

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 2003/0241

BETWEEN:

CHARLES DAVID SOUTHWELL

Claimant

And

CLETUS CHRISTOPHER

Defendant

And

CLAIM NO ANUHCV 2003/0368

BETWEEN:

CLETUS CHRISTOPHER

Claimant

And

CHARLES DAVID SOUTHWELL

Defendant

Appearances:

Mr John Fuller for Mr Southwell

Ms George Lake for Mr Christopher

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2005: July 6th, October 14th
November 16th
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JUDGMENT

[1] **Blenman J:** These are two consolidated claims and counterclaims for damages that arise out a road traffic accident.

[2] Mr Charles David Southwell (Mr Southwell) is the owner of motor car number A 7222 while Mr Cletus Christopher (Mr Christopher) owns motor car number A 9712.

- [3] On 18th March 2003, at approximately 8.00pm Mr Southwell was driving his vehicle along Old Parham Road when a collision occurred between his vehicle and Mr Christopher's. As a result of the accident both vehicles were damaged but repairable. Each party blames the other for the collision and seeks to recover damages for the losses sustained.
- [4] Accordingly, Mr Southwell and Mr Christopher filed claims and counterclaim against each other. The claims were consolidated by Order of Court.
- [5] The parties agreed that that the claim would proceed in order to determine the issue of liability.
- [6] Each driver gave opposing evidence as to how the accident occurred, and accused the other of negligent driving thereby causing the accident. Both parties denied these allegations.
- [7] Mr Southwell says that he was driving from West to East along Old Parham Road, which is the major road. He was traveling at a moderate speed when he observed that a vehicle which traveling from South to North along a minor road that intersects Old Parham Road. As he was about to enter the intersection of the two roads, he blew the horn on his vehicle to indicate his presence since the traffic was heavy. While he was in the process of entering the intersection, Mr Christopher who was traveling from South to North along the minor road, entered the junction and while crossing the Old Parham Road came into the path of Mr Southwell's vehicle. Mr Southwell applied the brakes on his vehicle and blew his horn but despite his best efforts the vehicles collided.
- [8] During cross-examination, he said that he first saw Mr Christopher's vehicle when he was a few feet away from the junction. There was a heavy flow of traffic on the road. He maintained that his vehicle was not traveling fast. Infact, he was traveling at 30-35 miles per hour.

- [9] Mr Christopher says that he was driving his motor vehicle heading North from Skeritts Pasture, a minor road. He stopped in the vicinity of the intersection of Old Parham Road and the Clare Hall School Main Road and looked to the east and then west to see if it was safe to cross. In the distance and to the west he saw the lights of another vehicle in the vicinity of Walts Supermarket, on the Old Parham Road. At that time, the vehicle appeared to be approximately 150- 200 feet away from his vehicle. The other vehicle was traveling very quickly. He proceeded to cross the Old Parham Road in order to enter the Clare Hall Road when he heard a loud noise and felt an impact on the left rear of his vehicle. As a result of the collision, the left rear door and fender of his vehicle were damaged.
- [10] During cross-examination he denied that he was traveling at more than 30 miles per hour. He denied that other cars were in front of him. The only vehicle he saw that night was Mr Southwell's. He knew that he should not have proceeded until it was safe to do so. He said that the road had skid marks from Mr Christopher's car.
- [111] While the court was not presented with measurements, it visited the scene of the accident. The visit proved very helpful.
- [12] This is a civil action for negligence and the standard of proof is based on the balance of probabilities.
- [13] Examining the facts as a whole, I find that Mr Southwell was driving his motor vehicle heading along Old Parham Road. He was driving with some speed in his approach to the intersection between that road and the Clare Hall road. Mr Christopher was driving his vehicle along the minor road (Skerritt Lane) and wanted to cross Old Parham Road in order to get into the Clare Hall road. Having reached the intersection, Mr Christopher made an injudicious move when he drove his vehicle across the Old Parham Road into the path of Mr Southwell's vehicle. Mr Christopher misjudged the situation that thought his vehicle would have been able to make its way safely across the road. This is so obvious

particularly when one considers the fact that the front of Mr Christopher's vehicle collided with the left rear fender of Mr Christopher's vehicle.

[14] I have no difficulty in finding that Mr Christopher's vehicle crossed over the road into the path of Mr Southwell's vehicle when it was unsafe to do so. I accept that three quarter of Mr Christopher's vehicle had cleared the path of Mr Southwell's vehicle and this explains the fact for damage being sustained only to the left rear door and fender.

[15] I am satisfied that when Mr Christopher proceeded to cross the road it was not safe to do so. He miscalculated the situation and found himself crossing the path of Mr Southwell's vehicle.

[16] I am also satisfied that Mr Southwell ought to have brought his vehicle to a total standstill since he said that he saw Mr Christopher's vehicle crossing he junction. Had he stopped his vehicle he would have averted the accident. As stated earlier, I have no doubt that he was proceeding at a speed. My view is fortified by skid marks from his vehicle and the distance at which he first saw Mr Christopher vehicle. He was proceeding with some dispatch and therefore could not slowdown or stop his vehicle in order to avoid the collision. He thereby contributed to the accident even though minimally.

[17] In the circumstances, I am of the firm view that Mr Christopher was substantially the cause of the accident due to his negligent driving. I apportion 70 percent liability for the accident to him and 30 percent liability to Mr Southwell.

[18] For the above reasons, I make the following order:

- (1) I give judgment for Mr Charles David Southwell on his claim against Mr Cletus Christopher to the extent of 70 percent of the damages together with prescribed costs, unless otherwise agreed.
- (2) I also gave judgment for Mr Cletus Christopher against Mr Charles David Southwell to the extent of 30 percent of the damages together with prescribed costs, unless otherwise agreed.

(3) Damages to be assessed if not agreed.

[19] I thank both learned counsel for their assistance.

Louise Esther Blenman
High Court Judge