

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

SUIT NO. GDAHCV2009/0552

BETWEEN:

BERNADETTE SAMPSON

Claimant

AND

SAMUEL CHARLES
WENDY CHARLES

Defendants

Appearances:

Ms. Karina Johnson of Counsel for the Claimant
Ms. Denise Campbell of Counsel for the Defendants

2012: June 4, 22
2012: August 17

JUDGMENT

[1] **ELLIS, J.:** By Claim Form and Statement of Claim filed on 17th December 2009, the Claimant claims that on 2nd December 2005, she was walking west on Gladstone Road in the Parish of St. Andrew on the left side of the road, when the Second Defendant negligently drove motor vehicle registration number HM576 thereby causing her to suffer injury, pain, loss and damage. The particulars of recklessness and negligence claimed are as follows:

1. Driving without due care and attention
2. Failing to keep any proper look out
3. Failing to apply her brakes in time so as to avoid colliding into the Claimant's back and injuring the Claimant
4. Failing to steer and or control the said vehicle so as to avoid the said collision.

- [2] As a result of the said collision caused by the Defendant, the Claimant had to seek immediate medical treatment. She was admitted as a patient in the Princess Alice Hospital and discharged on 5th December 2005. The Claimant exhibited a medical report dated 9th March 2006 detailing her medical condition. The diagnosis indicates that she suffered soft tissue injuries. The report also revealed that the Claimant complained of extreme pain and tenderness to her back, limited movement, weakness to the left upper thigh, back weariness and difficulty sitting up.
- [3] The Claimant also claims that the Second Defendant accepted liability for the accident to the Police and exhibited a Police Report dated 23rd June 2006 as evidence of this. She further alleges that the Second Defendant also accepted responsibility for the accident in the presence of attorney, Shadel Nyack Compton.
- [4] The Claimant claims special damages in the amount \$25,310.00, general damages in negligence, interest and costs.
- [5] In a Defence filed on 28th April 2010, the Second Defendant admits that a collision took place between the Claimant and the vehicle owned and driven by the Second Defendant on 2nd December 2005. The Second Defendant however denies that the said collision was caused by her negligence. She states rather that the collision occurred when the Claimant who was standing at the side of Gladstone Road walked into the road while the Second Defendant was turning onto the said Gladstone Road from Seaton Brown Street. Her defence is that the collision was caused wholly or at least in part by the negligence displayed by the Claimant in stepping into the road wearing high heels (although she had bowing of the tibial bones and unable to walk normally) and failing to return to sidewalk in order to avoid the said collision.
- [6] The Second Defendant further denies that the said collision caused any injury other than a minor injury to the Claimant since the vehicle was travelling very slowly and made only light contact with Claimant which caused her to fall to her knees without any great impact.

- [7] The Second Defendant states further that she blew her horn and stopped when she saw the Claimant walking into the road but was unable to prevent the Claimant's leg brushing against the vehicle's bumper. She stated that the Claimant fell onto her knees but denies that the Claimant's upper body ever touched the ground.
- [8] The Second Defendant denies that she ever accepted liability for the accident.
- [9] The First Defendant's defence was filed on 2nd July 2012 and essentially repeats the several averments set out in the Second Defendant's defence. The Defendants generally deny that the Claimant underwent medical treatment as a result of the collision or that she has been experiencing pain and suffering because of the said collision.
- [10] In her Reply, the Claimant denies that she was negligent as alleged by the Second Defendant or at all. She states that she was walking on the side of the road when she heard a vehicle coming from behind. She states that she stood up because it is her practice not to walk when vehicles are approaching. She stated that as a consequence of the vehicle hitting her on her hip, she was thrown into the gutter at the side of the road. There was no sidewalk. She was bruised, wet and dirty and she had to be assisted to get out of the gutter.
- [11] She stated that she asked the Second Defendant "Why did you do that to me?" to which she replied "I did not see you". The Claimant alleges that she then responded "I was not in your way, you did not have to see me".
- [12] She stated further that on 20th December 2005, the Second Defendant admitted liability to the Claimant's attorney, Shadel Nyack Compton, and promised to report the matter to her insurance company. She states also that the Claimant was interviewed by the Police and again admitted liability.
- [13] At the trial, the Claimant gave evidence on her own behalf and called one other witness, Shadel Nyack Compton. Both Defendants also gave evidence.

THE CLAIMANT'S CASE

- [14] The Claimant's evidence is that on 2nd December 2005, she took a bus from her home in Belmont which dropped her off at the bus stand close to the Grenville Police Station. After leaving the bus stand she walked to Gladstone Road on her way to Rivulet Lane. She kept to the left hand side of the road, on the opposite side to the oncoming traffic. She stated that she was "holding her side" because she knew that this road was a very busy one.
- [15] She said that she felt a strong force hit her in the lower back and hip. On impact she was pitched into the deep drain on the side of the road and although she could not remember exactly how she fell into the drain, she bruised her skin, hands and knees on the side of the drain. Her clothes and handbag were soaked.
- [16] Someone (she is unable to identify that person) lifted her out of the drain, and the shock of the collision and fall caused her to "black out" for a short while. She was later transported to Princess Alice Hospital in a bus procured by the Second Defendant. She stated that she was discharged from the Hospital on 5th December 2005.
- [17] A Medical Report dated 9th March 2006 accompanied the Claimant's Statement of Claim and disclosed the injuries alleged to have been suffered by the Claimant.
- [18] In cross-examination, the Claimant testified that the accident happened on Gladstone Road, just 10 feet from junction to Rivulet Lane. She stated that she was walking along the left side of Gladstone Road when she was hit by a vehicle and fell down into a culvert which ran alongside the road. She stated that she did not just fall onto her knees but rather "capsized on the side of the hole."
- [19] The Claimant stated that Gladstone Road has always been a very busy road so she kept to her side of the road. She did not attempt to step out, move into, cross or walk into the road. She stated that she was going to her friend's house in Rivulet Lane and she was about 10 feet away from the gap. She did not have to cross the road to get to Rivulet Lane because it was on the left hand side of

Gladstone Road and she could clearly see the turn off from where she was standing.

- [20] She stated that on the day in question she initially saw a “whitish coloured” bus with green at the bottom on Seaton Brown Street at its junction with Gladstone Road waiting to join Gladstone Road. When she heard a vehicle coming from behind her, she stood on the side of the road. She did not hear a horn blow. The next thing that happened is that she was hit. She stated that she never actually saw the vehicle that hit her but later realised that it was the bus that she had seen at the junction of Seaton Brown Street and which was driven by the Second Defendant.
- [21] She testified that the vehicle hit her on the left side of her body in the area of her hip and lower back. She stated that her whole body pained her when they took her to the Hospital. She stated that immediately following the collision she became unconscious. Prior to the accident she had no problem walking or sitting for long periods. She was a seamstress who sewed commercially just before the collision and she has not been able sew since the accident.
- [22] In her witness summary, Ms. Shadel Nyack Compton indicates that the Claimant sought her professional services consequent upon the accident at Gladstone Road, Grenville on 2nd December 2005. She stated that the Second Defendant visited her Office on 5th December 2005 in regard to the accident and that while in her presence, the Second Defendant unconditionally accepted liability for the said accident.
- [23] Under cross-examination Ms. Compton stated that the Claimant is her neighbour. She recalls that the Second Defendant came to her office on 5th December 2005. While in her presence and in the presence of her secretary, the Second Defendant admitted that she was liable for the accident. Ms. Compton indicated that she did not seek to get that admission in writing because at the time she knew that the Second Defendant would have had to deal with her insurance company and she thought that she would have honoured her word and followed through faithfully.

[24] When questioned by the Court, however, Ms. Compton was unable to definitively identify the Second Defendant as the person who visited her office on that day. She stated that she believed that the person who visited her that day was the Second Defendant but she could not say for sure because it has been a long time since 2005, and she only met her once. She indicated however that the person who visited her identified herself as Wendy Charles and although she gave no details of the way in which the accident took place, she acknowledged that she was liable and was willing to take responsibility. Ms. Compton indicated that she then asked her to contact her insurance company.

[25] Ms. Compton also testified that she wrote to Wendy Charles on 20th December 2005 (at an address provided by Ms. Charles) asking her to have the insurance company contact her, but she received no response to that letter. A copy of this letter was not tendered in evidence.

THE DEFENDANTS' CASE

[26] The Second Defendant in her witness statement admitted that a collision occurred on the 2nd December 2005 at Gladstone Road, St. Andrew. However, she denies that the collision was caused by her negligence. Rather she states that the collision occurred when the Claimant who was standing on the side of Gladstone Road walked into the road while she was turning her vehicle into the said Gladstone Road.

[27] She states that she was driving with the greatest care and attention. She blew her horn and stopped when she saw the Claimant walking into the road but was unable to prevent the Claimant's leg brushing against the vehicle's bumper. The Claimant consequently fell to her knees but at no time did the Claimant's upper body touch the ground.

[28] She denies all the particulars of negligence which are alleged by the Claimant. She asserts that the collision occurred wholly or in part through the negligence of the Claimant in stepping suddenly into the road without any regard to the traffic while wearing heels (although she had bowing of the tibia bones and was unable

to walk normally) and in failing to return to the sidewalk in order to avoid the collision.

[29] She further denies that the collision caused any injury to the Claimant save for very minor injuries, because she was driving the vehicle very slowly and made only slight contact with the Claimant who fell to her knees without any great impact. In fact she states that after the collision, the Claimant indicated to her that she had not suffered any injury at all and it was only after a bystander suggested it that the Claimant asked to be taken to the Hospital. Consequently, the Second Defendant does not accept or deny the contents of the Medical Report disclosed by the Claimant. In her view, the injuries referenced in the medical report are wholly or partly the result of the Claimant's pre-existing medical illnesses which are related to and wholly unaffected by the said collision.

[30] The Second Defendant again denied that she ever accepted liability for the collision.

[31] When cross-examined, the Second Defendant stated that on the day in question she was "making a run with the bus" and had passengers on board. She stated that before turning on to Gladstone Road she was on Seaton Brown Street. She stated that she had paused at the junction of Seaton Brown Street and Gladstone Road in preparation for turning onto Gladstone Road. She described Gladstone Road as a road which can easily accommodate two vehicles side by side.

[32] When the Second Defendant attempted to described the events just preceding the collision, her vacillating evidence and contradictions posed a great difficulty for the truth.

[33] Initially she stated that she did not see the Claimant while the bus was waiting on Seaton Brown Street. She stated that there were a lot of people walking and standing on both roadways that morning, but she could not say that she saw the Claimant. This is at variance with her witness statement. Later, she stated that she did see the Claimant before hitting her that day. She stated that she noticed and started to pay attention to the Claimant when she started to walk into the road

and towards her vehicle. The Second Defendant's evidence was that the Claimant took about three steps between the time when she first saw her and when she collided with the bus. She stated that the Claimant was not walking very fast or upright but was trying to get her balance and was walking at a slower rate than the bus.

[34] She stated that both the bus and the Claimant were travelling very slowly and that when she saw the Claimant approaching the bus and not steadying herself, she stopped the bus sounded the horn and did not attempt to move. She stated that she made no attempt to swing the vehicle away so as to avoid the impact.

[35] She stated that although she brought the bus to a complete stop immediately before the collision, the Claimant still managed to walk into the bus. She repeatedly testified that the bus was stationary when the Claimant walked into the left-hand side of the bus (lower fender and bumper). She stated that she sounded the vehicle's horn when she realised that the Claimant was coming towards the bus and continued to sound the horn even after she had stopped the bus. After walking directly into the stationary bus, the Second Defendant stated that she saw the Claimant fall to her knees.

[36] The Second Defendant also had considerable difficulty in cross-examination in accurately describing the position of the bus in the road when the collision occurred. Her evidence shifted with each question and it was only after examination by the Court that she indicated that her bus was more or less straight across Gladstone Road getting ready to go on the left side of the road at the time the collision occurred. It was at that point that she saw the Claimant walking towards her. She stated when the Claimant started her approach, she was facing the bus and the Second Defendant could clearly see her through the front of the vehicle.

[37] She stated that following the collision, she completely turned the bus onto Gladstone Road, parked and returned to the scene of the accident. She stated that when she returned, the Claimant was on the side of the road although she did

not see when she moved. She stated that she spoke to the Claimant and arranged for her to be taken to the Hospital. She stated that she received a call from the Claimant when she was discharged from the Hospital.

[38] In his witness statement, the First Defendant stated that he and his wife, the Second-named Defendant are the registered owners of the bus registration number HM 576. He admits that a collision took place on 2nd December 2005 between the Claimant and the said bus driven by the Second Defendant. He admits that he was not present at the time of the accident but relies solely on what he was told by the Second Defendant. His statement then repeats the several averments made by the Second Defendant.

[39] The First Defendant did not witness the collision and as a result his evidence was not particularly relevant to the issue of liability.

OTHER EVIDENCE

[40] No further eyewitness testimony was proffered by the Parties at the trial. However, the Claimant adduced a Police Report dated 23rd June 2006 signed by Superintendent R. Baptiste, and addressed to Shadel Nyack Compton. It indicates that following a report by the Claimant on 5th December 2005, the Second Defendant was contacted and attended the Traffic Department. The Report states that although the Parties were invited to revisit the scene of the accident, the Claimant declined to do so on the basis that she was not feeling well.

[41] The Report also states the Second Defendant accepted liability for the accident but does not indicate to whom these representations were made. The Second Defendant in cross-examination agreed that she was interviewed at the Police Station in relation to the accident and in the presence of the Claimant. However, she denied that she accepted responsibility for the accident. Superintendent Baptiste was not called as a witness and there appears to have been no formal police investigation into the accident. There was no site visit, no measurements were taken and the Report discloses no official conclusions. In circumstances, the Court attached little evidential weight to the Police Report.

ISSUES AND LAW

- [42] The Parties' Pre-trial memoranda disclosed the following issues:
- i. Whether the collision occurred as a result or through the negligence of the Second Defendant.
 - ii. Whether the Claimant was contributory negligent.
 - iii. Whether the collision was the cause of the loss or damage sustained by the Claimant.
 - iv. What (if any), is the appropriate measure of damages due to the Claimant?
- [43] **Nettleship v Weston (1971) 3 All E.R.** established that a driver or road user owes a duty of care to anyone who uses the road, to drive with the degree of skill and care to be expected of a competent and experienced driver, the standard or test to be applied being that of the average, competent and reasonable driver.
- [44] The courts have been very clear as to the duty of care owed by driver to pedestrians. A driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users including other drivers, cyclists and pedestrians. In order to fulfil this duty he should keep a proper lookout, observe traffic rules and signals and avoid excessive speed. It is a question of fact in each case as to whether a defendant has observed the standard of care required of him in the particular circumstances. The courts however put a very high duty on a road user vis-à-vis pedestrians. Pedestrians are of course particularly vulnerable, may not always be paying attention to cars and other vehicles, may not always be sober, or may be children whose visual and spatial awareness is not as developed as that of an adult. Drivers are expected to take all these factors into account and owe a duty of care to the pedestrian.
- [45] A pedestrian however, must also exercise reasonable care for his or her own safety. The care required of the pedestrian must be in proportion to the danger to be avoided and the consequences that might be reasonably anticipated. However,

pedestrians who enter a stream of traffic and disrupt the flow, or fail to use marked cross walks, or pedestrians or who "dart" in front of a vehicle have generally been held to be negligent or at least partially negligent.

ANALYSIS OF THE EVIDENCE/FINDINGS

- [46] That a collision occurred between the Claimant and the motor bus driven by the Second Defendant and jointly owned by the First Defendant on 2nd December 2005 was never an issue in dispute in this trial. Rather, the central issue to be determined was whether that collision was caused through the negligence of the Second Defendant or the Claimant.
- [47] Generally, the Court was of the view that the Second Defendant was not a witness of truth. The Court was left with the distinct impression that she was fabricating her evidence as she went along. Her evidence as to her events immediately preceding the collision was inconsistent and improbable. Her vacillating contradictions posed a great difficulty for the Court.
- [48] It was in cross-examination that she revealed that she did not see the Claimant standing on Gladstone Road. She stated that she first saw the Claimant when she was walking towards the bus. She also stated that at the time of the collision, the front of the bus was almost straight in the road and she was getting ready to go on to the left side of the road when the Claimant walked sideways into the road and into the left side of the bus. At the time, the Claimant was facing the bus and the Second Defendant stated that she could clearly see the Claimant's face through the front of the vehicle.
- [49] It was also only under cross-examination that she indicated that the vehicle was stationary at the time of impact. It was only under cross-examination that she indicated that she continued to sound the horn even after she had stopped the bus and up to the point of impact.

- [50] The Court did not find the Second Defendant to be a credible witness. Her oral testimony during the trial considerably revised her witness statement and the Court is not satisfied on a balance of probabilities that either account is truthful.
- [51] The Second Defendant asks the Court to accept that the accident occurred as a result of the negligence of the Claimant who walked into road and into the stationary bus (which was clearly within her view) and whose leg brushed against the left side of the said bus which caused her to fall to her knees. The Court finds the Second Defendant's version of events to be incredulous.
- [52] It was clear to the Court that the Claimant is of advanced age and because of her physical condition incapable of swift ambulatory movements. This is not a case where the pedestrian was rushing or darted suddenly into the road. The Second Defendant has never alleged this. Indeed, in cross-examination, the Second Defendant stated that the Claimant was not walking very fast or upright but was trying to get her balance and was walking at a slower rate than the bus. She also alleges that at the time the Claimant was facing the horn-blaring bus. That Claimant could in those circumstances, have walked into the stationary vehicle with sufficient force so as to fall and cause injury to herself is in the Court's view, implausible.
- [53] At the time of the accident the Claimant was 69 years old. She suffers from severe bowed tibial bones and has an admitted predilection for high heels. Even if (which is not accepted) that she was attempting to cross the road, the Claimant would have been walking sufficient slowly to allow the Second Defendant (had she been travelling at an appropriate speed and had she been keeping a proper lookout for pedestrians on the road), time to take necessary action to avoid any collision. That she was unable to do so indicates to the Court that the Second Defendant simply did not see the Claimant or failed to see her in time to avoid the collision.
- [54] Having had an opportunity to observe the demeanour of the Claimant, the Court is satisfied that she was sufficiently truthful in her responses. Although the collision

occurred some seven years ago, there were only minor contradictions in the Claimant's testimony which did not relate to the particulars of the actual collision. Under cross examination the Claimant indicated that she was not aware whether a Dr. Tam Tam lived on Gladstone Road contrary to what is alleged in her witness statement. The Claimant also indicated that she what she fell into was more of the nature of a hole rather than a drain as she alleged in her witness statement. Additionally, the Claimant also had to be specifically reminded of the conversation which she alleged took place following the accident and which was set out in paragraph 15 of her witness statement. The Court does not consider that these matters significantly impacted the credibility of the Claimant.

[60] Gladstone Road is a busy thoroughfare leading towards Grenville. The road itself has an ample carriageway in both directions. The Court accepts that the Claimant was walking on the far left side of Gladstone Road in the direction of Rivulet Lane, which turn off is on the left-hand side of Gladstone Road. The Court finds that the Claimant was not attempting to cross Gladstone Road as was suggested by the Second Defendant. The Court also finds that while on Gladstone Road, the Claimant was struck by the bus which was driven by the Second Defendant.

[61] The Court finds that the accident occurred as the Second Defendant was driving her bus along the Gladstone Road having come from the intersection with Seaton Brown Street. The Court does not accept that the Defendant's bus was at a standstill when the accident took place.

[62] The Court finds that the collision occurred because the Claimant failed to keep a proper lookout while driving. On the evidence of the Second Defendant, Gladstone Roadway was very busy with many people on the road. She was therefore obliged to drive with due care and attention and to keep a proper lookout for other road users. In failing to do so, the Second Defendant acted negligently. Further, the Court finds that the Second Defendant failed to steer and so control the said vehicle so as to avoid colliding with the Claimant.

ADMISSIONS

- [63] With regard to the Police Report dated 23rd June 2006, for the reasons already indicated, the Court ascribed no weight to the reported admission.
- [64] In respect of the alleged admission to Ms. Compton, the Second Defendant denied ever meeting Ms. Compton or visiting her Law Office or admitting liability for the accident. The Court found Mrs. Nyack Compton to be forthright in her testimony. She could not definitively identify the Second Defendant as the person who visited her Law Office on 5th December 2005 and when questioned by the Court she readily admitted this. She indicated, however, that the person who visited her Law Office identified herself as the Second Defendant and indicated that she was willing to take responsibility for the accident. However, she confirmed that this individual gave no details as to the way in which the accident occurred.
- [65] The Court therefore finds that the evidence of alleged admissions by the Second Defendant ultimately carried very little weight in deciding liability.

CONCLUSION

- [66] Driving with reasonable attention requires simultaneous attention to a number of different features of what may be in the vehicle's path. The reasonable care which drivers must exercise requires that they control the speed and direction of the vehicle in such a way that they can take reasonable steps to react to such events. The Court adopts the principle set out by Rawlins J in the case of **Cheryl Edwards Administratrix of the Estate of Janique Lewis v Etnel Mills HCANV 108/1998**.

"Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. They are expected to use and to observe proper signals. Signals must be clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due

care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road".

[67] Having reviewed the evidence, and with the benefit of having heard and observed the witnesses, the Court has no hesitation in concluding on a balance of probabilities that the collision occurred through the negligent driving of the Second Defendant. In failing to keep a proper lookout and to take the necessary evasive action, the Second Defendant collided with the Claimant while she was a pedestrian and properly on the left side of Gladstone Road. I further find that the force of the impact was severe enough to cause injury to the Claimant which caused her to be hospitalised for several days.

[68] The Court further concludes that the issue of contribution does not arise. Had the Second Defendant driven with competence, alertness and care, she could have avoided the collision. The Claimant is therefore are entitled to recover damages to be assessed along with interest and costs.

[69] It is therefore ordered as follows:

- i. Judgment is entered for the Claimant.
- ii. The Defendants shall pay damages to the Claimant as assessed by the Master on application made by the Claimants. Such application to be made within two (2) months of the date of this judgment.
- iii. The Defendants shall pay the Claimant's costs in the sum of \$7,000.00

Vicki Ann Ellis
High Court Judge