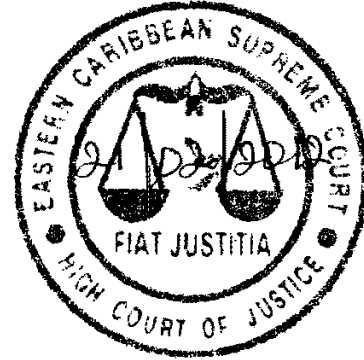


**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 111 OF 2008**



BETWEEN:

RODNEY WILLIAMS

Claimant

v

ROHAND DE ROCHE

Defendant

Appearances:

Mr. Jaundy Martin for the Claimant

Mr. Carlyle Dougan Q.C. for the Defendant

2011: October 5
2012: February 21

JUDGMENT

- [1] **THOM, J:** The Claimant claims damages for personal injuries which he alleges he suffered as a result of a motor vehicle accident which occurred on the 28th day of July 2005.
- [2] The Claimant in his claim alleges that he received injuries to his left foot when motor car RM2 driven by the Defendant collided with him. The claimant alleges that the accident was due solely to the negligence of the Defendant. He outlined the particulars of the Defendant's negligence as follows:
- (a) Failed to give any and every sufficient warning of his approach;
 - (b) Failed to stop, to slow down, to swerve or otherwise to manage to control his motor vehicle so as to avoid the collision;

- (c) Failed to keep any or any proper lookout;
- (d) Caused, permitted or suffered his motor vehicle to collide with him the claimant;
- (e) Failed to have or to retain any or any safe or sufficient control over his vehicle;
- (f) Failed to apply his brakes in time or at all;
- (g) Failed to see, heed or act upon the presence and position of the claimant;
- (h) Failed to take any adequate care for the safety of the claimant;
- (i) Exposed the claimant to a foreseeable risk of injury.

[3] The Defendant in his defence denied that the accident was due to his negligence and alleged that the accident was due to the negligence of the Claimant. He outlined the negligence of the Claimant as follows:

- (a) The Claimant attempting (sic) to run across the road when it was unsafe to do so and himself being negligent in not looking to the right then to the left and then right again to ensure that there was no traffic on the road;
- (b) The Defendant had little time to adjust mentally and to avoid striking the Claimant who in effect ran directly into the Defendant's vehicle.

ISSUE

[4] The issue in this case is whether the collision occurred as a result of the negligence of the Claimant or the Defendant, and whether they were both negligent.

EVIDENCE

[5] The Claimant in his witness statement stated that on July 28, 2005 at about 5pm he was standing in front of a stationary van on the Arnos Vale public road opposite the Sunrise Supermarket. He looked to see if the road was clear for him to cross. When he looked in the direction of the Public Works Department building he saw motor car RM2 approaching

very quickly. The driver had a cell phone to his ear and a young lady was also in the car. Before he could move the front left tyre of the motor car went over his left foot and he fell to the ground. The Defendant took him to the Milton Cato Memorial Hospital. His foot was placed in a cast and he was discharged.

[6] Under cross-examination the Claimant testified that he was not standing in front of the van. He was waiting to cross the road. He was about ten (10) feet from the vehicle when he first saw the vehicle. When he demonstrated the distance it was approximately fifty feet (50'). He further testified that when he came out of the van he stood up. He looked to his left then to his right before attempting to cross the road. As he was about to cross, he stepped out and the motor car went over his left foot. He denied that he stepped into the path of the motor car.

[7] The Defendant in his witness summary stated that on July 28, 2005 he was driving motor car RM2 along the Amos Vale Public Road towards Kingstown when the Claimant ran across the road from in front of a passenger van which had stopped at a bus stop. He swerved to his right, applied his brake but he nonetheless struck the Claimant. The Claimant did not look to the right to the left then and to the right again before he attempted to run across the road.

[8] Under cross-examination the Defendant testified that the accident occurred between 4-5pm. The collision took place in front of the bus stop on the side of the Airport. He agreed that at that time of the day the area would be very busy. He was driving about 25 feet behind the van. The van pulled aside and stopped. The Claimant got out and attempted to cross in front of the van. He blew his horn when he saw the Claimant stepping out. He swerved to his right to avoid colliding with the Claimant.

SUBMISSIONS

- [9] Learned Counsel urged the Court to accept the testimony of the Claimant. Learned Counsel submitted that the Defendant's evidence-in-chief that the Claimant suddenly ran across the road into the path of his vehicle thereby causing the collision should not be accepted since under cross-examination the Defendant testified that he saw the Claimant exit the van and crossed in front of it then crossed into his path, he swerved and still he was unable to avoid the collision.
- [10] The Defendant's version of how the incident occurred is not plausible. Learned Counsel urged the Court to apply the principles outlined in Cheryl Edwards Administratrix of the Estate of Jarique Lewis v Etnel Mills HCANV 108/1998.
- [11] Learned Counsel further submitted that should the Court find that the Claimant was contributory negligent, the Court must bear in mind the principle in Eagle v Chambers 2003 EWCA 1107 where the UK Court of Appeal stated that it is rare indeed for a pedestrian to be found more responsible than a driver, unless the pedestrian has suddenly moved into the path of the oncoming vehicle.
- [12] Learned Queen's Counsel for the Defendant in response submitted that the Claimant was not a reliable witness. He gave contradictory testimony. In his witness statement at paragraph 2 he stated:
- "I was standing in front of a stationary van at the Arnos Vale public road opposite to the Sunrise Supermarket. I wanted to cross the road and was checking to see that the road was also clear."*
- However under cross-examination he stated that he was standing near a fence when he first saw the Defendant in his vehicle traveling very fast.
- [13] Learned Queen's Counsel also submitted that the medical report shows that the Claimant only received minor injuries even though he testified that the Defendant was traveling at a fast speed. Also the injury was to his left foot and not his right. This is inconsistent with his testimony and to how the accident occurred. Further the van was not damaged. That

supports the Defendant's version that the Claimant ran across the road in front of the van. The fact that the Defendant assisted the Claimant cannot be regarded as admission of guilt but rather what should be expected of every decent and law abiding citizen.

FINDINGS

- [14] Having reviewed the evidence in this case I find that on July 28, 2005 at about 5pm the Claimant got out of a van at the bus stop on the Arnos Vale public road in the vicinity of the E.T. Joshua Airport. He went to the front of the van and attempted to cross the road. As he did so he was struck by the motor car driven by the Defendant. The Defendant admitted under cross-examination that he stopped the vehicle in the middle of the road, this was after he had swerved away to avoid colliding with the Claimant. This shows that the Claimant was still on the side of the bus stop when he was struck. The Defendant further admitted under cross-examination that the Claimant attempted to cross the road. This is consistent with the Claimant's testimony that as soon as he put out his left foot the vehicle went over his left foot. I also bear in mind the Defendant testified that he was driving closely behind the van in which the Claimant was traveling. He estimated he was about 2' behind the van.
- [15] I adopt the principle stated in the Cheryl Edwards case. Drivers of motor vehicles have a duty to take care when driving on the public road. They have a duty to be on the look out for pedestrians using the road. It is not disputed that there is no pedestrian crossing in the vicinity of the bus stop. The area where this accident occurred is a very busy area. There is the airport on the north and the Sunrise Supermarket on the south. The Defendant testified that he was about (25') twenty-five feet away and he was driving at a slow pace with his foot on the brake. He saw when the Claimant exited the bus and went in front of the bus.
- [16] If this is correct that the Defendant was driving at a slow pace with his foot on the brake and he had seen the Claimant then the Defendant would have been able to avoid the accident. This is not a situation where the Claimant suddenly appeared from in front of the van and the defendant had not seen him.

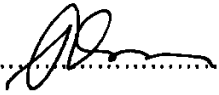
[17] I find that both the Claimant and the Defendant were negligent in this matter. The Claimant misjudged the speed at which the Defendant's motor vehicle was approaching and he attempted to cross the road. There is no pedestrian crossing in that area, it is a very busy area. A pedestrian is required to take due care before crossing the road. I find that the Defendant was negligent in that he did not keep a proper lookout. He was approaching an area that was very busy particularly during the period between 4-5pm. The Amos Vale public road is a main road that links Kingstown the Capital to the Windward side of the island. The accident occurred by a bus stop. The Defendant testified that there was no speed limit sign in the area. Amos Vale is indeed in the Kingstown area where the speed limit is fixed by the Road Traffic Act in schedule 1 at a limit of 20 miles per hour. Drivers of motor vehicle have a duty to acquaint themselves with the speed limit of the area where they drive.

[18] I find that the Claimant and the Defendant are equally responsible for the accident.

[19] I find that the Defendant is liable to the extent of 50% of the damage caused to the Claimant. The claim against the owner of the car was discontinued before trial.

[20] It is ordered:

- (a) Judgment is entered for the Claimant.
- (b) The Defendant shall pay to the Claimant 50% of the damages as assessed on the application of the Claimant.
- (c) The Defendant shall pay interest on the said sum from the date of assessment to the date of final payment at the rate of 6% per annum.
- (d) The Defendant shall pay the Claimant cost as prescribed in Part 65.


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Gertel Thom
HIGH COURT JUDGE