

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 481 OF 2005

BETWEEN:

**KINGSLEY WILLIAMS (by his mother
And next of kin CHRISTIANA CATO)**

Claimant

v

WENDELL TONEY

First Defendant

ISAAC YEARWOOD

Second Defendant

Appearances: Mr. Stephen Williams for the Claimant.
Mr. Olin Dennie for the Defendants.

2008: February 27;
April 9.

JUDGMENT

[1] **THOM, J:** This is a claim for damages for personal injury resulting from a motor vehicle accident.

BACKGROUND:

[2] In March 2005 the Claimant Kingsley Williams was a sixteen (16) year old student at the Multipurpose Center. The First Defendant is the owner of a minibus registration number H 278. The Second Defendant was at all material times the driver of the said minibus H 278.

[3] On March 4, 2005 while the Second Defendant was driving minibus H 278 he collided with the Claimant on the pedestrian crossing at Richmond Hill. The Claimant suffered injuries

as a result of the collision. The Claimant by his next of kin his mother instituted these proceedings for special and general damages. The Claimant alleged that the collision was caused solely by the negligence of the Second Defendant.

[4] The Defendants in their defence denied that the accident was as a result of the negligence of the Second Defendant. The Defendants alleged that the accident was caused solely or contributed to by the negligence of the Claimant.

EVIDENCE:

[5] The Claimant gave evidence on his own behalf, he called no witnesses. The Defendants gave evidence on their own behalf and called no witnesses.

KINGSLEY WILLIAMS:

[6] The evidence of the Claimant is that on March 4, 2005 at about 11:55 a.m. he was at the pedestrian crossing in the vicinity of the Ministry of Agriculture. He looked both sides of the road and he saw no vehicle approaching. He proceeded to cross the road walking on the pedestrian crossing. While he was walking on the pedestrian crossing he was struck by the minibus H 278 which was being driven by the Second Defendant. When the accident occurred he was not in the company of four boys. He had walked past the boys, they were walking on the side walk. The Claimant testified further that his back was not turned to the main road and he suddenly turned and began to walk quickly across the pedestrian crossing.

[7] Under cross-examination the Claimant testified that the boys were from his class but he did not leave class with them nor did he speak to them. He walked pass them. When he entered the crossing he did not look both sides again. He was struck by the vehicle when he was in the middle of the road about to go over to the other side. He saw the vehicle when it was about to hit him. He did not know how fast the vehicle was traveling.

ISAAC YEARWOOD:

[8] This witness testified that he has been driving motor vehicles for over twenty-five (25) years. In March 2005 he has been driving the said minibus H 278 for one (1) year. On March 4, 2005 he was driving the said minibus H 278 on the Richmond Hill public road. When he was approaching the pedestrian crossing about five (5) feet away he saw four school boys at the sidewalk next to the YWCA building. They were talking among themselves. He was driving at 15 miles per hour. He applied his brakes when the Claimant entered the pedestrian crossing and suddenly began to run quickly across the pedestrian crossing. The Claimant collided with the left front side of the vehicle.

[9] Under cross-examination, the witness agreed that the Claimant was struck on the pedestrian crossing. The witness stated that when he saw the Claimant on the crossing he was about five (5) inches away from him. The Claimant had already crossed about four to five feet on the crossing when he was struck by the vehicle. There were brake impressions. They started before the crossing and were about twelve (12) feet in length. There are about five (5) schools in the vicinity of the area where the accident occurred. When he saw the boys they were standing as if in conversation. There was no indication that they were going to cross. They were about three (3) inches (witness showed about three (3) feet) from the crossing when he saw them. When the vehicle was almost on the crossing the Claimant walked suddenly onto the crossing.

WENDELL TONEY:

[10] This witness testified that he is the owner of motor vehicle H 278. The Second Defendant was employed by him as a driver and on March 4, 2005 he was the driver of motor vehicle H 278. This witness was not cross-examined.

ISSUE:

[11] The issue to be determined is whether the accident was caused solely by the negligence of the Second Defendant, or the Claimant or in part by the negligence of the Claimant

SUBMISSIONS:

[12] Learned Counsel for the Claimant submitted that based on the evidence the Court should find that the Claimant was within close proximity to the pedestrian crossing awaiting to cross the road and when he began to cross he was struck by the vehicle driven by the Second Defendant. Learned Counsel urged the Court not to believe the evidence of the Second Defendant since his evidence was contradictory. Learned Counsel further submitted that if the Second Defendant was traveling at 15 miles per hour and the vehicle was about five feet away from the pedestrian crossing when he first saw the Claimant then he could not have struck the Claimant when he had crossed about half of the distance of the pedestrian crossing. Also the Second Defendant was in breach of his duty as stated in Regulations 4, 5 and 6 of the Motor Vehicles and Road Traffic Act Chapter 355.

[13] Learned Counsel for the Defendants did not file any submissions.

SUBMISSIONS:

[14] Regulations 4, 5 and 6 of the Pedestrian Crossing Regulations made under the Motor Vehicles and Road Traffic Act Chapter 355 read as follows:

- “4. **Drivers of vehicle to stop if pedestrian walking within crossing.** The driver of every vehicle shall stop his vehicle at the first line of a crossing if there is a pedestrian going from one side of the road to the other within such crossing.
5. **Drivers of vehicle approaching crossing to stop if necessary.** The driver of every vehicle approaching a crossing shall unless he can see that there is no pedestrian thereon, proceed at such speed as to be able, if necessary, to stop before reaching such crossing.
6. **Pedestrian to have precedence over vehicular traffic.** The driver of every vehicle at, or approaching, a crossing where traffic is not for the time being controlled by a Police Officer, shall allow free and uninterrupted passage to any pedestrian who is within such crossing, and every such

pedestrian shall have precedence over all vehicular traffic at such crossing.”

- [15] It is settled law that a driver of a motor vehicle has a duty to exercise due care when driving on a road. **In Cheryl Edwards Administrator for the estate of Janique Lewis v Ethel Mills**, No. 168 of 1988 ANUHC Rawlins J (as he then was) stated the duty of a driver in the following terms:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to maneuver their vehicles in order to prevent and avoid accidents. They are expected to use and observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.”

- [16] A pedestrian has a duty to ensure that it is safe to cross before entering a pedestrian crossing.

- [17] There were only two witnesses who testified about the accident, being the Claimant and the Second Defendant. Where their testimony differ I prefer the testimony of the Claimant rather than the testimony of the Second Defendant. While the Second Defendant in re-examination stated in a very positive manner that he could estimate distances, under cross-examination his demonstration of distances and his testimony did not correspond. He testified that the Claimant and three other boys were standing about two (2) to three (3) inches from the pedestrian crossing but when required to demonstrate, showed a distance of approximately three (3) feet. Initially the Second Defendant could not recall the length of the brake impressions, then he agreed it was about twelve feet (12'). He stated that he applied brakes before the Claimant was struck. If indeed the Claimant was only five (5) inches away from the vehicle as alleged by the Second Defendant when he saw the Claimant and he was traveling at 15 miles per hour, he would have struck the Claimant before he could have applied his brakes and tried to pull to the right. Also if the Second Defendant was driving at fifteen (15) miles per hour then he would not have had brake

impressions as long as approximately twelve (12) feet. Further if the Second Defendant was driving at fifteen (15) miles per hour and when he first saw the Claimant he was five (5) feet away with his back turned to the road then the vehicle could not have struck the Claimant when he had crossed about half the distance of the pedestrian crossing.

[18] I find that the Second Defendant did not pay due care and attention when approaching the pedestrian crossing in an area where there are five (5) schools. The accident occurred a few minutes before 12:00 noon on a school day. The brake impressions of approximately twelve (12) feet show that he was driving his vehicle at a speed at which he could not bring his vehicle to a stop before reaching the crossing. The brake impressions were before the crossing. Under Regulation 5 referred to earlier a driver when approaching a crossing unless he can see that there is no pedestrian on the crossing is required to proceed at such speed as to be able if necessary to stop before reaching such crossing.

[19] I also find that the Claimant contributed to the accident. Having regard to the area where this accident occurred, had the Claimant taken due care, when he looked to his right as he claimed he did he would have seen the vehicle proceeding towards the crossing.

[20] I find that the Claimant and the Second Defendant are equally responsible for the accident.

[21] Judgment is entered for the Claimant.

[22] It is ordered that the First and Second Defendants shall pay the Claimant one half of the damages as assessed and prescribed costs.

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Gertel Thom
HIGH COURT JUDGE