

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 171 of 2003

BETWEEN

ERMINE CHARLES

(Administratrix of the estate of Glenford Caudray Charles deceased)

Claimant

AND

ESAU HERBERT

EWORTH STEVENS

Defendants

Appearances:

Mr. Richard Williams for the Claimant

Mr. Olin Dennie for the Defendant

2004: May 11,18,21

June 28

JUDGMENT

BLENMAN J.

[1] This is a running down action. The parties agreed that the trial would proceed on the question of liability.

- [2] On the 26th September 2001, during the afternoon, Mr. Glenford Caudray Charles (Glenford Charles) who resided at Spring Village in the State of St. Vincent and the Grenadines was walking along the Spring Village road when he was hit by a Toyota Haice passenger van (motor vehicle) Registration Number H4628 owned by Mr. Esau Herbert and driven by his servant or agent Mr. Eworth Stephens. Mr. Glenford Charles suffered severe injuries and died as a consequence.
- [3] His mother, Mrs. Ermine Charles, who is the administratrix of her deceased son's estate, filed these proceedings claiming damages against Mr. Esau Herbert (Mr. Herbert) and Mr. Eworth Stevens on the ground that the accident was caused by the sole negligence of Mr. Stevens who drove too fast, failed to properly look out for Mr. Glenford Charles or to observe Coull's his presence. She claims both general and special damages on behalf of her deceased son and his estate, together with costs.
- [4] The main thrust of Mr. Herbert's and Mr. Stevens' defence is that the collision was caused when the braking system of motor vehicle H4628 suddenly and without any warning failed. They contend that the braking system had a latent defect in the brake pads which was not detected even though the pads had been replaced about one week before the collision. The failure of the braking system rendered the vehicle unmanageable by Mr. Stevens despite the fact that he exercised reasonable care and control.
- [5] The sole issue for my determination is whether or not the accident was caused due to the negligence of Mr. Herbert and Mr. Stevens.
- [6] Mrs. Ermine Charles and her son Mr. Clyde Charles both of whom live at Spring Village in Saint Vincent and the Grenadines testified in support of the claim.
- [7] Mrs. Charles stated that she was the mother of Mr. Glenford Charles deceased. She testified that on the 26th September, 2001 he was hit by a motor vehicle number H4628 owned by Mr. Herbert and driven by his servant or agent Mr. Stephens. She tendered a death certificate in evidence which showed that Mr. Glenford Charles died as a

consequence of the injuries sustained. At the time of his death Mr. Glenford Charles was 33 years old.

[8] Mr. Clyde Charles the brother of Mr. Glenford Charles, said that on the 26th September 2001 he was sitting on the sidewall of the road at the junction above the Police Station at Spring Village. He was speaking to a friend who was also sitting on the same side wall when he saw the motor vehicle No. H4628 drove pass him and dropped off a passenger who lives in his area, it then proceeded up the hill and into Top Village. While the motor vehicle No. H4628 was on its way back he observed that a van was speeding and heard a sound which indicated that it was trying to change gears. At that time a car was parked on the road, he observed the motor vehicle 'swagger' in the road as if the driver had lost control, then it appeared that he had regained control of motor vehicle. The motor vehicle was proceeding at great speed and was now coming into his direction. The driver went off his hand unto the opposite side of the road to go into Kingstown, the motor vehicle tilted suddenly to the right, while going around the corner in a manner which is consistent with it being on its left wheel. Having cleared the corner, the back wheel of the motor vehicle hit the top of the drain, by the time it was opposite the wall where he was sitting and the back tyre 'blow out'.

[9] Meanwhile, his brother Glenford Charles was walking on the left side of the same road on the sidewalk heading towards himself and his friend. When the tyre "blow out" the vehicle hit his brother and pushed him through the fence along the sidewalk and pinned him onto the agriculture house.

[10] After the collision, he and his friends ran over to the motor vehicle and attempted to remove it from on top of his brother Mr. Glenford Charles, the latter whose legs appeared to have been cut off and who also appeared to be dead.

[11] He stated that he knew Mr. Steven very well and infact Mr. Stevens had used his vehicle to obtain his license to drive for hire he said. During cross examination, he maintained his story and stated that he is a driver with ten years experience and that when he saw the vehicle "swagger" he was about 200 feet away from it and his deceased brother was

approaching the Police Station at that time. He was sure that a driver could not have seen his deceased brother from the distance of 200 feet. He maintained that based on the movement of the motor vehicle which he observed he was sure that its driver was not trying to stop it when the wheel hit the drain. However, the driver of the motor vehicle ought to have been able to see his brother before the vehicle turned the corner since the view is clear for about 5 to 10 feet away from the corner. Based on the motor vehicle's movement, he would not agree that the motor vehicle brakes failed since the vehicle was traveling at a tremendous speed immediately before the collision.

[12] Mr. Esau Herbert, Mr. Stevens and presently Mr. Johnson testified in defence of the claim. Mr. Herbert lives at Coulls Hill in North Leeward District of Saint Vincent and the Grenadines and is the owner of Toyota Haice motor vehicle H 4628.

[13] The Toyota Haice passenger van is about 5 years old. He purchased it as a used vehicle and caused it to be serviced regularly from the time of its purchase. He admits that he employed Mr. Stevens to drive the vehicle and before that he employed Mr. Presley Johnson who is a mechanic to drive the motor vehicle. Mr. Johnson serviced the vehicle before Mr. Johnson. He was adamant that the motor vehicle worked properly and in fact the Friday before the accident he caused Mr. Presley Johnson to install new brakes together with other parts and was present when the various parts were installed. He stated that the Sunday after the motor vehicle was serviced he drove it and it worked well. In fact on Monday, the 24th September 2001, he drove the motor vehicle from Coulls Hill to Spring Village in order to deliver it to Mr. Steven and it worked perfectly well.

[14] During cross-examination he stated that he changed the tyres on the motor vehicle approximately every two weeks since it made a lot of trips. He agreed that vans are subject to more abuse than cars. He maintained that he caused the motor vehicle to be serviced regularly and changed items such as the water pump, fan belt, replaced the drums for the back brakes and was sure that on the day of the accident both the hand and foot brakes were in good working order before the accident. While he serviced the brakes system weekly he never had cause to service the master cylinder since it was not faulty.

- [15] Mr. Stephens who lives at Chateaubelair in the North Leeward district of the State of Saint Vincent and the Grenadines said that from around 1999, he was employed by Mr. Herbert to drive passenger van H4628 and at the date of the accident he had been driving the motor vehicle for approximately 2 years. He purchased a new set of brake pads for the front wheel of the motor vehicle about a week before the accident occurred and had them installed. He was sure that Mr. Presley Johnson who was a mechanic serviced the motor vehicle on a regular basis. In fact before the accident occurred, he never experienced any mechanical problems with the motor vehicle.
- [16] However on the 26th September, 2001, he left Kingstown around 3:30 p.m. driving motor vehicle H4628 heading up to Chateaubelair. He got to Spring Village and then drove up to Golden Village to drop off a passenger. On his way back from Golden Village, when the motor vehicle approached the Methodist Church in Spring Village and was traveling down hill, he felt the brakes began to “get soft so he pumped up the brakes and got no brakes”. The motor vehicle was full of passengers. In order to stop it he drove into the drain on the right hand side of the road where upon it bounced out of the drain and went over to the other side of the road next to the Spring Village Police Station. While he was desperately trying to control motor vehicle it collided with a parked car just above the Police Station, and was damaged beyond repair. At no time did he see the deceased Glenford Charles who was his friend.
- [17] During cross-examination he stated that he has been driving for 18 years and obtained his first H licence while he was employed at the Fire Department. He said that he did not have to complain to Mr. Herbert about the hand brakes because they had serviced the vehicle the week before the accident occurred and the vehicle worked well. While he knew Mr. Glenford Charles very well he did not see him on the road that day. In his view the accident occurred due to the failure of the back brakes at the same time without any prior warning. He agreed that the front brakes and the back brakes are managed by two separate and distinct mechanisms. The back brakes utilizes hydraulic system where as the front brakes utilizes a cable system.

- [18] He admitted that after the collision with the deceased the motor vehicle H4628 ran into the fence and into the yard pinning Mr. Charles under it in the process but was adamant that the brakes failed while the motor vehicle was in the vicinity of the Methodist Church which was approximately 50 – 60 feet away from the deceased.
- [19] Mr. Presley Johnson stated that he is a mechanic for the past 15 years. He services buses, trucks, motor cars, jeeps and passenger van. He is the neighbour of Mr. Herbert and from time to time he has serviced motor vehicle number H4628. During his servicing of the motor vehicle, he changed the front disc pads, rear brakes shoes, oil filter plugs and gas filter together with carrying out a general service.
- [20] During cross-examination, Mr. Johnson stated that while he does not possess any certificates dealing with mechanic he has considerable experience in the field. He confirmed that the hand brakes is operated by cable and the foot brakes utilizes a hydraulic system. He serviced the hand brake on the vehicle but never had to change it. During his regular servicing of the foot and hand brakes he ensured that they were both in perfect working order. His evidence was consistent with that of the other defence witnesses in that approximately one week before the accident he serviced the vehicle. However he had never changed the rubber on the master cylinder even though he was of the view that a master cylinder on a vehicle should be changed after approximately 1 year of use. The parts that he did not change looked good.
- [21] This is a civil action and the burden of proof is on the balance of probabilities. I have reviewed the evidence and am more persuaded by that evidence in support of the claim. I am satisfied that on the day in question, Mr. Stevens was driving the vehicle at a fast rate and lost control of the vehicle which collided with Mr. Glenford Charles while the latter was walking on the sidewalk, the proper side of the road and I am far from convinced that the accident was caused by the mechanical failure of the brakes as Mr. Eworth Stevens and Mr. Herbert would have me believe. This if believed would raise the question why didn't he use the front brakes to bring the vehicle to a complete halt. He had ample time to do that. He tried belatedly to convince me that the front brakes too were faulty.

[22] It is clear to me that even if the motor vehicle collided with the car, Mr. Stephens ought to have been able to regain control of it but was unable to do so and in the process he collided with the deceased. I have no doubt in my mind that at the time of the accident he was speeding. Even if I am to believe Mr. Stephens when he stated that he did not see the deceased on the day in question, in the absence of any explanation coming from him as to the reason for this failure, this fact by itself as admitted by him is indicative of his negligence without more, since it shows that he did not keep a proper look out for the deceased as he ought to. He owed a duty of care to the deceased.

[23] Another fact that supports my view that he was negligent quite apart from the evidence of Mr. Clyde Charles', which I accept, is that the vehicle having hit the fence did not stop but ran into the house. This is consistent with some degree of force being present as a consequence of the fast rate at which the vehicle was traveling (even though there is no evidence of the speed limit). He ought to have been able to stop the vehicle yet again if he were careful and alert. I do not for one minute believe that both the foot and the hand brakes failed at the same time causing the motor vehicle to collide with the deceased in spite of his best efforts. This is highly improbable.

[24] In every case, the court has a duty to decide what is the reasonable inference from the known facts. I therefore have to determine whether Mrs. Charles has established her case by a preponderance of probabilities. She can do so by proving that the other party drove carelessly.

[25] In **Jones V GW RY (1930) 47 T.L.R. 39** the House of Lords held that where a person has a right to cross a railway and was found crushed between the buffers of shunted trunks without any evidence of why he was there or how the accident occurred, there is a duty of care owed by the railway company in the shunting operations, that there was no evidence that the man shunting saw the deceased or warned him based on this, there was some evidence of negligence on which the jury could give a verdict against the company. Also in **Craig v Glasgow Corporation (1919) SC1** it was held that the position would be similar if the deceased had been on the highway, because he had a right to be on there and

drivers of vehicles owed a duty of care not to run him down. I am in respectful and entire agreement with those principles.

[27] Applying those principles to the facts as I find them, I am of the view that Mrs. Charles has established on a balance of probability that Mr. Stevens was negligent and therefore liable for the accident and the consequent injuries to Mr. Glenford Charles deceased.

[28] For what it is worth, I am not satisfied from Mr. Priestley Johnson's evidence with the quality of his maintenance of the vehicle. He did not give me the impression that he was as thorough as he should have been.

[29] In the circumstances, I find that Mr. Eworth Stevens and his employer Mr. Esau Herbert are liable in damages for the death of Mr. Glenford Charles. Accordingly, there will be judgment for Mrs. Ermine Charles, Administratrix of the estate of Glenford Caundray Charles, deceased against Mr. Esau Herbert and Mr. Aworth Stevens for damages to be assessed if not agreed together with costs.

[30] In accordance with CPR 2000, on the conclusion of the evidence, I directed that written closing arguments were to be submitted to me within 7 days, I received none and therefore obtained no assistance with the analysis of the evidence.

**Louise Esther Blenman
High Court Judge.**