

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

SAINT LUCIA

CLAIM NO. SLUHCV2005/0202

BETWEEN:

ROBINSON RISMAY

Claimant

and

[1] JEREMIAH MARTELLY
[2] MERVIN DALSON
[3] EMMANUEL DALSON
[4] AZARIAH PERSAD

Defendants

Appearances:

Mr. H. Nicholas for Claimant
Ms. D. Theodore for Defendants

2006: October 23, 24

JUDGMENT

Introduction

[1] **EDWARDS, J.:** This claim and counter claim arise from an accident which occurred along the Micoud highway in the vicinity of the Sadoo Gas Station at about 10:00 a.m. on Monday 6th September 2004.

Background Facts

- [2] The Claimant Mr. Robinson Rismay is 65 years old. He was driving his White Nissan pick-up registered T.C. 3144 from the direction of Castries towards Vieux Fort on his left side of the highway.
- [3] On approaching the Sadoo Gas Station he put on his right indicator; intending to go into the Gas Station on his right side of the highway.
- [4] His evidence is inconsistent as to whether he had seen the mini bus registered M757, owned by Defendants Messrs Mervin Dalson, Emmanuel Dalson and Azariah Persad, and driven by Defendant Mr. Jeremiah Martelly, approaching from Vieux Fort, towards Castries, before he began turning across the Road.
- [5] In his witness statement he stated that he had seen this bus a good distance away, so he indicated right and began turning across the road towards the Gas Station. He also said that this bus he saw coming from Vieux Fort had a lot of speed, and it hit his pick up, while he was stationary across its path, where he had stopped to allow a grey jeep to come out of the Gas Station Compound.
- [6] However, at the trial he testified that he had not seen Mr. Martelly's mini bus coming before he turned right across the Road. He testified that there were no vehicles ahead of him traveling towards Vieux Fort. There was at least 1 motor vehicle traveling behind him while he was negotiating the turn into the Gas Station, he testified. This motor vehicle passed him after he had turned and stopped to await the exit of the grey jeep from the Gas Station.
- [7] At the time when he was stationary awaiting the grey jeep's exit from the Gas Station, Mr. Martelly's mini bus collided with Mr. Rismay's pick-up.

- [8] The front of the minibus apparently collided with the left front door, left rear box of Mr. Rismay's pick-up. The impact pushed the pick up into the grey jeep, resulting in further damage to the pick up's right front fender and right front light. The left door glass and front windshield of the pick up was also damaged.
- [9] According to Mr. Martelly he was traveling about 40 to 50 mph along the straight highway on his proper side of the road. Suddenly, he said, he saw Mr. Rismay's pick up swing from Mr. Rismay's driving side of the Road over to his side of the Road in front of his path and suddenly stopped across his path.
- [10] Mr. Martelly said he blew his horn, and applied his brakes when Mr. Rismay did this. However because he was so close to Mr. Rismay's vehicle; he was unable to stop and the collision took place.
- [11] Both drivers testimony conflict regarding the existing condition of the road at the time of the accident. Mr. Rismay said the road was wet while Mr. Martelly said the weather was sunny and the road was dry.
- [12] Mr. Martelly admitted that at about 100 yards away approaching the point of impact, there is a school on the right side of the road. He denied that at the date of the accident there was a pelican crossing with lights there, or a sign saying 20. He denied seeing any sign marked SLOW about 50 yards from the point of impact. Such signs now apparently exist in that area. He testified that there was a wall to the left side of the road as he approached Mr. Rismay's pick up, which had suddenly stopped across his path. Apparently, the vehicle that was driving behind Mr. Rismay's pick up had continued traveling towards Vieux Fort at the time of the collision. Mr. Martelly said he therefore could move neither to the right or the left to avoid colliding with Mr. Rismay's pick up. All he could do is to blow his horn and brake.

[13] He admitted that the Police measurements showed that his brake mark from the left front tyre to his point of impact was 40 feet. Learned Counsel Mr. Nicholas has emphasized the length of the brake mark and the reasonable inferences to be drawn from this, as relating to Mr. Martelly's speed, in his closing submission.

[14] I make the following findings of fact from the evidence –

- (a) The Sadoo's Gas Station is in the Village of Micoud which is a built up area.
- (b) Though the road where the accident occurred is a highway, the speed limit in that area according to road traffic law, given it is a built up area and village, is far less than 40 mph.
- (c) Mr. Martelly's driving speed at the time he was approaching the Gas Station was too fast, in all the circumstances.
- (d) Mr. Rismay had seen Mr. Martelly's mini bus approaching, before he turned across its path and stopped.
- (e) Mr. Rismay made his right turn across the path of Mr. Martelly, intending to go into the Gas Station, at a time when it was unsafe for him to do so.

The Law

[15] Sections 34 (16) and 34 (17) (b) of the Motor Vehicles and Road Traffic Regulations No. 20 of 1995 (The Regulations) direct drivers of motor vehicles to comply with the following Rules:

“(16) He shall not negligently or willfully prevent, hinder or interrupt the passage of any vehicle . . .

(17) A driver shall: -

(b) When turning across traffic or turning to the right, slow down and make the appropriate traffic signal."

[16] Mr. Rismay was obviously also in breach of his duty to calculate and determine the distance of Mr. Martelly's oncoming mini bus away from the Gas Station entrance, the speed at which Mr. Martelly was approaching, and whether or not Mr. Martelly's mini bus was near enough to cause risk of accident before Mr. Rismay turned across the path of Mr. Martelly's approaching mini bus. Apart from slowing down and indicating, Mr. Rismay should have stopped and waited until Mr. Martelly's bus had passed before maneuvering his right turn.

[17] It seems to me that he misjudged the distance and speed that Mr. Martelly was approaching, when he made the right turn.

[18] Since the impact was on Mr. Martelly's driving side of the road, this gives rise to the inference that Mr. Rismay is to be blamed for the accident.

[19] The primary issue therefore is whether or not Mr. Rismay has discharged the evidential burden of showing that the accident was not completely caused through his fault.

[20] The extent of Mr. Rismay's liability is dependent upon the degree of his success in discharging this burden.

[21] Though Mr. Rismay has proven that he could not proceed out of the right of way of Mr. Martelly as quickly as possible, because of the grey jeep which was exiting at the same time he was about to enter the Gas Station, this is insufficient to establish that Mr. Rismay was not at fault. This is one of the events that he should

have anticipated or foreseen before deciding to turn across the path of the oncoming mini bus.

[22] Though Mr. Martelly had a legitimate expectation that Mr. Rismay would observe the rules regulating traffic; and not swing across the path of his oncoming vehicle and suddenly stop, the speed at which Mr. Martelly was traveling, was a factor, which prevented him from stopping in time so as to avoid the collision.

[23] Had he not been traveling at a speed of 40 to 50 mph in the area where the accident occurred, it is, probable that he may have stopped in time despite the dilemma that Mr. Rismay had put him in.

[24] Mr. Martelly cannot therefore be completely absolved from blame in all the circumstances. He should have been driving at such a speed that, if in breach of his duty, Mr. Rismay had interrupted and obstructed his free passage, Mr. Martelly would be able to stop without colliding with Mr. Rismay.

[25] I therefore do not completely agree with Learned Counsel Mr. Theodore that Mr. Martelly was not negligent as pleaded by Mr. Rismay in his Particulars of Negligence at paragraph 5 (a) and (b) – i.e.

(a) **“Failing to stop, slow down . . . so as to avoid hitting the Claimant’s vehicle.”**

(b) **“Failing to stop in a timely manner to allow the Claimant to veer his vehicle into the such petrol station.”**

[26] Notwithstanding this, I have concluded that Mr. Rismay’s negligent driving was the primary cause of the accident. I have attributed 90% proportion of fault to Mr. Rismay and 10% to Mr. Martelly.

Proof of Damages

[27] Mr. Rismay pleaded the following as Particulars of Special Damages –

“Spares	=	\$4,422.00
Labour	=	\$4,000.00
Materials	=	\$ 360.00
Police Report	=	\$ 200.00
Survey Report	=	\$ 300.00
Loss of Use 14 days	=	<u>\$ 1,500.00</u>
@ \$150 per day		\$12,882.00

[28] He has also claimed General Damages, Interest and Costs. He has provided no documentary exhibits to prove his Special damages. Neither has he explained his Special Damages in his evidence.

[29] On the Counterclaim, the Defendants pleaded that they would provide Particulars of Special Damages at or before disclosure. This did not take place. At the trial Mr. Mervin Dalson testified on a Witness Statement filed out of time on 20th October 2006 with documentary exhibits attached to it, supporting his testimony in proof of Special Damages.

[30] He testified in this Witness Statement that he paid \$200.00 for an Accident Report, and tendered the receipt. He purchased motor parts from Genuine Parts World to repair the damage to the mini bus for a total sum of \$4,275.00, evidenced by the receipt he tendered. These parts were Panel, Front Bumper, Grill, Support Bumper; Head Lamp, Fog lamp, mirror and other parts. On 20th October 2004 he paid his mechanic \$4,800.00 to repair the mini bus, and the receipt from the mechanic was tendered.

[31] The Accident Report was never tendered, and the Defendants have not testified as to what damage was done to the bus as a result of the collision.

[32] Learned Counsel Mr. Nicholas has not challenged this total sum of \$14,495.00 paid to Mr. Dalson by his Insurance Company St. Lucia Motor and General Insurance Co. Ltd. There has been no explanation as to why a sum beyond \$9,275.00 was paid by the Insurance Company. There has been no evidence led from Mr. Dalson concerning loss of use.

Pleading Damages

[33] One of the relevant rules for pleading damage was stated in The Susquehenna [1926] A.C. 655 by Lord Dunedin at page 661 as follows –

“If there be any special damage which is attributable to the wrongful act that special damage must be averred and proved, and if proved, will be awarded. If the damage be general, then it must be averred that such damage has been suffered, but the quantification is a jury question.” (My emphasis).

[34] The basic test of whether damage is general or special is whether particularity is necessary and useful to warn the defendant of the type of claim and evidence, or of the specific amount of claim, which he will be confronted with at the trial: **Mc Gregor on Damages** 16th ed. 2003 para. 43-006.

[35] The rule relating to awards for general and special damages was also stated by Lord MacNaughten in Stroms Bruks Aktie Bolag v Hutchinson [1905] A.C. 515 at pages 525-526 thus.

“General damages’ . . . are such as the law will presume to be the direct natural or probable consequence of the action complained of. ‘Special damages’ on the other hand, are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed specially and proved strictly” (My emphasis).

- [36] I am not satisfied that Mr. Dalson has proven on a balance of probability that the sum in excess of the \$9,275.00 proven as special damages was attributable to the accident with Mr. Ramsay.
- [37] Consequently the damages proven by the Defendants are \$9,275.00.
- [38] In light of Article 989 D (2) of the Civil Code of St. Lucia, the damages recoverable by the Defendants will be reduced by 10% since I have found that Mr. Martelly's excessive speed contributed to the accident to the extent of 10%.
- [39] The success of Mr. Rismay's Claim depends on him being able to prove on a balance of probability that he suffered damage caused by the negligence of Mr. Martelly. Though he has proved that Mr. Martelly was 10% negligent, he has not proved what damages he suffered. I am of the opinion that in such circumstances he must be non suited.
- [40] Apart from the \$8,275.00 that the Defendants are entitled to recover, in my opinion they should be paid 6% interest per annum on this sum from 21st September 2004, the day they bought the parts to repair the vehicle to 21st September 2006. This is an additional \$993.00 bringing the total sum to \$9,268.00.
- [41] I therefore enter judgment for the Defendants on the Counter Claim in the sum of \$9,268.00 with prescribed costs in the sum of \$2,780.40 pursuant to PART 65.5 (2) (a) and Appendix B of CPR 2000. There will be interest on this judgment debt from 24th October 2006 until full payment.

Dated this 23rd day of October, 2006

**OLA MAE EDWARDS
HIGH COURT JUDGE**

