

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2001/0927
and
SLUHCV2002/0452

BETWEEN:

VIKINGS TRADERS LIMITED

Claimant

and

(1) DAVID HIPPOLYTE
(2) JOHNNY SADOO

Defendants

and

PARKINSON ANTOINE

Defendant to the Counterclaim

-AND-

DAVID HIPPOLYTE

Claimant

and

(1) VIKINGS TRADERS LIMITED
(2) PARKINSON ANTOINE

Defendants

Appearances:

Mr. Mark Maragh for Vikings Traders Limited and Parkinson Antoine
Mrs. Esther Greene-Ernest for David Hippolyte and Johnny Sadoo

2004: May 24
June 14

MOTOR VEHICULAR ACCIDENT...NEGLIGENCE...CONTRIBUTORY NEGLIGENCE...
DAMAGES

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** These are consolidated actions for damages arising out of a motor vehicular accident which occurred at approximately 2.22 p.m. on 11th August 1999 along the Choiseul/ Dacretin Highroad in the Quarter of Choiseul. Parkinson Antoine was driving a white Mazda B1600 Panel Van, belonging to his employer, Viking Traders Limited along the said Highroad from Jalousie Hotel, Soufriere, in the direction of Choiseul when his van was in a collision with a white Mazda Panel Van driven by Johnny Sadoo and owned by David Hippolyte. Mr. Sadoo was traveling in the opposite direction towards Soufriere.
2. At the time of the collision, the road was dry. It accommodated two vehicles but it was not a wide road. At the point of impact, it measured 15 feet 8 inches. It was bordered on the right in the direction of Choiseul by a hill and on the other side by a cliff. Along the edge of the road with the cliff, the road was lined with trees and shrubs. The vehicles were in collision at a blind corner.
3. On 2nd November 2001, Viking Traders instituted these proceedings against Mr. Hippolyte and Mr. Sadoo claiming special damages of \$38,182.00, interest and costs. Viking Traders alleged that the said collision was caused by Mr. Sadoo's negligence in that, among other things, he failed to keep to his left and proper side of the road. Mr. Hippolyte and Mr. Sadoo defended the claim and alleged that the collision was caused wholly or in part by the negligence of Mr. Antoine.
4. The claim brought by Viking Traders was still pending when on 3rd June 2003, Mr. Hippolyte instituted a claim against Viking Traders and Mr. Antoine, claiming special damages of \$23,200.00 as well as interest and costs. He alleged that Mr. Antoine was negligent on the day in question in that, among other things, he failed to keep to his left and proper side of the road and drove at an excessive speed.
5. Both vehicles were damaged beyond repair and were written off. Mr. Antoine's vehicle sustained damage to the left side hood, windscreen, pillar, dash board, blower assembly, front panels, flooring, grille, bumper, fender, park indicator, head lamps, wheel arch, front door, side

panel and broken crash bar. Mr. Sadoo's vehicle sustained damages to the windscreen, front main panel, left front door post, front grille, front bumper, left headlamp surround, left headlamp assembly, left front door, left front door glass, left front mirror, main structure deformation, left front flooring area, dash board, left front fender and left front suspension.

6. The two drivers gave diametrically opposed accounts as to how the accident occurred. Mr. Antoine gave evidence that he was traveling at approximately 35 k.p.h. towards the direction of Choiseul. He slowed down as he approached a blind corner which turned left on his side of the road. As he exited the corner, he suddenly saw a white panel van driven by Mr. Sadoo on his side of the road attempting to avoid an enormous pot hole. He immediately applied brakes and attempted to steer his vehicle to his right away from the cliff. Simultaneously, Mr. Sadoo tried to drive back to his left but Mr. Sadoo still ended up colliding with his vehicle.
7. Mr. Sadoo alleged that he was traveling in the opposite direction to Soufriere. He saw Mr. Antoine swerved in the road to avoid a pot hole and in doing so, he drove onto his side of the road and hit his vehicle. Mr. Sadoo also alleged that Mr. Antoine came around the corner with speed and that he did not keep to the left side of the road. Mr. Sadoo said that he slowed down with the intention of coming to a complete halt when Mr. Antoine's vehicle collided with his.
8. The police were informed of the accident and attended the scene shortly afterwards. Police Constable 254 Jacob was the investigating officer. He made some measurements in the presence of both drivers. In his report, he stated that Mr. Sadoo would be prosecuted for careless driving. However, it appeared that neither driver was prosecuted.
9. The two drivers and the owners of the respective vehicles gave oral testimony at the trial but neither of the owners was present when the collision took place. So, the only evidence remaining was that of the drivers themselves. It is always difficult to decide a case like this where there is one person's word against another and no other evidence to assist; not even the investigating officer who, I understood, has left the police force and may be overseas. A visit to the locus in quo would have proven helpful but the on-going repairs on that road have substantially changed the nature and condition of the road as at the date of the accident.

10. On a balance of probabilities, I prefer the evidence of Mr. Antoine. Although he was sometimes exuberant and excitable, he was more lucid and consistent. On the other hand, I found Mr. Sadoo to be hesitant and sometimes, evasive in his answers.

11. I now turn to a critical aspect of the case. In traffic cases, the point of impact plays a significant feature in determining blameworthiness. Officer Jacob established the point of impact as being 12 feet 4 inches to the left side of the road and 3 feet 3 inches to the right side in the direction of Choiseul. This in effect, placed Mr. Antoine's vehicle in Mr. Sadoo's lane. Why then would Officer Jacob recommend that Mr. Sadoo should be criminally prosecuted if Mr. Antoine was in Mr. Sadoo's lane? This is further complicated by the following observation which he made in his report:

"It has been established that Motor Omnibus Reg. No. HB5415 driven by Johnny Sadoo traveling along the said road in the opposite direction failed to keep to his left and proper side of the road and collided with the said Motor Panel Van."

12. I could only conclude that Officer Jacob made an error. Mr. Antoine challenged the point of impact as being grossly inaccurate. One may further ask: why did he not do so at the scene of the accident? His answer is simple. His passenger, Vincent St. Omer was trapped in the vehicle and he was more interested in his passenger's safety. This seems to be a good enough reason for not being focused when Officer Jacob was taking measurements.

13. I go a step further. The damages to both vehicles were concentrated on their respective left side. It is not disputed that Mr. Antoine was traveling in the direction of Choiseul and as he approached a blind corner, he turned left. It is also not disputed that Mr. Sadoo was traveling in the opposite direction to Soufriere. Why then were the damages more to the left side of both vehicles? The answer seems clear. Mr. Sadoo was in Mr. Antoine's lane. I believe Mr. Antoine when he asserted that Mr. Sadoo was attempting to avoid a huge pot hole.

14. I therefore find that Mr. Sadoo was negligent on the afternoon in question. In the defendants' defence filed on 25th January 2002, Mr. Sadoo denied that he was responsible for the accident. He alleged, among other things, that Mr. Antoine drove around the bend at an excessive

speed; failed to keep to his left and proper side of the road and drove into collision with his vehicle. He nevertheless pleaded contributory negligence on Mr. Antoine's part.

15. As I said in *Lawrence Eleuthere et al v Linda Esnard*¹ at paragraph 11:

"It is axiomatic that where a claimant is suing a defendant for damages, the first question to be determined is whether the claimant has established liability against the defendant, that is, that he was negligent and that the negligence caused or materially contributed to the damage. The next step, of course, once liability has been established, is to assess what is the total of the damage that the claimant has suffered as a result of the established negligence. It is only after these two decisions have been made that the next question arises, namely, whether the defendant has established that the claimant by his own negligence, contributed to the damage which he suffered."

16. In their particulars of special damage, Viking Traders claim the following:

Pre-accident value	\$38,000.00
Wrecker	\$ 300.00
Storage	\$ 450.00
Survey Fees	\$ 350.00
Advertisements	\$ 132.00
Loss of Use @ \$200 per day for 7 days	\$ 1,400.00
Excess paid	\$ 2,500.00

	\$43,182.00
Less sale of wreck	<u>\$ 5,000.00</u>
TOTAL	<u>\$38,182.00</u>

17. Mrs. Ernest appearing for the defendants did not challenge the amount. Therefore, Viking Traders is entitled to the sum of \$38,182.00 unless it is proven that Mr. Antoine contributed to the accident so as to reduce damages. As Denning L.J. said in *Jones v. Livox Quarries Ltd.*² at page 615:

"Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as

¹ High Court Claim No. SLUHCV2002/0407 (Saint Lucia) [unreported] –judgment delivered on 17th July 2003

² [1952] 2 Q.B. 608

a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

18. Mrs. Ernest forcefully argued that Mr. Antoine was speeding whilst negotiating a bend and it would have been prudent for Mr. Antoine to have stopped in order to prevent the accident.
19. There is little doubt in my mind that Mr. Antoine contributed to the accident. In cross-examination as well as re-examination, Mr. Antoine admitted that he was traveling with speed and that he was late but not in a rush. Besides speed, he could have slowed down or perhaps, stop, in order to avoid the accident. I am guided by legal principles which states that speeding in itself cannot ground civil liability: see *Barna v Hudes Merchandising Corporation*³.
20. Mr. Maragh for the claimants submitted that Mr. Antoine was confronted with a sudden emergency though no fault of his. I find this argument to lack merit.
21. I therefore find that the damage is partly the result of Mr. Antoine's own fault, and the damages recoverable by him fall to be reduced accordingly.
22. In my judgment, Mr. Sadoo must take the greater part of the blame so far as the accident is concerned. As an experienced driver of about 22 years, he should have been more vigilant and keep to his left and proper side of the road.
23. I assess Mr. Sadoo's blameworthiness at 70 per cent and that of Mr. Antoine at 30 per cent.
24. I am now left to consider the question of what liability may be said to have devolved on Mr. Hippolyte as well as Viking Traders, the owners of the respective vehicles. I do not think that there is any denial that the respective driver was a servant or agent.

³ (1962) Crim. LR 321, CA

25. In my judgment, Viking Traders is entitled to 70% of the special damage of \$38,182.00 and Mr. Hippolyte is entitled to 30% of \$23,200.00. In respect of costs, I will award the sum of \$3,500.00 to Viking Traders and \$1,500.00 to Mr. Hippolyte.

26. The most prudent thing to do is to offset the damages. I will leave that for able Counsel to attempt.

INDRA HARIPRASHAD-CHARLES

High Court Judge