

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT LUCIA**

**CLAIM NO. SLUHCY2010/1035**

**FANUS KURK MATHURIN**

Claimant

and

**FELIX WILLIE**

Defendant

**Appearances:**

Mr. Vern Gill for the Claimant

Mr. Egan Modeste for the Defendant

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**2012:** June 6;

**2014:** October 2.

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**JUDGMENT**

- [1] **BELLE, J.:** There are two versions of the facts of this case. The Defendant's version is that on Tuesday 9th of March 2010 at about 7:50 a.m while the Defendant was operating his Toyota Hiace Motor Omnibus Reg No. HD9631, he turned right at the Ti Rocher Micoud/ Vieux Fort Highway road going towards Vieux Fort. He saw two buses in the distance approaching but they were not at a distance to obstruct his turn unto the main road neither did he obstruct their passage on the said road.
- [2] According to the Defendant after negotiating the turn he was able to stop to pick up a secondary school student. He stopped on the left side of the road facing Vieux Fort with his left front and rear tyres off the highway, leaving sufficient space for another vehicle to safely pass his vehicle without any collision.

- [3] The Defendant said further that just as the secondary school student was about to open the door to enter the vehicle he heard tyres screeching and after that the Claimant's vehicle slammed into the left rear of his bus at point of the left side of the rear door.
- [4] The Defendant Mr. Willie was thrown forward on the impact and the motor omnibus went forward hit a rock and landed on its right side. The Defendant remembers his passengers who were secondary school students, screaming after the collision.
- [5] Subsequently the police took measurements of the accident scene.
- [6] The Claimant's version of the facts was that on the morning of 9th March 2010 at about 7:30 a.m he was driving his vehicle Reg. No PG 9284. On approaching the Ti Rocher junction from the direction of Ti Rocher he noticed that a minibus left the intersection and just came out onto the road turning in the same direction that he was heading he then applied brakes and tried to swing away from the defendant's motor omnibus but still collided with it.
- [7] The Claimant admits to driving at about 50-60 kilometres per hour which he says is the average speed on that road.
- [8] The Claimant also alleges that the police came to the scene and among them was Inspector Leo who was his witness in the case. He claims that the Defendant was unconscious. He says that Mr. Willie was taken away by ambulance. The Claimant also claims that he met the Defendant's wife at the hospital and she said to him that she knew that it was not his fault, apparently referring to the accident.
- [9] The Claimant agreed that the parties subsequently returned to the scene with the investigating officer to take measurements.

## **AG Inspector Leo's Evidence**

- [10] The Claimant's witness Inspector Leo gave evidence of having responded to a report of a vehicular accident on Tuesday 9th March 2010 and he proceeded to the scene of the accident along the Micoud /Vieux Fort Highway. AG. Inspector Leo said that Felix Willie the Defendant identified himself at the scene as the driver of Motor Omnibus Number HD9631 and Fanus Kirk Malthurin identified himself as the driver of Motor Jeep Registration Number PG 9284. Both parties informed him that they were in great pain as a result of the accident.
- [11] On 15th March 2010 all of the parties were present at the scene of the accident to take measurements. The Police Inspector Leo insisted that all measurements were agreed. But there were two separate points of impact indicated by the parties.

## **Arguments**

### **Claimant's Alleged Conversation With Defendant's wife**

- [12] The Defendant's counsel argues that an alleged conversation which the claimant claims he had with his wife in which his wife said that she knew that the accident was not the Claimant's fault was a fabrication. In any event I conclude that this statement would have been hearsay and the Defendant could not have been fairly cross-examined on this issue to explain it since it was not his statement and it was purportedly made by someone who was not at the scene of the accident and could only be prejudicial.
- [13] Another point about this is that the statement is ambiguous. What exactly would the Defendant's wife have been referring to as not the Claimant's fault? What exactly would she have meant by this? Unfortunately the Defendant's wife was not present to explain. I ascribe no weight to this statement.

### **Travelling to the scene of the accident**

[14] Counsel for the Defendant also argues that Mr Mathurin stated that he went to the scene with Ag. Inspector Leo a few days after the accident. However I interpret that to mean that they left the police station around the same time to travel to the accident scene. Even Mr. Mathurin's statement in his witness statement is ambiguous since he said that he went back to the accident scene with the officer and Mr. Willie. Clearly the three parties did not travel to the scene together and I do not think that the Claimant intended to convey this meaning.

### **The Point of Impact**

[15] The Claimant's counsel states emphatically that the Defendant could not have been parked off the road as he alleged since he indicated a point of impact which AG. Inspector Leo states, measured 8 feet from the left side of the road. It was the left rear fender of the Defendant's vehicle which was damaged therefore the bus could not have been parked with its wheels off the road as the Defendant stated.

[16] I agree that this evidence shows that the Defendant's vehicle was not off the road when it was struck by the Claimant's vehicle. Indeed the bus was on a balance of probabilities still at an angle in the road. But it leaves open the issue whether there was space on the right hand side of the road for the Claimant to pass if he was able to steer the vehicle in that direction.

[17] AG. Inspector Leo's evidence is not very helpful since he does not attempt to arrive at an independent conclusion about the point of impact. He appears to totally accept the Claimant's version which indicates that in spite of having seen the Defendant approach from approximately 60 ft. he still collided with the Defendant at the mouth of the Ti Rocher junction with the Vieux Fort Highway on the right hand side of the road heading to Vieux Forte.

[18] It should be noted that AG. Inspector Leo took the measurements some six days after the accident occurred.

[19] In addition to this the Police accident report exhibits a drawing which shows only one point of impact on the right hand side of the road. Presumably this is the point of impact indicated by the Claimant.

### **Damage to HD 9631 Driven by the Defendant**

[20] I have also assessed what counsel had to say about the point of impact pointed out by the Defendant. However I ascribe little weight to this since the Defendant would not have been able to recall exactly where the collision occurred some days later. I do not think that the method used to determine the point of impact in this accident was at all scientific and I consider the exercise to have been very subjective and unreliable.

[21] However counsel for the Claimant argues persuasively that the point where the Defendant's vehicle suffered the most damage is indicative of the Defendant's bus being in the road at an angle. This argument was bolstered by photographs which were unchallenged documents admitted at trial. Indeed this evidence tends to imply that the bus had not completely crossed the road when it was struck by the Claimant's vehicle. I agree with counsel that the Defendant's vehicle could never, on a balance of probabilities, have been impacted at that point had the vehicle been stationary with left wheels off the left hand side of the road.

### **Major Discrepancy in Claimant's Evidence**

[22] There is a major discrepancy in the Claimant's evidence. Doubt was cast upon the Claimant's evidence because of the discrepancy between his and his own witness AG Inspector Leo's evidence. The important discrepancy in the Claimant's evidence is identified are as follows:

1. The Claimant gave evidence that the Defendant Felix Willie was unconscious after the accident.
2. The Claimant also states that Willie was taken away by ambulance and was still unconscious.
3. The Claimant's witness , acting Inspector Leo stated that as he was about to take measurements Felix Willie and Fanus Kirk Mathurin informed him that they were in great pain as a result of the accident.

4. Under cross examination AG. Inspector Leo said that Mr Willie/ The Defendant spoke to him at the scene of the accident. He therefore could not have been unconscious. But this fact does not determine the matter.

### **The Issue of Excessive Speed**

[23] I note however that the Inspector of Police does not agree with counsel for the Defendant that the Claimant's vehicle would have had to be doing excessive speed when the accident occurred. I however do think that had he been paying due attention to what was going on the road at the time, this accident would not have occurred. Indeed due attention is connected to speed since margins for error are reduced with the degree of speed involved in the motion of the vehicle which strikes another in the rear.

### **Conclusion**

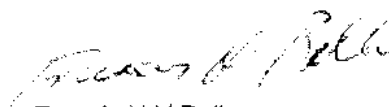
[24] I therefore conclude that the accident was caused largely by the Defendant emerging from an access road at Ti Rocher Junction unto the main Vieux Highway and obstructing the flow of traffic, contrary to law. The Defendant therefore bears 75% of the liability for the damage caused in the accident.

[25] The Claimant was not paying due attention to the traffic which was on the road as he approached the junction and therefore was unable to stop or slow down or so steer his vehicle as to avoid the collision. In the circumstances he is 25% liable for the collision and the damage caused by it.

[26] There was no effort of either side to contradict the other's pleadings or submissions on damages. The Defendant claims the sum of \$33,000.00 in special damages. The Claimant Claims \$14,200.00.

[27] Based on the conclusion that this is a case of contributory negligence on the ratio of 25% negligence on the part of the Claimant and 75% on the part of the Defendant I make the following award.

- [28] Judgment is entered for the Claimant. The Claimant is awarded damages reduced by 25% which amounts to special damages in the sum of \$10,650.00.
- [29] The Defendant is awarded damages which based on the deduction of 75% is the sum of \$8250.00 in special damages.
- [30] Both sums are to attract interest at the rate of 6% per annum from the date of the accident to the date of payment.
- [31] Costs are awarded to the Claimant pursuant to Part 65 of the CPR 2000 reduced by 25%.

  
Francis H V Belle  
High Court Judge