

SAINT LUCIA

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

CLAIM NO. SLUHCV2003/0555

BETWEEN:

VINCENT CLERY

Claimant

and

(1) STANTHUR HIPPOLYTE
(2) REMBERT CHASSANG

Defendants

Appearances:

Mr. Shawn Innocent for the Claimant
Mr. Alvin St. Clair for the Defendants

2004: May 13, 29, September 22
September 27

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This is a claim for personal injuries and damages arising out of a motor vehicular accident which occurred on Tuesday, 12th March 2002 at about 5.20 p.m. on the Belvedere Road in the Quarter of Canaries.
2. The facts as I find them are as follows. The claimant, Vincent Clery was driving his blue Daihatsu Hi-jet mini van along the Belvedere Road when he stopped on a side road to sell bread to some customers. The side road is on the right hand side of the road facing a southerly direction. After he had finished selling his bread, he drove to the junction of the side road and the main road. Then he came out on to the main road, reversed to give himself enough clearance and proceeded uphill diagonally across the road to his left and proper side of the road. While he was almost at the center of the road, he noticed a blue pickup van coming from

the opposite direction. He continued driving towards his left and proper side of the road. Suddenly, he heard the screeching sound of brakes and then he felt an impact to the right rear side of his vehicle. The two vehicles were in collision.

3. After the collision, Mr. Clery's vehicle capsized and ended up on its roof with the front facing south. The blue pickup driven by the first defendant, Mr. Stanthur Hippolyte and owned by the second defendant, Rembert Chassang inverted on its left side in the middle of the road with part of the rear carriage protruding onto the left side of the road facing a northerly direction. Both vehicles were damaged beyond repair. Mr. Clery suffered some minor injuries and had to be taken to the Soufriere Hospital where he received six stitches to his left eye and was discharged the same day. Two of the five passengers in Mr. Hippolyte's pickup sustained minor injuries.
4. The Police were called to the scene and arrived some ten minutes later. Officer Melchoir Louis was assigned to investigate the matter. He enquired of the drivers. He found out that Mr. Clery had been taken to the hospital. Nonetheless, he proceeded to obtain a brief oral statement from Mr. Hippolyte. Officer Louis also took measurements in respect of the point of impact which Mr. Hippolyte showed him. He made notes in his pocket book. He then marked the position of the vehicles on the road with spray paint.
5. Three days later, Officer Louis returned to the scene to take more measurements. This time, both drivers were present. They did not agree on a point of impact and as a result, two points of impact were identified. Upon completion of his investigations, Officer Louis recommended that Mr. Hippolyte be prosecuted for careless driving. On further instructions from his superior officers, Officer Louis also charged Mr. Clery. The status of these traffic matters was not disclosed at this trial.
6. On 15th July 2003, Mr. Clery instituted these proceedings claiming special damages of \$11,000.00 with interest and costs. Mr. Hippolyte then counterclaimed for damages in the amount of \$22,150.00 and alleged that Mr. Clery was wholly to be blamed for the collision.

7. Each side relied on particulars of negligence in standard form. In his particulars of negligence, Mr. Clery alleged, among other things that Mr. Hippolyte was negligent in that he:
 - (i) drove too fast and or at excessive speed in all the circumstances of the case having regard to the nature of the road.
 - (ii) failed to keep to his left and proper side of the road.
 - (iii) failed to stop, slow down, swerve and steer clear or in any other way so as to manage or control his vehicle to avoid the said collision.

8. In Mr. Hippolyte's particulars of negligence, he alleged, among other things that Mr. Clery:
 - (i) proceeded on to a major road from a minor road at a time when it was unsafe so to do.
 - (ii) failed to stop, slow down, steer or otherwise control his vehicle so as to avoid hitting the other vehicle.
 - (iii) failed to take heed of proper traffic rules by ensuring that the major road was clear before proceeding on to the same from a minor road.

9. The accident occurred on a bright afternoon at 5.20 p.m. when visibility was clear. The road was pitched, dry and in good condition. Traffic was comparatively light on the day in question. The speed limit on that stretch of road is 35 m.p.h. The approximate width of the road where the accident occurred is 34 feet 4 inches.

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10. The two drivers' accounts of how the accident occurred are radically different. Mr. Clery says that the accident was all Mr. Hippolyte's fault because he [Mr. Hippolyte] was driving at excessive speed in the center of the road and lost control of his vehicle. He also says that Mr. Hippolyte was in his left and proper lane. Consequently, he has sued him for damages. Mr. Hippolyte says it was all Mr. Clery's fault because he proceeded on to a major road from a minor road without firstly ensuring that it was safe to do so.

11. At the trial, I heard evidence from both of the drivers and a number of witnesses including the Investigating Officer.

12. This is a civil action for negligence wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court and having had the opportunity of seeing and hearing the witnesses and visiting the scene of the accident, I found the evidence of Mr. Clery and his witnesses to be more plausible. I do not agree with Mr. St. Clair that Mr. Clery's evidence should be discarded in totality because there was no curb. Whatever nomenclature one ascribes to it, there was an intersection at the major and minor road. In particular, I was impressed with the evidence of Officer Louis. I found him to be honest and candid. On the other hand, I found Mr. Hippolyte to be untruthful and unreliable in his evidence. For example, he stated under cross-examination "you couldn't see Mr. Clery's vehicle until you arrive there". This was an untruth. Then he fabricated his evidence on speed and the point of impact.
13. Although there were two points of impact, Officer Louis concluded that he was more inclined to accept the point of impact shown to him by Mr. Clery because there was a higher concentration of debris from both vehicles whereas there was none at the other point of impact. In addition, several witnesses including Klent Abel testified to the fact that the collision occurred in Mr. Clery's lane. In my opinion, Mr. Abel was a critical witness because he was a passenger on board Mr. Hippolyte's pickup at the time of the accident. Mr. Abel testified that Mr. Hippolyte was driving 'fast' most of the way. Under cross-examination, he stated that although he does not have a licence, he drives vehicles and in his estimation, Mr. Hippolyte was driving at about 50 – 60 m.p.h. because he flew out of the vehicle after the collision. It is interesting to observe that both vehicles capsized after the collision and there was a brake impression from Mr. Hippolyte's vehicle measuring approximately 68 feet 2 inches. Mr. St. Clair attributed the irreparable damage and consequential inversion of both vehicles to the fact that the vehicles were relatively low in weight.
14. Mr. St. Clair next submitted that even if there were a brake impression of 68 feet 2 inches, according to Wilkinson on Road Traffic¹, it meant that Mr. Hippolyte was traveling at a speed of between 26 - 35 m.p.h. which was consistent with the speed limit on that road. It is to be noted that Wilkinson's stopping distances speak to driving on flat roads and not on steep gradients.

¹ 20th edition

In Saint Lucia, every driver should familiarize himself with some elementary traffic rules which pertain to our roads. One such rule is that once you are traveling downhill, you must reduce speed. In my opinion, Mr. Hippolyte should have reduced the speed of his vehicle on approaching the steep gradient.

15. Mr. St. Clair further submitted that whether or not the point of impact was in Mr. Clery's lane did not make Mr. Hippolyte negligent simply on that fact alone. He skillfully argued that Mr. Clery was the one who created a situation of emergency to which Mr. Hippolyte reacted as any reasonable driver would. Ingenious though this argument is, I am of the view that Mr. Hippolyte was traveling downhill at an excessive speed and he lost control of his vehicle. A visit to the scene of the accident proved extremely helpful as the court was able to see first hand the steep gradient and also, that visibility was clear for a distance of at least 60 feet. Mr. Hippolyte himself admitted that he first observed Mr. Clery's vehicle a distance of 57 feet 4 inches before the impact which should have given him sufficient time to slow down or stop in order to avoid the accident.

16. Mr. Innocent appearing as Counsel for Mr. Clery submitted that a driver on a major road owes a duty of care to vehicles exiting or traveling from a minor road on to a major road and Mr. Hippolyte was not entitled to rely absolutely on the fact that he was on a major road and had the right of way. I totally agree that Mr. Hippolyte was bound to exercise the right of being on the main road in a reasonable way. He had to watch and conform to the movement of other traffic which was in the offing, and he must take due care to avoid any collision.

17. I therefore find Mr. Joseph to be negligent on the day in question.

Contributory Negligence

18. Although not specifically pleaded, the only question that appears to me to be capable of debate is whether Mr. Clery was guilty of contributory negligence such as to reduce damages. As Denning L.J. said in *Jones v. Livox Quarries Ltd.*²:

² [1952] 2Q.B. 608 at 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 a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

19. The negligence alleged by Mr. Hippolyte is that Mr. Clery proceeded on to a major road without ascertaining or ensuring that it was safe for him to do so. He next alleged that Mr. Clery failed to keep any or any proper look out or to have any consideration for other vehicles which may reasonably have been traveling on the major road or any other road in the area.
20. It is trite law and elementary traffic rules that when a driver is coming out of a minor road on to a major road, it is his duty to ensure that it is clear before proceeding on to the major road. In my view, Mr. Clery was negligent in executing a cross in the road in a manner in which he said he did. Like Mr. St. Clair, I am also of the view that had he taken full advantage of the clearance and not proceed diagonally but instead proceed to his immediate left across the road, the accident may have been avoided. His failure to do so constituted negligence.

Apportionment of Damages

21. The remaining issue for my determination is apportionment of damages. Neither Counsel argued contributory negligence although I think that they tacitly agreed that both drivers were blameworthy for the accident. This is borne out by the fact that they both relied very heavily on the case of **Lang v London Transport Executive and Another**.³ In that case, Lang, a motor cyclist, emerged from a minor side road on to a major road and collided with an omnibus which was traveling along the major road. He was killed. The traffic on the major road was clearly visible from the side road from a distance of 40 yards from the mouth of the side road. The deceased was traveling at 20 m.p.h. along the side road; when he approached the junction, he did not slow down but carried on at the same speed, straight out on to the major road. The bus was traveling along the major road at a speed of not more than 20 m.p.h. It was held that the possibility of danger was reasonably apparent and the bus driver was negligent in not taking

³ [1959]3 All E.R. 609

the precaution of looking at the traffic in the side road as he approached it to see whether the deceased was still moving at 20 m.p.h. and obviously intending to cross the major road. The deceased was much more responsible for the accident than the bus driver and the responsibility was apportioned as to two-thirds to the deceased and one-third to the bus driver.

22. In the instant case, Mr. Clery proceeded from a minor road on to a major road. He then reversed and crossed the road diagonally when it was unsafe and dangerous so to do. As an experienced driver, he should have exercised more caution. I therefore find that the accident was partly the result of his fault, and damages recoverable by him fall to be reduced accordingly.

23. The negligence of Mr. Hippolyte is that he was driving downhill at an excessive speed and he failed to keep to his left and proper side of the road. In my judgment, Mr. Hippolyte was far more to be blamed for the accident than Mr. Clery. I therefore find Mr. Clery one-fourth to blame and Mr. Hippolyte three-fourths to blame.

Quantum of Damages

24. Mr. Clery claims an aggregate of \$11,410.00 as particularized in his statement of claim. His evidence in respect of quantum of damages was uncontroverted. The total award to Mr. Clery is \$11,410.00 less one-fourth making an award of \$8,557.50. Mr. Clery also claimed general damages for pain and suffering. No evidence was adduced to substantiate any claim falling under this head. I will therefore refrain from making any award.

25. The defendants claim an aggregate of \$22,150.00. This figure was uncontroverted. The total award to the defendants will be \$22,150.00 as counterclaimed less three-fourths making an award of \$5,537.50.

26. The most prudent thing to do is to offset the damages. I have therefore undertaken to do so by simple subtraction. In the result, my order will be:

- (1) Judgment for the claimant in the sum of \$3,020.00.
- (2) Interest at the rate of 6% per annum from 15th July 2003 to the date of payment.

- (3) Costs of \$6,000.00 will be awarded in the same percentage proportion. Having done again done simple subtraction, I will award costs of \$3,000.00 to Mr. Clery.

Indra Hariprashad-Charles

High Court Judge