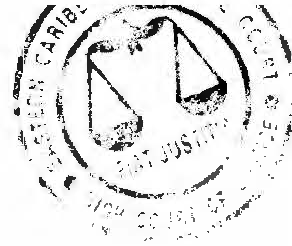


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 395 of 2006



BETWEEN:

FLOYD POMPEY

Claimant

V

CASLEY TONEY

Defendant

Appearances:

Mr. J.O.R. Martin for the Claimant
Mr. J. Delves for the Defendant

2007: December 19;
2008: April 30

JUDGMENT

- [1] **MATTHEW J (Ag.):** On September 14, 2006 the Claimant filed a statement of claim in which he alleged that on September 22, 2005 at about 9:30 a.m. while riding his motorcycle P 4795 along the Peruvian Vale public road the Defendant drove his motor vehicle PL 644 from the opposite direction, and suddenly and without warning crossed over to the Claimant's side of the road and collided with his motorcycle.
- [2] The Claimant alleged that the Defendant drove his car negligently and gave particulars of the said negligence.
- [3] The Claimant alleged that he was injured and gave particulars of the injuries which were:
 - (a) abrasions to both knees and the left elbow;
 - (b) a small wound to the mid right leg with pain and swelling of the right leg;
 - (c) a compound comminuted fracture of the mid shaft of the right tibia;

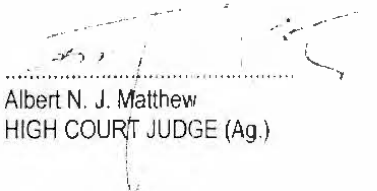
- (d) fracture of the right fibula.
- [4] The Claimant's leg was placed in a cast and he remained at hospital from September 22 to September 24, 2005. The Claimant was referred to physiotherapy and issued with a course of non steroid anti-inflammatory voltoren. The Claimant obtained medical reports from Dr. Charles Woods and Dr. Perry Defreitas.
- [5] The Claimant gave particulars of loss of amenities and alleged that he was not able to work for 16 weeks. He pleaded special damages amounting to \$7,471.86.
- [6] On November 14, 2006 the Defendant filed a defence and counterclaim. The Defendant denied that the collision was caused by him or due to his negligence. He stated that at the relevant time he stopped his vehicle and the Claimant's motorcycle crashed into the right end of the front bumper of his vehicle. He gave particulars of the Claimant's negligence.
- [7] In his counterclaim the Defendant gave the cost of repairs to his vehicle amounting to \$1,200 and loss of use amounting to \$450.00 making a total of \$1,650.
- [8] The Claimant gave evidence and called Randolph Richards as his only witness. The Defendant also gave evidence and called Glenda Lorraine and Eva Williams as his witnesses.
- [9] It is not disputed that the Claimant was riding in the direction from Kingstown to Georgetown and the Defendant was coming from the opposite direction and was in the process of turning right, across the road, to enter the road leading to Yambou which was on the Claimant's left hand side of the main road.
- [10] The Claimant stated that as he proceeded along the road he approached a turn off on his left hand side leading to Yambou and as he came in full view of the turn off he saw about 4 vehicles on his right hand side heading in the direction of Kingstown from the direction of Georgetown.

- [11] He said he passed the first three vehicles and was about to pass the fourth just about the entrance to the turn off on his left, and it was at that point that the Defendant's vehicle pulled away from his side and headed to the turn off.
- [12] The collision occurred and the Claimant and his pillion rider fell to the ground. The Claimant said he experienced excruciating pain and shortly after, Randolph Richards and two other persons came to his assistance.
- [13] When he was cross-examined he said he was not hustling on his way to Sandy Bay. He denied that there were trucks with aggregate on that highway, neither were there stones or sand to block the way. He said he was driving between 25 and 30 miles per hour.
- [14] He also stated that nothing was going in or coming out of the Yambou junction. He said he was a minibus driver and knew Randolph Richards by driving through the area.
- [15] Randolph Richards who lives close to the Yambou or Mesopotamia gap was standing next to a telephone booth opposite the gap at the time of the accident. He said the Defendant's vehicle suddenly turned across the road towards the gap and in the process struck the Claimant's motorcycle.
- [16] He went to the aid of the Claimant who cried for help. At the time the Defendant had stopped his vehicle and was sitting in it. He said the Defendant never indicated that he was turning across the road.
- [17] When cross-examined he stated that before the accident the Claimant and himself did not chat to each other. He denied that he was in his yard when the accident occurred. He denied that there was Rabacca road material on the road that day.
- [18] The Defendant stated that on reaching close to the gap he put on his indicator light to turn right and began to turn right.

- [19] He said shortly after he moved off he saw a bike coming at full speed and he stopped. The bike skidded and slammed into his jeep. The rider of the bike was the Claimant.
- [20] Under cross-examination he said that when the traffic was clear he moved on. The other side was clear and the area was a stretch of road. He admitted he was in the middle of the road. He said it was his front bumper that was damaged.
- [21] Glenda Lorraine was traveling in the Defendant's car at the time of the accident from Georgetown to Belmont. She said the motorcycle came from the opposite direction around the corner very fast and it skidded right into the front of the jeep. She said there was sand on the road.
- [22] Under cross-examination she said the Defendant stopped before he turned across the road. She said the Defendant and herself are friends having known each other for 14 years.
- [23] Eva Williams is a friend of the Defendant who operates a snack and drink business in a bus shed opposite the Yambou gap. She said she saw the accident on the day in question. She said whilst Toney's vehicle had already passed the middle of the road she saw a bike coming with speed and very fast. As there was sand and stone in the road the bike tried to stop but it skidded and slammed into Toney's vehicle.
- [24] She said Randolph Richards whom she knows was not around at the time of the accident.
- [25] Under cross-examination she said she was coming from around the bus shed at the time but was watching the road. She said she had seen the Claimant and Randolph Richards speaking before the date of the accident.

- [26] I examined the demeanour of Eva Williams. Her evidence smacks of untruth, a convenient witness prepared to perjure testimony for a friend. Glenda Lorraine was not convincing either.
- [27] I find that there were neither stones, sand, aggregate nor Rabacca road material on the surface of the road at the time of the accident. In my judgment the Defendant was the sole cause of the accident when without stopping, without indicating so to do, he suddenly turned across oncoming traffic and collided with the Claimant's vehicle.
- [28] In his closing submissions learned Counsel for the Defendant stated that because two medical reports were attached to the claim form, that did not make them evidence in the case. Perhaps Counsel is right. Evidence before a Court must be tendered in a proper manner. But the effect of the submission may be minimized since what is contained in both reports is pleaded in the claim form under "particulars of injury" and "treatment". And even pleading is not evidence.
- [29] I agree with learned Counsel for the Defendant that no evidence was tendered to support the various heads of special damages – medical expenses; loss of earnings and nursing care.
- [30] As Counsel correctly stated cases of this nature are guided by the well-known principles set down in Cornilliac v St. Louis 7 WIR Page 491 which hardly needs repetition. I shall be guided by these principles laid down by the illustrious Chief Justice Sir Hugh Wooding.
- [31] I am not persuaded that the Claimant suffered loss of amenities as he said he suffered in his statement of claim, but even those should be supported by testimony.
- [32] I could not simply award the Claimant the amount of \$15,000 which was awarded for a fractured leg by a Claimant in St. Kitts in suit 16 of 1996. Each case must be assessed on its own particular facts.

- [33] I reject the Claimant's contention that a Defendant becomes liable for an accident because his insurers may have admitted liability. That is a different scenario from the local case, **Osley Baptiste v C.K. Greaves & Co Ltd** where it was the Defendant who had itself made payments to the Plaintiff in circumstances where Mitchell J held the Defendant's payments were legally binding on him and indicated liability for the Plaintiff's injuries.
- [34] I would award the Plaintiff general damages of \$20,000 for his pain and suffering – past, present and future and order the Defendant to pay his costs in the amount of \$5,000.
- [35] The counterclaim is dismissed.



Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)