

# EASTERN CARIBBEAN SUPREME COURT

## IN THE COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2011/0384

## BETWEEN:

RAYMOND LANGLAIS Claimant

and

EULALIE BURTON Defendant

#### Appearances:

Dr. William Riviere Counsel for the Claimant

Mrs. Singoalla Blomqvist-Williams Counsel for the Defendant

2013: October 8<sup>th</sup>

2014: January 23<sup>rd</sup>

## JUDGMENT

- [1] Thomas, J. [Ag.]: This is an action in negligence filed on 20<sup>th</sup> December, 2011 by Raymond Langlais against Eulalie Burton, the defendant. The claimant seeks special damages and general damages.

- [2] The claimant's case is that on 15<sup>th</sup> April, 2011 at about 3:45 p.m. he was driving his vehicle along the Coulibistrie village road, in a southerly direction at about 30 – 35 miles per hour when a vehicle driven by the defendant crossed over to his side of the road and collided with his vehicle causing damage to his vehicle as well as personal injuries.

#### Defence

- [3] In her defence the defendant denies the claimant's case and avers that she was not negligent and that on the day in question the claimant was driving in excess of 35 – 55 miles per hour. It is the defendant's averment that she was about to cross from the left side of the right side but abandoned that course of action when she observed the claimant's vehicle was coming towards her at great speed.
- [4] The defendant contends that the claimant suffered no loss for which she is liable. In the alternative the averment is that the claimant contributed to the collision.

#### Counter-claim

- [5] In her counter-claim the defendant contends that the claimant was negligent in that he was driving too fast. In the result the claimant says that she suffered loss in the amount of \$85,140.13.

#### Reply

- [6] The claimant in his amended reply the claimant denies that he was driving well in excess of 30-35 miles per hour; and contends further that the accident took place well within the claimant's lane, and denies the collision was wholly caused by the negligence of the defendant.

Defence to counterclaim

- [7] In the defence to counterclaim the claimants repeats this case and denies that the defendant suffered any loss, and as such is not entitled to any relief claimed.

Evidence

Raymond Langlais

- [8] In his witness statement the claimant says he is the owner of a Mitsubishi pick-up truck, registration number PS079. With regard to the collision on that day in question the claimant details the following: he was driving in a southerly direction on the Coulibistrie main road, the section where the vehicles impacted is straight for about 300 yards; there were no other vehicles on the road at the time; he was driving at 30-35 mph; he saw the defendant vehicle coming towards him when it was about 20 or so yards from him; the defendant's vehicle crossed to the claimant's side of the road, as a result of the accident the claimant suffered damage to his vehicle and minor personal injuries.
- [9] In cross-examination Raymond Langlais testified that he was aware of a secondary road going to Mount Rachel and a right turn is required. The witness testified that the area is a built up area where people sell at the side of the road.
- [10] It is also the claimant's evidence that it is a rule of the road that when a person has started to turn, the other person must give way. It was then put to the witness that the defendant had started to turn to get to the secondary road when he ran into her. In response Langlais said: "It was she who hit me. I did not hit her." He continued: "when I saw her coming I hold my side and I slow down. I used my horn. I gear down and pulled on my side. I had no escape." The following proposition was put to the witness by learned counsel: "you were at high speed and you could not stop when you saw her." Response: "I was going 30-35 mph."

- [11] Raymond went on to give the following pieces of evidence under further cross-examination: his vehicle was damaged to the front right side; he swerved to the left denied that made no attempt to avoid the accident; when he saw the defendant's vehicle the visibility was clear.
- [12] In re-examination Langlais testified that he was familiar with the road signs and that just before entry into Coulibistrie the speed limit was 40 mph.

#### Eulaine Burton

- [13] Eulaine Burton in her affidavit said that on 15<sup>th</sup> April 2011 she was travelling along the Coulibistrie public road when she was involved in an accident with a vehicle driven by the claimant. It is also the defendant's evidence that on her way to Portsmouth she intended to stop to buy roasted plantain. In this regard the defendant gives the evidence as to what she did.
- [14] According to the witness, the area where the accident occurred is a built-up area with lots of activity. It is also the defendant's evidence that the vehicle was damaged on the right side and the claimant's vehicle which was also damaged was 20-30 feet away from her vehicle.
- [15] In commenting on paragraph 6 of the claimants witness statement Eulaine Burton testified that the claimant was traveling much faster than 35 miles per hour and that her vehicle was at a standstill when it was hit.
- [16] Under cross-examination Eulaine Burton gave evidence that her purpose in turning was not to go to Mount Rachel but to buy plantain. In further cross-examination it was put to the witness that she could have parked on the left and go to the shed. With this the witness agreed and added that she could have parked and walked.
- [17] In giving evidence of events of the accident Eulaine Burton testified that the accident happened towards the middle of the road; where the accident happened there was room to pass; she knew the road well; before she decided to turn she looked up to the front and back; the road the Police Station to the shed is flat and straight; the straight road is less than 300 yards, when she saw the

vehicle it was about 150 yards or 400 feet away; she had stopped in a fixed position at the time of the accident; when she saw the speed of the other vehicle she had to slow stop, she felt she did not have enough time and so she stopped; the claimant stopped 40 feet away; the claimant did not move further left to the edge of the road; the force of her vehicle did not push the claimant's vehicle further to the edge.

- [18] In re-examination the witness testified that the witness statement and that police are true. She went on to explain that after the impact her vehicle was in the same spot.

### Issues

- [19] The issue for determination are

1. Whether
  - a) the defendant owed a duty of care to the claimant, and whether the defendant was in breach of such a duty it was owed; and
  - b) the claimant owed a duty of care to the defendant and whether there was a breach of that duty.
2. Whether the claimant or the defendant is liable to pay damages
3. Whether any party is liable to pay costs.

#### Issue No. 1

1. Whether
  - a) the defendant owed a duty of care to the claimant, and if a duty is owed, whether the defendant was in breach of such a duty if it was owed; and
  - b) the claimant owed duty of care to the defendant and whether there was a breach of such a duty if it was owed.

## The Law

- [20] A duty of care arises in the circumstances in which one person can reasonably foresee that his or her actions may cause harm or loss to another person's property or the property of another. Based on this broad principle, drivers of vehicles owe a duty of care to all users of the road and the breach of duty arises so long as the act complained of is reasonably foreseeable.<sup>1</sup>
- [21] In context both the claimant and the defendant being motor vehicle drivers owe a duty of care to each other.

## Submissions

- [22] On behalf the claimant learned counsel, Dr. William E. Riviere submits the following:
  - 1. The claimant's vehicle was clearly visible to the Defendant from a distance of about 150 yards, as a result of which the Defendant had a duty to give way to the Claimant's vehicle which she failed to do
  - 2. After having noticed the oncoming vehicle from a distance of about 150 yards, the time and space at the disposal of the Defendant in which to remedy her negligence and return to her proper side of the road were sufficient.
  - 3. Having seized the option to cross the road, instead of giving way to the Claimant, the Defendant had a duty to execute the maneuver safely which, the collision having taken place, she did not exercise.
  - 4. A court, with evidence corroborating the Defendant's evidence that the Claimant's vehicle was travelling at excessive speed ought to that the claimant's was driving at 30-35 miles an hour.

[7]

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<sup>1</sup> Clerk and Lindsell on Torts, [19th ed.] chapter 8

5. The Claimant did everything that a reasonable man in his position could have done in the circumstances to prevent the Defendant's jeep hitting his pick up truck.

[23] Learned counsel for the defendant, Mrs. Singoalla Blomqvist Williams outlines the defendant's evidence: that she was travelling at about 5 miles per hour and was about to cross the road with her vehicle from the left side to the right side; she abandoned the intending crossing when she noticed the claimant's vehicle approaching at great speed; the defendant's evidence that she stopped her vehicle, and the damage to the right side of the defendants vehicle.

[24] The submissions continue as follows:

"We submit that the damage to the defendant's vehicle supports her version of how the accident occurred. Had the accident occurred as the claimant said the damage would have been on the left side of the defendant's vehicle.

Robenson's Vehicular Engineering Services prepared a report at the request of the claimant at page 58. The report confirms that the damage sustained by the claimants vehicle was to the front bumper, destroyed the grille, the headlamp RH destroyed, the bonnet folded, the windscreens front broken and the fender RH destroyed.

We submit that this confirms that the claimant's vehicle collided head on into the Defendant's vehicle and subsequent to the collision travelled more than 40ft. whereas; the Defendant's vehicle remains stationery. We submit that this confirms that the Claimant's vehicle was the one in motion at the time of the collision. The claimant failed to alert the defendant of his presence by honking on his horn.

We say therefore that the claimant has not discharged the burden of proving liability and that judgment ought to be entered for the defendant on her counterclaim.

Evidence accepted as fact

[25] The following aspects of the evidence are accepted as fact:

1. The area of the Coulibistrie main road where the vehicles impacted is straight, flat and about 300 yards in distance.
2. There were no other vehicles on that area of the said road at the material time.
3. The accident took place at about 3:45 pm on 1<sup>st</sup> April 2011.
4. The damage to the claimant's vehicle was to front
5. The damage to the defendant's vehicle was to the right side.

6. After the impact that the claimants vehicle stopped about 20-30 feet away, while the defendant's vehicle remained stationery.

## **Reasoning**

- [26] It has already been established that as users of the road both the claimant and defendant owed a duty of care to each other as well as to other users of the road.

### **Was the defendant in breach her duty of care?**

- [27] For this issue much turns on the evidence regarding the two vehicles after the impact, coupled with the findings of fact.

- [28] The court accepts the defendant's evidence that she intended to make a right turn on the Coulibistrie road but changed her mind because of an oncoming vehicle. This is reflected at paragraph 4 of the defendant's witness statement which reads:

"I looked up and looked down to ascertain that the road was clear. I then began to turn and looked up again and saw a vehicle approaching at high speed. I therefore stopped the vehicle to avoid a collision. Whilst in a stationery position, the [claimant's] vehicle collided with my vehicle as a consequence the right side of my vehicle was damaged."

- [29] The court does not accept the claimant's evidence that it was the defendant vehicle which hit his vehicle since the evidence shows front end damage to the claimant's vehicle and right side damage to the defendant's vehicle.

- [30] At pages 58-62 of the Trail Bundle the reports on the claimant's vehicle is part of the evidence. Of immediate relevance is the section of the report with heading "Description of Damages". It reads thus:

"Immediately it can be seen that the front bumper is destroyed, the grille is broken, the headlamp RH destroyed, the bonnet folder, the windscreen front broken and the fender RH destroyed.

Closer investigation revealed that the front apron is pushed inwards carrying with it the radiator (which is affixed to the apron) into the fan blades assembly. The radiator is damaged the fan blades and clutch fan assembly destroyed. The side apron was also significantly damaged.

Further examination of the underside of the vehicle proved that the chassis was bent and it is distinctly visible that there is misalignment of the cabin and cargo box. Also, on the left the fender is dented but repairable."

- [31] On the other hand, in the case of the defendant's vehicle, the report was prepared by Aadal Engineering Ltd, and in the part of the said report headed "Description of Damages" the following appears:

"The vehicle received significant amounts of damage to the right front quarter, resulting in what in my view as irreparable damage to the front bumper, the right fender right wheel apron, and the right door. In addition the right headlamp flasher lamp and the right door mirror were either broken or destroyed and would have to be replaced.

The transfer case mounting bracket, the transfer case rubber mount, fender liner, the drag link, the stabilized bar, the stabilizer bar rubber, the rod, the front axel housing, the front right axle shaft, the axle bearing seal, the wheel rim, shock absorber, the inductor and duct, filter housing, cowl panel, the right side door moulding and the rear wheel arch moulding were all badly damaged and would have to be replaced.

The radiator support assembly, the right hinge or corner pillar, the hood, the floor panel and the right side chassis side member all received appreciable amounts of damage but in my view repairable."

- [32] The court agrees with the submission on behalf of the defendant that if the accident was as the claimant averred the damage would have been to the left side of the defendant's vehicle. In other words, if the defendant had crossed the middle of the road into the claimant's path, that would have been the result. But the matter goes much beyond the right side of the defendant's vehicle to the damaged chassis on both vehicles. This is not to imply that the other damaged or destroyed parts on both vehicles are not significant but chassis goes far towards breach of a duty of care.
- [33] In the Concise Oxford Dictionary "chassis" is defined as "the base frame of a motor vehicle carriage or other wheeled conveyance.

- [34] In the report on the claimant's vehicle it is indicated that the chassis of the single cabin pickup truck was bent and there was misalignment of the cabin and cargo box. On the other hand, the report on the defendant's vehicle indicates, inter alia, that the floor panel and the right side chassis side member all received applicable amounts of damage.
- [35] The point in all this is that a chassis is a fundamental part of any vehicle and damage to the chassis would imply a considerable force. In this case this derived from reasonable inference in the circumstances. And given the fact that the front of the claimant vehicle received considerable damage, this is further evidence that the claimant was travelling at high speed on the 300 yard curve free portion of the road as the defendant said in her evidence. This is further supported by the evidence, which the court accepts, that the claimant's vehicle stopped some 20 to 30 feet after the impact. And in this factual matrix the court accepts the defendant's evidence that the impact caused her vehicle to lift.
- [36] Before going further the court must say expressly that the submissions on behalf of the claimant cannot be accepted in the face of the strength of the contrary evidence and submissions. One submission in particular warrants mention. It is that the defendant's evidence that the claimant was travelling at high speed which is not corroborated, as is required by section 54 (2) of the **Vehicle and Road Traffic Act** should not be accorded "no weight at all". Unfortunately no authority was cited for the suggested convergence of a criminal offence and a civil law principle. For one thing the standard of proof is different in the two legal contexts.

### Conclusion

- [37] It is the conclusion of the court that:
- a) The defendant owed a duty of care to the claimant but there is nothing in the evidence to show that the defendant acted in breach of that duty since at the time of the impact the defendant's vehicle was stationary which is borne out by the right side of the vehicle received the damage caused by the claimant's vehicle.
  - b) The claimant owed a duty of care to the defendant but was in breach of that duty when he drove his vehicle in a manner, being a high speed, which was reasonably

forseeable could cause damage to the defendant's vehicle; and did in fact cause damage to the several engine and body parts of the defendant's vehicle, including the right side chassis and the floor panel.

**Issue No.2**

**Whether the defendant or the claimant is liable to pay damage?**

- [38] Based on the determination of the court above that the claimant was in breach of his duty of care owed to his neighbor, the defendant, the equation is simple: the claimant cannot succeed on his claim and the claimant is liable for the damages with respect to the defendant's vehicle.
- [39] Learned counsel for the defendant submits that the defendant is entitled to succeed on her counterclaim. The court agrees entirely and the defendant is entitled to \$45,140.13 in damages as pleaded to be paid by the claimant.

**Issue No. 3**

**Whether any party is liable to pay costs**

- [40] In accordance with Rule 64.6 (1) of CPR 2000, the claimant having failed to succeed must pay the claimant prescribed costs.

**ORDER**

**IT IS HEREBY ORDERED AND DECLARED** as follows:

1. The defendant owed a duty of care to the claimant but there is nothing in the evidence to show that the defendant acted in breach of that duty of care succeed the time of the accident the defendant's vehicle was stationary which is borne out the right side of the vehicle received the damage caused the claimant's vehicle.
2. The claimant owed a duty of care to the defendant but was in breach of that duty when he drove his vehicle in a manner, being at high speed, which was reasonably foreseeable could cause damage to the defendant's vehicle, and did in fact cause damage to several engine and body parts of the defendant's vehicle, including the right side chassis and floor panel.

3. The claimant cannot succeed on his claim but the defendant succeeds on her counterclaim and as such the claimant must pay the defendant \$45, 140.13 in damages.
4. The claimant is liable to pay the defendant prescribed costs

Errol L. Thomas

High Court Judge (Ag)