

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 2003/0364

BETWEEN:

HAROLD JOSEPH

Claimant

And

EWART THOMAS

Defendant

Appearances:

Mr George Lake for the Claimant

Ms Turkessa Benjamin for the Defendant

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2005: June 7th
November 21st
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JUDGMENT

- [1] **Blenman J:** This is a claim and a counterclaim arising out of a road accident.
- [2] Mr Harold Joseph (Mr Joseph) owns a tractor and trailer, registration Number C 860 (the tractor) which he utilizes to earn his living by moving chattel houses. On October 20th 2002, at around 7.00pm, he was driving the tractor along Kentish Road heading from south to north when a collision occurred at the junction of Kentish Road and Vivian Richards Street between his vehicle and a bus re registration No. C 258 (the Bus) owned by Ewart Thomas (Mr Thomas). The bus is operated commercially. At the time of the accident the bus was driven by Mr Everton Martin (Mr Martin) in the course of his employment by Mr Thomas.
- [3] Mr Joseph says that Mr Martin drove the bus negligently and was the sole cause of the accident. The tractor was damaged and required replacement parts. Mr Joseph was unable to obtain replacement parts in Antigua and Barbuda and had to purchase them in England. He seeks to be compensated for the losses that he suffered due to his not being

able to earn a living for three months by driving the tractor. He claims \$31,014.00 in damages together with costs.

[4] Mr Thomas denies that Mr Martin drove the bus negligently and caused the accident. He says that the accident was caused wholly or in part by Mr Joseph's negligent driving which resulted in his bus being damaged. He suffered losses in the sum of \$14,941.71 for which he counterclaims together with costs.

[5] The issues that arise for my determination are:

- (1) Who is liable for the accident.
- (2) The amount of damages that I should award.

[6] Each side gave different versions as to how the accident occurred and sought to persuade me as to the correctness of that position.

[7] Mr Joseph gave evidence on his own behalf and called his mechanic Mr Leroy Lynch (Mr Lynch) in order to prove the cost of repairing his tractor.

[8] Mr Thomas, Mr Martin and Police Constable 544 Gordon provided evidence on behalf of the defendant.

[9] This is a civil matter and the standard of proof required is on the balance of probabilities. The burden of proof lies on the party who is alleging specific facts to prove them.

[10] Mr Thomas was not present at the scene of the accident and was not in a position to provide me with any reliable information as to how the accident occurred. His evidence as to cost of repair was not contradicted. He said that it cost him \$12,541.71 and I accept this aspect of his evidence. He also claims loss of use for 12 days at \$200.00 per day.

[11] PC Gordon who testified did not provide me with any reliable information in relation to the collision. He provided no measurements and instead proffered inadmissible evidence as

to who in his opinion was the cause of the accident. I find his evidence unhelpful, to say the least.

[12] Mr Joseph says that he expended \$15,714.00 in repairing the tractor. He also claims loss of use for 90 days at \$170.00 per day. Mr Lynch agreed to the cost of repairing the tractor and the fact that the parts were unavailable in Antigua and Barbuda so he had to order them from England. He says that the tractor was down for a little more than three months. Mr Thomas did not challenge this evidence. I accept this evidence.

[13] My determination of this matter is based essentially on whose evidence I accept. In a word, the credibility of the Mr Joseph vis-à-vis Mr Martin became a crucial factor in the assessment of the evidence. This must be taken together with my evaluation of the nature of damage both vehicles sustained.

[14] Mr Joseph says that he was driving his tractor along Kentish Road heading north and was in the process of turning on to Vivian Richards Street. The tractor had attached to it a 38 feet trailer. He came to a standstill and in order to turn the corner he had "to get suitable clearance in front." He was in the process of moving but as passengers were crossing the road, he brought the tractor to a standstill in order to enable them to pass. Whilst the tractor was in a stationary position, he saw the bus coming from a distance of about 200 feet by this time the tractor had enough room to make the turn. The bus swerved into the right side front of the tractor while the latter was at a standstill. As a result of the collision the front end and right wheel of his tractor were damaged.

[15] There was some suggestion in cross-examination that he had been drinking but there was no evidential basis for this.

[16] Mr Martin says that he has been driving from 1994 – 2002. On the night in question, he was driving the bus heading along Kentish Road. Many passengers were in the bus, as he had just left the bus terminal. He was on his proper side of the road and was driving his vehicle at a normal speed. There was a vehicle in front of him that was heading in the

same direction as he was. The vehicle turned left after that, he continued along Kentish Road when he saw the lights of a vehicle coming towards him. By this time he had passed the intersection of Kentish Road and Vivian Richards Street when the tractor collided with the right side of the bus hitting it just behind the driver's door, even though he had swerved the bus to the left so as to prevent a collision. He denied that the bus collided with the tractor while the tractor was stationary. There was some suggestion in cross-examination that Mr Martin was driving quickly but he denied this.

- [17] Learned Counsel Mr George Lake appearing on behalf of Mr Joseph referred me to the following cases: **United Africa Co. Ltd v. Owade** [1957] 3 ALL E.R 216; **Donoghue v. Stevenson** [1932] AC 562 and **Tiddy v. Batman** [1934] 1 KB 319.
- [18] For her part Learned Counsel, Ms Tessa Benjamin appearing on behalf of Mr Thomas cited the following cases: **Simpson v. Peat** [1952] 1 ALL ER 442; **Manzoni v. Douglas** [1880] 6QB 145 and **Parkinson v. Liverpool Corporation** [1950] 1 ALL E.R 367
- [19] Drivers of vehicles on a road owe a duty of care to other road users. When two persons are using the road and are moving in relation to each as to involve the risk of collision, each owes the other a duty to move with care. **See Simpson v. Peat.** Driver of motor vehicles have a duty to keep a proper look out for other road users.
- [20] The evidence of PC Gordon was valueless. There is no dispute between the parties as to the nature of damage each vehicle sustained. I am familiar with the site of the accident.
- [21] The facts as I find them are as follows: Mr Joseph was turning his tractor heading from Kentish Road on to Vivian Richards Street and driving at a slow speed across the path of the bus when the right front of his vehicle came into contact with the right side of the bus. At the time of collision the bus was in the process of passing the tractor. The bus did not stop since the driver must have felt that he should proceed based on the fact that he had the right of way. I am unconvinced that the bus "slammed into" the tractor. To contrary, I have no doubt that the tractor came into contact with the right side of the bus when the bus

was moving. Luckily for both drivers the damage to each vehicle was not extensive as it might have been if the bus had in fact "slammed into" the tractor.

[22] I am satisfied that Mr Joseph made an injudicious turn when it was unsafe to do so. Mr Martin was also negligent since he saw that the tractor was turning and should have stopped the bus instead he choose to continue. I believe that he pulled his bus to the left but it was too late. He ought to have proceeded with caution and given himself sufficient time to bring the bus to a halt if the need arose, as obviously to me, it did. However, I am convinced that Mr Joseph was more blameworthy for the collision. I am firmly of the view that Mr Joseph's injudicious act of driving the tractor across the path of the bus was mainly responsible for the collision and hold that he was 70 percent to blame for the accident.

[23] I find therefore both drivers were negligent in the driving of their respective vehicles and thereby caused the collision. I apportion 70 percent liability to Mr Joseph for the damage suffered since I am the considered view that he should take more responsibility for the collision, he ought to have remained at a standstill until it was safe to proceed. Mr Martin is 30 percent responsible for causing the accident even though he had the right of way he was under a duty to bring the bus to a halt and so take some defensive measure in order to prevent the collision.

[24] I have no difficulty based on the uncontroverted evidence led that each parties suffered the losses they seek to recover.

[25] For the reasons stated, I make the following orders:

- (1) Judgment is entered for the Mr Harold Joseph on his claim against Mr Ewart Thomas the extent of 30 percent of his proven damages. I therefore award him judgment in the sum of \$9,304.20 together with prescribed costs.
- (2) Judgment entered for Mr Ewart Thomas on his counterclaim against Mr Harold Joseph the extent of 70 percent of the damages. I therefore award Mr Ewart

Thomas damages in the sum of \$10,459.00
together with prescribed costs.

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

Louise Esther Blenman
High Court Judge