

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 227 OF 2004

BETWEEN:

TERRANCE DASENT

Claimant

And

DAVID LEGAIR

Defendant

Appearances:

Mr. Stephen Williams for the Claimant

Mr. Ronald Marks for the Defendant

2005: February 23

2006: April 4

JUDGMENT

- [1] **BRUCE-LYLE, J:** The Claimant Terrance Dasent has brought this action against the Defendant David Legair as a result of a motor vehicle accident which occurred in Kingstown in the vicinity of the Old Public Library on the 11th May 2003. This accident involved motor vehicle PJ 148 owned and driven by the Defendant.
- [2] The Claimant claimed that he received injuries when he was struck by the car driven by the Defendant. He also claimed that the Defendant drove negligently and was the cause of the accident. This the Defendant denies and asserts that it is the Claimant who ran across the road and caused the accident.
- [3] At the onset of the trial both parties and the Court agreed that the only issue to be determined would be that of liability with assessment of damages and costs to be determined by the learned Master at a later stage.



[4] There is no dispute that the accident took place on a straight road in Kingstown in the vicinity of the Old Public Library at about 1:30 a.m. on the 11th day of May 2003. There is also no dispute that PJ 148 driven by the Defendant struck the Claimant causing injury to the Claimant.

[5] From this scenario the Court has to determine:

- (a) whether the accident was caused solely by the Claimant or the Defendant and
- (b) whether the Claimant was in any way contributorily negligent for the accident and if so the extent of the negligence.

To resolve these issues the credibility of both the Claimant and the Defendant will have to be tested thoroughly as this case revolves most entirely on that issue.

CLAIMANT'S CASE:

[6] The Claimant gave evidence on his own behalf and called no witnesses. In his witness statement the Claimant said that on the 11th May 2003 at about 1:30 a.m. he had just bought a Pepsi drink from a fellow who operates a bar on the left hand side of the road just after one passes the Barclays Bank building in Kingstown, named Phil. After purchasing the drink the Claimant Dasent said he was about to cross the road over to the side of the Old Public Library. The Old Public Library is on the right hand side of the road which is a two lane road with vehicles traveling in one direction to Forrester's Corner junction.

[7] He stated that there was a fight going on further up the road closer to where the video store was but he ignored the fight and did not pay attention to it. He said before he crossed the road to meet his friend, he looked right and left of the said road to see if any vehicle was coming. He saw no vehicles passing in the road or approaching where he was standing. He then proceeded to cross the road to go in the vicinity of the library to meet his friends.

- [8] Dasent said he had almost crossed the road and was about to step onto the sidewalk when he received a lash on his right foot and went up into the air and fell on the windshield of a car and then onto the sidewalk where he finally landed. He interestingly stated that he was not under the influence of alcohol at the time of the accident. He said it was while in the hospital that he learnt that the Defendant was the person driving motor vehicle PJ148 which had struck him. He further denied that he was in any way negligent or caused the accident in any way.
- [9] Under cross-examination the Claimant Dasent admitted that the pedestrian crossing in that area was near to the Barclays Bank Building and that he did not use that pedestrian crossing at the time of the accident. He also said that in crossing the road he did not run across the road to witness a fight because there was no fight going on while he was crossing the road. He also stated that it was after he was struck by the vehicle that he saw the two men fighting in the vicinity of the video store. He also stated that when he was struck the blow knocked him unconscious.
- [10] In analysis of the Claimant's evidence before the Court by way of his witness statement and viva voce evidence under cross-examination, I would agree with Learned Counsel for the Claimant that although the Claimant did not use the pedestrian crossing the only inference should not be one of negligence. The Court takes judicial notice of the fact that people cross roads even where there are no pedestrian crossings, and even where crossings are present, they are sometimes not used. The Claimant cannot be held to be negligent in not using the crossing. What I have to concern myself with is whether it is true that he took the necessary precautionary steps by looking along the road to see whether any vehicle was passing or approaching before he crossed the road.
- [11] There was also some confusion in the Claimant's evidence under cross-examination pertaining to whether he had admitted to the Police whilst he was at the hospital that he was drinking alcohol that night and was drunk, and that that was what had caused the accident. There was some confusion in his mind as to whether Counsel for the Defendant was referring to a statement he had given one Mr. Wright a private investigator, which he

denied, and his witness statement. After being asked whether he had given the Police and Mr. Wright a statement admitting that he was drinking and admitting also that he ran across the road to witness a fight and that had caused the accident, he was then shown his witness statement which he denied making. Under re-examination by his Counsel the Claimant stated that he was an illiterate person – that he could not read nor write but could recognize his name if he saw it.

[12] Learned Counsel for the Claimant has tried to pass this confusion off as being a result of his client's illiterate status and the fact that Learned Counsel for the Defendant did not specifically put to the Claimant and identify which of the statements, the contents of which he was putting to the Claimant and that this led to confusion on the Claimant's ability to answer questions put to him pertaining to the statements properly.

[13] To clear up this notion being sought as an explanation to the "confusion" in the Claimant's mind as regards the two statements I refer to the Claimant's evidence under cross-examination. He says,

"I never gave the police a statement. They came to me in the hospital on 22nd May 2003. They spoke to me. I did not give them a statement. I told them I did not run across the road and that no fight was going on across the road."

On being referred to paragraph three of his witness statement the Claimant said,

"I did not tell the police what is contained in the statement. I told my lawyer so. When I was hit by the car two men were fighting. When I received the hit I was knocked unconscious. The police took me to the hospital. I don't know for sure if it was the police or others who took me to the hospital. I spoke with Mr. Wright of Alders Investigative Services. The fight took place after I was struck by the car."

Somewhere else later in his evidence under cross-examination the Claimant states:

"I don't know what happened after I received the blow but I later saw the fight after being hit."

It is at this stage that the Claimant is shown his witness statement – he identifies it as the statement taken in the hospital and that he was forced to sign it. Then he says,

"My friend told me about the fight. This statement is not the truth. No fight was going on before."

[14] I am afraid that the only inference I can draw from the convoluted evidence I have related above is that the Claimant is the architect of his own confusion. He very well knew to my mind which statement he gave the police at the hospital, which one he gave to his Counsel (witness statement), and which other statement he gave to Mr. Wright of Alders Investigative Services. From what he has said under cross-examination it is clear that when cornered with statements he had given to the various parties after the accident he sought to rectify the damage done when he realized that he had at one time stated that he saw the fight before being hit by the Defendant's car, and then in another instance that he saw the fight after being hit before he became unconscious, and then in another vein that his friend told him about the fight when he was at the hospital. However much he tried he sunk further into the quicksand of lies I am convinced he has put to the Court. There was no confusion on his part as far as I am concerned. If there was any, it was of his own making when he realized he had cornered himself with his inconsistent story as to how the accident happened.

[15] The Defendant gave evidence on his own behalf in support of his defence and counterclaim and relied on his witness statement. He stated that on the 11th day of May 2003 at about 1:30 a.m. he was driving PJ 148 along Back Street in the vicinity of Heritage Square and the Old Public Library at a moderate pace. He further stated that just opposite the small gate of what used to be known as Reigate, two persons suddenly ran from the Reigate side of the road and into the path of his vehicle. He said he applied his brakes, but the Claimant who was the closest to his vehicle was struck by his vehicle and thrown onto the bonnet of the vehicle and its windshield and when the vehicle stopped the Claimant rolled and fell to the right side of his vehicle.

[16] Under cross-examination the Defendant stated that he was traveling on the left lane of the road in the vicinity of the Old Public Library when the Claimant ran across the road. He said he struck the Claimant when the Claimant was $\frac{3}{4}$ way across the left side of the road. This would place the Claimant before he was struck somewhere more to the middle of the two lane road than more to the left side of the road. But he went further to state that when the Claimant was struck he ended up in the vicinity of the side walk of the Library which

would be on the right side of the right lane of Back Street. I do not find this to be strange in any way since the Defendant went further to explain that after being struck the Claimant got up and was struggling and then fell down unconscious. I do not see this as indicative of the Defendant speeding. The Defendant said as the Claimant was struck whilst running across the road he landed on the bonnet and windshield of the moving vehicle which would then have thrown him onto the right side of the road.

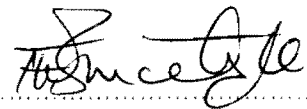
[17] I cannot see how the Claimant's version of events can be more believable than that of the Defendants, especially in view of the inconsistencies in the Claimant's narration of events. To my mind credibility of the witnesses is an issue in this case. I find the Defendant's version to be more credible, having regard to all the circumstances of the case and on a balance of probabilities.

[18] I accept that time and time again, drivers drive in a reckless manner without any consideration for the presence of other road users or pedestrians. But this is not what happened in this case. I believe the Defendant to have been driving at a moderate speed in that area mentioned at 1:30 a.m. on the day in question. I agree it is not uncommon for people to be in that particular area at that time of the night, but it is my view from the evidence adduced, that the Defendant exercised the requisite standard of care and caution and did not fail in his duty. The Defendant was in no way contributorily negligent for what happened that night. I attribute the cause of the accident purely on the part of the Claimant.

[19] I will also say that the absence of a witness statement from Private Investigator A. Wright and the absence of a statement from a police officer who investigated the case did not detract from the Defendant's case. The Court did not consider the report from Alders Investigative Services as part of the evidence. What is contained therein is neither here nor there and has no bearing on the evidence the Court was required to consider in this case.

ORDER:

- [20] In the circumstances the Court finds favour with the Defendant's case and counterclaim and dismisses the Claimant's claim on the issue of liability. Damages are to be assessed by the learned Master of the Supreme Court with costs, on a date to be fixed by the Registrar.

A handwritten signature in black ink, appearing to read 'F. Bruce-Lyle', written over a dotted line.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE