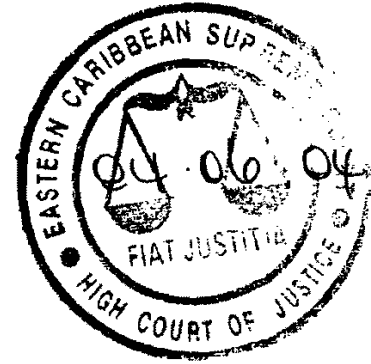


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 128 OF 2001**



BETWEEN:

ROBERT PEEL

Claimant

v

HEATHER REYNOLDS

Defendant

Appearances:

Mr. Ronald Burch-Smith and Ms. Rose Anne Knights for the Claimant

Mr. Samuel Commissiong for the Defendant

2003: May 20

2004: June 04

JUDGMENT

- [1] **BRUCE-LYLE, J:-** On the 11th March 1999 on the Lower Bay Public road in Bequia, Saint Vincent and the Grenadines, the Claimant Robert Peel and his wife Barbara Peel were walking along the said road towards Port Elizabeth from Lower Bay.
- [2] Mr. Peel was walking ahead of his wife, because as he claimed in his evidence, he had a longer stride than her. They were both on the seaside of the road immediately before the accident. He turned and looked behind him and saw his wife on the seaside of the road just before the accident.

- [3] Soon after, Mr. Peel stated that upon reaching an area in the road where a steep private driveway intersected with the road, he heard a sound like someone “thumping pedals”, and this caused him to look towards the driveway.
- [4] A motor vehicle came at him from this driveway and collided with him. He remembers nothing afterwards.
- [5] The Defendant Heather Reynolds stated that she was driving down her driveway slowly, got to the end of the driveway, came to a complete stop, drove a little into the main road to observe the state of traffic in both directions and saw only two pedestrians – one a tall male walking briskly in front of her driveway and a female, on her side of the road about nine to twelve feet to the left or west of the driveway walking about two feet to three feet in the road with her head down.
- [6] She further contended that as there was no vehicular traffic on the road, she turned her vehicle’s wheels left to travel to Lower Bay and at that same moment the woman, Mrs. Peel, with her head still down began to walk across the main road and directly into the path of her vehicle.
- [7] The Defendant contended further that in order to avoid contact between her car and Mrs. Peel she quickly swerved to her right, but encountered the claimant who by her calculations should have cleared her driveway, who was also quite close to her car and she managed to stop just close to the guard rail on the seaside of the road.
- [8] Her view was that the Claimant at this stage panicked as he came face to face with her car and fell backwards on the guardrail with both hands raised defensively, palms outwards.
- [9] The Claimant relied on his evidence by way of witness statements and some oral evidence as his evidence-in-chief, the evidence of Cyril Harry a then Corporal of

Police who investigated this accident, Barbara Peel, wife of the Claimant. All three were extensively cross-examined by the learned defence counsel. The Defendant Heather Reynolds also gave evidence on her own behalf by way of her witness statement and was also cross-examined extensively by learned counsel for the Claimant.

- [10] From the evidence, I find as a fact that on the 11th of March 1999 there was an accident along the Lower Bay Public road at the intersection between that road and the driveway to Heather Reynolds' home at around 1:00 p.m.; and that Mr. Peel, a Canadian citizen, resident in Bequia was walking along the seaside of the road opposite the Reynolds' driveway when the Defendant entered the road.
- [11] I also find as a fact that as a result of this accident Mr. Peel was injured and was hospitalized first in Saint Vincent and later flown back to Canada for medical treatment a few days afterwards.
- [12] It is also not in dispute as per the evidence of both sides in this matter that a driver cannot in one continuous motion turn right into the main road towards Port Elizabeth, but must reverse at least once or twice into the driveway before being able to execute the turn to the right from the driveway, and that turning to the left does not pose any difficulties. It is also not in dispute that a driver at the base of the driveway can see pedestrians coming from any direction.
- [13] That there was a seawall or guardrail on the seaside of the road that was damaged as a result of the accident but which was described as slight as a portion of the stone wall was broken away was also not in dispute. It was also not in dispute that there was a gutter or slipway at the foot of the driveway measurements of which neither the Claimant nor the Defendant could satisfy the Court with any degree of certainty. There was also a dispute pertaining to the width of the road at the intersection mentioned.

[14] It is also not in dispute that one of Mr. Peel's shoes was found stuck between the front right wheel of the Defendant's motor vehicle and the stone wall on the seaside of the road, and the second shoe was found over the wall down in the bushes some considerable distance from the scene.

[15] It is also not in dispute that there was no evidence from the police's point of view that the defendant's motor vehicle was defective as no checks were carried out and no person requested any to be done.

ISSUES:

[16] The issues to be determined in this case are whether the defendant drove negligently on the day in question and thereby caused her to improperly control the car; fail to apply her brakes although she could have stopped if she wanted to; driven too fast; and failed to maintain a proper look out or to have sufficient regard for other road users and thereby entered the main road from a private road without stopping, slowing down or taking proper precautions.

[17] It is interesting to note that Cyril Harry's evidence stated that there was a lot of blood around the scene of the accident and blood on one of the shoes found at the scene; and that Mrs. Peel also told him that she and her husband, Mr. Peel were walking on the same side of the road, as also stated by Mr. Peel.

[18] Mr. Peel stated that the thumping sound he heard could also have been the sound of tyres hitting the undercarriage of the car; he also stated that he saw the Defendant's motor vehicle coming to him at a high rate of speed that he estimated to be between 15 to 18 miles per hour. He also stated that when he saw the vehicle looming towards him it was 3 feet to 4 feet away from him and he instinctively tried to raise one leg up onto the vehicle bumper while raising up both hands. He said he had no time to run from the vehicle as it was only at most

four feet away from him, and that at the point of impact he was abreast or in line with the centre of the driveway.

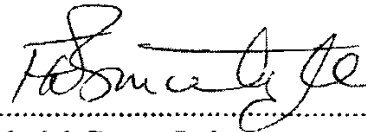
- [19] More importantly Mr. Peel indicated to the Court that in his opinion Mrs. Reynolds, the Defendant, was driving at a speed not consistent with a vehicle moving from a standstill and that the accident was entirely her fault.
- [20] Looking at Mrs. Peel's evidence, she stated that she was walking along the road about 20 feet behind her husband and on the same side as her husband. She said she heard a loud noise, and when she looked up she saw her husband about five feet in the air going over the sea wall. She also confirmed Cyril Harry's evidence that the said stonewall was damaged by the Defendant's motor vehicle and stones from it dislodged. She completely denied that she was walking on the side of the road as the driveway, nor did she walk out into the road.
- [21] The most independent witness for the Claimant was ex-police officer Cyril Harry who investigated this case. He was unable to refresh his memory from the police records that he would have compiled. Nevertheless his evidence as to what he saw at the scene, to my mind throws a lot of light as to what exactly happened. I found his evidence to be credible despite the disadvantage he might have faced owing to the absence of the police records he had compiled as a result of investigating this accident.
- [22] From his evidence, arise mind-boggling questions. If the Defendant's vehicle stopped short of the stone wall on the seaside of the road what caused portions of the wall to break away? Secondly, if the Defendant's car did not touch the Claimant as the Defendant asserts, what caused the Defendant to lose his shoes, one of which was bloodstained, and what led to bloodstains being found on the road close to the area where there was damage to the stonewall?

- [23] There is also the evidence of Barbara Peel who saw her husband in the air before he toppled backwards over the wall and to the ground, a distance below the top of the wall.
- [24] I find from all the circumstances of the case that the Defendant's story ought to be completely rejected. In its material aspects it is inconsistent, implausible and absurd. I do not believe her story. There is no evidence that the Defendant was an incompetent driver, but even on the best of days, a good driver can be negligent and lose control of his or her vehicle. That is what in my view led to this unfortunate incident. I need not rehash her evidence in this judgment except to say that she said in her evidence that she considered it prudent to move off into the road rather than wait for the pedestrian to pass presumably because it was safe to do so.
- [25] She further stated that although she was moving from a stationery position at approximately 5 miles per hour, she determined that it was not safe to stop but it was best that she swerve to her right, away from Mrs. Peel. This in her view was prudent and reasonable because otherwise she would have run Mrs. Peel over. She further admitted that her speed at this time was such that had she wanted, she could have stopped instantly. But having swerved away from Mrs. Peel on the near side of the road she continues all the way across the road where she encountered Mr. Peel who was standing very close to the guard wall on the other side of the road. If this is not negligent driving, then the Defendant has failed to convince me that it is anything else.
- [26] In my view the Claimant's case is simple and honest and this case turns purely on the facts and credibility issues. I do not believe the Defendant's story and there is no evidence to support her particulars of negligence set out in her pleadings. In contrast the Claimant has proven that the Defendant drove negligently by failing to properly control her vehicle, failing to apply her brakes although she could have stopped if she wanted to; driving too fast and failing to swerve to avoid the

Claimant. I agree with learned Counsel for the Claimant that inferences can be drawn which inexorably lead to the fact that the Defendant failed to maintain a proper look out or to have sufficient regard for other road users; and entered the main road from a private road without stopping, slowing down or taking proper precautions.

CONCLUSION:

[27] I therefore enter judgment for the Claimant against the Defendant, and dismiss the Defendant's defence and counterclaim. I also order that damages be assessed by the Master of the Supreme Court to a date to be fixed by the Registrar. The Defendant will pay the Claimant's costs in the sum of \$4,000.00.



.....
Frederick Bruce-Lyle
HIGH COURT JUDGE