

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

CIVIL SUIT NO. DOMHCV2004/0324

BETWEEN:	Maria Joseph	Claimant
	AND	
	Cleve Paul	1 st Defendant
	Terney St. Luce	2 nd Defendant

Appearances: Ms. G. Dyer, for the Claimant
Mr. J. Prevost, for the Defendants

21st – 22nd March, 2006

DECISION: 10th April, 2006

JUDGMENT

[1] The Claimant lives at Salisbury, Dominica. She is 34 years old. She states that on 18 December, 2003, at about 7:00 pm, she was standing on her left side of the road at Salisbury outside a shop known as Wavel's shop. According to her, there were two vehicles parked on the same side of the road. She said there was a space between the two vehicles and that she was leaning on the front side of one of them.

[2] The Claimant continued that, while she was there and in the above-mentioned position, the second Defendant drove a motor car, PA627 up the hill on the same road where she was. That motor car, it has not been disputed, belonged to the first Defendant who was a passenger in it. It was also not disputed that, at the same time the first Defendant was driving up the hill, a motor bus was coming down the same hill from the opposite direction. Because of the presence of the two vehicles on the Claimant's side of the road, the motor bus and the motor car could not pass simultaneously and, so, one of them had to give way to the other.

[3] The Claimant's evidence is that the second Defendant gave way by reversing down the hill. In her words, he did so "at a speed" and attempted to pull into the space between the two vehicles parked on her side of the road. She stated that, in maneuvering into the space, a wheel of the motor car which was being driven by the second Defendant hit her on her ankle. She said that she went to the second Defendant and told him "Look, you hit me." This is how her evidence continued when she was being examined in chief:

"Turney St. Luce told me he was sorry. Then afterwards, Cleve Paul opened the door of the vehicle and said, "Let me see your foot." I showed him my left ankle. There was a scratch and he told me if I would like to go to the Casualty. I told him "I guess I am ok." That was it."

She said that she understood "Casualty" to mean the hospital.

[4] The Claimant has since filed a claim for damages against the first Defendant vicariously and the second Defendant primarily for damages, costs, interest on the damages and further or other relief. At the trial, however, the Court was asked to consider the question of liability only; and, depending on the Court's finding, to leave damages to be assessed at a later stage. I acceded to that request.

- [5] What is the Defendants' version of the facts? Both Defendants agree that they were driving along Salisbury Road at the alleged time; that the second Defendant was driving the motor car as alleged by the Claimant; that the first Defendant was the owner of the motor car and was a passenger in it; that they met a motor bus coming towards them and that the second Defendant reversed. They disagreed, however, that there were only two vehicles on the side of the road where the Claimant was. They claimed that there was a long line of vehicles parked on that side of the road and that there was no parking space between any of them. They said that a door of one of the parked vehicles was open and that the Claimant was standing on the road in the doorway of that vehicle. They denied that the second Defendant struck the Claimant as she alleged or at all. Rather, both Defendants and their witness, Devon Esprit, maintained that the Claimant never complained to the Defendants of having been struck by the motor car PA627. They consistently stated that, at the scene, Claimant accused the second Defendant of almost running over her foot.
- [6] In addition to the evidence of the parties already referred to, the Claimant said that within two minutes of the Defendants leaving the scene, her ankle began to pain her and she could not walk. She mentioned that she was in pain that night.
- [7] It must be recalled that the Defendants had offered to take the Claimant to the hospital and she declined their offer. I find her refusal to be most unfortunate as it would have been in her interest to seek immediate attention if, indeed, the wheel of a vehicle had struck her ankle while that vehicle was reversing "at a speed", I also find it strange that she was stricken with an inability to walk so soon after the Defendants left the scene. What I also find baffling was that although, from the evening of 18 December, 2003 the Claimant could not walk on her left foot, yet she did not seek medical attention until 22 December, 2003, that is to say nearly one week after. She appeared, on the witness stand, to be a very intelligent person and very adept at anticipating the questions put to her in cross-examination.

[8] The Claimant had a boyfriend by the name of Joseph Bruno. Bruno had lived in England for 34 years which is as long as the Claimant's age. He passed away on 24 February, 2006. The Defendants went to the Claimant's home on at least two occasions, apparently to inquire of the Claimant's welfare. It is not clear if they were summoned there or went voluntarily. The Claimant related that Bruno, who was there, told them that in England they would have been sued for \$70,000.00. She denied that Bruno told them that he would take \$20,000.00 from them. She said that the Defendants promised to obtain a bank loan and compensate her.

[9] The Claimant told the Court that the second Defendant suggested that since he, the second Defendant, worked at a Bank, that he and the first Defendant between them could obtain a loan and compensate the Claimant. The second Defendant, now 22 years of age, is a teller at FirstCaribbean International Bank. However, both Defendants strongly denied that they promised to obtain a loan for the purpose of compensating the Claimant. They insisted that the suggestion of a bank loan was made by Joseph Bruno, the Claimant's boyfriend. They also insisted that the injury to the Claimant was one she suffered in an earlier incident involving one Garfield Paul, the first Defendant's uncle.

[10] While the Claimant was under cross-examination by Mr. Prevost, she said:

"The Defendants promised to come back and see me and bring the money. Then after that I saw no sign of Turney or Cleve Paul. That is why I had to call Cleve Paul to let him know I was waiting."

On being further questioned she said:

"I don't know how much money they were bringing. I did not settle for any amount. Not true I am trying to get money out of the Defendants for something that never happened."

[11] The suggestion relating to the obtaining of a bank loan also surfaced during the evidence of Police Constable Neville Samuel, who gave evidence on behalf of the Claimant. Constable Samuel has been a policeman for twenty-four years. He is attached to the Salisbury Police Station. This is what he said in paragraph 5 of his witness statement:

“On the evening of Monday 22nd December 2003, Terry St. Luce came to Salisbury Police Station and said to me that he was driving car registration number no. PA627 on Salisbury public road on 18th December 2003 about 19:30 hours (7:30 pm) and passed on a girl foot, but he was trying to see if he will get a little loan to pay her.”

The impression I am left with is that the second Defendant simply walked into the police station and made that statement to Constable Samuel. That to me seems somewhat improbable.

[12] Constable Samuel admitted under cross-examination that he did not record the statement he alleged the second Defendant made to him. It is my view that a police officer, however inexperienced, would have recorded any statement made to him about a traffic accident. He admitted that he never visited the scene of the alleged accident. His investigation seemed to have begun and ended with a report the Claimant made to him earlier on the same day that the second Defendant spoke to him. Without more, he preferred a charge of careless driving against the second Defendant.

[13] Both Defendants were together at the Salisbury Police Station when the second Defendant spoke to Constable Samuel. They said that Constable Samuel was levelling accusations at the second Defendant who never told him that he drove the vehicle on the Claimant's foot or that he was trying to obtain a loan to pay her. They said that it was Samuel who told him to settle the matter. The second Defendant said that he reported to Constable Samuel that he was being accused of driving on the Claimant's leg.

- [14] Constable Samuel denied that he was a friend of the Claimant's boyfriend, Joseph Bruno. However, the first Defendant claimed that he often saw Constable Samuel in Bruno's bar drinking and that he often saw his car at Bruno's house. In any case, the Defendants became worried and concerned about the manner Samuel was treating them and their report and they left and made the report at the Police Station in Coulibistrie. This act seems to confirm a lack of confidence in Constable Samuel by the Defendants who, they claimed, was a friend of the Claimant's boyfriend.
- [15] I am not impressed with the manner in which Constable Samuel handled the investigation of the incident and I am more inclined to believe the Defendants that he was a friend of the Claimant's boyfriend. I am also satisfied that they had no confidence in him and decided to report to another police station.
- [16] In conclusion, I am most concerned as to whether the Claimant's claim is a genuine one. It is unbelievable that after having refused to be taken to the hospital by the Defendants she was unable to walk and that this incapacity set in a mere two minutes after the Defendants left the scene of the alleged accident. I also find it difficult to accept that someone who was struck on the ankle by the wheel of a car which was reversing "at a speed" and was unable to walk as a result of the blow would allow between four to five days to elapse before seeking medical attention when there was an offer to make it available at the time of the accident. Moreover, I find the investigation of the police to be sloppy and biased, I am consequently unable to make a finding in the Claimant's favour. It is probable that that the injury was an old one as the Defendants contested. The Claim is therefore dismissed with costs to the Defendants in the sum of \$5000.00.

LEWIS S. HUNTE J. [Ag.]