GRENADA

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

CLAIM NO. GDAHCV2006/0126

BETWEEN:

KENITA PAUL

Claimant

AND

SHEM TELESFORD (By his father and
next friend FLOYD TELESFORD)
FLOYD TELESFORD

Defendant

Appearances:

Mrs. C. Edwards, Q.C with Mrs. Sabrita Khan-Ramdhani for Claimant
Ms. Deborah Mitchell for 1st Defendant
Mr. Derick Sylvester for 2nd Defendant

2012: October 15

JUDGMENT

[1] **PRICE FINDLAY, J.:** This claim arises out of a traffic accident which took place on the Crochu Main Road, going towards St. David, close to the La Tante junction. At the time of the accident and at the time of the filing of this claim the First Defendant was a minor. It was not disputed that the First Defendant drove vehicle number PB396 along the said road and struck the Claimant as she walked along the side of the road.

[2] The First Defendant admitted that he had been the driver and that the accident did happen. In fact, the First Defendant did not file or serve a defence in the matter. The Second Defendant is the father of the First Defendant. PB396 is a vehicle registered to the Second Defendant as the owner.

[3] In his pleadings, the Second Defendant was not his servant or agent, and the First Defendant was not driving the vehicle for the purpose of the Second Defendant. The Second Defendant also pleaded that the vehicle was the property of the First Defendant even though it had not been transferred to the First Defendant and so registered at the Inland Revenue Department of the Licensing Office. It was in the custody and control of the First Defendant.

[4] The Second Defendant also pleaded that he did not send First Defendant on any errand or activity on his behalf and that he was unaware that the First Defendant was driving the vehicle at the date and time of the accident. The Second Defendant further pleaded that he did not permit the First Defendant to drive in a negligent manner, and he had no knowledge that the First Defendant was driving under the influence of alcohol.

[5] The Claimant is a Public Officer employed with the Ministry of finance. On the 22nd may 2005 at approximately 5:00 a.m. she was walking along the Eastern Main Road in Crochu. She was exercising.

[6] She was walking on the left-hand side of the road, when she was struck by PB396 which was driven by the First Defendant. She was hit from behind. She lost consciousness. When she regained consciousness she was being assisted by Nolan Richardson.

[7] She was in pain all over her body. She was taken to the hospital. She had bruises on her legs and face. She was admitted to the hospital. She experienced severe pain and she visited a doctor in Sauteurs. She was sent back to the hospital and spent two weeks there. She spent a further three months at home after her discharge from the hospital totally stationery on her back. After this period she spent another six weeks at home.

[8] As a result of the accident, she suffered from ligaments in her left ankle, abrasions to her lips, arms and elbows and a broken vertebra in her spine. She testified that she had difficulty in having sexual intercourse. She cannot bend without lower

back pain and severe back pain during sleep. She moved with assistance during the time she was at home, she had a helper.

[9] Nolan Scott testified that on the day in question he was returning to St. George's from a party in Moonlight City. He was driving and had one passenger in his vehicle. The First Defendant had been at the party. Mr. Scott was driving behind the First Defendant. He described the First Defendant as 'driving all over the road' swerving from left to right, and driving at approximately 50-60 mph.

[10] He saw the Claimant walking and saw the vehicle driven by the First Defendant run into the Claimant from behind and knock her over a wall. The First Defendant's vehicle spun around in the road and came to a stop. Scott came out and assisted the Claimant who was lying unconscious behind the wall. She did not respond when he called out to her. He thought there was a passenger in the First Defendant's vehicle but was not sure.

[11] He picked up the Claimant, put her into his vehicle and took her to the hospital. On the way to the hospital, she regained consciousness and complained of pain all over her body. He took her to the hospital and left her there.

[12] In cross-examination he stated that the vehicle driven by the Defendant was in his sight from the time it left Moonlight city to the scene of the accident. He insisted that the vehicle swerved as it was driven. The Claimant did not walk into the Emergency Department, the hospital staff came with a stretcher. The First Defendant having admitted liability did not testify at the hearing nor was he cross-examined.

[13] The Second Defendant testified that the First Defendant is his son and was the sole owner of PB396. He testified that the First Defendant was not driving the vehicle for his purpose, but was driving on an assignment of own. He had no knowledge of what his son was doing that day, not did he have any idea of the First Defendant's whereabouts.

[14] He denied any negligence and denied that there was any master/servant relationship between he and the First Defendant. On cross-examination he testified that at the time of the accident, the vehicle was insured in his name, not the First Defendant. He also testified that he had not transferred the vehicle to his son in the accepted manner by filing the necessary paper work at the Inland Revenue Department. Lastly, he testified that the First Defendant was driving the vehicle on the day and time in question with his permission.

[15] Firstly, the Court is not at all convinced on the evidence that the vehicle PB396 belonged to the First Defendant. It is clear from the evidence of the Second Defendant that even if he intended to transfer the vehicle to his son, that he failed to do so in the accepted legal manner. I find therefore that on the date of the accident, PB396 was owned and insured in the name of the Second Defendant, Floyd Telesford. The question now left to be decided is whether the Second Defendant is liable for the admitted negligent driving of the First Defendant.

[16] The Second Defendant argues that since the First Defendant was not driving the vehicle for the purpose of the Second Defendant, there is no liability attaching to the Second Defendant for the negligent driving of the First Defendant. He further argues that there is no relationship or master and servant as between the First and Second Defendants, a position readily accepted by the Claimant.

[17] The further argument is that the Second Defendant does not admit any tortuous liability because he had no knowledge of the First Defendant's activities and that the First Defendant was not acting for or on behalf of the First Defendant. The First Defendant was acting on his own.

[18] Counsel cited **Hewitt v Borin and Another** where it was held that where a son drove a vehicle with permission of his mother and was negligent, the Court of Appeal held that the son was not driving the vehicle as the servant or agent of the father or for the father's purposes and as a result the father was not liable for the tortuous act of the son.

[19] The Second Defendant argues that although the ownership of a vehicle at the time of the accident is prima facie evidence that the driver was the servant or agent of the owner, thereby evidencing liability in the owner, that inference can be displaced by evidence that the driver had the permission of the owner to use the vehicle for his own purposes. The question of service or agency being a question of fact.

[20] In the case of **Bambarran v Gurrucharran (1970) 1 All ER 749** Lord Donovan stated:

> "It must be established by the Plaintiff if he is to make the owner liable, that the driver was driving the car as the servant or agent of the owner, and not merely for the driver's own benefit and on his own concerns…"

[21] The Second Defendant argues that this is what happened here. The First Defendant in going to Moonlight City to attend a party was on a jaunt of his own, he was not 'about his father's business'. He argues that this is so even though the Second Defendant gave the First Defendant permission to drive the vehicle. It is a generally accepted principle of law that the owner of a vehicle is only liable for the negligence of the driver if the driver is with the owner's consent driving the car on the owner's business or for the owner's purposes. In order to find liability in an owner, it is necessary to show that the driver was driving either wholly or in part on the owner's business.

[22] This was clearly enunciated by the House of Lords in **Morgans v Launchbury (1973) AC, 127** where the theory of the family car or matrimonial car pronounced by Lord Denning in the Court of Appeal was disapproved. While the Court accepts that this is the state of the law, in this case at the time of the accident the First Defendant was a minor and this puts the matter in this case on a different footing to those cited by Counsel.

[23] This Court finds it difficult to ignore the implications of this fact. Taking this factor into account, as well as the fact that ownership of the vehicle rested with the Second Defendant and the fact by his own admission that he had given the First

Defendant direct permission to drive the vehicle that night, I find that the First Defendant on that night was indeed the servant or agent of the Second Defendant. I further find that as a result of the First Defendant's admission of liability in the matter, that the Second Defendant is also liable. I differ with the established authorities only because at the date of the accident, the First Defendant was a minor and as a result the Second Defendant must bear the responsibility for the negligent driving of the First Defendant, his son.

[24] In conclusion, it is therefore ordered as follows:

1. Judgment is entered for the Claimant against both the First and Second Defendant.

2. Assessment of damages to be done by the Master, such application to be made on or before the 31st October, 2012.

3. The Defendants to pay the Claimant's cost to be assessed if not agreed.

Margaret A. Price Findlay
High Court Judge