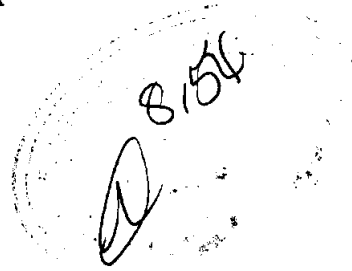


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

Claim No. DOMHCV2003/0141



BETWEEN

David Robin
Virginia Peters

Claimants

and

Ulysses Auguiste

Defendant

Zena Dyer for the Claimants
Francine Baron-Royer for the Defendant

2007: September 17, 18, 19, 25, 26
2008: April 18

JUDGMENT

[1] *BAPTISTE J.*: This claim in negligence arises out of a collision between an ambulance and a pick-up van on the Hatton Garden/Marigot main road. The collision occurred on 13 September 2002 close to the Hatton Garden junction. The ambulance was being driven by David Robin and the pick-up, by Ulysses Auguiste. At the time of the collision Mr. Robin was transporting a patient to Roseau accompanied by Virginia Peters, a district nurse. Both vehicles were damaged as a result of the collision. Mr. Robin and Ms. Peters also sustained injuries.

[2] Before the collision Mr. Auguiste was driving his pick-up along the Atkinson road. That road runs in an east to west direction. The Hatton Garden road runs in a north to south direction. The Atkinson road meets the Hatton Garden road at what is referred to as, the Hatton Garden junction. The junction is approximately 30 feet wide. On reaching the Hatton Garden junction Mr. Auguiste made a right turn into the Hatton Garden main road. A manoeuvre which would necessarily entail driving across traffic coming from or going to Roseau. As indicated, Mr. Robin was travelling to Roseau.

[3] The gravamen of the claimants' claim in negligence is that Mr. Auguiste did not stop at the Hatton Garden junction. Particulars of the alleged evidence are that Mr. Auguiste:

- (a) failed to stop at an intersection when proceeding from a secondary road to a major road;
- (b) failed to give precedence to the vehicle driven by Mr. Robin on a major road;
- (c) failed to keep any or any proper look out for on-coming vehicles on the major road;
- (d) failed to slow down, stop, steer or otherwise control his vehicle so as to avoid hitting the ambulance.

[4] Mr. Auguiste denies the alleged negligence and pleads that the matters complained of were caused wholly or partly by Mr. Robin's negligence. Mr. Auguiste counterclaims, claiming damages for negligence as a result of the damage to his vehicle. In paragraph 6 of his defence and counterclaim Mr. Auguiste states:

“On the 13th of September, 2002, the 1st Defendant was driving from the Atkinson public road towards the Marigot public road. The 1st Defendant stopped at the intersection of the two roads and looked to his left and right and saw no vehicles approaching. The 1st Defendant then moved into the Marigot road and began turning towards Marigot. In the process of turning the 1st Defendant noticed the 1st Claimant traveling towards him at an excessive speed. The 1st Defendant continued towards his left side of the road. The center of the claimant’s vehicle then hit the 1st Defendant’s right front.”

Particulars of negligence alleged against Mr. Robin are that:

- (i) he failed to keep any or any proper look out or to observe or heed the presence of Mr. Auguiste’s vehicle;
- (ii) he drove too fast in all the circumstances;
- (iii) he drove on the wrong side of the road;
- (iv) he failed to apply his brakes in time or to steer or control his motor vehicle so as to avoid the collision.

Mr. Robin also pleads that as a result of the collision Mr. Auguiste was convicted of careless driving at the Magistrate’s court. Mr. Auguiste admits on his pleading that he was convicted at the Magistrate’s court for driving without due care and attention in respect of the collision.

[5] I now consider the claimants’ evidence. In his witness statement Mr. Robin stated that he was travelling from Marigot to Roseau at about 25 miles per hour. The emergency light was on; it was raining. He was travelling on the left side of the road. On reaching the Hatton Garden junction, he saw the Nissan van coming from the Atkinson road. The van did not stop at the stop line. It made a sudden turn onto the main road. It

turned suddenly into his path and collided with him. He applied brakes in order to avoid the accident but the action of the defendant was so sudden and swift that he could not avoid the accident. Everything happened in a split second. The defendant was driving fast. The defendant only looked in one direction, that is, towards Roseau, before making the sudden turn into his path. Mr. Robin also stated in his oral evidence that Mr. Auguste drove straight into the major road on the right side of the junction. Mr. Robin further said, "We agreed on the point of impact as being 2 feet on the edge of the road going to Roseau." In cross-examination Mr. Robin stated that the collision occurred on his left hand side, 2 feet from the edge of the road going to Roseau.

[6] In her witness statement Virginia Peters stated:

"When we reach the Hatton Garden junction, I saw a pick-up driven by the defendant coming from the Atkinson/Carib Reserve area. The driver did not stop at the junction...he just swing into the main road and both vehicles collided. David Robin was not driving fast. David Robin was driving on his (David Robin's) side."

Ms. Peters further stated:

"...as soon as we reach the junction the Defendant came on us suddenly and all I heard was "Bow" and the collision, all this happened quickly in a flash."

Ms. Peters also stated that:

"David Robin applied brakes and tried to avoid the accident, but could not, as the Defendant just without stopping, came on the ambulance all of a sudden. The Defendant swing into the path of the ambulance."

- [7] In cross-examination Ms. Peters stated that the defendant was not on the left side of the Atkinson road when he approached the intersection. The defendant's van was on the right side of the road. The vehicles collided on the left side of the road just about 2 feet from the left. In re-examination Ms. Peters said that when Mr. Auguiste left the Atkinson road he was on the right side and took a sharp right turn towards Marigot.
- [8] Pierson Abraham gave evidence for the claimants. He stated that on the day of the accident he was sitting on a stone on the right side of the road, if you are facing Roseau, so he could see both the defendant's vehicle and the claimant's vehicle clearly. He saw the defendant's van coming from the Atkinson/Carib Reserve side. The defendant did not stop at the junction. The defendant just cut the corner at his right, that is he just turn right and did not stop on the stop line, but swung into the path of the vehicle the claimant was driving and collided with the ambulance. The Claimant was driving on his correct side, that is the left side of the road going to Roseau. The defendant was on the right side of the junction before he collided with the claimant's vehicle.
- [9] In cross-examination Mr. Pierson Abraham stated that the defendant never stopped at the intersection between the Atkinson road and the road to Roseau. The vehicles did not collide on the right hand side of the road if you are coming from Marigot. Mr. Auguiste never stopped at the intersection. The ambulance did not drive from the left hand side of the road to the right hand side of the road. Mr. Auguiste never stopped at the intersection. When the ambulance and van collided, Mr. Auguiste was not

already stopped. It is not true that when Mr. Auguiste got to the intersection he was on the left side of the road.

[10] The final witness called by the claimants was police officer George Diggs, who investigated the matter. Both drivers explained to him their version of how the accident occurred. Mr. Robin explained that the defendant did not stop at the stop line, but he was turning right and collided head on with him. The defendant explained that when he reached the Hatton Garden junction he looked up and down, but did not see the ambulance coming. Officer Diggs took measurements in respect of both vehicles and made observation as to the damage done to both vehicles. In his oral evidence Officer Diggs stated that the point of impact was 2 feet from the left side of the road if you are facing Roseau. That would be on David Robin's side of the road. In cross-examination he stated that if one is coming from Atkinson and stops at the junction and looks towards Marigot, the visibility is 165 feet.

[11] I now consider the evidence of the defendant. In his witness statement, Mr. Auguiste stated that he was driving his Nissan pick-up along the Atkinson road on his way to Marigot. When he got at the Hatton Garden junction, he stopped at the intersection. He saw Willix Mason who was on the road at the junction and said hello to him. Before moving from the intersection he looked up and down the road to his left, then to his right. He saw no vehicles approaching. He then moved off, turning right to go towards Marigot. On reaching the center of the road he saw an ambulance coming from the direction of Marigot towards him. It was being driven fast at about 70-80 miles per hour. He went as far to his left as he could. He completed his turn and was facing towards Marigot with most of his vehicle on the grass verge on his left side of the road when the

ambulance slammed into him. Immediately before the impact he brought his vehicle to a complete stop and lay down flat across the front seat because he could see the ambulance was about to hit his vehicle. The center of the ambulance hit the right front wheel area of his vehicle and pushed his vehicle completely off the road. Mr. Auguiste also stated in his witness statement that the first claimant and himself agreed on the point of impact, which the police measured as being 2 feet from the edge of the road on his side of the road.

[12] Willix Mason gave evidence for Mr. Auguiste. In his witness statement he stated that he was standing at the Hatton Garden junction. It was raining and he stood under a mango tree. While there he saw Ulysses Auguiste driving his van coming from the Atkinson direction. Mr. Auguiste stopped at the intersection of the Atkinson and Marigot roads. They said hello to each other. After that Mr. Auguiste moved off in the direction of Marigot. Mr. Mason further stated that he heard a vehicle approaching with brakes squealing then he heard an impact. He saw that the ambulance had hit the van that Mr. Auguiste was driving when the van was on its left side of the road.

[13] I have referred to the evidence led by the parties in respect of this matter. I find the evidence of the claimants to be more credible than that of the defendant and I accept their evidence whenever it conflicts with that of the defendant. The evidence of Mr. Robin and Ms. Peters is quite consistent with and supportive of each other. Initially, I was inclined to entertain some doubt as to whether Ms. Peters in fact witnessed the collision. This arose because of a rather curious statement in paragraph 3 of her first witness statement filed on 24 March 2005. Paragraph 3 states:

"The details of the accident as related to me by the 1st claimant is that the defendant driver of the pick-up did not stop at the junction."

However having had the benefit of seeing and hearing her give her evidence in the witness box, and particularly how she withstood cross-examination, I have no doubt as to the veracity of her account as an eyewitness in this matter.

[14] I accept the evidence of the claimants that Mr. Auguiste's van did not stop at the Hatton Garden junction, but made a sudden turn into the path of the ambulance. I consider the evidence of Mr. Pierson Abraham to be very important. I view him as an independent eyewitness to the collision. He clearly had a bird's eye view of the events leading to the collision and the actual collision. I accept the veracity of his account. Mr. Abraham's evidence supports the critical evidence of Mr. Robin and Ms. Peters that Mr. Auguiste did not stop at the junction but made a right turn and swung into the path of ambulance, colliding with it on the left side of the road. The claimant's version is also supported by Officer Diggs, the police investigator. Officer Diggs stated that the point of impact was 2 feet from the left side of the road, if you are facing Roseau. That would be from Mr. Robin's side of the road.

[15] The evidence relating to the point of impact is critical. In his oral evidence Mr. Robin stated that we (i.e. Mr. Auguiste and himself) agreed on the point of impact as being 2 feet on the edge of the road going to Roseau. In his evidence Mr. Auguiste stated that he and Mr. Robin agreed on the point of impact which the police measured as being 2 feet from the edge of the road on his (Mr. Auguiste's) side of the road. The evidence of the police investigator in relation to the point of impact is clear. He described

the point of impact as being 2 feet from the left side of the road if you are facing Roseau. That would be on Mr. Robin's side of the road. I do not doubt the truthfulness or reliability of Officer Diggs. He is an independent witness with no interest in the matter. I have no difficulty in accepting his evidence. The acceptance of his evidence has the effect of undermining the credibility of Mr. Auguste's evidence. I do not consider Mr. Auguste to be a witness of truth. I accordingly reject his evidence that the police measured the point of impact as being 2 feet from the edge of the road on his side of the road (that's going to Marigot). A rejection of that evidence necessarily entails a rejection of the version of events advanced by Mr. Auguste and Mr. Mason leading to the collision. It will be remembered that Mr. Auguste stated that he had completed his turn and was facing towards Marigot with most of his vehicle on the grass verge on his left side of the road when the ambulance slammed into him. It is recalled that part of Mr. Mason's evidence is that he saw the ambulance had hit Mr. Auguste's van when the van was on its left side of the road. That evidence of Mr. Auguste and Mr. Mason is fundamentally inconsistent with the point of impact being on the left side of the road going towards Roseau. I do not believe them.

[16] I do not consider Mr. Mason to be a witness of truth and I do not believe him when he said that Mr. Auguste stopped at the intersection of the Atkinson and Marigot roads. I do not believe his evidence that before the impact, he heard a vehicle approaching with brakes squealing.

[17] In her written submissions learned counsel for the defendant argued strongly that the physical damage to the ambulance does not support the version of events put forth by the claimant. I find no real inconsistency between the version of events advanced by the claimants and the damage

to the ambulance. In cross-examination Ms. Peters stated that the defendant hit the center of the ambulance. Because the defendant was taking a sharp turn to the right it was not a head-on collision. In re-examination Ms. Peters stated that the right front wheel of the defendant's van hit the center of the ambulance.

[18] I find as a fact that Mr. Robin was driving the ambulance on the left side of the Marigot/Hatton Garden road going towards Roseau at 20 to 25 miles per hour. Mr. Auguste was driving on the Atkinson road. When he got to the Hatton Garden junction he was driving on the right side of the road. Further, Mr. Auguste did not stop his pick-up van at the Hatton Garden junction as he was supposed to and should have done. On reaching the Hatton Garden junction, Mr. Auguste made a right turn into the path of the ambulance and collided with it. Mr. Robin applied brakes and swerved a little but could not avoid the collision. The collision occurred on the left side of the road going towards Roseau, that is, on Mr. Robin's side of the road. The point of impact was 2 feet from the left side of the road going towards Roseau. Visibility towards Marigot from the Hatton Garden junction was about 165 feet. Mr. Auguste clearly failed to keep any or any proper look out for oncoming vehicles on the major road.

[19] In my judgment the collision was caused solely by the negligence of the defendant. It is ordered that judgment is entered for the claimants and the defendant's counterclaim is dismissed with costs. Prescribed costs to the claimants.

DKB

DAVIDSON KELVIN BAPTISTE
HIGH COURT JUDGE

