

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(CIVIL)

CLAIM NO: ANUHCV 2006/0229

BETWEEN:

GREGORIO OZUNA

Claimant

and

ERROL TAYLOR

Defendant

Appearances:

Mr. John Fuller for the Claimant

Mr. Charlesworth Brown for the Defendant

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2007: May 10 July
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JUDGMENT

[1] **Thomas J:** On 9th May 2006, the Claimant, Gregorio Ozuna, by way of a claim, instituted proceedings against the Defendant, Errol Taylor. In the claim the Claimant is seeking damages consequent on the negligence of the Defendant on or about 4th July 2005.

[2] In his statement of claim the Claimant pleads that at all material times he was the owner and driver of motor pickup C1611 and the Defendant was at all material times the owner and driver of motor car A11076.

[3] It is further pleaded that on 4th July 2005 at about 7:00 pm the Claimant was driving his said pickup from east to west on the Queen Elizabeth Highway, when the Defendant, driving his said motor car from the opposite direction on the said highway in a negligent manner crossed over into the path of the Claimant's pickup and collided head on with the right front side of the Claimants pickup causing the Claimant loss and damage.

[4] The particulars of the Defendant's negligence pleaded are:

1. Failing to remain on his side of the road.
2. Crossing to the wrong side of the road when it was unsafe to do so.
3. Failing to stop or swerve or howsoever control his vehicle so as to avoid colliding with the Claimant's pickup.

[5] The particulars of the Claimant's loss pleaded are:

1. Cost of repairs as described in invoice of Isidro de Jesus of 5 th August 2005	\$11,260.00
2. Net loss of use for 14 days @ \$200.00 per day	<u>\$ 2,800.00</u>
Total	<u>\$14,060.00</u>

DEFENCE

[6] The Defendant in his defence filed on 5th July 2006 admits that at all material times he was the owner of motor vehicle A11076.

[7] At paragraph 2 of his defence the defendant denies that he drove his vehicle in the negligent manner as alleged in the Claimant's statement of claim. Instead the Defendant pleads that it was the Claimant who negligently crossed over the centre of the road and drove his vehicle directly into the path of the Defendant's vehicle when it was lawfully travelling on the left side of the road from west to east.

[8] It is the further plea of the Defendant that the collision was wholly caused by or largely contributed to by the negligence of the Claimant.

- [9] The particulars of the Claimant's negligence pleaded are:
1. Driving too fast in the circumstances.
 2. Failing to keep any or any proper lookout or to have any or any sufficient regard to the presence of the Defendants' vehicle on the road.
 3. Failing to stop, slow down, swerve or [in] any other way to so manage or control his motor vehicle as to avoid the collision.
 4. Failing to drive his motor vehicle in a careful and responsible manner.
 5. Failing to blow his horn or otherwise give any or any sufficient warning of his intention to cross over into the path of the Defendant.

[10] Still further the Defendant says that he makes no admission as to the alleged or any loss suffered by the Claimant.

COUNTERCLAIM

[11] In his counterclaim the Defendant pleads that by reason of the matters aforesaid the Defendant has suffered loss and damage for which the Claimant is liable.

[12] The particulars of loss and damage pleaded are:

1. Cost of repairs – parts		
material		\$ 4,554.00
Labour		\$ 5,000.00
2. Loss of use – 14 days @ \$162.00 per day		<u>\$ 2,268.00</u>
	Total	<u>\$11,882.00</u>

[13] The Defendant counterclaims:

1. The sum of \$11,882.00
2. Damages
3. Interest pursuant to the Eastern Caribbean Supreme Court Act.
4. Costs as prescribed by CPR 2000.

REPLY AND DEFENCE TO COUNTERCLAIM

- [14] In his reply the Claimant joins issue with the Defendant on his defence.
- [15] In his defence to counterclaim the Claimant denies driving his vehicle negligently as alleged in the counterclaim or all and maintains that it was the Defendant who crossed over to the wrong side of the road and collided with the Claimant coming from the opposite direction.
- [16] The Claimant further denies that he was driving too fast, failing to heed the presence of the Defendant's vehicle or failing to otherwise control and operate his vehicle in a negligent or irresponsible manner.
- [17] Finally, the Claimant says that he does not admit the Defendant's loss or damage.

ISSUE

The issue for determination is whether the Defendant or the Claimant is liable for the damage and loss claimed by both parties.

EVIDENCE

GREGORIO OZUNA

- [18] In his witness statement filed on 19th January 2007 the Claimant, Gregorio Ozuna, says that on 4th July 2005 at about 7:00 p.m. he was driving his pickup from east to west on the Queen Elizabeth Highway near the entrance to Parliament Drive when the Defendant, who was driving his motor car in the opposite direction, pulled out from his side of the road in an attempt to overtake another vehicle proceeding in front of him. The Claimant says further that as a result of the Defendant's action the Defendant's car collided with his pickup.
- [19] In cross-examination the Claimant testified that on the night of the accident it was clear, traffic was heavy with lots of vehicles – about six vehicles coming toward him. He denied driving at 60 miles per hour. According to him the Defendant was attempting to overtake and it was the Defendant's vehicle that crossed over and collided with his (the Claimant's)

vehicle. He went on to say that the Defendant's vehicle hit him from the back and that is when he lost control.

[20] The Claimant denied that he was speeding and repeated that it was as a result of the Defendant's vehicle hitting his vehicle that he ran off the road and went to the side of the road.

[21] When it was put to the Claimant that he travelled over 75 feet he responded by saying that after the impact that is where he stopped. It was put further to the Claimant that he said that he hit another vehicle. He responded by saying that when the Defendant hit him that is when he ran off the road and the second vehicle also hit him. The Claimant also repeated his earlier testimony that the Defendant tried to overtake and was driving faster than 25 miles per hour.

[22] In further testimony the Claimant said that on the day of the accident, which he believed was a Monday, he came from home and was not tired. He also said that after the accident the Defendant asked him what happened and that he in turn asked him the same thing. The Claimant however denied that he said he did not know what happened.

[23] With respect to the vehicle, the Claimant said he was not a mechanic but he can say that the steering was in good condition; and that he in fact drove his vehicle to his home after the accident.

[24] Concerning the damage to his vehicle, the Claimant testified that it was not less than that to the Defendant's vehicle. And in terms of the actual damage he testified that there was damage to the chassis, lights and something around the wheel was also damaged in front – both wheels. When cross-examined on the fact that the estimate for repairs at **TB p. 18** did not mention chassis damage, the Claimant said that at the time of the preparation Isidro de Jesus was not aware of such damage. He went on to say that he replaced the chassis. It was also put to the Claimant that the accident could not have caused damage

to the right and left springs to which the Claimant responded by saying that the damage was caused by the accident.

[25] In further testimony on the damage to his vehicle, the Claimant said that the Defendant's vehicle hit his vehicle in front right corner resulting that the right light was damaged and maintained that it was the Defendant's vehicle which collided with the front of his vehicle.

[26] With respect to the two photographs in evidence, the Claimant said that they are false as there was no one there to take them. He however said that he saw a dent in the Defendant's vehicle; but while the front is not damaged the right side is damaged.

[27] When learned counsel for the Defendant returned to the question as to who caused the accident, the Claimant denied that he did. He also denied that he crossed over on to the wrong side of the road and also denied having to pay compensation to the Defendant.

[28] In terms of his employment the Claimant's testimony is that as a garbage collector he makes \$200.00 per day or \$1,500.00 per month; while as a landscaper he makes \$150.00 to \$200.00 per week.

BERNARD ANDREW

[29] Bernard Andrew filed a witness summary on 23rd January 2007 and in it the following is stated:

"This witness will be questioned concerning his knowledge of the cause of the accident between the Claimant and the Defendant, in particular about what he saw as the police report states that he was involved in the accident in a third vehicle."

[30] In his examination-in-chief Bernard Andrew testified that he was driving a few lengths behind Mr. Taylor who was driving a Sunny while he was driving a Trueno. He said that the road was empty and Taylor and himself were taking their time.

[31] Continuing his evidence Andrew said that Taylor kept driving over to the on-coming traffic and kept asking himself what this guy was up to. The witness said further that Taylor then

- came back over again and then everything happened. He said further that at the time of the accident Taylor was over the line.
- [32] In cross-examination Bernard Andrew testified that he spoke to the Claimant because, based on what he witnessed, he thought Mr. Ozuna started the chain re-action. He then corrected himself and said he though Mr. Taylor started the re-action.
- [33] In further testimony Andrew said that he was not aware of Mr. Taylor's speed.
- [34] Regarding the accident Andrew testified that the contract was between the two vehicles was on the right side of Mr. Ozuna's vehicle and the right side of Mr. Taylor's vehicle. He added that Mr. Taylor was on the wrong side and as such Mr. Ozuna could not do anything.
- [35] It was put to Mr. Andrew that Mr. Ozuna could have pulled to his left. Mr. Andrew's response was: "I don't think so."
- [36] In further testimony regarding the accident Andrew said that Mr. Ozuna's vehicle spun out of control and ended up in front of the gate to the Prime Minister's Office.
- [37] With respect to his vehicle, Andrew said that his vehicle did not get the full impact but the bumper was ripped off and the repairs cost \$5,000.00.
- [38] When it was again put to Mr. Andrew that it was Mr. Ozuna's vehicle which crossed over, this was again denied. He added that he saw everything and was not twisting the facts.
- [39] In terms of his actual position and that of Mr. Taylor on the Queen Elizabeth Highway, the witness said that he was driving behind the area near the St. Johns Hospital while Mr. Taylor was driving in the area after Parliament Drive.

ERROL TAYLOR

- [40] In his witness statement filed on 26th January 2007, Errol Taylor the Defendant, says that on 4th July 2006 at about 7:00 pm he was lawfully driving his vehicle A11076 with due care and attention from west to east at about 25 miles per hour up the incline on the Queen Elizabeth Highway in the vicinity of the Prime Minister's Office. According to the Defendant there was no vehicle immediately in front of him traveling in the same direction.
- [41] The Defendant says further that he noticed a Toyota pickup coming towards him from the opposite direction at a fast speed which he estimated to be about 60 miles per hour. According to the Defendant, the Claimant's vehicle suddenly and unexpectedly swerved across the centre of the road onto his side and collided violently with his vehicle. He continued by saying that the speed with which the collision occurred left him no time to swerve or otherwise manoeuvre his vehicle so as to avoid the impact.
- [42] The Defendant described the impact of the vehicles in this way:
5. The force which the Claimant's vehicle collided with mine was such that my vehicle was rotated about 45 degrees and pushed backwards down and across the incline to a standstill facing south-east several feet to the west of the point of impact.
 6. After colliding with my vehicle the Claimant's vehicle also collided with another vehicle, Registration Number A17039, that was traveling behind me and then completely crossed over the northern edge of the road to an area of vacant land several feet from the point of impact."
- [43] In terms of the sequel to the accident, the Defendant says that he was unable to open the driver's door and that after alighting from his vehicle through the passenger door he noticed the damage to his vehicle.
- [44] Under cross-examination by Mr. John Fuller, counsel for the Claimant, Mr. Taylor said that on the night in question he was taking home his workers and was not drinking.
- [45] In terms of the accident the Defendant said that he felt that Mr. Ozuna was wrong but he did not sue him. Instead he was sued by the Claimant.

[46] Regarding the evidence of Mr. Ozuna and Mr. Andrew, the Defendant said that they both said that I came to the wrong side of the road. He went on to say he believed they were influenced. He added that Mr. Ozuna came to his side of the road.

[47] In ending his testimony the Defendant again denied causing the accident. He said that he was physically fit, does not drink and did not work very hard.

CONCLUSION

[48] The evidence of the Claimant and the Defendant follow the familiar part of balancing each other for the accident.

[49] For his part both in evidence-in chief and in cross-examination the Claimant's case is that the Defendant crossed over on the wrong side of the road in attempting to overtake another vehicle. It is the Claimants testimony that as a result of the Defendant hitting his vehicle, he lost control and hit another vehicle.

[50] As far as the Defendant is concerned the Claimant was at excessive speed – 60 miles per hour. This was however denied by the Claimant. The Defendant also testified that there were no vehicles ahead of him and it was the Claimant who swerved suddenly unto the wrong side of the road and thereby caused the accident.

[51] The evidence of Bernard Andrew differed from that of both the Claimant and the Defendant. This is what he said in evidence in chief:

“Mr. Taylor kept driving over unto the on-coming traffic. At that point I was asking what this guy was up to. The next thing he came back over again. Everything then happened. At this time of the accident in front of the Prime Minister's entrance he was over the line and Mr. Ozuna could not get away. He was traveling east to west. The two cars made an impact. Mr. Ozuna could not get away. As a result of the accident both vehicles spun. I do not remember what day it was but there were practically no vehicles on the road.

Mr. Ozuna's vehicle spun around to my side and hit my car and damaged it. Mr. Ozuna was not going at 60 miles per hour Mr. Taylor was in the wrong lane.”

[52] Learned counsel for the Defendant, Mr. Charlesworth Brown, cross-examined Mr. Andrew extensively and one of the many things he maintained was that Mr. Taylor was on the

wrong side and as such Mr. Ozuna could not do anything. The witness was even cross-examined concerning visits to the area where Mr. Ozuna lives. This was denied by Mr. Andrew. On the whole it is the assessment of the Court that Mr. Andrew's evidence was not shaken in any material particular in cross-examination.

[53] The photographs show damage to both vehicles. In particular photograph A shows right side light missing from vehicle A11076, while photograph B shows right side damage to the said vehicle in relation to the fender and door. The same photograph shows damage to right side damage to the fender of the red pickup.

[54] There was no expert or other evidence regarding these two photographs. However a reasonable inference the Court can draw is that having regard to the right-side damage to both vehicles and the missing light on A11076, is that there was no full frontal impact.

[55] In his address to the Court Mr. Brown impacted heavy blows on Mr. Bernard Andrews' evidence. He said that Mr. Andrews was not a credible witness, his answers were evasive, could not recall in some cases, he held Mr. Ozuna responsible for the accident, was influenced by the police report and has demonstrated that he is not a person to be trusted.

[56] On the other hand Mr. Fuller, learned counsel for the Claimant characterized Mr. Andrew as a good witness. The Court also accepts that Mr. Andrew is a credible witness.

[57] It is clear from the evidence that the accident happened in one lane of the highway. In this regard the Court accepts the evidence of the Claimant and Mr. Bernard Andrew that the Defendant crossed over to the Claimants lane and thereby caused the accident. In fact part of Mr. Andrew's evidence is that the Defendant was swerving in and out of his lane.

[58] It is therefore the determination of the Court that the Defendant was the cause of the accident being in breach of the duty of care owed to the Claimant and damage resulting. By the same the Defendant's counterclaim is dismissed.

[59] On the matter of the cost of repairs there was no challenge to the amount claimed by the Claimant except with respect to the right and left springs shown on the estimate (TB p. 18). However, the Defendant did not adduce any contrary evidence to show that they were not damaged or destroyed.

ORDER

[60] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. The Defendant is liable in negligence for the damage caused to the Claimants vehicle.
2. The Defendant must pay damages to the Claimant in the amount of \$14,060.00.
3. The Defendant must pay prescribed cost to the Claimant in accordance with Part 65 of CPR 2000.
4. The Defendant's counterclaim is dismissed.

Errol L. Thomas
Judge