

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

SAINT LUCIA

CLAIM NO. SLUHCV2006/0195

BETWEEN:

THERESA PASARD

Claimant

and

- (1) GERVY CHARLES
- (2) KIM RENEE
- (3) C & M TOURING

Defendants

CONSOLIDATED WITH
CLAIM NO. SLUHCV2006/0298

PATRICK MICHAUD

Claimant

and

- (1) GERVY CHARLES
- (2) MATTHEW PARSAD

Defendants

CONSOLIDATED WITH
CLAIM NO. SLUHCV2006/0304

SHEILA ADLAIN

Claimant

and

- (1) IAN PARSAD
- (2) KIM RENEE
- (3) C & M TOURING
- (4) IAN PARSAD

Defendants

Appearances :

Mr. D. Theodore for Ian Parsad

Mr. C. Calderon for Theresa Parsad

Mr. G. Charlemagne for Gervy Charles, Kim Renee, C&M Touring

2007: September 24;

2008: January 25.

JUDGMENT

- [1] **COTTLE, J.:** These three claims arose out of one motor vehicular accident. They were consolidated and heard together.
- [2] On the evening of Sunday 20th April 2003 there was a collision which involved three vehicles. Firstly, there was an impact which concerned a car driven by Ian Parsad and a motor omnibus driven by Gervy Charles. Immediately thereafter there was a second collision, this time involving a motor omnibus driven by Kim Renee.
- [3] The evidence revealed that after the initial impact the car was left on the shoulder of the roadway while the bus, which had turned onto the side was across the road way. While in that position the second bus came into contact with the rear of the first bus.
- [4] In the collision Sheila Adlain and Theresa Parsad suffered injuries. They were passengers in the car. Also injured, but to a lesser degree were the drivers of the vehicles.
- [5] At the trial, evidence was given by Sheila Adlain, Theresa Parsad, Ian Parsad, Gervy Charles and Patrick Michaud. Kim Renee opted to give no evidence.

The Evidence

- [6] Theresa Parsad swore that she was a passenger in a car driven by Ian Parsad. While travelling towards Augier she saw one minibus overtaking another. Both vehicles were travelling towards her. Ian Parsad pulled to the left of the road and stopped. The bus driven by Gervy Charles collided with the car. Theresa received injuries for which she had to be treated at the St. Jude's Hospital.
- [7] Sheila Adlain also gave evidence of the accident. She was a passenger in the car driven by her cousin Ian Parsad. She saw a minibus overtaking another minibus. Both vehicles were travelling at high speed. She swears that Ian Parsad pulled over to the left side of the road and stopped completely. One of the buses then collided with the car. She suffered serious injuries including multiple fractures of the pelvic bone. She was hospitalized for a week. After her discharge from hospital she had to undergo therapy. To assist her to walk she used a walker for three (3) months then crutches and finally a cane before she was able to walk unaided. She was not able to return to work until some eight (8) months after the accident. Even then she said she was compelled to employ an assistant to help her carry out her duties as a teacher. He worked with Theresa Adlain for six (6) months until she was fully mobile and able to be constantly active and moving about with her students.
- [8] Ian Parsad's evidence of the accident was more detailed but it was consistent with that of Sheila Adlain and Theresa Parsad. He says as well that he lost consciousness for a while as a result of the impact. His injuries were attended to at the hospital. He was discharged after his bruises and cuts were treated.
- [9] He was subjected to extensive cross examination. He denied he was speeding. He denied being under the influence of alcohol at the time of the accident. He said he was very familiar with the road, as he would drive it daily and had been driving for more than ten (10) years.

- [10] Patrick Michaud gave evidence. He is the owner of both minibuses. He employed Gervy Charles and Kim Renee. He said that at the time of the accident the drivers were returning from a tour. He was not present at the time of the accident.
- [11] Gervy Charles gave evidence. He admitted that he had been convicted at the Magistrates Court for driving without due care and attention as a result of the accident. He has appealed that conviction. The appeal is still pending. For the purposes of this case, I did not take that conviction into account.
- [12] Charles is the driver of the minibus. He uses it to ply the Route 1A Castries to Gros Islet. On the day in question he had not been on any tour. He had six (6) persons on board the bus. He had been visiting with friends and family in Laborie and Choiseul. He says that it was at Choiseul that he met Kim Renee. They were on the way back to Castries when the accident occurred. The vehicle driven by Ian Parsad was travelling on the wrong side of the road. The roadway was dry. There were no potholes. Ian Parsad drove his vehicle and collided with the bus which flipped onto one side. The bus driven by Kim Renee then ran into the rear of Charles' bus.
- [13] Kim Renee elected to give no evidence. None of the passengers on the minibus gave evidence.
- [14] Having heard the evidence of the witnesses who appeared, I find that the most likely cause of this accident is the dangerous driving of Gervy Charles and Kim Renee.
- [15] I find that these two young men were driving back towards Gros-Islet after a long day driving which they visited friends. Both minibuses carried passengers – all young males who had been on some frolic together. I believe that both were travelling at a fast rate and speed. When the bus driven by Charles struck Ian

Parsad's car it overturned. Kim Renee was travelling too quickly to stop. He ran into the overturned bus.

[16] It was noteworthy that none of the passengers on the bus – some of whom gave witness summaries were prepared to testify at the trial. Even Kim Renee did not testify.

[17] I find that Kim Renee and Gervy Charles contributed to the accident and they are jointly responsible for the damage and loss suffered by Ian Parsad, Theresa Parsad and Sheila Adlain. Kim Renee's contribution I put at 10% and Gervy Charles at 90%.

[18] The claim by Patrick Michaud is dismissed. The only evidence in support of his claim came from Gervy Charles whose version of the way the collisions occurred I roundly reject.

The Award

[19] This judgment has been so long delayed for one reason only. I did not consider the evidence led as to the damages to be awarded to be adequate to permit me to make an award. Having found that Charles and Renee were wholly responsible for the accident. I find myself unable to go further. Yet I do not think it fair that Theresa Parsad, Sheila Adlain and Ian Parsad should remain uncompensated because of the way in which the evidence has been led.

[20] I thus invite all Counsel to agree on the compensation to be paid to the injured parties. Should there be no agreement. I direct that the damages to be awarded be assessed by the Court.

[21] I do not consider that it would be fair to Charles and Renee to permit fresh evidence. I direct that Counsel file written submissions to the Court on the

assessment of damages with authorities in support. The Court will make the assessment on that basis.

BRIAN S. COTTLE
HIGH COURT JUDGE