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

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2010/0156

BETWEEN:

RYAN RICHARDS

Claimant

and

MICHAEL FRANCOIS

Defendant

Appearances:
Mr. Derrick Sylvester for the Claimant
Mr. Alban John for the Defendant

2013: June 10, June 27,
July 8, November 7

DECISION

[1] **MOHAMMED, J.:** Ryan Richards ("the Claimant") a bus driver, was involved in an unfortunate motor vehicle accident on a Friday evening in January 2008 while on his way to purchase barbeque in Petit Bacaye. On that day he was struck by a motor vehicle driven by Michael Francois, ("the Defendant") who was the Superintendent of Police in charge of the Traffic Branch of the Royal Grenada Police Force at that time. As a result of the collision the Claimant suffered injuries to his left leg, left arm and shoulders. He instituted this action to recover damages from the Defendant, whom he believes was solely responsible for the accident. The Defendant accepted that his vehicle struck the Claimant but instead insists

that the Claimant either caused or contributed to the accident. He denied that the accident was caused by his negligence.

[2] In running down actions, despite the simplicity of the facts, it is common for the Court to be presented with two conflicting versions of the accident and it is left to the Court to conduct the unenviable task of reconstructing the events to determine which version of the accident presented is more reasonable. In determining liability in this case, it was no different.

[3] The issues to be determined were:

(a) Did the Defendant's negligence cause the accident?

(b) Did the Claimant contribute to the accident?

(c) If the Defendant was negligent, to what extent is he liable to compensate the Claimant for his injuries and loss sustained in the accident?

[4] At the trial the persons who gave evidence for the parties were not strangers. The Claimant, his brother PC Chasteau and the owner of Greenidge Barbeque Hut, Mr. John Greenidge, gave evidence on behalf of the Claimant. The Defendant and Mr. Ronald Hughes, the insurance representative gave evidence for the Defendant.

[5] After hearing the evidence, the Court accepted the invitation of Counsel for the Claimant, which was not opposed by Counsel for the Defendant, to visit the site to obtain a better appreciation of the evidence. In this matter, distance and visibility were critical factors in determining the issue of liability. The Court therefore conducted the site visit at around the same time the accident took place.

Did the Defendant's negligence cause the accident?

[6] **Clerk & Lindsell on Torts** has concisely set out the requirements which a claimant must prove to establish a defendant's negligence[1] as:

[1] 17th ed at page 219

(a) The existence in law of a duty of care situation;

(b) Careless behaviour by the defendant;

(c) A causal connection between the defendant's careless conduct and the damage;

(d) Foreseeability that such conduct would have inflicted on the particular claimant the particular damage of which he complains; (Once (a) to (d) are satisfied, the defendant is liable in negligence and only then the next two factors arise);

(e) The extent of the responsibility for the damage to be apportioned to the defendant where others are also held responsible;

(f) The monetary estimate of that extent of damage.

[7] The particulars of the Defendant's negligence which were pleaded by the Claimant were: the Defendant failed to keep a proper look out or observe or heed the presence of the Claimant on the road; he failed to apply his brakes in time; he drove too fast in the circumstances; he failed to take any or any adequate care for the safety of the Claimant and he failed to stop, slow down, swerve or in any way manage his vehicle in order to avoid colliding with the Claimant.

[8] According to the Claimant, on the evening of the accident, he parked his bus on the right side of the road facing St. David. He admitted that the bus was largely parked in the road with the two right wheels being in the shallow drain bordering the roadway. His brother PC Chasteau confirmed that the said drain was 2 feet wide from the side wall to the edge of the asphalted road. The Claimant stated that after parking his bus he put on his hazard lights on the bus. He then alighted from the bus on the conductor's side, which he later agreed with PC Chasteau was almost in the middle of the road. After making 2-3 steps into the road he saw a bright light approaching him at a very fast speed, which he estimated to be around 50-60 miles per hour [2](mph), from the direction of St. George's. His only reaction at that time was to jump, which caused him to land on the Defendant's vehicle.

[2] Paragraph 26 of the Claimant's witness statement –page 46 Trial Bundle Part B

[9] Under cross-examination, the Claimant admitted that he took the shortest route to cross the road, which was squarely across the road rather than diagonal towards the barbeque hut and that since he was 6 feet 1 inch it would have taken him 3 to 5 steps to get to the other side of the road. The Claimant also admitted that although the road gently sloped downhill from the bend towards the location where his bus was parked, he had a clear line of vision of at least 60 feet up the road. This was confirmed at the site visit where all parties agreed that a vehicle coming around the bend from the direction of St. George's was clearly visible from where the bus was parked.

[10] To place the Claimant's evidence in the context of the location of the accident, the width of the road and the vehicles were important. The Claimant agreed that the width of the road where the collision was approximately 18 feet, and at the site visit this was accepted by the Defendant. The Claimant admitted that the width of his bus was 8 feet, and it was not disputed that the width of the Defendant's vehicle was 5 feet. The parties accepted that with the parked bus there was at least 10 feet of the roadway free for vehicular traffic to pass. While I accept that there was some degree of inconsistency between the Claimant's pleaded case that two motor vehicles passed along the road at the time of the accident and his evidence that there was only one vehicle which was the Defendant's, I accept his admission that he had made a mistake.

[11] To support his version of the facts the Claimant relied on John Greenidge, a First Class Cricket Umpire employed by the West Indies Cricket Board and the owner of Greenidge's Barbeque Hut who claimed to be the only other eye witness to the accident. While I accept that Mr. Greenidge was not motivated by ill will since he admitted that he knew the Defendant from birth, he knew his family and he enjoyed a cordial relationship with him, there are two reasons I did not see John Greenidge as a credible and reliable witness. They are his inconsistent evidence with respect to his location at the time of the accident and his inability to accurately assess distances given his training.

[12] John Greenidge stated in his witness statement that *"Where I normally sell BBQ I operate a stand and I position myself on my property about six feet minimum from the main road in an effort to enable me to see vehicles and passersby from both directions of the street. This position is to enable marketability."*[3] He stated that the barbeque hut was at a higher elevation, approximately 4-6 feet above the road, which was confirmed during the site visit. Based on this evidence he placed himself inside his property. However, during the site visit John Greenidge pointed out that he was standing at the edge of the wall which ran along the road. It was clear to the Court, having visited the site, that the location of John Greenidge at the time of the accident was critical in determining the reliability of his evidence. If he was under the barbeque hut he could not have seen oncoming vehicles from St. George's towards St. David's and therefore his evidence with respect to the Defendant's speed, point of impact and location of the Claimant at the point of impact were unreliable. If he was by the wall then he was better placed to observe the accident. However, due to the material inconsistency on his position at the time of the accident, the Court is hesitant to accept this aspect of his evidence.

[13] Secondly, under cross-examination he stated that after the Claimant was thrown off the Defendant's vehicle, on his own volition he took measurements with a tape to be approximately 80 feet from the point of impact. However at the site visit he pointed out a spot which was approximately 40 feet. In my judgment, given his training he ought to have been able to more accurately assess distances, but he failed to do so.

[14] The Defendant's case is on the night of the accident he was driving the Government's motor vehicle from St. George's to Grenville along the Westerhall public road. After passing the corner next to the gap to the residence of former Governor General, Sir Daniel Williams, he proceeded downhill along a short stretch of road estimated to be approximately between 80 to 100 feet. He was driving about 30-35 mph, which coincidentally was within the speed limit, and he saw the Claimant's bus parked on the right, in the direction of St. David. As he

[3] Paragraph 10 of witness statement of John Greenidge- Tab 11 Trial Bundle Part B

was about to pass the bus he noticed someone jumped from inside the bus onto the road directly in front of his vehicle colliding with his vehicle and causing damage to the centre of the windshield and bonnet of his vehicle. He applied brakes and stopped a short distance past the bus, which he accepted during the site visit to be 40 feet from the point of impact and not 25 feet.

[15] However, while the Claimant offered one version of where he was when the accident occurred, the Defendant offered two versions. In his Defence[4] and his witness statement he stated that *"someone jumped from inside the bus into the road directly in front of my vehicle."*[5] However, under cross-examination he stated that the Claimant jumped unto his vehicle and not into the road, which was consistent with the police report of the accident[6].

[16] The Defendant's Counsel submitted that there was no evidence that the Defendant was speeding. However, I do not agree with this position. In my judgment the impact of the collision on the Defendant's vehicle, which were the damages to the bonnet and windscreen as depicted by the post-accident photographs, the nature and extent of the injuries sustained by the Claimant, which were to his left leg, left arm and shoulders, and the point of stoppage by the Defendant after the impact, which was approximately 40 feet past the point of the collision, are not consistent with the Defendant driving at a speed of 30-35 mph but more consistent with a vehicle travelling at a greater speed. Even if I accept any of the Defendant's version that the Claimant had alighted the bus directly into his path, if he was driving at a speed of 30-35 mph he ought to have had a reasonable chance of avoiding the collision since his vehicle was 5 feet wide and he had free space of 10 feet in the roadway to manage his vehicle to avoid the collision. I therefore find that the Defendant was driving far in excess of 30-35 mph and speeding.

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[4] Paragraph 5 of the Defence- Trail Bundle Part A page 31.
[5] Paragraph 4 of the Defendant's witness statement – Trial Bundle Part B page 62
[6] Dated 21st January 2008- Trial Bundle Part C at page 95

[17] In **Grealis v Opuni** the English Court of Appeal had this to say when a court makes a finding of speeding[7]:

> *"Although it does not necessarily follow that negligence is to be imputed to a driver who breaks the speed limit, there is no doubt that evidence of the speed limit being broken may provide evidence of negligence".*

[18] Having found that the Defendant was speeding and driving in excess of the speed limit, I have no hesitation in finding that the Defendant was negligent since he had a duty of care to drive at a speed that was safe in the circumstances and he failed to do so . He also had a duty to manage his vehicle to avoid the collision and he failed to do so. As a result of his failure in his duties, the Claimant suffered damages.

Did the Claimant contribute to the accident?

[19] The Defendant pleaded that the Claimant was either solely responsible for the accident or contributed to it. The particulars of the Claimant's negligence pleaded by the Defendant were: failing to keep any proper look out or to observe or heed the presence or approach of the Defendant's vehicle; jumping out of his vehicle into the road without first ensuring that it was safe to do so; jumping off his bus into the path of the Defendant's oncoming vehicle when it was unsafe to do so; and recklessly alighting from his bus into the road without first establishing that it was safe to do so.

[20] The Claimant admitted under cross-examination that he was not struck at the side of the road but in the middle of the Defendant's path. In my view, the Claimant cannot be absolved from any responsibility for this accident since as a user of the road who knew that he was exiting the bus, not at the side of the road but almost in the middle, he too had a duty of care, given his clear line of visibility, to act prudently. In my judgment, by exiting the vehicle almost in the middle of the road the Claimant acted recklessly. Even if the Defendant was speeding, if the

[7] 2003 EWCA Civ 177

Claimant had exercised a greater duty of care he would have seen the Defendant's approaching vehicle, but he failed to do so and, in the circumstances, he too must bear some responsibility for his actions by recklessly alighting the vehicle almost into the centre of the road.

[21] Therefore, I find that both the Defendant and the Claimant contributed to the accident and are both liable, with 70% to the Defendant and 30% to the Claimant.

If the Defendant was negligent, to what extent is he liable to compensate the Claimant for his injuries and loss sustained in the accident?

[22] The particulars of special damages pleaded by the Claimant were:

(a)	Cost of medical report of Dr. Douglas Noel	$550.00
(b)	Cost of medical report of Dr. Sonia Johnson	$250.00
(c)	Cost of X-ray at General Hospital	$15.00
(d)	Medication	$47.90
	TOTAL	**$862.90**

[23] The Claimant annexed to the Statement of Claim the bills for the said receipts. It is settled law that special damages must be pleaded, particularized and be "strictly" proved[8]. The onus is therefore on the Claimant to prove his loss, and I am satisfied that he has done so. I therefore order the Defendant to pay to the Claimant 70% of the sum of $862.90 which is $604.03.

[24] In assessing the Claimant's claim for general damages, the Court is guided by the principles in **Cornilliac v St Louis**[9] namely:

(a) The nature and extent of the injuries sustained;

(b) The nature and gravity of the resulting physical disability;

(c) Pain and suffering;

(d) Loss of amenities;

[8] Grant v Motilal Moonan Ltd (1988) 43 WIR 372 per Bernard CJ
[9] (1966) 7 WIR 491

(e) The extent to which pecuniary prospects were affected.

The Court is also guided by other similar cases for the possible range of an award of damages[10]. I will now examine the evidence under these headings.

[25] According to the medical reports of Dr. Sonia Johnson[11] and Consultant Orthopaedic Surgeon Dr. Douglas Noel[12] which were annexed to the Statement of Claim, the Claimant suffered a displaced comminuted fracture mid shaft left femur, skin traction to the left lower limb, soft tissue injuries to the shoulders and left arm, permanent scars to shoulders and left arm and permanent limp and deformity to the femur uniting with some angulation and shortening.

[26] The nature and gravity of the Claimant's resulting physical disability were set out in Dr. Douglas' medical report. He stated that the Claimant would have a permanent limp and deformity of the left lower limb. He advised against further surgery to straighten and extend the Claimant's left lower limb since it would be risky and complicated. His prognosis was that due to the limp the Claimant has a strong possibility of back pain developing in the future.

[27] The Claimant's pain and suffering. I accept that at the time of the collision the Claimant experienced excruciating pain to his left leg, left arm and shoulders. He was admitted to the General Hospital in St. George's where he spent three months immobilized and with his left leg suspended in the air and attached to a 25-pound sand bag. While the Claimant's pain may have diminished over the three-month period, I have no difficulty in finding that during this period the Claimant still experienced severe pain. Additionally, during this period the Claimant was forced to suffer the indignity of performing all his biological functions while remaining in bed, which I accept must have been humiliating for the Claimant, a relatively young man. Even after the Claimant was discharged from the hospital after his three month stay, due to the shortening of his left leg he was forced to rely on

[10] Aziz Ahamad v Raghubar 12 WIR 352
[11] Trial Bundle Part A pages 14 to 16
[12] Trial Bundle A pages 17 to 19

ambulatory aids such as sticks or umbrellas to assist with his walking. His pain even continued afterwards due to the shortening of his leg. While he stated that he still suffers severe pain to his waist and back, I had difficulty in accepting the severity of his pain since there was no evidence that he needed to take medication to alleviate it. However, I accept that he occasionally suffers from pain in his leg due to the shortening.

[28] The Claimant's loss of amenities. The consequences of the Claimant's injuries from the collision came from the report of Consultant Surgeon Dr. Douglas Noel[13] where he stated *"I do not believe that he will be able to run again or lift loads heavier than 30 lbs in the future."* This prognosis was unchallenged, and the Claimant confirmed that he walks with a limp since his left leg is shorter than his right leg. After the Claimant was discharged from the Hospital he was forced to rely on the use of crutches for over six months since it was difficult for him to walk or move around. I accept that this shortening has affected the Claimant's ability to run, walk or jog, activities which the Claimant said he engaged in before the accident, and he cannot garden as he used to before the accident, wash his bus and left heavy loads.

[29] Counsel for the Claimant referred the Court to the authorities of **Lincoln Carty v Lionel Patrick[14]; Bernice Jeremiah and Anor. v Royston Gilbert and Ors[15]; Sherma Mathurin v Rain Forest Sky Rides Ltd[16]; Kendol Fredericks v Carlton Cunningham[17]**; and **Ronald Fraser v Joe Dalrimple and Ors[18]** in submitting that a reasonable sum as general damages for the Claimant's pain and suffering is $150,000.00 and loss of amenities is $100,000.00. None of the cited authorities are on all fours with the injuries and the consequential effects. However, in all the authorities the Claimants suffered similar injuries to that of the Claimant in the instant case but in some cases the nature of the injuries were more severe than

[13] Trial Bundle Part A at pages 17 to 19
[14] SKBHCV 0054/1998 Belle J decision delivered in June 2009
[15] GDAHCV 2008/0038 Decision of Price- Findlay J decision delivered in March 2010
[16] SLUHCV2008/0551 Georges J delivered in August 2010.
[17] St Vincent and the Grenadines High Court Claim 475 of 2002 Decision of Cottle J delivered in July 2009
[18] ANUHCV 2004/0513 Decision of Michel J delivered in May 2010.

the Claimant in the instant case. In all the cases, the treatment of the injuries and the consequential effects of the injuries were similar.

[30] In **Lincoln Carty** the Claimant suffered far more extensive injuries than the Claimant in the instant matter. He suffered a fracture to the right leg, fractures of the pelvis, fractures to the 3rd to 8th ribs, cuts on the right knee, contusion of the sciatic nerve in the right leg, permanent dislocation of the joint in the sternum, bruising of the front left rib cage and a neck strain. The Claimant who was a 46 year-old man underwent three surgeries, he was hospitalized for 32 days after the accident, he underwent physical therapy and chiropractic care and due to the shortening of his leg he was unable to run long distances, play lawn tennis, his lack of sex drive adversely impacted on his marital relations and caused him stress and depression, and relied on the use of a cane to move around. He was awarded $155,000.00 as general damages for pain and suffering and loss of amenities in June 2009.

[31] In **Kendol Fredericks** the Claimant was a young man who suffered injury to his left knee to the ankle. He underwent two surgeries and was hospitalized for 3½ months. His left leg became disfigured. In July 2009 he was awarded $150,000.00 for pain and suffering and loss of amenities.

[32] In **Bernice Jeremiah and anor** the Claimants were a mother and her daughter respectively. The First Claimant, the mother, suffered a broken left leg. She underwent surgery twice and physiotherapy during her recovery. The resulting effects of her injury was a shortening of the left leg. She was no longer independent and she relied on persons to cook and perform household chores, she remained with a scar. She was awarded the sum of $80,000.00 for pain and suffering and loss of amenities in March 2010.

[33] In **Ronald Fraser** the Claimant suffered fractures to his left ankle and left leg. He spent 28 days in hospital immediately after the accident. Pins and screws were placed in his leg and he remained bedridden at home for five months. He

underwent physiotherapy and was able to walk with the aid of crutches. He subsequently underwent two surgeries and was unable to participate in his children's activities. He was awarded the sum of $85,000.00 for pain and suffering and $65,000.00 for loss of amenities in May 2010.

[34] In **Sherma Mathurin** the Claimant suffered a broken right leg where she was able to see the broken bones protruding from her leg. She underwent one surgery where plates and screws were inserted in her leg. There was a permanent impairment of her right foot which restricted her ability to walk long distances and wear high heel shoes. She was unable to dance, play with her children, she could not run and she had limited physical sexual activity with her husband. She was awarded $150,000.00 for her pain and suffering and loss of amenities in August 2010.

[35] In assessing the Claimant's general damages for pain and suffering I have taken into account that at the time of the accident the Claimant was a relatively young man at the age of 34 years old. He was hospitalized for three months after the collision; he had a broken left leg, the level of pain from the time of the collision to present ranged from excruciating to bearable. He has a shortening of his left leg which will cause him continued pain. He has been unable to perform such basic tasks as gardening and washing his bus. His prognosis is not promising since he has been advised against future surgery and given his condition, he is expected to continue to experience pain.

[36] In my judgment a fair award for pain and suffering for this Claimant is in the sum of $80,000.00 and $60,000.00 for loss of amenities. I have apportioned liability in the percentage of 30% liability for the Claimant and 70% liability for the Defendant. In the circumstances, the Defendant is to pay to the Claimant the sum of $56,000.00 as general damages for pain and suffering and the sum of $42,000.00 for loss of amenities.

ORDER

[37] Both the Defendant and the Claimant contributed to the accident and are liable 70% to the Defendant and 30% to the Claimant.

[38] The Defendant is to pay to the Claimant the sum of $56,000.00 as general damages for pain and suffering and $42,000.00 for loss of amenities, with interest at the rate of 6% per annum from the date of service of the claim to payment.

[39] The Defendant is to pay to the Claimant the sum of $604.03 as special damages with interest at the rate of 3% per annum from the date of service of the Claim to date of judgment and thereafter at the rate of 6% per annum until payment.

[40] The Defendant being 70% liable is to pay 70% of the prescribed costs which I will rely on the parties to calculate.

Margaret Y Mohammed

Margaret Y Mohammed
High Court Judge