THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2012/0138

BETWEEN:

TREVOR NATHANIEL

Claimant

and

DONEL FORDE

Defendant

Appearances:
Richards & Co for the Claimant
Ms C. Debra Burnette and K. Simon for the Defendant

2015: April 16

JUDGMENT

[1] **HENRY, J.:** By Claim Form filed on the 29th February 2012, the claimant claims for loss and damage suffered as a result of a motor vehicle accident on 24th November, 2009 on the Perry Bay Main Road plus interest and costs.

[2] In his Statement of Claim the claimant avers that at the material time he was the owner and registered keeper of motor car license number A26519. On 24th November 2009, he was travelling from east to west on a by-road. Upon reaching the junction with the Perry Bay Main Road, he stopped, then proceeded to make a right turn unto the Perry Bay Main Road when motor car A32952 travelling from north to south on the said Perry Bay Main Road, at a fast speed, coming over the brow of the hill collided into the right rear portion of his car. He pleads that the collision occurred solely as a result of the defendant's negligence. The alleged particulars of the defendant's negligence include:

(a) Driving too fast in the circumstances
(b) Failing to drive in a manner and speed that was right for the road conditions
(c) Failed to keep proper lookout
(d) Failed to see or heed the presence of the claimant's vehicle
(e) Failed to brake, steer or otherwise maneuver his vehicle in order to avoid colliding with the claimant's vehicle
(f) Caused his said vehicle to collide with the claimant's vehicle

[3] The claimant also states further or alternatively, he relies on the doctrine of res ipsa loquitor.

[4] The defendant disputes the claim. In his defence, he admits the collision took place but denies that he was guilty of the alleged or any negligence or that the collision was caused by the alleged or any negligence on his part. He instead avers that the collision was caused solely or alternatively was contributed by the negligence of the claimant. Further, the defendant counterclaims against the claimant. He states that on the day in question, while he was driving his motor vehicle number A32952 from north to south along the Perry Bay Main Road, upon reaching the top of the hill, the claimant, negligently emerged out of a minor road on the left side of the road directly into his path and at a time when it was unsafe for him to do so, causing the collision. He lists the particulars of claimant's negligence as follows:

(a) Failing to keep any or any proper lookout or to have any or any sufficient regard for the defendant's vehicle or other motor vehicle on the road.
(b) Emerging from the said junction of the road without first ascertaining or ensuring that it was safe so to do and when he knew or ought to have known it was unsafe so to do by reason of the presence of the defendant's vehicle thereon.
(c) Failing to give precedence to the defendant who was on a major road.
(d) Failing to stop, slow down, to swerve or in any other way so to manage or control the said motor vehicle so as to avoid the collision.

[5] The defendant also states that he too will rely on the doctrine of res ipsa loquitur. The defendant therefore counter-claims for loss and damage in the sum of $17,415.50, in addition to interest and costs.

The Evidence

[6] The claimant, in his witness statement sets out the details of the collision consistent with his pleadings. He notes that the time of the collision was approximately 5:45 am; that upon reaching the junction with Perry Bay Main Road, he looked in both directions and made sure the road was clear of traffic before he proceeded to make the right turn from the by-road on which he was travelling. According to him, he was half way through the turn when he saw some headlights coming from the brow of the hill on Perry Bay Main Road. He states that when he saw the headlights the vehicle was at least 100 feet away from the corner where he turned. The vehicle was travelling at such a high rate of speed that he was unable to maneuver and avoid being hit. He insists that at the time he proceeded to turn onto Perry Bay Main Road, it was safe to do so.

[7] On cross-examination his evidence is that he would not be able to see a vehicle travelling from north to south on Perry Bay Main Road before it reaches the brow of the hill. He admitted that at 5:45 am it was dark and agreed that lights from a vehicle would alert him that a vehicle is approaching. But denies that he saw lights coming over the hill and decided to turn anyway, at a point in time when it was manifestly unsafe to do so. It was put to him that in deciding to turn right he created a dangerous situation for himself and other road users. This he denied. He accepted that vehicles travelling from north to south up the hill on the Perry Bay Main Road would not be able to see a vehicle coming from the by-road before getting to the brow of the hill.

[8] The defendant in his evidence states that he was travelling from north to south on the Perry Bay Main Road on his way to work. As he ascended the hill, he was travelling at a speed of around 40 miles per hour. His headlights were on. According to him he saw a vehicle at the junction of the minor road waiting to turn onto the Perry Bay Main Road. He blew his horn to alert the claimant, but despite the warning the claimant proceeded to exit the minor road turning right onto the Main Roan into his path at a slow pace and at a time when it was unsafe to do so. He continues that he slammed on his brakes, but the front right side of his vehicle collided with the right side of the claimant's vehicle. The right front portion of his vehicle was severely damaged and had to be repaired at a cost of $13,895.50. He suffered loss of use for six days at a cost of $720.00 and he paid the sum of $2,500,00 towards the claim, being the policy excess. Further, he has now lost this as a result of his claim.

[9] On cross-examination, the defendant stated that he is aware that the speed limit on that road is 20 miles per hour, and admits that he was travelling in excess of the speed limit when the collision occurred. It was put to him that the police report dated 2nd June 2010 reveals that there were skid marks from his vehicle to the point of impact measuring 95 feet. He accepted that there were skid marks left by his vehicle, but did not agree that they measured 95 feet. His evidence is that he has no idea the length of the skid marks since he didn't have a tape measure. It was further put to him that from the brow of the hill to the by-road is over 100 feet. His response was that he had no idea. He accepted that the police report indicates that from the point of impact to the position of his

vehicle after impact was 12 feet. Finally it was put to him that he would have had ample time to swerve or stop but for the speed he was travelling. His answer was no, the distance was too close.

[10] The Police Report on the accident dated 2nd June 2010 indicates the following measurements taken at the scene:

Width of Road at junction	26 ft
Front of A 26519 to east of road	25 ft
Distance between both vehicles	16 ft
Point of Impact to east of road	15 ft
Point of impact to A 32952	12 ft
Skid marks of A 32952 to point of impact	95 ft

[11] Before the liability of a defendant to pay damages for the tort of negligence can be established, three things have to be proved: (a) that the defendant failed to exercise due care; (b) that the defendant owed to the claimant a duty to exercise due care; and (c) that the defendant's failure was the cause of the damage done.[1]

[12] In order to establish the defence of contributory negligence, the defendant must prove that the claimant failed to take ordinary care for himself and that his failure to take care was a contributory cause of the accident.[2]

[13] The doctrine of res ipsa loquitur pleaded by a claimant, means that an accident may by its nature be more consistent with its being caused by negligence for which the defendant is responsible than by the other causes, and that in such a case the mere fact of the accident is prima facie evidence of such negligence. In such a case the burden of proof is on the defendant to explain and to show that it occurred without fault on his part.[3] To apply the principle is to do no more than shift the burden of proof. A prima facie case is assumed to be made out which throws upon the defendant the task of proving that he was not negligent. This does not mean that he must prove how and why the accident happened; it is sufficient if he satisfies the court that he personally was not negligent[4].

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[1] Woods v Duncan [1946] AC 401
[2] Lewis v Danye [1939] 1 KB 540
[3] Cole v De Trafford [1918] 2 KB 523
[4] Woods v Duncan,

Liability

[14] The claimant's case is that as he exited a by-road and turned onto the Perry Bay Main Road he was struck by the defendant. He alleges that it is the defendant who was negligent.

[15] The defendant admits that he was travelling at approximately 40 miles per hour in a 20 miles per hour zone. The measurements in the police report are the only measurements before the court, and are accepted The 95 feet of skid marks ending at the point of impact highlight the speed at which the defendant was travelling. In addition the measurements indicate that the point of impact was 15 feet from the eastern side of the road. The width of the road being 26 feet, this means that the claimant had already traversed the eastern half of the Perry Bay Main Road and was on the western half of the road when the collision occurred. The eastern half of the Perry Bay Main road is the side of the road used by vehicles travelling from north to south, as the defendant was that morning. This means that impact took place on the side of the road reserved for traffic travelling northward. So that had the defendant stayed on his side (the eastern side) of the road, the collision would not have taken place. In addition, the defendant's evidence is that he travels this road often; that he is aware of the by-road and that it is used by persons to access the main road. He would have seen the claimant's headlight at the by-road once he got to the brow of the hill. His evidence is that he did see him. Yet he descended the hill travelling at 40 miles per hour. He ought to have exercised more care.

[16] The claimant, having pleaded res ipsa loquitur, the burden then shifts to the defendant to prove that he was not negligent. The defendant submits that it is obvious that the claimant was exiting from a blind spot, therefore the onus was on him to take extra care. Counsel suggests that the better approach was to turn left rather than crossing one lane to make the right turn. Counsel submits it was manifestly unsafe for the claimant to turn right. It created a dangerous situation not only for himself but also for the defendant who was heading straight along and was not expecting a vehicle to be dead in his path and expected to take evasive action. Counsel concludes that the claimant was wholly responsible for the accident.

[17] The court does not accept that the claimant created a dangerous situation by making that right turn. There is no traffic regulation against making a right turn at that intersection. A vehicle exiting from the by-road was not unexpected for the defendant since his evidence is that he was familiar with the road and was aware of the by-road used by vehicles to access the main road. Further both vehicles had on their headlights and he would have seen the light. Further the fact that the claimant's vehicle had already traversed the eastern side of the road and that impact took place on the western side of the road does not support the contention that it was claimant who was negligent.

[18] The court finds that the defendant has not shown that the claimant was negligent. Rather, the court finds that it is the defendant who was negligent in the circumstances. The defendant owed a duty to the claimant, as a user of the road, to exercise due care. He failed to do so in that he was

driving too fast in the circumstances and he failed to drive in a manner and speed that was right for the road conditions. In addition, he failed to steer or otherwise maneuver his vehicle in order to avoid colliding with the claimant. Had he steered his vehicle so as to remain on the eastern side of the road, the collision would not have occurred. Therefore, the court finds that the defendant was the sole cause of the accident.

[19] With regard to the counterclaim, even though the defendant pleaded res ipsa loquitur, the evidence has established that the negligence of the defendant was the sole cause of the accident. Accordingly the counterclaim is dismissed.

Damages

[20] The claimant claims damages of $26,250.00. In his particulars of damages he lists the pre-accident value of the vehicle at $32,000.00 less salvage value of $7000.00 for a claim of $25,000.00. He also claims $1200.00 as loss of use for twelve days and $50.00 as the cost of the police report. A copy of the estimate from Keith Edwards Body Shop is attached to the pleadings.

[21] Counsel for the defendant submits that the above pleadings suggest that the vehicle was written off and there is no such evidence. Even though the claim form says he is seeking damages and loss to his vehicle, the particulars indicate a claim for the value of the vehicle – not for the estimate of the repairs. Counsel also challenges the claim for 12 days loss of use in light of the nature of the damages claimed. Counsel urges that the court ought not to rely on the report because there was no evidence by the claimant sufficient to have had the claimant cross-examined. She submits that the court cannot simply look at the estimate. The claimant has to say what he is claiming.

[22] While the claimant, in his witness statement, avers that the defendant's vehicle collided into the back right door in the quarter panel area of his vehicle, the claimant fails to mention the nature of the damages, if any, his vehicle sustained or to reference the estimate attached to his pleadings. It is against this background that Counsel for the defendant submits that the court ought not to rely on the report.

[23] While the court appreciates the difficulties presented by the omissions made by the claimant, once there is a finding of liability, it is the duty of the court to make an award of damages to reflect the reasonable estimate of the damages suffered by the claimant, based on the evidence before the court[5]. The evidence before the court includes the estimate contained in the Bundle of Agreed Documents.

[24] It is the pleadings supplemented by the process of disclosure which informs the defendant of the claim he is called upon to defend. The written estimate was attached to the pleadings and disclosed in the claimant's list of documents. There can be no prejudice to the defendant if the court relies on the estimate.

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[5] Dixons (Scholar Green) Ltd v Cooper [1970] 114 Sol Jo 319, CA

[25] The estimate indicates the total cost of repairs done to the vehicle in the sum of $21,040.28. It also lists the pre-accident value of the vehicle at $32,000.00 and the present value at $7,000.00. The court will therefore award the sum which reflects the repairs done to the vehicle. No evidence is before the court in respect of loss of use and the cost of the police report. Therefore no award will be made in respect of those items.

[26] Accordingly, judgment is granted in favour of the claimant for damages in the sum of $21,040.28 plus prescribed cost and interest pursuant to the Judgments Act at the rate of 5% per annum. The defendant's counterclaim is dismissed.

CLARE HENRY
High Court Judge
Antigua & Barbuda