

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 475 OF 2002

BETWEEN:

**KENDOL FREDERICKS an infant by his mother and
next friend CLAUDETTE FREDERICKS of STUBBS** Claimant

AND

CARLTON CUNNINGHAM of BIABOU Defendant

Appearances:

Mr. Richard Williams with Ms. Roxanne Knights for the Claimant
Mr. Olin Dennie for the Defendant

2004: February 16
June 28

JUDGEMENT

- [1] **BLENMAN, J:** At approximately 7 p.m. on the 30th May 2000, Kendol Fredericks a young boy sustained injuries to his leg when he was struck by motor vehicle number T 6544 owned and driven by Mr. Carlton Cunningham. He filed this proceedings acting through his mother and next friend Ms. Claudette Frederick and claimed damages for the injuries suffered.
- [2] At the trial, Counsel agreed that the matter would proceed in order to determine the issue of liability.
- [3] In his claim, Kendol Fredericks alleged that Mr. Cunningham drove too fast, drove on the wrong side of the road and failed to apply his brakes in sufficient time or at

all in order to prevent the motor vehicle from colliding with him. Accordingly, he claimed both special and general damages against Mr. Cunningham.

[4] While he admitted to driving motor vehicle number T 6544, on the day in question at Stubbs Hill heading towards Kingstown, Mr. Cunningham denies that he was negligent as alleged or at all. He contends that Mr. Kendol Fredericks and another little boy tried “to hop” the truck that he was driving and collided with the spare tyre and was injured when he fell to the ground.

[5] The sole issue I have to determine is whether the accident was caused, due to Mr. Carlton Cunningham’s negligent driving.

[6] The parties testified and called witnesses in support of their case. They gave opposing evidence of how the accident happened. Kendol Frederick, his mother Mrs. Claudette Frederick, together with Mr. Gosnel Anderson testified in support of the claim whereas Mr. Carlton Cunningham and his sons Mr. Delroy and Elroy Cunningham together with a young boy Romano Andrews testified on behalf of the defence.

[7] Kendol Fredericks who is a Form 3 student at St. Vincent Grammar School is 14 years old. On the night in question; he was walking on the right side of the road heading away from Kingstown towards Rona Supermarket to purchase some items for his mother. The road bends to the left and there is no side walk. Accordingly, he walked on the extreme side of the road on the grass, when he saw a truck approaching him laden down with bananas heading towards Kingstown. The truck came very close towards him and even though he attempted to get out of the way by placing his right foot on the ledge he was unable to mount the ledge completely, when his right foot slipped. He fell on the ground and the front left wheel of the truck struck his left leg.

[8] After the collision the truck stopped a little way off and someone disembarked the truck came to the spot where he was lying and said something which was inaudible to him. The person re-entered the truck which drove off. He was in pain and cried out loudly where upon persons came to his assistance. His mother subsequently arrived at the scene of the accident and took him to the Hospital. On his way to the Hospital fortunately he recognized the truck and pointed it out to his mother who wrote down its number. He was hospitalized for 3 months and 13 days. On his discharge from hospital and while he was at home recuperating a gentleman visited him and told him that he wanted to apologize because he falsely told Mrs. Frederick that he was Mr. Cunningham's brother when in fact he was his son. The gentleman told him that he was present in the truck on the night of the accident. At that time he was lying in his room, the gentleman never the less thought it fit to question him about the accident causing his mother to become angry.

[9] During cross examination he admitted to having "hopped" trucks about 3 times previously but was adamant that he did not hop the truck on the night in question. In fact he was walking on the proper side of the road on the dirt when the truck came around the corner and collided with him while he was still on his proper side of the road (on the grass). Even though he tried to get out of its way and was unsuccessful of getting onto the cone shaped wall, luckily for him he was able to make some progress in getting somewhat out of its way failing which he would have been injured more seriously.

[10] He maintained that he was partly on the ledge when the truck run over his leg. He was clear that he knew Ramano Andrews who was not his friend but vehemently denied that he was trying to "hop" the truck since he indicated that it was heading in the opposite direction to which he was going. In addition, it was a very big truck with two large wheels on each side of the back. The wheels on each side of the back of the truck are approximately 24 inches wide and the truck is very high no

one would try to hop that truck. He identified Mr. Delroy Cunningham as the person who had visited his mother's home and spoke with him.

- [11] Ms. Claudette Fredericks' evidence was that on the night in question she sent her son to the supermarket to purchase some items. It takes about 10 minutes to get to the Supermarket. Later that night she received a report and based on the report she received, on the night in question she ran to the scene of the accident where she saw her son Kendol lying on the side of the road in a pool of blood. She hired a passenger van to take her son to the Hospital, and while they were on their way to the Hospital her son pointed out the truck that hit him by the Shell Gas Station at Arnos Vale. She wrote down its number which was T 6544.
- [12] On Saturday the 16th day of September 2000 she was at home when a gentleman visited her home and told her that he was Mr. Cunningham's brother. The gentleman told her among other things that he wanted to settle the matter and that he was wanted to speak with Kendol since he was surprised that Kendol was able to see the number of the truck. She advised the gentleman to return the following night which he did. On his return he apologized to her telling her that he misled her into believing that he Mr. Cunningham's brother when in fact he was his son. The gentleman told her that he was present when the accident occurred and tried to question Kendol whereupon she became angry and told him to leave her home.
- [13] During cross examination Ms. Fredericks stated that she did not ask the person his name since the person had identified himself to her. She admitted also that the first time that she learnt that her son had "hopped" trucks was while he was testifying in court. She admitted to having heard rumours that her son Kendol had hopped the truck.
- [14] Mr. Gosnel Aberdeen's evidence was that he lives at Stubbs in Saint Vincent and the Grenadines. On the night in question he was in his yard situate below the main road at Stubbs when he heard the sound of a truck coming uphill. It sounded

as though it was moving very slowly. It stopped and he observed someone who was sitting in the front of the truck jump out of it and walked to the back of the truck proceed a bit down the road. The person returned to the truck and reentered it whereupon the truck drove off.

[15] Shortly thereafter he heard the shouts of someone and he together with two friends went to the person's assistance. On reaching the spot he observed the lad Kendol Fredericks lying on the ground in a pool of blood and he was crying. The pool of blood in which he was lying was about 60 feet away from where the truck stopped.

[16] Mr. Carlton Cunningham resides at Biabou in the State of Saint Vincent and the Grenadines. His evidence was that he is the owner of the motor vehicle number T 6544 and earns his living by trucking bananas. On the night in question, he was driving his truck up Stubbs Hill at a very slow speed since it was loaded with approximately 1,800 pounds of bananas. With him were 2 Conductors at the front of the truck. The Conductors were his sons Mr. Delroy and Elroy Cunningham. The road was clear and he did not see anybody in the road in front of his vehicle.

[17] However when he arrived at the Geest Shed in Kingstown and was waiting to deliver the bananas he was approached by a young man, a lady and a Policeman. The Police enquired of him who was the driver of the truck whereupon he admitted to being its owner and driver. The officer asked him whether his truck was involved in an accident that night he told the Officer that he was totally unaware of that. The policeman requested him to produce his Driver's licence and Insurance at the Stubbs Police station the next day and he complied.

[18] During cross examination Mr. Cunningham maintained that he did not see Kendol Fredericks on the night neither did he stop the truck as Kendol stated. At no time did anyone leave his truck at Stubbs. He said he learnt later on that Kendol was injured by his truck. He later stated during persistent cross examination that it was

not until the next morning, that is on the 31st May 2000 he learnt that a little boy was injured when he tried to “hop” the truck.

[19] He stated that he was unsure whether his lawyer wrote several letters subsequent to the 31st May 2000 on his behalf denying that his truck was involved in the accident since he had told his lawyer that he had learnt of the accident on the day after it occurred. He admitted that the back wheel has 4 tyres – two on each side and the width of the back tyre is approximately 19 inches. In his view if the back wheel of the truck were to run over someone’s foot it would “smash it up”. However he was sure that it was the back wheel that had run over Kendol’s foot. Later, he recanted and stated that Kendol was not on the road at the time and he did not see him yet he was able to say later on that his truck wheel did not run over Kendol’s foot rather it only “squeezed it”.

[20] Romando Andrews a young lad testified in support of the defence. He stated that on the night in question he saw the truck with bananas going up Stubbs Hill. It was not traveling fast and he saw Kendol Fredericks who was heading towards the Rona Supermarket “hop” onto the left side of the truck by holding onto the rope over the bananas and climbing onto it as it passed him. He remained on the left rear side of the truck for a while and then his foot slipped under the truck and Kendol fell off and cried.

[21] During cross examination he stated that he too was “hopping” the truck. He was sure that at no time did Kendol try to jump onto the ledge even though the accused occurred near to it. The ledge is not difficult to stand on. The point at which the accident occurred the truck had not passed the supermarket. He later stated that Kendol was riding on the truck and when it reached in front of his aunt’s gate Kendol jumped off the truck and his foot got damaged in the process. He maintained that Kendol had not purchased the items as yet but instead had hopped on the truck on his way home.

- [22] He was sure that he saw the conductor of the truck opened the door after Kendol had fallen but the truck later continued on its way. No one came out of it since the truck did not stop. He ran home because he was very scared.
- [23] Both Mr. Delroy and Elroy Cunningham testified in support of their father. They admitted to being present in the truck with their father on the night in question. Like their father, they did not see Kendol or anybody on the night in question. Elroy was of the view that the back of his father's truck is too high so that an eleven year old cannot hop on it from the back. They were both sure that at no time on the night in question did their father stop the truck at Stubbs nor open its door neither did anyone of them disembark the truck.
- [24] Mr. Delroy Cunningham maintained that people "hop" trucks from the back of the truck. He estimated the back of the truck T 6544 to be at least four feet off from the ground. He denied visiting Mrs. Claudette Frederick home and even further that he ever discussed the possibility of settling the matter with her.
- [25] In a civil action for negligence, the burden lies on Kendol Fredericks to establish on a balance of probabilities that Mr. Cunningham's negligence was the sole cause of the accident.
- [26] Examining the evidence as a whole, I am persuaded by Mr. Kendol Fredericks evidence together with that of his witnesses in preference to Mr. Cunningham's and his witnesses.
- [27] Kendol Fredericks was a very candid and straight forward witness who testified in a very unhesitating manner. At no time did he try to mislead the Court or give me any impression that he has never committed a wrong by "hopping" trucks. He was very fair to Mr. Cunningham and did not seek to embellish his story.

- [28] I accept Mr. Gosnel Aberdeen's evidence in its entirety. He is a simple man with no interest to serve, who simply said what he observed. I believe him when he said he saw someone leave the truck and go to the back of it and there after reentered it. He said no more than he saw. This is commendable.
- [29] I am afraid that I cannot say the same to little Romando Andrews who bent the truth throughout his testimony. The inconsistencies in his evidence are so numerous that it suffices to say that he is a very unreliable witness. I simply do not accept his version of the events most of which are highly improbable. This is coupled with the fact that he was very hesitating in answering during cross examination. It is rather unfortunate, but I must state that he lacks credibility. His evidence as stated earlier was extremely inconsistent.
- [30] I do accept Kendol Fredericks and Mr. Aberdeen's version of events to that of Carlton Cunningham and his witnesses. The clear inference is that after the collision the truck stopped and one of Mr. Cunningham's sons disembarked. He went to the back of the truck, saw Kendol there, he re-entered the truck and they drove away because they never felt that he would have been able to obtain the truck's number.
- [31] Mrs. Fredericks evidence is only material in so far as it shows that Kendol recognized the truck that injured him and that Mr. Delroy Cunningham had approached her with a view to settling the matter. I have absolutely no reason to disbelieve her.
- [32] The Cunninghams proved to be very unreliable witnesses. Mr. Carlton Cunningham in particular made a very bad showing in so far as his honesty is concerned. On several occasions during cross examination he recanted from his earlier positions. I was far from impressed with his honesty. The same holds for his sons Mr. Delroy and Mr. Elroy Cunningham. I simply do not believe them. Delroy's demeanour was consistent with a reluctant witness who was

uncomfortable with not speaking the truth. It was obvious to me that he had great difficulty in making some of the statements. His demeanour indicated to me that he was uncomfortable in providing me with his version of the events (his body language was consistent with that of an embarrassed person).

[33] In the circumstances, I find that on the night in question; Mr. Cunningham drove motor vehicle T 6544 in a negligent manner and collided with Kendol Fredericks who was approaching it from the opposite direction. I do not for one moment believe that Kendol Fredericks was in the process of “hopping” the truck when he was injured. Further, I am of the view that an 11-year old boy as stated Mr. Elroy Cunningham cannot “hop” such a big truck and that Kendol did not attempt to do so..

[34] Mr. Kendol Fredericks has established, on a balance of probabilities, that Mr. Cunningham failed to apply his brakes in time or at all so as to steer or control the truck and avoid striking him. Accordingly, Mr. Kendol Fredericks suing by his mother and next friend Mrs. Claudette Fredericks has proven his claim that Mr. Carlton Fredericks was negligent and solely responsible for the accident.

[35] There will be judgment for Mr. Kendol Frederick suing by his mother and next friend Mrs. Claudette Frederick against Mr. Carlton Cunningham to be assessed if not agreed together with costs.

[36] I commend all learned counsel for their assistance.

Louise Esther Blenman
High Court Judge

