used by vehicles. He stated that he was not driving fast on that day, nor did he drive too close to the edge of the road, nor drove his vehicle off the public road. He also stated that it was incorrect to say that he failed to apply his brakes at all to prevent the accident. This formed his viva voce evidence to the Court. Otherwise he relied on his witness statement filed on the 28th April 2003. Basically the defendant stated that having gone to drop his friend Selwyn Edwards on his lands using the Rose Hall – Chateaubelair bypass road; he turned back on the same road.

[17] He was accompanied by the deceased Curtis Rodney who was in the front passenger seat. He said they were traveling at between 12 mph to 15 mph. He described the road as "some parts pitch, some with red dirt surface and others dirt." He also stated that rain had fallen heavily overnight and earlier that morning.

[18] The defendant stated further that some distance away from where they had dropped Selwyn Edwards whilst traveling towards Rose Hall, he saw a donkey on the loose approaching his vehicle to his left. This donkey was running. As a result the defendant said he kept to his right to avoid the donkey running into his vehicle. In so doing he maneuvered his vehicle close to the edge of the road that appeared to be "perfectly normal." As he did so his front right wheel sank in the soft sand at the edge of the road and the sand broke away. This resulted in the vehicle going over the bank and down a precipice.

[19] The defendant further told the Court that the vehicle rolled down the precipice and stopped about 185 feet from the road. When it stopped he was still in the vehicle. He said he crawled from the vehicle through the left door which was opened. He

said at this point he did not see Rodney. He called to him but did not hear him. He said one Cammie Samuel of Rose Hall came on the scene shortly after and he called to him to assist him to search for Rodney.

[20] He further stated that Rodney was found lying on his back under some elephant grass. He was taken out, with the help of another person Osborne Samuel. More assistance was called for. The defendant said he was bleeding badly so he could not assist in removing Curtis Rodney from the precipice, but in his bleeding state he walked to the Rose Hall Police Station, where he commandeered a police vehicle P801 which he used in transporting Curtis Rodney to Layou Police Station, where he handed him over to Sergeant 90 Humphrey to take Rodney to the General Hospital in Kingstown.

[21] The defendant said he then sought medical attention at the Barrouallie Clinic, and was also visited at home by Dr. Charles who happened to be in Barrouallie that morning. Dr. Charles then ordered that the defendant attend the General Hospital for x-rays.

[22] The defendant stated that the injuries he received were to his left knee and right shin where he sustained a wound and a spiral fracture of the bone. Curtis Rodney he said later died in hospital. The defendant further stated that he has used the said bypass road on numerous occasions and met several untethered animals in the past. He stated also that Rodney had been his close friend for the past five years before the accident and that this was a terrible accident that he could not have anticipated.

[23] A witness statement from Dr. Shirley Robertson was filed which alluded to her management of the deceased when he was first brought to the hospital and the nature of his injuries, which were confirmed by a post mortem report on the deceased's death. This witness was not called to testify in court, but I would hold

here that her evidence is not in dispute by either party and only goes to show the nature of the injuries sustained by the deceased from the accident.

[24] Under cross-examination the defendant basically stuck to his version of events as he gave in his witness statement. The only area of contention was when it was drawn to his attention that he was driving at 12 mph to 15 mph on the bypass road as stated in his witness statement, which he denied ever saying to his counsel, and rather posited that he was driving at about 5 mph when he saw the donkey approaching his vehicle. He denied swerving suddenly to the right causing the vehicle to go over the bank. Most importantly the defendant stated that he could not see there was an embankment when the vehicle went over. But he insisted that had he known there was an embankment he might still have gone close to it to avoid the donkey. He insisted he was not driving fast that day and that any experienced driver as himself, who had been driving since 1971 would not drive fast on that road, on which he had driven on numerous occasions. He also maintained that rain had fallen heavily overnight and in the early hours of that morning and that there were no signs on the road to warn drivers of an embankment or other hazards.

[25] On being re-examined the defendant repeated that his right front wheel was partly on the pitch and partly on the grass verge to the right of the road as the donkey was galloping and prancing to the left of the road. Rather than have it come straight at him, he decided to move slowly on the right so it would pass to the left of him. This was when the grass verge collapsed and the vehicle went over the bank.

[26] This is a very unfortunate case. As a result of this accident, the defendant lost his close friend Curtis Rodney. He is the only person who has been able to tell the Court what happened on that fateful day. There were no other witnesses to the accident. The claimant cannot tell the Court how the accident occurred except to

allege that the defendant drove negligently and to rely on the Res Ipsa Loquitur principle.

[27] From the evidence it is reasonable to infer that the defendant was an experienced driver who found himself on a very narrow mountain road confronted by a galloping donkey and sought to get his vehicle away from a possible collision with this donkey on an 8 feet wide stretch of road. He said he just saw this donkey 50 feet away as he came round a bend in the road. In trying to avoid this collision he so maneuvered his vehicle such that the right front wheel was partly on the pitch and partly on the grass verge with grass as tall as 2 feet high. He said he did not recklessly swerve or veer to the extreme right side of the road. Flowing from this scenario which is all the Court has as to how the accident occurred, I ask myself the following questions –

(a) Did the defendant take reasonable care to avoid going too far to the right of the road?

(b) Was the defendant prudent in the exercise of caution in these circumstances?

(c) In the exercise of this caution was the defendant reckless; was he mindful of a danger to his right that he also wanted to avoid?

[28] The claimant however says otherwise. She says the defendant was –

(a) Negligent in that he was driving too close to the edge of the road;

(b) That he failed to keep the motor vehicle on the public road;

(c) That he was driving too fast;

(d) That he failed to apply his brakes in time or at all so as to steer or control the said vehicle as to prevent it from running off the road;

(e) And that the defendant drove in such a manner as to cause the vehicle to go over an embankment.

[29] To my mind the claimant has not given any such evidence because she was not a witness to the accident. The only two persons present at the accident were the

deceased Curtis Rodney and the defendant. In the result, only the defendant can say what happened and from the nature of his own evidence it is reasonable to conclude that a driver of his experience and knowledge of the road was not and would not have been driving negligently. He said he was careful not to swerve or veer to the right and that his turn in the direction he took was very slight, and his right front wheel never completely left the hard surface of the road. I have no alternative but to agree with this position.

[30] A driver of a motor vehicle on a public road has as his first duty to faithfully observe the traffic regulations at all times. Regulation 26 (5)(a) of the Motor Vehicles and Road Traffic Regulations Cap 355 states as follows: That the driver of a motor vehicle "Shall keep the motor vehicle on the left side of the road unless prevented by some sufficient cause." So what is "Sufficient Cause?" Here we have a situation where this defendant is driving on the left side of a public road. He encounters a galloping donkey coming straight at his car, and he takes avoiding action, not to veer or swerve, but sensibly and slowly to shift his vehicle slightly to the right of the road as the evidence available suggests. To my mind this act is done in direct compliance with the Regulation cited – see ***Muttal v Pickering (1913) 1KB 14.***

[31] In the instant case, in addition to not committing a traffic offence, the defendant had a legitimate excuse to move slightly to the right of the road because of a sufficient cause - a galloping donkey coming at his vehicle on the left side of the road – see ***Phillips v Brittania Hygienic Laundry Co. Ltd, and others All E.R. Law reports (1923) 227 at 131 H – I; Tan Chye Choo and others v Chong Kew Moi 266 at 270 and 272.***

[32] From the above, I hold that the defendant's moving slightly to the right of the road was not unlawful in the circumstances and if the defendant drove with due caution and still fell into an unfortunate accident he cannot be said to be liable for the Common Law tort of negligence. I cannot see any negligence emanating from the

driving of the defendant. There is no evidence from the claimant as to the defendant driving fast, nor did she produce any evidence that the defendant drove too close to the right side of the road. To my mind the claimant relied on pure conjecture as to how the accident happened.

[33] From the defendant's evidence itself, there is no evidence of negligently driving too close to the right of the road. Counsel for the defendant contends that given the fact that the defendant was well acquainted with the road, had driven on it many times, something new and supervening must have occurred to create a latent danger that was not there before. That danger being the sodden soil caused by overnight rains, and that notwithstanding, he drove carefully and kept as far as he would from the actual edge of the road as the circumstances would permit. His right front wheel was still partly on what he considered the solid part of the road and that he cannot be guilty of negligence. I cannot help but agree in the circumstances of the evidence before.

"RES IPSA LOQUITUR"

[34] Phipson on Evidence 14th Edition 1990 at 4 – 29 explains the application of the maxim as follows –

"It is sufficient for present purposes to state that while ordinarily it is for the plaintiff to prove negligence, sometimes although he will be able to prove the accident, he will be unable to prove how it occurred. However accidents speak for themselves and in such cases the plaintiff may rely upon the maxim Res Ipsa Loquitur."

Phipson then goes further –

"There must be reasonable evidence, but where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from a want of care."

[35] It follows by extension of the above statement of the law on the principle, that the claimant cannot rely on this dicta for two reasons –

(1) She is incapable of offering any explanation of how the accident happened as she was not present when it occurred, and she was the only person to testify on her own behalf and therefore does not know how the accident happened;

(2) The defendant has in fact given an explanation as to how the accident happened. There is nothing to my mind in the defendant's evidence which shows him as having driven negligently at the material time.

[36] The defendant in the face of a donkey galloping ahead of him and coming in his direction on a narrow road turned the wheel of his vehicle slightly to the right and did not swerve or pull to the right rashly, clearly demonstrating that he was observing both the duty and standard of care that was required for in the circumstances in which he found himself. I agree with Learned Counsel for the defendant when he submits that this cannot be negligence on any principle or authority, and that far from showing negligence, the defendant was rather cautious see ***Roe v Ministry of Health and others (1954) 133 and Bennett v Chemical Construction (GB) Ltd 3 All E.R. 1571.***

[37] In the Bennett Case, the Court held as follows – "………If the accident is proved to have happened in such a way that prima facie it could not have happened without negligence on the part of the defendants, then it is for the defendants to explain and show how the accident could have happened without negligence. As I have said they made no attempt to do that in this case. In my judgement this is a classic case of Res Ipsa Loquitur." In the Roe Case the defendants offered an explanation as to how the plaintiff was injured. That explanation was accepted. In the Bennett Case the defendant offered no explanation at all so the plaintiffs' tenuous explanation of the cause of the accident stood uncontroverted.

[38] Juxtaposed to this instant case, the defendant offered an explanation for the cause of the accident. The claimant offered no explanation whatsoever because she had no evidence of what happened in the course of the accident. In this regard the Court is left with no alternative but to accept the defendants explanation if it is plausible, in the absence of any evidence of negligence from the claimant.

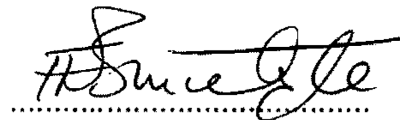
[39] I wish at this stage to deal with the issue of the speed at which the defendant said he was driving at, when the accident occurred. In his witness statement he stated that he was driving at between 12 mph and 15 mph. Under cross-examination he then stated that he was driving at 5 mph at the time when he saw the donkey galloping towards him 40 feet to 50 feet away. Firstly this Court considers that driving at 12 mph to 15 mph can in no way be considered fast, especially driving on an 8 feet wide pitch road. If the defendant says under cross-examination that he was driving at 5 mph when he saw the donkey, one can safely infer that at the time of seeing the donkey his slow pace of 12 mph to 15 mph further reduced to 5 mph. I see no evidence of negligence in that action and what Learned Counsel for the claimant wants this Court to consider as a contradiction. 12 mph to 15 mph was not and cannot be considered as speeding in the circumstances. The question is whether the defendant took reasonable care to avoid going too far right on the road. Looking at the totality of the evidence, and on close scrutiny of the claimant's arguments and evidence, and on a clear balance of probabilities, I hold that the defendant did take reasonable precautions.

[40] I have carefully examined the claimant's submissions as put forward by Learned Counsel. I am afraid I find no merit in any of them. There really is no leg for the claimant to stand on. I reject her arguments entirely as put forward by her Counsel.

CONCLUSION

[41] Having so held as above, I find that the claimant has woefully failed to prove her case as claimed. I dismiss her claim in its entirety and find for the defendant; the

defendant is found not liable for this unfortunate sequence of events as happened on 26th December 1997. The claimant obviously is a woman of very little means. Her main reason for instituting this action was to secure some compensation for the death of the sole provider for herself and infant son. To impugn her with costs would not only be unjust in the circumstances but would have the effect of deterring other claimants in similar situations but with an otherwise good case against the other party. In the circumstances, having at the onset of the trial intimated to both Learned Counsel that only the issue of liability would be determined at the trial, with the issue of assessment of damages and costs to be determined by the Master, I now order that since the defendant is found not liable to the claim, all that is left to be determined is the issue of costs. For the reasons stated earlier on this point, I order that each party bear its own costs.



Frederick V. Bruce-Lyle
HIGH COURT JUDGE