

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2009/0563

BETWEEN:

**JOHN MARK FORSHAW
LISA FORSHAW**

Claimants

AND

**ERIC WILLIAMS
SOUTHERN WASTE MANAGEMENT SERVICES LTD.**

Defendants

Appearances:

Mr. Derick F. Sylvester and Ms. C. Bain for the Claimants
Ms. D. Williams-Mitchell for the Defendants

2011: October 19, November 14
2012: January 17

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This matter arises out of a road traffic accident which occurred on the Mt. Moritz road junction on the 21st August 2009.
- [2] The Claimants are the owners of the motor vehicle numbered PC 216. The said vehicle was being driven by the second claimant on the day of the accident. The other vehicle, a garbage truck, TAB 394, was owned by the second defendant and driven by the first defendant on the day of the accident. The first defendant is the employee of the second defendant.
- [3] On 21st August 2009 at approximately 7:25 a.m. – 7:30 a.m. the second claimant was driving the vehicle, a Suzuki Escudo, along the Mt. Moritz Main Road. She was accompanied by a passenger, Ms. Jacqueline Dowden, who was seated in the front passenger seat of the vehicle.

- [4] The first defendant was driving a garbage truck coming from the direction of the Mt. Moritz Community Centre. He was accompanied by two fellow employees of the second defendant, Ian Mc Queen and another. Mc Queen was at the back of the truck and did not see the collision.
- [5] Both parties testified that there was a collision at the junction of the Mt. Moritz Main Road.
- [6] Both parties agree that the second claimant was travelling on the major road and the first defendant was travelling on the minor road.
- [7] The evidence revealed that the second claimant was travelling at approximately 25 mph and the first defendant was emerging from the minor road turning onto the major road to continue his garbage collection duties that morning.
- [8] At the intersection where the collision took place there was a large sprawling bush as well as a large sign and a parked vehicle, all of which obstructed the view of both parties to the collision to some degree.
- [9] The first defendant was driving up an incline to get to the major road and the second claimant was descending a slightly curved slope as she approached the intersection.
- [10] Each driver and their witnesses gave opposing evidence as to what occurred the morning of the accident and each has accused the other of negligence thereby resulting in the collision. Both parties have denied being negligent, even though in cross-examination the second claimant stated, "We are both responsible for the accident".
- [11] The second claimant and her witness testified that on the morning in question the second claimant was driving on the left and proper side of the road. As stated before, the second claimant estimated her speed at approximately 25 mph. She was on her way to work. She testified that she was not late for work and was therefore not in a hurry to get to her place of employment.

- [12] While driving along the main road the second claimant said she could see the intersection with the hill but she could not estimate how far from the intersection she was when she first saw the intersection.
- [13] She also testified that she could not see anything coming up the hill towards the intersection until she was close to the junction. The bush and the van to the right side of the main road by the intersection would obstruct the view of someone coming up the hill.
- [14] She was some distance away when she saw the truck. She blew her horn; she realized the truck was not going to stop. She mashed her brakes but she collided with the truck which had come from the minor road onto the major road without stopping. She denied that she was speeding. She denied that the driver of the truck had blown his horn.
- [15] The claimant's witness in large part confirmed the evidence of the second claimant. She confirmed the presence of the heavy vegetation, the parked vehicle and the large signboard at the intersection where the collision took place.
- [16] She indicated she first saw the garbage truck coming out of the road at a distance of approximately 8 ft. She saw the truck when the second claimant blew the horn of her vehicle. She testified that when the second claimant blew her horn the truck had not already turned in their direction. She also testified that the truck did not stop at the brow of the hill (at the intersection). She also testified that the truck did not blow its horn as it approached the intersection. She recalled shouting "he is not going to stop".
- [17] The police came to the scene and Officer Alexander took measurements and statements from the parties. He stated that he was of the view that the second claimant was responsible for the accident, he gave no reasons why. The measurements he recorded at the scene are as follows:

"Measurements in respect of vehicle number TAB 394

Position of vehicle at the scene: the truck was slanting across the road facing the Happy Hill direction.

Measurements towards Happy Hill direction

Width of road at point of impact	11 ft.
Point of impact to left of road	4 ft 11 ins.
Length of vehicle	21 ft.
Width of vehicle	7 ft 5 ins.
Right front wheel to right of road	6 ft 10 ins.
Right rear wheel to right of road	off road.
Left front wheel to left of road	2 ft.
Left rear wheel to left of road	off road.

Measurements in respect of vehicle number PC 216

Position of vehicle at the scene: the van was on the left side of the road facing the direction of Grand Mal.

Measurements towards Grand Mal direction

Width of the road at point of impact	11 ft.
Point of impact to left of road	6 ft 1 ins.
Length of vehicle	13 ft 5 ins.
Width of vehicle	5 ft 8 ins.
Right front wheel to right of road	4 ft.
Right rear wheel to right of road	3 ft.
Left front wheel to left of road	1 ft 8 ins.
Left rear wheel to left of road	1 ft 8 ins.
Brake impression to left of road	10 ft 6 ins."

[18] The first defendant in his evidence stated that he was proceeding from the area of the Community Centre up the incline to the major road. He admitted that the garbage truck he was driving was on the minor road.

[19] He testified he took a wide turn on entering the major road in order to keep to the left side of the road, but that despite what he did the truck covered almost the width of the major road. He denied driving straight onto the major road. He denied driving up the hill (the minor road) at a fast speed. He testified that he stopped before he entered the major road, he blew his horn repeatedly and then entered the major road. He said he could see and hear nothing coming from either direction. It was not until he was halfway into the major road that he saw the second claimant's vehicle. It was by then too late; there was nothing he could do to avoid the collision.

[20] The damage to the truck was to the left front step, the left indicator, the left front park light and the end of the left side of the front bumper.

[21] He placed the blame for the accident wholly on the second claimant.

[22] The damage to both vehicles, recorded by Officer Alexander were as follows:

"Damages to vehicle number TAB 394

Damages: - left front park light, indicator, bumper, left front fender and left front step.

Damages to vehicle number PC 216

Damages: - bonnet, grill, bumper (front), radiator support, crash bar, right fender, indicators and right head lamp".

[23] He denied that he had entered the major road without stopping. He denied that he had failed to blow his horn.

[24] His witness Mr. Ian Mc Queen testified that the first defendant blew his horn several times but from his position at the rear of the garbage truck, he did not see the collision.

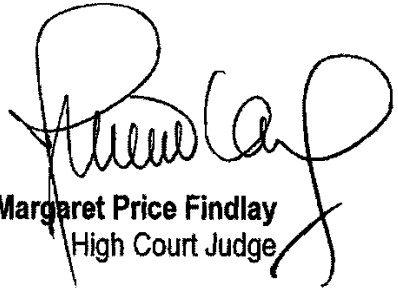
- [25] The Court visited the scene of the accident. It proved to be a very helpful site visit.
- [26] At the scene the Court was able to assess to a degree the state of the obstructions which were at the intersection on the morning of the accident. And while neither the sign nor the vehicle which were there that morning remain, the vegetation still exists even if it is now trimmed.
- [27] Having reviewed the evidence in the matter as a whole, I find that the second claimant was driving along the Mt. Moritz Main Road travelling at approximately 25 mph. She was on the major road approaching the intersection with the road leading from the Mt. Moritz Community Centre.
- [28] The first defendant was driving along the minor road, coming from the direction of the Community Centre. He was heading towards the major road with the intention of making a right turn onto that major road.
- [29] As he approached the intersection there were several things to his left that obstructed his view of traffic coming from his left on the major road; a signboard, a dense bush and a parked vehicle.
- [30] I find that the first defendant made the turn onto the major road without being sure that it was safe to do so. With those three obvious obstructions in his way, he ought to have taken great care and precaution before he attempted to enter the major road.
- [31] He was operating an almost full garbage truck, a relatively large vehicle. He was travelling up an incline. It was a tricky manoeuvre even without the obstructions which blocked his view, even if only partially.
- [32] The position pointed out to the Court by the first defendant at the site visit as to where he stopped his vehicle on the major road that morning is at odds with the damage suffered by the garbage truck.
- [33] The defendant sought to put the front of the truck on his left side of the major road, near to the edge of the road.

- [34] But for the damage which was caused to the truck to have happened from that position, the second claimant's vehicle would have had to be on the right side of the major road, having driven through the several obstructions on that side of the road to hit the truck behind the step, as pointed out by the first defendant.
- [35] The Court does not accept this as a plausible explanation of what transpired that morning.
- [36] Further when one has regard to the measurements taken at the scene, it is clear that the second claimant was driving on her left and proper side of the road at the time of the collision.
- [37] It is clear to this Court that the defendant came out from the minor road onto the major road and was partly on the second claimant's side of the road when the collision took place. The measurements bear this out.
- [38] I find that the first defendant drove onto the major road from the minor road when it was unsafe to do so given all the attendant circumstances. He clearly did not see the second claimant coming towards the intersection because of the obstructions and found himself into the major road with the claimant's vehicle bearing down on him. He could do nothing to avoid the collision at that point.
- [39] In all the circumstances, I can find no contributory negligence on the part of the second claimant in this matter.
- [40] She was on the major road, and while she was driving at approximately 25 mph there is no evidence that driving at this speed contributed in any way to the collision which took place.
- [41] There were no other vehicles on the road at the time of the collision, the second claimant did not venture onto the wrong side of the road. In fact there is nothing before the Court to suggest that she was in any way negligent.
- [42] For the above reasons, I find for the claimant and make the following order:
1. Special damages in the sum of \$14,550.00

2. General damages in the sum of \$3,000.00
3. Interest at the rate of 6% per annum from date of judgment to date of payment.
4. Costs in the sum of \$3,500.00
5. The defendant's counterclaim is dismissed.

[43] I make no award for loss of use as no evidence, documentary or otherwise, has been led with respect to this aspect of the claimant's claim.

[44] I thank Counsel for their assistance.



Margaret Price Findlay
High Court Judge