

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

CLAIM NO: ANUHCV 2005/0212

BETWEEN:

RONALD GREENAWAY

Claimant

-And-

CHARLES EDWARDS

Defendant

Appearances:

Mr. John E. Fuller for the Claimant
Mr. George Lake for the Defendant

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2007: December 19; 2008: January 17, 18
2008: December 16
.....

JUDGMENT

[1] **Harris J:** This is an action for damages for personal injuries suffered by the 40 yr old Claimant and school teacher, in an accident on 28th August 2002 when the Claimant was standing on the shoulder and off the Airport Road alongside a parked vehicle. The personal injury was due to the negligent driving of the Defendant who was reversing his *S.U.V* Jeep along the said road at night and at a fast rate of speed.

[2] The facts of this matter are that on the night of the 28th August 02 sometime around the hour of 8:00 p.m. in the vicinity of Amaryllis Hotel and Double Happiness Restaurant in Antigua and Barbuda, the Claimant, who was driving his vehicle in a **southerly** direction pulled aside on the eastern verge of the road, came out of his vehicle which he had parked 3' off the road and stood up off the

road between his vehicle and the road, speaking to his brother. The Claimant left his vehicle engine running and his park lights were on. Further his vehicle had a series of reflectors mounted to the back and sides of it.

[3] The Defendant in the mean time travelling in a **northerly** direction had driven past the claimant's location, stopped at a traffic light some distance down from the claimant, then reversed up the said Airport Road in the direction of the Claimant's vehicle but on the other side of the road and whilst manoeuvring across and off the road he ran into the Claimant's vehicle crushing the Claimant between the two vehicles in full view of the Claimant's brother, Nieta Greenaway. The Claimant suffered loss and damage including the personal injuries of loss of a limb and several bodily functions.

[4] The Claimant has brought this action in Negligence for his loss and damage. The Defendant alleges that the collision was caused solely or alternatively was contributed to by the negligence of the Claimant. Further, the Defendant made no admissions with respect to the injuries or special damages sustained or special damages sustained by the Claimant and put the Claimant to proof of the injuries and Damage.

[5] Several issues arise in this matter:

- (1) Whether the Defendant was negligent or contributorily negligent in driving his motor vehicle in such a manner so as to cause the collision with the Claimants person and vehicle and the resulting loss and damage.
- (2) Whether the Claimant was negligent or contributory negligent in:
 - (i) *Failing to keep any or any proper lookout or have any or any sufficient regard for other vehicles using the road;*
 - (ii) *Failing to heed the presence of the Defendants vehicle;*
 - (iii) *Failing to give precedence to the Defendant in the circumstances;*
 - (iv) *Failing to take any or any adequate precaution for his own safety while standing in the dark road in the shadows behind the black tray or rear of the said pick up at night;*
 - (v) *Failing to move to safety after seeing the Defendant reversing his vehicle towards him;*

(vi) Failing to stand off the highway so as to get out of the way of the Defendant and other users of the said roads;¹

(3) Whether the Claimant suffered any loss damage and personal injury resulting from the collision.

“ISSUE 1”

Whether the Defendant was negligent or contributarily negligent?

- [6] Defendant's Submissions: The Defendant avers that the Claimant's vehicle was not parked off the road, but had two wheels on the road with the Defendant standing on the road. Further, contends the Defendant, the Claimant admitted to seeing him reversing in his direction and notwithstanding this, failed to move out of the way. The Claimant's truck was black and the Defendant contends that contrary to the evidence of the Claimant, it did not have reflectors. Added to this, the Defendant contends that the Claimant and his vehicle were parked in a dark area; an area of the road over which a flamboyant tree casts a shadow from the street light. The Defendant contends that he was driving slowly at the time of the accident and that it was safe to reverse into the area with nothing to indicate to him that a vehicle was parked there. The defendant denies that he was reversing at a fast rate of speed.
- [7] The Claimant submits; that he was parked 3' off the road and was himself standing off the road when he saw the defendants vehicle reversing on the road in his direction but not coming at him. At this point the claimant said that he looked away and continued talking with his brother when the defendant's vehicle all of a sudden came in contact with him.
- [8] The Claimant insists that the area was illuminated by the street light and light from the restaurant and that his vehicles park lights were on at the time when the Defendant negligently reversed on the highway and crossed over to the claimant's side and then off the main road when it was not appropriate and safe to do so.

¹ See pp 22 of the Trial Bundle for “Defence”

[9] The Claimant submits that despite the Defendant recognizing, as he said, that the area was dark (which is not admitted by the Claimant), the Defendant took a chance and proceeded anyway to reverse up and off the road and ultimately into the Claimant and his parked vehicle. The Claimant argues and in cross examination put it to the defendant, that he the Defendant ought to have proceeded along the road facing forward so that his headlights would further illuminate the area if he determined the area was dark.

[10] It is submitted by the claimant that the Defendant was travelling at a fast rate of speed trying to reverse off the highway as quickly as possible when he collided with both the Claimant and his visible and illuminated vehicle.

[11] The Claimant testified that his vehicle had its engine running, park lights on, and had several visible reflectors mounted on it.

LAW

[12] The definition of Negligence is trite. Nothing unusual arises in this case on the fundamental law of Negligence. Suffice it to say, that the three (3) elements of negligence to be proved by the Claimant remain as:

- (1) a duty of care owed by the Defendant to the plaintiff;
- (2) breach of that duty by the defendant; and
- (3) damage to the Claimant resulting from that breach.

[13] A driver of a vehicle on the road owes a duty of care to other road users to drive carefully. The Defendant in this matter owed the Claimant a duty of care on that night of the collision. It has not been suggested otherwise in the evidence or submissions by the parties.

[14] In determining whether that duty was breached, the court considers whether or not a reasonable man placed in the position of the Defendant would have acted as the Defendant did¹.

¹ See Alderson B in *Blyth v Birmingham Water Works Co* [1843-60] All ER 478 (479)

FINDINGS

- [15] I find the facts of this case to be; that the Defendant reversed his vehicle at a fast rate of speed, crossed and left the main road and drove into the adequately illuminated Claimant and his vehicle. The defendant is not likely to have seen the claimant and his vehicle if he did not keep a proper look out, but proceeded anyway to reverse of the main road and run into him as alleged and proved. But, it was the duty of the Defendant to ensure that the passage was clear by exercising the appropriate caution, keeping a proper look out, taking steps to illuminate his proposed path if he felt it needed further illumination and doing so, if necessary, by driving front forward with his lights on. The defendant simply failed to exercise the duty of care required and indeed, expected in the circumstances of this case. On the facts, the circumstances permitted the defendant ample time and opportunity to do all that was required to satisfy his duty of care to the claimant and to other road users generally. There is no evidence that the circumstances confronting the defendant required of him any unusual or peculiar act in pursuance of his duty of care beyond that expected of him to any other user of the road generally. There is no evidence of oncoming cars for instance, forcing the defendant to leave the road in a hurry or blinding lights emanating from a third party or other source or muddy or otherwise slippery or precarious road conditions. Nothing of the kind is sufficiently disclosed in the evidence.
- [16] The Defendant admitted in cross examination that had he driven front forward with his lights on, he would have seen the Claimant. I also accept the evidence of the Claimant that his vehicle was lit, had reflectors and the area was illuminated in the manner he testified to. I accept also that on the evidence, the lighting although adequate, could not be of the best quality, thereby strengthening the imperative that the defendant exercise greater caution in maneuvering his vehicle in a reversed position and off the road.
- [17] The evidence suggests that even after impact the Defendant's vehicle did not come to an immediate stop. Further, that the Claimant's brother was shouting to the Defendant to stop after he had come into contact with the claimant and the Defendant was oblivious to that. That the Claimant's brother who witnessed the collision would shout out to the Defendant is perfectly plausible and consistent with the horror of the moment and I accept that he did so.

[18] The extent of the impact¹, and injuries² on the Claimant together with the eye witness evidence³ of the Claimant's brother and the Claimant himself, support the contention that the Defendant was reversing at a fast rate of speed. I find that the Defendant was reversing at a fast rate of speed.

[19] Having regard to the Defendant's duty of care to the users of Airport Road and in this case to the Claimant, the Claimant's pleadings of the "*Particulars of Defendants Negligence*",⁴ the Law and the facts as found by the court, I find that the Defendant breached his duty of care to the Claimant by: *failing to observe the claimant; failing to stop, swerve or otherwise control his vehicle so as to avoid colliding with the claimant; reversing when it was unsafe to do so; Driving to fast in the circumstances; Reversing and crossing the road at a speed without regard to the claimants presence.* **The Court finds the defendant was Negligent in the circumstances.**

"ISSUE 2"

Whether the Claimant was negligent or contributarily negligent

[20] The Defendant contends that the Claimant was negligent or did contribute to the cause of the accident by his negligent conduct as set out in the pleadings of the Defendant at para. 4 of the Defence on pp 22 of the Trial Bundle filed March 30/2007⁵.

[21] The Defendant contends; the Claimant was standing on the road and not off the road as testified to by the Claimant. Further, he contends that the Claimant was dressed in dark clothes, standing against a black vehicle with no lights or reflectors as alleged by the Claimant and was in a poorly lit area. Further still, the Defendant contends that the claimant on seeing him reversing on the highway in his direction, ought to have taken steps to move away.

¹Nieten Greenaway's evidence is: "*The same jeep that hit my brother did not stop and I yelled out...*"; and further, the claimant, in chief, said: "*...the jeep...crushed me violently against my vehicle.*"

² See para 4, 5, 6, of the witness statement of the claimant; and on the claimant's application to amplify his statement pursuant to the CPR 2000, he said "*All of a sudden the said vehicle I saw reversing came in contact with me*".

³ "*...I glimpsed a vehicle flash pass close to me and collide with my brother...*" per Nieten Greenaway.

⁴ See pp 4 of the Trial Bundle

⁵ See also para 6 of this Judgment

[22] The Claimant's contention is fundamentally the same as that which he asserts on the "issue 1" at para 6 to para 19 above. He denies that he was either negligent or contributed to the damage by negligence on his part. He denies the factual assertions inconsistent with his, that is relied upon by the defendant in support of this allegation.

THE LAW

[23] The Defendant by his pleadings raises contributory Negligence of the Claimant. By this, the Defendant claims – in Law - that there has been an act or omission on the part of the Claimant which has materially contributed to the damage. This does not go to the root cause of the collision as it does to the damage caused by the collision. Contributory negligence does not depend upon any breach of duty as between the Claimant and a negligent Defendant. *"It depends entirely on the question of whether the plaintiff could reasonably have avoided the consequences of the defendant's negligence"*¹. It applies solely to the conduct of the Claimant and means that there has been an act or omission on the part of the Claimant which has materially contributed to the damage². Put another way, Contributory Negligence is a failure on the part of the person injured to take reasonable care of himself in his own interest³.

FINDINGS

[24] I am strongly inclined to accept the facts in favour of the Claimant, they being more robust and inherently consistent and the Court has made such findings on "issue 1" above. Further, in relation to the Claimant not taking evasive action and moving away on seeing the Defendants vehicle reversing in his direction; the Claimant testified that initially the vehicle was not driving towards him but merely in his direction on the other side of the road⁴. I do not think it is being suggested by the defendant that every time a vehicle is driving on the road in your direction you should take steps to protect yourself. Driving on the public road and reversing, unless shown to be otherwise, are perfectly legitimate activities in modern society that are not expected as a matter of course to engender fear in

¹ Para 1183 Charlesworth on Negligence 6th edit, Jones v Livox Quarries [1952] 2 Q.B 608 (615).
Contributory negligence presumes a negligent defendant and resulting damage.

² Para 1181 *ibid*

³ Commonlaw Caribbean Tort Law, 3rd edit. Gilbert Kodilyne pp 355

⁴ See para 3 of the claimant's witness statement at pp 16 of the Trial Bundle for this evidence.

other road users. In relation to the claimant's reaction to the reversing vehicle driven by the defendant; the claimant said in cross-examination; "No, the vehicle did not come toward me, it came in my direction." Further, he made the critical distinction that " 'Toward' me and 'in my direction' are two different things."

[25] The Claimant went on to testify in cross-examination that "**Toward me** – I would have reason for concern. **In my direction** – I would not be concerned. The road was used by other persons. No I did not see the vehicle coming toward me." (emphasis mine). I reject the defendant's contention that the claimant standing with dark clothes against his dark coloured vehicle amounted to either negligence on the part of the claimant or contributed to his damage. Users of the public roads wear dark clothes, vehicle manufactures make dark coloured vehicles, national vehicle Licensing authorities license dark coloured vehicles and users of the public road own dark coloured vehicles. The existence of these facts I believe, is all the more reason that a driver reversing his vehicle at night ought to exercise the greatest of caution. In the appropriate circumstances, of which this is not one, these facts or any combination of them may be of a different significance.

[26] I accept the evidence of the claimant as supporting the finding that the movement of the Defendant's vehicle on the public road did not warrant any anticipatory protective reaction on his part. The act of reversing by the Defendant was at best not in itself negligent, but the decision, manner and circumstances of leaving the road and entering on the shoulder off the road, is what encompasses the act of negligence. This happened unbeknownst to the Claimant up until the time of impact. The claimant clearly was not left with any time to react to what was a negligent and unexpected manoeuvre by the defendant.

[27] **In all the circumstances, having regard to the Courts finding of fact and the law, the Claimant was not negligent nor did he contribute to his damage and loss as alleged by the defendant or at all.**

“ISSUE 3”

Whether the Claimant suffered any loss damage and personal injury resulting from the negligent collision?

- [28] The claimant has alleged substantial loss and damage and set it out in his pleadings at pp 4 and pp 5 of the Trial Bundle. The defendant has not denied the personal injuries sustained or Special Damages claimed by the claimant but puts him to proof of same.
- [29] The claimant - in chief - in his witness statement, from para. 4 to para. 5¹, testifies as to his injuries sustained as a result of the defendant's actions which the Court has already found above to have amounted to culpable Negligence. He refers to and relies on also, the various medical reports filed in this matter on his behalf. He testifies as to the pain, discomfort and mental anguish suffered by him as a result of the personal injuries sustained in the collision. He speaks of being crushed between his vehicle and that of the defendants and losing one leg in its entirety. He testified in chief as to losing his sexual function as a result of his injuries. He testifies further that he received medical treatment and has received no compensation for his loss and injury.
- [30] The defendant has not proffered any evidence to contradict this evidence of personal injury and medical treatment for it. **The court is sufficiently satisfied that the claimant did suffer the personal injuries and loss as alleged.** As agreed to between the parties and accordingly directed by the court in an earlier stage of these proceedings, the question of the determination of the extent and quantum of damages is left to be assessed at a separate hearing, the directions for which appear in the ORDER below.

ORDER

- [31] For the reasons provided above it is hereby ordered:
- (i) That, there is Judgment for the Claimant on the issue of liability with Damages to be assessed and thereafter, costs to be determined on the Prescribed Cost scale if not agreed.

¹ See pp 17 of the Trial Bundle

- (ii) That, the issue of the quantum of damages be assessed at a date to be fixed by the Registrar.
- (iii) That in relation to the hearing on the assessment of Damages, the Claimant is to file its witness affidavits in support on or before the 5th day of February 2009 and the Defendant file its witness affidavits in answer on or before the expiration of 21 days of service upon him of the said claimants' witness affidavits . The claimant to file its affidavits in reply on or before the expiration of 14 days of service of the defendant's affidavits in answer.
- (iv) That the parties file their legal submissions in relation to General Damages and the whole of the matter, on or before the expiration of seven (7) days of the filing and serving of the claimant's reply on the defendant.
- (v) That a trial window is set for the week of 16th to the 20th of March 2009.

**DAVID C HARRIS
JUDGE
HIGH COURT
ANTIGUA AND BARBUDA**