

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 251 OF 2001

BETWEEN:

ALEX BAPTISTE

Claimant

v

EVE BALLANTYNE
ARNETT THOMAS

Defendant

Appearances:

Mr. Richard Williams with Ms. Roxanne Knights for the Claimant

Mr. Samuel Commissiong with Ms. Suzanne Commissiong for the Defendants

2004: January 26
May 14

JUDGMENT

[1] **BLENMAN, J:** This is a claim by Mr. Alex Baptiste (Mr. Baptiste) against Mrs. Eve Ballantyne and Mr. Arnette Thomas for damages as a result of injury and loss he sustained in a road accident.

[2] On 17th day of October 2000, Mr. Baptiste was riding a bicycle down the minor road leading from the Sandy Bay Police Station heading into the Owia road at Sandy Bay. There is an intersection between the Sandy Bay Police Station road and Owia road which forms a U-turn. He was struck by minivan number H 4029 owned by Mrs. Ballantyne and

driven by Mr. Thomas which was heading from the Owia road to Kingstown. He sustained serious injuries and was hospitalized.

[3] He brought these proceedings and claimed special and general damages against Mrs. Ballantyne and Mr. Thomas on the ground that the collision between the minivan and his bicycle was caused due to the negligence of Mr. Thomas. He alleged that Mr. Thomas who was Ms. Ballantyne's servant or agent, drove the minivan too fast, failed to drive on the left and proper side of the road and failed to apply his brakes in time or at all so as to avoid the collision.

[4] Mrs. Ballantyne and Mr. Thomas denied that Mr. Thomas caused the accident. They contend that the collision was caused solely by Mr. Baptiste who negligently rode his bicycle at an uncontrollable speed and was unable to control or to stop it while he was coming down the steep Sandy Bay Police Station road which adjoins the Owia road. As a result, he crashed into the minivan. Mr. Baptiste failed to stop at the intersection as he was obliged to do since he was coming from the minor Sandy Bay Police Station road into the main road on which the minivan was traveling. In addition, he rode his bicycle in a careless, negligent manner. Alternatively, Mr. Baptiste's negligence contributed to the accident in a substantial way.

[5] In support of his claim, Mr. Baptiste filed a witness statement and testified. Police Constable 207 Delbert Peters also provided a witness statement and gave oral evidence. Witness statements were filed by Mr. Thomas, Ms. Ballantyne and Mr. Wayne Greaves on behalf of the defendants. However, only Mr. Thomas testified.

[6] The claim proceeded on the question of liability as agreed by counsel.

[7] Three issues arise for determination:

(1) Whether Mr. Arnett Thomas caused the accident due to his negligent driving of the minivan

(2) Whether Mr. Arnett Thomas was the agent or servant of Mrs. Ballantyne

(3) Alternative, whether Mr. Alex Baptiste's negligence caused or contributed to the collision.

[8] Mr. Alex Baptiste stated that he was riding his bicycle at approximately 7:00 a.m. on the 17th October 2000, coming from the direction of the Sandy Bay Police Station and heading home where lived next to the Sandy Bay Primary School on the Owia road. The road on which he was riding has a downhill slope and turns to the left around the corner. He was in his left lane when he saw a passenger minivan, driven by Mr. Thomas, coming towards him at a speed so he jumped off the bicycle and tried to get out of the road but was unable to do so. The minivan collided with him, while he was in the left lane injuring him. He lost consciousness but regained it and saw the police officer who came to the scene and took measurements. As a consequence he was hospitalized for 6 to 7 weeks. The accident occurred in front of the soup shop (which is on the flat Owia road).

[9] During very extensive cross-examination by Learned Counsel Mr. Sam Commissiong he agreed that the road from which he emerged was very steep and that it joins the Sandy Bay Public road and the Owia road. Biddy shop is at that junction and from the Sandy Bay Police Station road it is difficult to see traffic flowing from Owia road to Kingstown on the main road. He was "hustling" the morning and did not stop at the intersection. The accident happened as soon as he had turned the corner. He later stated that it occurred when he was in the process of making a U-turn to go in the opposite direction. The Sandy Bay Police Station road from which he emerged is very steep so that he had to "open up wide" to get into the Owia road. He "opened up wide" away from the corner and reentered the Owia road when the accident occurred. It was not the first time he was riding down that road but he denied that he was riding fast on that day. At the junction, there is another shop on the right hand side that sells soup and behind there is the sea with boulders and water.

[10] He first realized that the minivan was coming along the Owia Road when he was coming around the corner and was about 20 feet away. By that time he had completed the U-turn and had "kind of stop". He recanted and stated that he could not stop because he had

already turned the corner. On seeing the minivan, he pulled his brakes and tried to stop and get off the bike and despite his best efforts the minivan which was coming fast collided with him and injured him. He denied that the bicycle had no brakes and yet still that there was a crowd of persons in front of the soup shop on that day.

[11] In re-examination he said that the minivan was speeding in the centre of the Sandy Bay road leading to Kingstown when the accident occurred and that the point at which the two roads meet is not very steep.

[12] Police Constable 207 Delbert Peters testified and produced a report on the accident. He stated that on the 17th October 2000 at about 7:15 a.m. based on a report received he visited the scene of the accident and spoke to both parties in order to determine the possible cause of the accident. He also took measurements of the scene of the accident as pointed out by Mr. Thomas. The right front of the minivan to the right end of the road measured 5 feet 8 inches; the left rear wheel was 4 feet from the right end of the road. The width of the road at the point of impact was 15 feet.

[13] During cross-examination he was very unsure about the location of the accident. He said it was close to the soup shop. Initially he could not recall whether it was close to the shop on the right or left side of the road. He measured in the area in front of the soup shop since the accident took place in front of the soup shop but could not recall where the soup shop was located. He took the measurements in the presence of Mr. Thomas but Mr. Alex Baptiste was not there. He does not know Sandy Bay well since he does not belong to there. He was sure that he had seen bicycles coming down the steep slope hugging the left corner. When he arrived at the scene the bike was under the minivan and based on his assessment, the accident happened close to the drain which was on the left hand side within that area. At first, he could not remember whether the accident took place in front of the soup shop but later he stated that the accident took place in front of the soup shop. He was attached to the Sandy Bay Police Station for approximately five months and remembered that the road at the junction is elevated at about 20 degrees. He measured

the road where the minivan and the bike were as pointed out by Mr. Arnette Thomas. Neither Mr. Thomas nor Mr. Alex Baptiste agreed to the measurements.

[14] In re-examination he stated that the accident occurred on the left hand side of the road close to the drain if you are going to Owia, in Sandy Bay.

[15] Mr. Arnett Thomas stated that Ms. Eva Ballantyne is the registered owner of H 4029, a 1990 Mitsubishi minivan which he was driving on October 17, 2000 at approximately 7:15 a.m. He was heading along the Sandy Bay Public Road traveling slowly just having picked up two passengers. As he approached the junction between the Sandy Bay main road and the steep Sandy Bay Police Station minor road, he saw the bicycle coming traveling fast coming from the steep Sandy Bay Police Station minor road. The rider, Mr. Baptiste, did not stop at the intersection but rode right into the main road across his lane and attempted to turn left, but could not stop so he jumped off the bicycle. Mr. Baptiste fell into the road and the bicycle ran into the minivan the latter which was in its proper lane.

[16] During cross-examination by Learned Counsel Mr. Richard Williams he stated that the collision occurred at the junction between the roads and he was driving going from Owia to Kingstown on that day. He denied that the collision occurred in the Owia road. The junction between the minor road and the main road is not usually busy with traffic and the corner where the Sandy Bay Police Station minor road joins the main road is very steep. When he first saw Mr. Baptiste he was about 5 feet away and the minivan was not traveling fast. After the collision, the police officer came but he did not point out the point of impact to him since the vehicle was in its position. The police officer took the measurements in his presence and he also wrote down the measurements. He was adamant that Mr. Baptiste's bicycle hit the minivan when the minivan was on its proper side and left lane. He maintained that Mr. Baptiste was solely responsible for the collision. The left front wheel of the minivan was about a foot away from the end of the road and there is no drain on the left side of the road. There was a wall about a foot away from the left side of his vehicle so he could not pull away to the left to avoid the collision. The right front wheel of the minivan to right end of the road measured about 10 feet.

[17] He was unaware that the measurement the police took indicated that his right front wheel to the right end of the road was 5 ft. 6 inches and that his right back wheel to the right end of the road was only four feet away and was sure that the police officer did not ask him whether he was in agreement with the measurements, he said in re-examination. He denied that he was negligent. He contends that Mr. Baptiste rode at an uncontrollable speed and placed himself in a position which made it impossible to stop his bicycle at the intersection to allow the minivan to pass freely without colliding with the bicycle and that the bicycle collided with the minivan.

[18] In a matter of this nature it is sometimes difficult for a court to determine who was responsible for the collision, particularly so where the situation comes down to one person's word against the other. This matter does not present that difficulty. P.C. Constable Peters, a formal witness who was expected to produce the details of the measurements and the accident, proved to be very unreliable. His testimony was badly weakened during his cross-examination. He treated the matter very lightly and gave the impression that he was totally ill-prepared to testify in the matter. He seemed not to be able to recall most of the important aspects of the matter during cross-examination and it was obvious that he had not taken the time to refresh his memory in relation to the accident, which occurred nearly some four years ago. While he was not cross-examined on the accuracy of his measurements Mr. Thomas denied that they were correct; Constable Peters did not say that the measurements were accepted by Mr. Thomas. The Police Officer's conduct in court left much to be desired, he was a flippant and an unconvincing witness. I am unable to accept his evidence in the circumstances.

[19] This is a civil matter and proof is required on a balance of probabilities. The claimant has the burden of proving that Mr. Thomas' negligent driving caused the accident.

[20] I am familiar with the junction, it is dangerous. I am satisfied that the Sandy Bay minor road is steep and the point where the major road meets the minor road is steep. It is very difficult to come out of the minor Sandy Bay Police Station road into the Owia road. Having analyzed the evidence, I find that on the day in question Mr. Baptiste rode his

bicycle from the Sandy Bay Police Station minor road unto the Sandy Bay Public road and did not stop at the intersection, as he should have. He was in the process of entering the Owia road to head along the Anglican School Road when the collision between his bicycle and the minivan occurred at the junction. At the time of the accident he was not on his proper side of the road since he had negotiated the corner at a wide angle and ended up in front of the minivan which was in its proper lane. Once he took the corner at a wide angle it is very clear that he would end up in the lane of the minibus. The accident occurred on Mr. Thomas' proper side of the road in the vicinity of the soup shop which is a very short distance away from the junction heading in the Owia road and can be regarded as being opposite the junction which forms a U-turn, and as a "blind corner" for persons coming from the Sandy Bay Police Station road since it is almost impossible to see any oncoming vehicles from the Owia road, until one comes out into the Owia road. I believe that the accident occurred at the junction as stated by Mr. Thomas and that when he first saw Mr. Baptiste on the bicycle he was about 5 feet away since it is well nigh impossible to see any traffic before that distance. Persons coming from the Sandy Bay Police Station unto the Owia Road persons must be very careful if they are to avert accidents. It is difficult to make the U-turn without "opening up" particularly if one is traveling quickly. I am convinced that Mr. Baptiste was coming from that corner and hurrying on the morning and when "he opened up wide" to make the turn unto the Owia road, he left his lane and came into the lane of the minivan driven by Mr. Thomas. This was unsafe and he was injured.

[21] Even though the circumstances are unfortunate, I am satisfied that the collision occurred due to Mr. Alex Baptiste's negligence and that he was solely liable for the accident.

[22] In view of my finding, it is necessary to determine whether Mr. Arnett Thomas was the agent or servant of Ms. Ballantyne at the time of the accident. Be that as it may however, I would deal with this issue briefly since Counsel has raised it. Where it is proven that at the time of an accident a person is the registered owner of a motor vehicle this raises a presumption that the driver was acting as the owner's agent or servant, however this presumption can be easily rebutted. See Commonwealth Caribbean Tort Law second Edition by Gilbert Kodilyne pages 439 - 444.

[23] The rule in ***Barnard and Scully (1931) 47 TLR 557*** states that where a plaintiff in an action for negligence proves that damage has been caused to him by the defendant's vehicle, the fact of ownership of the vehicle is prima facie evidence that the vehicle was being driven by the servant or agent of the owner, or the owner itself. There is an initial presumption of service or agency which the defendant owner must rebut by leading positive evidence to prove that the driver was not using the vehicle at the time of the accident for the owner's purposes or partly for the owner's purposes. This presumption was rebutted in ***Morgans v Launchbury (1972) 2 ALL ER 606***. ***Rambarran v Gurrucharran [1970] 1 ALL ER***. In ***Hewitt v Bonvin (1940) 1KB186 MacKinnon LT at page 191*** said:

"Before any question as to the right of control and direction over the tortfeasor arises at all, it must be established that in doing the act complained of he was employed by the Third Party to do work for him. This cannot be established by mere proof that the tortfeasor is using a chattel or driving a vehicle which is the property of a Third Party, though that may, in the absence of any explanation be some evidence of the proposition."

[24] The issue of agency or master and servant does not arise for consideration in this matter since as stated earlier in view of my finding that Mr. Alex Baptiste solely caused the accident.

[25] Accordingly, I will dismiss Mr. Alex Baptiste's claim against Ms. Eve Ballantyne and Mr. Arnett Thomas and enter judgment for them with costs as agreed in the sum of \$7,000.

[26] I thank both Learned Counsel for their assistance.

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Louise Esther Blenman
HIGH COURT JUDGE