

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 245 OF 2006

BETWEEN:

MAXWELL ROBERTSON

Claimant

v

VERNON DAVY
KARIB CABLE LTD.

Defendants

Appearances:

Mr. Cecil Williams for Claimant

Mr. Richard Williams and Ms Adrienne Grant for Defendants

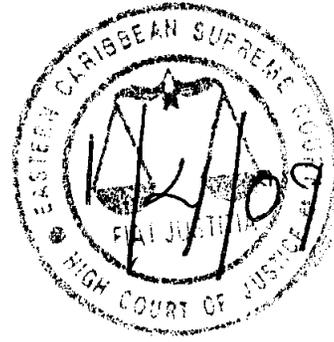
2009: March 16th
April 1st

JUDGMENT

BACKGROUND

[1] **JOSEPH, Monica J. (Acting):** This is a claim by Claimant Maxwell Robertson for damages for injuries he received as a result of a motor vehicle accident on the public road at Calliaqua on 27th March 2004. Robertson suffered segmental fractures to the left leg involving the proximal tibia: compound fracture of the distal fibula: compound fracture to mid aspect of the tibia and fibula.

[2] In his claim Robertson claims that first defendant Davy was negligently driving a motor vehicle (registration number TJ588) (the truck) owned by his employer second defendant Karib Cable and consequently struck him (Robertson). Davy denies that he struck



Robertson. He asserts that Robertson failed to use the walkway but instead found himself in the middle of the road. His claim is that the collision was caused wholly or in part by claimant Robertson.

- [3] Karib Cable's defence is that, at the time of the accident, Davy was on a frolic of his own and it is not responsible for his actions.
- [4] Claimant Robertson provided affidavit and oral evidence and called two witnesses Toney Clarke and Bernaville Morgan who also provided affidavit and oral evidence. Defendant Davy gave affidavit and oral evidence on behalf of the defendants.

CASE FOR PARTIES

- [5] The case for Claimant Robertson was that he was on the public road at Calliaqua about 9.20 p.m. on his way to a political rally at Calliaqua. Toney Clark and Bernaville Morgan were in a vehicle traveling behind a four ton truck. The truck turned the corner near to Mariner's Inn and was on a straight piece of road in the vicinity of a club Macomay. Vehicles were parked on the left hand side of on the road.
- [6] Robertson's evidence was that he had parked his vehicle and was checking to see if it was parked properly when he was struck. He was flung against a parked vehicle on the left hand side and he fell to the ground. Toney saw the truck traveling fast 'come round' and the tail of the truck struck Robertson who was walking on the side of the road and he fell to the ground.
- [7] As the truck did not stop Clarke drove behind it blowing his horn trying to attract the driver's attention. The truck stopped near to the bridge some distance away. Clarke informed Davy that he had struck somebody.
- [8] The case for the defendants: Davy stated that that night he was driving the truck which he described as a long truck. He was aware that there was a festival at the Calliaqua park and was driving slowly. He did not see Robertson that night and he did not strike him with the truck. He was seeing Toney Clarke the first time in Court that day. That night he was

stopped by a police officer (not by anybody else) in the bridge area and accompanied the officer to the police station.

WRITTEN SUBMISSIONS ON 16TH MARCH 2009 AND 19TH MARCH 2009

- [9] Counsel Cecil Williams for Claimant Robertson submitted that there are two legal issues: Was the first defendant Davy negligent when the truck he was driving struck Robertson? Is the second defendant Karib Cable vicariously liable for Davy's act?
- [10] Counsel Richard Williams for the defendants submitted that the issues are three: whether or not Davy drove the truck that struck Robertson: If Court finds that Davy was in fact driving the truck whether he drove it in a negligent manner: whether Robertson contributed to the accident and his injuries.
- [11] Counsel Richard Williams argued that no witness has identified Davy as the driver of the vehicle that struck Robertson. The only act that Davy is guilty of, he said, is that accompanied by his wife and acting out of sympathy, he went to see Robertson in the hospital. It was at the hospital that Davy told Robertson that a police officer had stopped him and told him he had been informed that Davy had struck somebody.
- [12] I find: Davy was driving a four ton truck which truck was stopped on the bridge at Calliaqua shortly after the accident. There was no evidence that there was another four ton truck in the Calliaqua area at that time. Two witnesses saw one (not two) four ton truck that night and Clarke drove behind that truck after the accident until that truck stopped on the bridge.
- [13] From the totality of the evidence on that point I find that Davy drove the truck that struck Robertson. I turn to consider whether Davy drove the truck in a negligent manner. Counsel C. Williams submitted that Davy failed to exercise the duty of care that rests on a driver and cited **Soraya Lewis (by her mother and next friend Lily Lewis) v Eardley Browne** Claim No. 164/2006 Thom J. and **Cheryl Edwards Administrator for the Estate of Janique Lewis v Ethel Mills** No. 168/1998 ANUHC Rawlins J (as he then was) who had this to say:
- “Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected to determine and anticipate the actions and movements of

other users of the road. They are expected to maneuver their vehicles or to stop in order to prevent and avoid accidents. They are expected to keep a proper look out and to exercise particular care and attention in residential areas."

- [14] Mr. Richard Williams for the defendants submitted: that Davy was driving carefully being aware of the fact that there was extra activity in the area. Robertson was the author of his injuries as he failed to exercise duty of care he owed to himself and other road users. He cited *Nance v British Columbia Electric Railway* (1951) 2AER 448.
- [15] Questions that arise: Why is it that Clarke, who was driving behind the truck driven by Davy, did see Robertson on the side of the road and Davy did not see Robertson? Did Robertson step into the road in a manner that contributed to the accident?
- [16] From the evidence I attempt to reconstruct what happened that night. I accept driver Clarke's evidence that Davy was driving fast. Driving fast by itself is insufficient to constitute negligent driving. Someone may drive fast and not be negligent. But where driving fast causes a driver to be less capable of managing or maneuvering a vehicle then driving in a negligent manner arises.
- [17] Where the vehicle being driven is a long truck then it is more difficult for a driver driving fast to safely maneuver that vehicle. When a driver fails to do what a reasonable person would do, that is, drive a long truck at a speed to enable the driver to safely maneuver the truck, then the driver has driven negligently.
- [18] From the evidence I believe Davy was driving fast so he did not see Robertson on the left hand side of the road. Before reaching the point of impact Davy had driven too close to the parked vehicles on the left side of the road. As he swerved away, the front part of the truck swung clear of the parked vehicles, but the tail section of the truck struck Robertson, who was on the left hand side of the road but on the right side of the parked vehicles. The back section of the long truck did not respond to the turn of the steering wheel in the same way the front section of the long truck responded.
- [19] I find that Defendant Davy driving fast did not keep a proper look out, and so failed to see Robertson. That was negligent driving. I also find that Davy, traveling fast, failed to

maneuver the truck so as to avoid striking Robertson and was thus driving in a negligent manner.

[20] Did Robertson contribute to his injury? In cross examination he said:

"Fair to say had I not gone to see if my vehicle was parked properly I would not have been struck. It is also fair to say that if I had not gone to ensure that my vehicle is properly parked I would have been on the left hand side of vehicles. The left hand side of vehicles was safer place to walk than the right".....I was just about stepping up between the vehicles to left side of vehicle which it was better place to be."

[21] Although Robertson was still on the side of the road when he stepped into the road, the parked vehicles were on his left. He ought to have been more careful and watch for oncoming traffic. He therefore failed to keep a proper look out and contributed to the accident. Robertson ought to have exercised care for his own safety and the safety of other users of the road. In the **Nance** case (above) at p. 450 "H" Viscount Simon said:

"Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. If it were not so, the individual on foot could never be sued by the owner of the vehicle for damage caused by his want of care in crossing the road, for he would owe to the plaintiff no duty to take care."

[22] The Contributory Negligence Act (Cap 84) provides authority to the Court to apportion liability where there is a finding that both parties are at fault. Section 3(1) reads:

"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

[23] I think Davy has to bear greater responsibility for the accident. I apportion 70% blame on the part of Defendant Davy and 30% blame on the part of Claimant Robertson.

[24] At the time of accident Davy was employed as a driver with second defendant Karib Cable. I accept his evidence that the arrangement with his employer was that he picks up its

workers in the morning, takes them to work and drops them back after work. For that purpose he is allowed to keep the truck and he is paid overtime for performing that task.

[25] I find that Davy was acting within the scope of his employment and was not on a frolic of his own. *Rose v Plenty and Cooperative Retail Services* (1976) 1AER 97 at p. 100 h Lord Denning said:

"In considering whether a prohibited act was within the course of the employment It depends very much on the purpose for which it was done. If it is done for the employers' business, it is usually done in the course of his employment even though it is a prohibited act."

CONCLUSION

[26] At the commencement of the trial Counsel for the parties had indicated to the Court that only liability would be addressed, leaving the question of assessment for a later date.

[27] Court finds that on 27th March 2004, the first defendant drove a four ton truck in a negligent manner and so struck the claimant. Court finds that the second defendant is vicariously liable for the action of the first defendant as, at the material time, the first defendant was acting within the scope of his employment with the second defendant.

[28] Court finds that the claimant failed to exercise the duty of care that he owed to other road users and therefore contributed to the accident. Court apportions blame for the accident between the parties: 70% on the part of Defendant Davy and 30% on the part of Claimant Robertson.

ORDER

- [29]
1. Judgment for the Claimant against the Defendants to the extent of 70% of the claim.
 2. Defendants to pay Claimant 70% damages of the loss occasioned.
 3. Claimant to apply for assessment on or before 30th April 2009; application to be supported by affidavit and relevant documents.
 4. Prescribed costs apportioned: 70% to be met by defendants: 30% by claimant.

5. Date for assessment 27th May 2009.

A handwritten signature in black ink, appearing to read 'm. Joseph', written over a horizontal dotted line.

Monica Joseph
High Court Judge (Acting)
28th March 2009.