

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO.: 25 OF 2003

BETWEEN:

LEROY ALLEN

Claimant

v

EVE KNIGHTS

Defendant

Appearances:

Mr. Sylvester Raymond-Cadette for the Claimant

Ms. Roxanne Knights for the Defendant

2003: November 10

2004: May 18

JUDGMENT

[1] **BLENMAN, J:** This was a running down action. By consent the parties agreed that the trial would proceed on the question of liability.

[2] It involves a claim and a counterclaim for damages arising out of a motor vehicular accident which occurred at approximately 9:30 p.m. on the 19th March 2001 at Buccament, in the State of Saint Vincent and the Grenadines.

[3] Mr. Leroy Allen who lives at Lowmans Hill in Saint Vincent and the Grenadines is the registered owner of Toyota Corona Motor Vehicle PD 224. His son, Mr. Edwin Allen was driving the motor vehicle traveling from his home at Lowmans Hill toward Layou, with passengers in the vehicle. Ms. Eve Knights of Questelles in Saint Vincent and the

Grenadines was driving her motor vehicle whose registration number is PB 66 along the Buccament road leading to Kingstown. She had her daughter with her in the vehicle which is a left hand drive. The two vehicles were traveling in opposite directions when they collided. No-one was injured in the accident but both vehicles were damaged. Ms. Knights' vehicle was damaged beyond repair. It was a write off. Mr. Leroy Allen's vehicle was repaired.

[4] Mr. Leroy Allen instituted these proceedings against Ms. Eve Knights alleging that the accident was all her fault and claimed general and special damages of nearly \$13,000.00. Ms. Knights denied that she was negligent and contends that the collision was caused by the negligence of Mr. Edwin Allen and counterclaimed against Mr. Leroy Allen for special damages in the sum of \$10,000.00.

[5] The sole issue to be determined is who was responsible for the accident?

[6] Mr. Leroy Allen filed a witness statement and testified. Mr. Edwin Allen, Police Constable 179 Rohan Noel and Police Officer Thaddeus Bushay provided witness statements and also gave oral evidence.

[7] Ms. Eve Knights filed a witness statement and testified on her own behalf. Mr. Wesley Williams also provided the court with a witness statement.

[8] Mr. Leroy Allen stated that he loaned his son Mr. Edwin Allen his vehicle to do an errand on the day it was involved in the accident. He indicated the extent of the damage to his vehicle as a consequence of the accident and the costs he incurred which he is seeking to recover.

[9] The main witness Mr. Edwin Allen stated that he was driving his father's vehicle at around 9:00 p.m. and was traveling towards Layout from Lowmans Hill when on approaching Buccament he saw the car PB 66, driven by Ms. Knights coming towards him. It had on the high beam and was traveling in the centre of the road. Neither vehicle was traveling

fast. On reaching the top of the hill he slowed down, the car swerved in front of his vehicle and collided with his vehicle while it was in its proper lane, pushing it into the retaining wall on the left side of the road. After the accident his vehicle was sandwiched between the retaining wall and Ms. Knights' car. After the impact she left the scene and went into a yard with a small child in her arm. She later returned subsequently, the Police arrived at the scene and took measurements in their presence.

[10] During cross-examination he stated that he was traveling at about 40 miles per hour and recanted later and said that he was traveling at approximately 15 to 20 miles per hour when the accident occurred. He denied that he was talking with the other persons in the vehicle at the time of the collision yet still that he was speeding. In fact, he had reduced his speed and was in the left lane or proper side of the road. He maintained that Ms. Knights' vehicle collided with his vehicle pushing it a few feet. He conceded that the normal rate of traveling for vehicles is between 15 to 20 miles per hour. He could not see the other vehicle coming towards him since there is a small hump in the road and the point at which the vehicles collided. He was however able to see the other vehicle when it was 5 feet away and knew that it was approaching him before that time since he saw its lights from when it was about 10 feet away, but was now unsure as to whether Ms. Knights' vehicle had on its high beam.

[11] In re-examination he stated that when he said that he was driving his vehicle at 40 miles per hour what he meant in fact was 40 kilometers per hour.

[12] Mr. Thaddeus Bushay is a police officer. He stated on the night in question he was a passenger in PD 224. On reaching Buccament Village, he saw PB 66 coming in the centre of the road towards the vehicle in which he was traveling. Both vehicles were traveling at a normal rate of speed; Ms. Knights' car was straddling both lanes. To him the collision between the two vehicles was imminent. The car swerved in front of the motor vehicle in which he was a passenger and they collided.

- [13] During cross-examination, Mr. Thaddeus Bushay said that Mr. Edwin Allen is his friend. He was sitting at the back on the left side of the vehicle and a lady was sitting immediately in front of him. They were heading to Layou but were not in a hurry. He states that Mr. Allen was driving the vehicle at about 15 miles per hour which is a normal rate. It was a dark night but he was able to see that the other vehicle was partly on the left lane in which Mr. Allen's vehicle was traveling. He thought that the vehicles would have passed very close to each other or collided. The vehicle in which he was traveling collided with the car.
- [14] Police Constable 719 Rohan Noel stated that he visited the scene of the motor vehicular accident and spoke with both drivers who he questioned about the cause of the accident in each other's presence. The vehicles were stationary when he arrived at the scene. Mr. Edwin Allen told him that he was traveling towards Layou and after passing the ramp he was driving on his side of the road, when he saw the car which was approaching his vehicle it was not in its correct lane. The car collided with his vehicle. He spoke to Ms. Knights who was very uncooperative and aggressive. He could not remember what she said to him. He cannot recall writing down what she had told him even though he took statements from both parties. He took measurements which were produced in evidence.
- [15] He admitted to having refreshed his memory from the case file and stated that he recorded the measurements in his pocket book during cross-examination. He stated that he saw fragments from glass in a particular spot of the road and was of the view that that was the point of impact. He conceded that since it was at night he did not check to ascertain whether there were fragments at other spots on the road and it was possible that other fragments could have existed on the road. He confessed that the point of impact could have been elsewhere. He observed that the right front fender of PD 66 was damaged whereas the right and left front door of PD 224 were damaged. He maintained that on his arrival at the scene of the accident he observed that both vehicles were facing the direction in which they were traveling.
- [16] Eve Knights stated that she was driving her left hand drive vehicle slowly heading towards Kingstown, going home. She had her two-year old daughter in the passenger seat. While

she was completely on her left side, and approaching Cane Grove, Buccament she saw Mr. Leroy Allen's motor vehicle approaching her in her vehicle, at a fast speed of about 40 miles per hour. The vehicle was about to pass her vehicle when it swung suddenly butting the right side of her car causing it to swing around. After the collision his vehicle hit the wall on the other side of the road. Later a police officer came and took measurements but there were no agreements between them as to the point of impact. The value of her car was \$10,000.00. She alleged that Mr. Edwin Allen drove the vehicle negligently and was the sole cause of the accident. After the accident she sold the wrecked car for \$2,000.00.

[16] Ms. Knights maintained during cross-examination that she was driving her car at about 15 miles per hour since she had her two year old daughter in the car with her. Her daughter was strapped in the front seat and was asleep at the time and she was driving in the left lane when she first saw the bus coming towards her. She pulled her vehicle more to the left in an effort to avert the accident but despite her best effort, the fast moving vehicle collided with her car. She denied that she caused the accident due to her negligent driving since she looked away to attend to her daughter. Her daughter was sleeping securely at the time of the accident. Her car was hit and the axel of the front wheel broke causing it to spin around. She was sure that at the time when the vehicles collided she was in control of her vehicle which was on its left side and proper lane.

[17] This is a civil matter and the standard of proof is upon the balance of probabilities.

[18] I am satisfied that Mr. Edwin Allen is not a truthful witness. His evidence was very hesitating. He is an unreliable witness. His evidence was punctuated with many major inconsistencies on crucial aspect of the case, for example, the speed at which he was traveling and the distance he was from Ms. Eve Knights when he first saw her car approaching. Examining the facts as a whole, it is very probable that Mr. Edwin Allen was traveling at approximately 40 miles per hour and that he first saw Ms. Eve Knights' vehicle when it was about 5 feet away. I do not believe that he saw the lights of her vehicle at about 10 feet away. Even though he recanted in re-examination and said that he was 40 kilometers, I do not believe him.

- [19] It is very clear that he was traveling in his father's vehicle with persons who he knew very well and he drove in the incorrect lane and did not see the oncoming vehicle driven by Ms. Knights as a consequence the vehicles collided.
- [20] I am attracted to Ms. Eve Knights' evidence that the accident occurred on her side of the road and that PD 224 hit the front of her vehicle causing its axle to brake and spinning it around in the process. I observed the witnesses and I am satisfied that Ms. Eve Knights is a very truthful witness. I have no reason to disbelieve her.
- [21] I do not find the evidence of Police Constable Noel to be reliable since he ought to produce measurements in relation to the accident, which were not agreed to by the parties. I am far from convinced as to his certainty of the point of impact, based on his own admission to being unsure during cross-examination. He gave the impression that he was impatient with Ms. Knights who clearly must have been very distraught after the accident since he could not remember anything that she said to him. He is however excused since she must have reacted badly to the fact that both she and her daughter could have sustained injuries in the accident, after all, he was a new police officer with approximately 1 year's experience.
- [22] Mr. Thaddeus Bushay merely reproduced in his witness statement the same facts as Mr. Leroy Allen. During his oral testimony, I was far from convinced that he saw how the accident occurred. He is a witness of convenience. I do not believe him when he stated that Ms. Knights' vehicle was straddling both lanes. I am not convinced that he saw how the accident occurred.
- [23] Overall, I am persuaded by Ms. Eve Knights' evidence in preference to that of Mr. Leroy Allen's witnesses. I therefore find that Mr. Edwin Allen was negligent on the day in question and was the sole cause of the accident.
- [24] In the circumstances, Mr. Edwin Allen's claim against Ms. Eve Knights is dismissed.

[25] Ms. Eve Knights counterclaimed for damages against Mr. Leroy Allen who is the registered owner of the motor vehicle PD 224. However, she has not pleaded that on the day in question Mr. Edwin Allen was Mr. Leroy Allen's agent or servant. This issue was neither raised nor addressed during the trial. No evidence was adduced in relation to the issue. Parties are bound by their pleadings. In the pleadings she merely alleged that "the accident was caused wholly or in part by Mr. Edwin Allen the driver of Mr. Leroy Allen's vehicle". I am satisfied that in view of the state of the pleadings and based on the evidence led on her behalf, Ms. Eve Knights is unable to raise the issue of vicarious liability in order to clothe Mr. Leroy Allen with any liability.

[26] In his defence, Mr. Leroy Allen stated that "he loaned his son the motor vehicle Toyota Corona PD 224" even though he did not indicate whether the vehicle was used for any purpose in which he was interested, I draw the inference that it was loaned to Mr. Edwin Allen for the latter's own purposes.

[27] I find that there is no plea in support of a relation of agency or that of master and servant as between Mr. Leroy Allen and his son Mr. Eldon Allen. Neither is there any evidence on which I can properly conclude that the relationship of master and servant existed at the time of the accident between Mr. Leroy Allen and Mr. Edwin Allen. It is true that the very fact of ownership of the vehicle PD 224 raises a presumption that Mr. Leroy Allen is liable for the negligence of Mr. Edwin Allen, this was not an issue in the trial, neither could the inference be drawn based on the fact that Mr. Leroy Allen stated that he loaned the vehicle to his son.

[28] Even if I were wrong to come to that conclusion and it can be argued on behalf of Ms. Eve Knights that the presumption of master and servant has been raised on the evidence, I am satisfied that Mr. Leroy Allen rebutted the presumption by proving that he lent Mr. Edwin Allen the motor vehicle and for the latter's purposes. ***Morgans v Launchberry (1972) 2 ALL ER 606 and Rambarran v Gurrucharran*** are instructive on this point. Gilbert

Kodilyne in Commonwealth Caribbean Tort Law Second Edition states at page 439 - 443 that the presumption is easily rebutted. I agree with this entirely.

[29] Accordingly, Ms. Eve Knights' counterclaim against Mr. Leroy Allen is also dismissed.

[30] It is hereby ordered that the claim and the counterclaim are dismissed. In the exercise of my discretion each party shall bear his own costs.

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Louise Esther Blenman
HIGH COURT JUDGE