

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 247 OF 2002

BETWEEN:

FANCY ROTARY VILLAGE CORPORATION Claimant

AND

GARNET SOLOMON HENDERSON Defendant

CLAIM NO. 33 OF 2003

BETWEEN

GARNET SOLOMON HENDERSON Claimant

AND

FANCY ROTARY VILLAGE CORPORATION

AND

LENNOX JACKSON Defendants

APPEARANCES:

Mr. Samuel Commissiong and Ms. Suzanne Commissiong for Fancy Rotary Village Corporation
and Mr. Lennox Jackson

Mr. Olin Dennie for Mr. Garnet Solomon Henderson

2003: October 20, 23
November 6, 10
2004: April 19

JUDGMENT

[1] **BLENMAN, J:** These are consolidated claims in which Fancy Rotary Village Corporation
and Mr. Barnett Solomon Henderson sued each other for damages sustained as a result of

a road traffic accident which occurred on 30th July 1999 at Arnos Vale in the state of Saint Vincent and the Grenadines.

- [2] The collision occurred around 3 p.m. when Mr. Lennox Jackson was driving a Toyota Dyna 4000 bus (the bus) owned by Fancy Rotary Village Corporation (Fancy Corporation) collided with a mini van (mini van) owned by Mr. Garnet Solomon Henderson (Mr. Henderson) which he was driving at the time. Lennox Jackson was employed to drive the bus by its owners. At the time of the accident Mr. Henderson was driving from Biabou to Kingstown while Mr. Jackson was coming from Kingstown and heading to Fancy. Mr. Lennox Jackson sustained minor injuries while Mr. Henderson suffered severe injuries to his leg and hip. He was hospitalized for several weeks and has to utilize an ambulator to walk. Both vehicles were seriously damaged beyond repair and were declared write-offs.
- [3] Fancy Corporation says that the accident was Mr. Henderson's fault, and it commenced proceedings against him for the damage to the bus, as a consequence of his negligent driving of his mini van. Meanwhile, Mr. Henderson filed a separate action against Fancy Corporation claiming damages for the injuries and loss he sustained as a result of the accident which he says was caused by the negligent driving of Mr. Lennox Jackson who was the agent or servant of Fancy Corporation. Both actions were properly consolidated by Order of Master Cottle dated 4th day of June 2003.
- [4] The parties agreed that the trial would proceed in order to determine who was liable for the damages sustained and that the assessment of damages would be determined separately.
- [5] In their pleadings both Mr. Henderson and Mr. Jackson alleged that each other driver drove too fast, drove on the wrong side of the road and failed to control or manage his vehicle in order to prevent or avoid the accident. Fancy Corporation claims damages on the basis that its vehicle has been wrecked as a result of the collision caused by Mr. Henderson's negligence. Mr. Henderson sues both the Fancy Corporation and Mr. Jackson for the loss he suffered due to the fact that his vehicle has been severely damaged and he has sustained injuries.

- [6] Both drivers gave very different accounts of how the accident occurred. Fancy Corporation called Mr. Eluid Mayers in its defence. Mr. Jackson stated that he was on his proper side and was driving approximately 20 miles per hour, with about 18 passengers in the bus. He slowed down before the small pile of quarry stones that was on his left hand side of the road. At that point, the vehicle driven by Mr. Henderson, at a very quick speed came over from its proper and left side of the road to Mr. Jackson's side of the road and collided with the bus he was driving. The side of the road on Mr. Henderson's had a slight curve and the mini van left its side of the road and came straight over the road and hit the bus. He first saw the mini van when it was about 50 – 60 feet away and it was traveling at about 40 – 50 miles per hour. He heard a screeching noise and shortly after the mini van collided with the right front fender of the bus despite his best efforts to pull to the left. In fact he had actually stopped his bus in his lane when it was hit.
- [7] During cross-examination, he stated that the bus was about 30 feet away from the pile of stones when he first saw the van. The pile of stones that was on his side of the road was small quarry stones. The bus stopped about 6 feet behind the stones and was stationary when the mini van hit it. He stated that he did not know the speed limit in that area. Before the accident occurred he tried to move the bus closer to the drain but could not since it was already in the far left of the road.
- [8] Eluid Mayers testified on behalf of Fancy Corporation and Lennox Jackson. He stated that the Fancy Corporation owns the bus and employed Lennox Jackson to drive it. On the 30th July 1999 he was traveling in the front seat of the bus which was heading from Kingstown to Fancy when he saw the mini van approaching from the opposite direction of Calliaqua at a very fast rate. Mr. Jackson pulled the bus aside and the bus had stopped to a stand still. By this time the mini van was traveling off its hand and collided with the bus. The mini van was pinned to the bus. The bus was, at a standstill, about 50 feet away from the mini van when he first saw it. The entire front bumper of the mini van was damaged while the windscreen, steering wheel, bumper and right head lamp of the bus were damaged.

- [9] In cross examination he maintained that he had not seen the bus before the bus got to the stones even though the bus was traveling at about 20 miles per hour. He accepted that there was a large heap of stones but denied that the accident occurred when the bus tried to pass the heap. The road was very clear at the time of the accident and the bus had stopped about 2 feet behind the heap of stones. He was aware that other passengers in the mini van were injured.
- [10] Mr. Henderson says that he was driving on his left and proper side of the road at about 25 – 30 miles per hour when he saw the bus coming at a speed towards him. The bus swerved into the road in order to avoid the heap of bricks and came out too much into the road and hit his mini van. He was at the time expecting the bus to stop due to the heap of stones which obstructed it but it did not. He agreed that when he first saw the bus the van was about 50 – 60 ft. away. He vehemently denied that the bus was stationary at the time of the collision nether was it behind the heap of stones. The bus collided with the right side of his mini van. The mini van was a right hand drive vehicle as a consequence he was injured.
- [11] In cross examination, he stated that the mini van was on proper side. The right side of his vehicle was badly damaged. He said that when he saw the bus coming on his side of the road he put on the brakes but skidded. He was driving about 25- 26 miles per hour but was unaware of the speed limit in that area. Jackson's vehicle was traveling at about 25 to 30 miles per hour when it entered the mini van's lane and collided with it. The first time he saw the bus it was about 12 feet behind the heap of stones and was approaching the min van. As a result of the accident he was hospitalized for several weeks.
- [12] The bus is very large and the mini van is substantially smaller. It is not disputed that in the State of St. Vincent and the Grenadines vehicles must drive on the left of the road. At the time of the accident, there was a high pile of quarry stones on Mr. Jackson's side of the road since a reclaiming wall was being constructed on the area. The Court also visited the scene of the accident together with the parties and their Counsel. The road has a slight bend about 50 feet from the scene of the accident. The road is about 20 feet wide at the

- point of impact and the heap of stones was about 2 feet high. The stones were big boulders. The heap of bricks was about 2 – 3 feet into the road. Mr. Eluid Mayers who is the President of the Fancy Corporation was in the bus at the time of the accident.
- [13] The bus is lying at Joyette Auto Collision Works. The Court in the presence of all parties and counsel carried out an inspection of the bus. It is a locally made bus. The width of the front of the bus is about 7 feet while its length is 21 feet. They agreed that the width of the mini van was approximately 5 ft. the front right bumper and the fender of the bus were severely damaged. The right door of the vehicle was also damaged; the front tyre on the right was burst. The Court was unable to view the minivan.
- [14] At the scene Mr. Jackson stated that he first saw Henderson's vehicle when it was 120 feet away and that the mini van was on its proper side of the road later he changed his story to say that Mr. Henderson vehicle was in the middle of the road. He also showed the mini van as coming diagonally over to his side of the road and provided no explanation for that occurrence.
- [15] Apart from the evidence being diametrically opposed there is serious disagreement between the parties as to where was the point of impact and there are no police measurements to assist the court. The case will have to be determined on the basis of whose evidence the court accepts. Mr. Jackson states the accident occurred behind the heap while Mr. Henderson statement avers that it occurred in front of the heap of stones.
- [16] This is a civil action for negligence and the standard of proof is that of a balance of probability. Examining the facts as a whole, I am persuaded by Mr. Garnet Henderson's testimony which is substantially more consistent both in chief and cross examination than that of Mr. Jackson and Mr. Mayers. Mr. Henderson's evidence is more plausible. I believe that Mr. Jackson on passing or attempting to pass the heap bricks which was (about 2 – 3 feet into the road) left his proper side of the road and the bus came into the mini van's lane and collided with it. The stones that were pointed out to the court by both parties are big stones. I am convinced that the heap of stone was large.

- [17] It is manifestly clear that if there is a three feet obstruction in the road, two vehicles cannot easily pass on the road at the same time based on the fact that the width of the road is about 20 feet. The heap of bricks having encumbered the road, on Mr. Jackson's side he should have stopped the bus. I do not accept that he stopped the vehicle and that the mini van came straight over to his side of the road and collided with the bus on its proper side. Mr. Jackson tried to pass the bricks when it was unsafe to do and collided with the mini van even though Mr. Henderson tried to avoid the collision. It would have been impossible for the mini van to do such damage to the bus if the bus was in a stationary position only a few feet away from the two feet high pile of stones. The vehicles were moving and about to pass each other but could not do so due to the narrow width of the road. I do not accept Mr. Mayers testimony of how the accident occurred. He does not strike me as very credible based on my observation of him and having heard his evidence. He has Fancy Corporation's interest to serve and did not provide any reason which the court could accept for his statement that the mini van simply drove into the bus which was parked in the corner.
- [18] The parties sought to persuade the court that they were both traveling at 20 – 25 miles per hour, given the fact that they both saw each other when they were more than 50 feet away, it is difficult to accept that they were not proceeding with more dispatch than they both stated. Even though I find that the bus came out of its lane when it was unsafe to do so I do not accept that either party was driving at the speed stated. No evidence was presented to the court on the speed limit.
- [19] In my judgment, I find that Mr. Lennox Jackson, the servant or agent of Fancy Rotary Village Corporation was negligent on the day in question and is solely responsible for the accident.

[20] My order is that Judgment be and is hereby entered for Mr. Garnet Solomon Henderson against Fancy Rotary Village Corporation and Lennox Jackson to be assessed by the Master in Chambers in the absence of agreement, together with costs. I will dismiss Fancy Rotary Village Corporation's claim against Mr. Henderson.

Louise Esther Blenman
HIGH COURT JUDGE