

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 467 OF 2002

BETWEEN:

RAYMOND MCDOWALL

Claimant

AND

THEODORE SOLOMON

Defendant

Appearances:

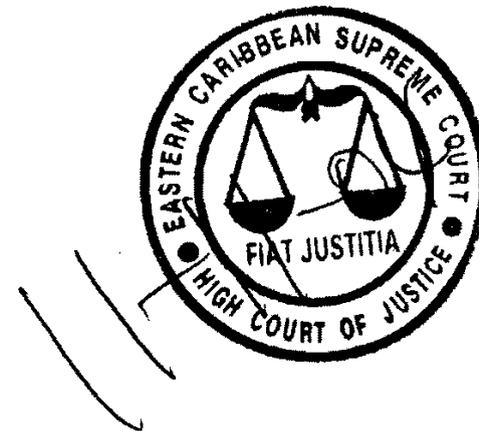
Mr. Perry Joseph for the Claimant

Ms. Roxanne Knights for the Defendant

2004: May 11
November 11

JUDGEMENT

- [1] **BRUCE-LYLE, J:** On the 18th day of March 2001 at Buccament, motor bus H 4852 owned and driven by the Claimant Raymond McDowall, and motor bus HA 677 owned and driven by the Defendant Theodore Solomon were proceeding in the same direction on the Leeward Highway from Layou towards Kingstown.
- [2] Both buses were carrying passengers who were on their way to attend political rallies being staged by the two opposing political parties for the March 2001 General Elections in St. Vincent and the Grenadines.
- [3] On reaching the area of Buccament an accident occurred when motorbus HA 677 ran into the rear of H 4852. Both vehicles sustained damages, but fortunately there were no serious injuries sustained by any of the passengers. Both drivers denied liability for the accident.



CLAIMANT'S CASE

- [4] The Claimant in his witness statement said that while traveling along the Buccament stretch, he noticed a woman at the side of the road whom he recognized. He indicated his intention to stop, pulled aside and began speaking to her. He further stated that his van was not full at that stage, and this was confirmed by other witnesses for the claimant. He stated in the said witness statement, that he was not traveling fast before the collision. He said while speaking to the woman in the space of about thirty seconds, he felt a loud bang at the rear of his vehicle and realized that he had been struck from behind by the defendant, whom he knew as "Scissors".
- [5] The Claimant, McDowall further stated that upon exiting his vehicle, "Scissors" or defendant Solomon said to the Claimant that he (the claimant) had given him a 'bad stop'. He said the police came soon afterwards and took measurements. It is significant to note at this stage that McDowall stated further that traffic going to Kingstown at the time of the accident was not heavy. This was between 3:00 p.m. and 4:00 p.m. He described the traffic as being free flowing. Both McDowall and Solomon described the stretch of road where the accident occurred as having a slight gradient upwards as one travels along it.
- [6] The Claimant called two witnesses who testified that traffic was not heavy but present on the road, contrary to what the Claimant had stated in his witness statement which served as his Examination-in-chief, that there was no traffic on the road at the time of the accident, and that he did not see any vehicles coming from the opposite direction and neither did he see any vehicle behind him when he purported to slow down and stop for the lady.
- [7] Both witnesses for the Claimant however, agreed that the Claimant pulled aside on the road to speak to a woman. But then none of these witnesses spoke to the woman attempting to board the bus. They however, also agreed that they saw the defendant's bus approaching from behind with speed, which the defendant denies speeding. Witness McDowall, for the Claimant testifies as to seeing the defendant trying to apply brakes, and the fact that he could see the defendant's lower body down to his thighs.

DEFENDANT'S CASE

- [8] The Defendant's case is that he was traveling behind the Claimant's bus in a long line of traffic from since they left the town of Layou. He said when they reached Buccament the Claimant McDowall stopped suddenly and without any warning, which the Claimant denies. Defendant stated further that as a result of McDowall's sudden stop, he collided into the rear of his bus. He insisted that McDowall never slowed down or indicated his intention to stop by using the indicator light or any form of hand signal.
- [9] The Defendant went further to state that when McDowall stopped so suddenly, it caused him, the defendant to apply his brakes, but it was too late and the accident occurred. He also denied that after the accident his bus began to roll backwards and that the conductor or anyone else placed a stone behind one of the back wheels or any of the wheels of the bus for that matter. He denied categorically that he was guilty of negligence on the day of the accident. He said the accident was caused wholly or in part by McDowall.
- [10] Under cross-examination defendant Solomon stated that whilst traveling behind McDowall's bus from Layou, he was approximately 40 feet away from it, but that sometimes they got a little closer to about 15 feet to 17 feet away from McDowall's vehicle. He stated that vehicles on the road including his vehicle were traveling at no more than 25 to 30 miles per hour. He further stated that he was about 15 feet away from McDowall's bus when McDowall stopped suddenly, and that had McDowall given him proper indication that he was going to stop, and had not stopped so quickly, he Solomon would have been able to stop in time thereby avoiding the collision.
- [11] Solomon went further to state that McDowall did not pull his bus aside at any time, but that he just stopped. The Claimant himself in his own evidence given in his witness statement and repeated during his cross-examination said the very first words Solomon said to him were that he McDowall gave him 'a bad stop'.
- [12] Solomon's two witnesses, Akham Myers who was the conductor on Solomon's bus on the day of the accident, and Zenna Williams a passenger in Solomon's bus basically and

materially supported the evidence given by Solomon. In fact Zenna Williams was not cross-examined by the Claimant's counsel at all. Counsel for Solomon Ms. Roxanne Knights submitted that Zenna Williams should be considered as the only impartial witness. I agree because she has neither worked for any of the parties nor is she a relative of any of the parties, as is the case in the two witnesses for the Claimant and Akhan Myers who was the conductor in Solomon's bus. I find the evidence of Zenna Williams to be crucial to the resolution of this case.

[13] She stated that she was sitting behind the driver of the bus and that from where she was sitting she could see the road ahead clearly. She further stated that the bus driven by Solomon drove behind McDowall's bus from Layou to Buccament. She said, McDowall's bus pulled up suddenly without any warning from the driver McDowall that he was going to stop either by way of the vehicle's indicator light or by any hand signals. She further stated that as a result Solomon could not avoid the accident or even pull onto the other side of the road, as there were oncoming vehicles from the direction of Kingstown.

[14] Zenna Williams stated categorically in her witness statement that she did not see McDowall's bus at any time stationary alongside any one before the accident occurred. She stated that both buses were in a long line of traffic when McDowall's bus stopped suddenly. She also further stated that after the accident all the passengers in Solomon's bus exited and at no time did she see Solomon's bus roll backwards, and neither did she see the conductor or anyone else place a stone behind any of the wheels.

[15] This witness as I said earlier in my judgement, was not cross-examined at all and as such her evidence stands unchallenged and has not been refuted in any way. Counsel for Solomon, Ms. Roxanne Knights has submitted that as a result of her not being cross-examined by the Claimant's counsel, Zenna Williams' evidence-in-chief by way of her witness statement dated and filed on 27th February 2004, should be deemed to be admitted in every regard by the Claimant. I agree to that for the reasons stated earlier in this judgement.

ISSUES

- [16] To my mind the issues to be determined in order to resolve this case are as follows: -
- (a) Whether the accident was caused solely by the Claimant or the Defendant or
 - (b) Whether both drivers were partly responsible for the collision and if so, the extent of the liability of each driver.
- [17] At the onset of the trial it was agreed that the trial would proceed on the issue of liability only, with Damages if any and Costs to be determined by the Master of the Supreme Court.
- [18] From the evidence it is clear that there were two political rallies being held in Kingstown, a mere couple of days before the General Elections of March 2001. The Claimant McDowall insisted that traffic on the road where the accident occurred was clear. He stated that there were no vehicles approaching from the opposite direction, nor were there any vehicles following him on the road up to the point where he stopped for the lady. The Defendant on the other hand stated that from Layou he drove right behind McDowall's bus at varying distances, as there was a long line of traffic proceeding into Kingstown owing to the two political rallies on that day. He said at the point in time of the collision he was about 14 feet from McDowall's vehicle when McDowall suddenly stopped without any indication of so doing.
- [19] There is no denying that the elections of 2001 March were hotly contested until the results were declared. In a situation where the two main political parties were having rallies in Kingstown on the same afternoon, it is inconceivable that the road, especially the Leeward Highway would be bereft of any traffic and could be described as 'clear'. I am inclined to believe the defendant Solomon on this score, to the effect that there was considerable traffic on the road, which he described, as 'bumper to bumper', and that he had followed McDowall's bus all the way from Layou to Buccament.
- [20] By extension therefore I am also inclined not to believe the Claimant when he says at the time he stopped for the lady there were no vehicles approaching from Kingstown and

neither was there any vehicle behind him at the time he purported to indicate, slow down, pull aside on the road and then stop. An examination of the claimant's evidence as posited by his witnesses would clearly support my inclination. Witness Timothy McDowall, a nephew of the claimant gave evidence to the effect that the people in the bus that was driving behind the one in which he was traveling were cheering and making noise. Then he states that the claimant having stopped he saw a large bus approaching at a distance of about 50 feet away with speed; and that the driver of the large bus appeared to be trying to apply the brakes. First of all if the bus traveling behind this witnesses bus was 50 feet away and he was inside the bus, how on earth could he hear the cheering and making of noise from passengers who were also in an enclosed bus. Secondly how could he have drawn the conclusion that the driver of the bus behind this witness' bus was trying to apply brakes. It is in evidence that the bus driven by Solomon was bigger and higher than McDowall's bus. How could Timothy McDowall and Odette James have seen and concluded that Solomon was trying to apply brakes.

[21] Yet, none of these two witnesses warned McDowall of the impending danger from this bus. I agree with Learned Counsel for Solomon that the reason why these two witnesses gave no warning of the impending collision to McDowall was because they did not know that an accident was about to occur from the circumstances they have described in this trial.

[22] Again only the Claimant McDowall testified to seeing the conductor of Solomon's bus place a stone behind the rear wheel of that bus to stop it rolling backwards after the collision. None of his witnesses saw that happen. Their evidence is silent on that issue. This is also denied by the Defendant Solomon and his conductor. From the preponderance of the evidence and on a balance of probabilities, having regard to all the circumstances of the case, I believe Solomon in regard to this issue of placing a stone behind the rear wheel of his bus by his conductor and his denial.

[23] What is interesting is that both McDowall and Solomon agree that after the collision the first words stated by Solomon to McDowall was that he gave him Solomon, 'a bad stop'.

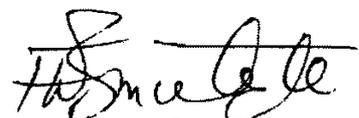
[24] The issues enumerated above to be determined to my mind are simple. Having analyzed the whole of the evidence, I am of the view that (a) there was a long line of traffic on the Buccament road that afternoon of the 18th March 2001 because of the two political rallies being held in Kingstown (b) as a result of this bumper to bumper traffic, the claimant McDowall did not exercise the requisite due care and attention required of him having regard to other road users when he suddenly stopped to speak to or give a ride to this lady. I believe from the preponderance of the evidence that McDowall stopped suddenly without giving any indication, electronic or otherwise, that he was going to do so. It is interesting to note that the claimant denies that there was any vehicle following him, and also denies that at the time he purported to slow down and pull aside and stop for the lady in question, there was no vehicle behind him. I find this position from the claimant hard to believe. I believe the defendant on this issue.

[25] There is also the evidence from the claimant under cross-examination that there were brake marks behind his vehicle leading to his rear wheels. To my mind this is indicative of a sudden, hard stop, when he decided to stop for the lady. I cannot by any stretch of imagination conclude that those brake marks were made by the defendant's vehicle as the other witnesses for the claimant tried to assert when they said they saw him struggling to apply his brakes to avoid the collision.

[26] Flowing from these premises as enumerated above in this judgement, I do not find the issue of contributory negligence applicable in this case. I find the claimant to have been wholly responsible for the accident in the circumstances gleaned from the evidence as a whole, and on a balance of probabilities.

CONCLUSION

I therefore find the claimant's claim to be without merit and dismiss it outright. Instead I find for the defendant on the issue of liability. Damages to be assessed by the Master of the Supreme Court with costs on the defendant's counterclaim.


Frederick V. Bruce-Lyle
HIGH COURT JUDGE