

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2012/0151

BETWEEN

DONALD FINDLAY

CLAIMANT

and

WENDELL WALTERS

DEFENDANT

Appearances:

Mrs. Ronnia Durham-Balcombe for the claimant.

Mr. Akin John for the defendant.

2016: May 10 & 17

2017: Jan. 19

Apr. 12

JUDGMENT

BACKGROUND

[1] **Henry, J.:** On the night of September 1st, 2011, Mr. Donald Findlay was driving along Vigie main highway on mainland Saint Vincent when his motor car was involved in a collision with Mr. Wendell Walters' vehicle. Mr. Findlay claimed Mr. Walters caused the accident by emerging from a minor road onto the Vigie Highway and collided with his vehicle when it was not safe. He alleged that Mr. Walters drove without due care and attention, drove onto a major road without first ensuring that it was clear. He accused Mr. Findlay of driving too fast and failing to control his motor vehicle. He seeks compensation for injuries he allegedly sustained in the accident and for damage to his vehicle.

[2] Mr. Walters denied driving negligently and claimed that Mr. Findlay caused the accident by his negligent and reckless driving. He alleged that he had already entered the main highway and crossed into the right lane when Mr. Findlay drove le at an excessive speed and collided with his vehicle. He contended that the accident was caused wholly by Mr. Findlay's recklessness and negligence in that he approached the intersection without slowing down, drove onto the wrong lane, failed to keep a lookout for other road users and failed to manoeuvre his vehicle to avoid the accident or to give adequate warning to other road users. Mr. Walters is liable in damages.

ISSUES

[3] The issues are:

1. Whether the accident was caused by Mr. Findlay's or Mr. Walter's negligence?
2. To what remedies is Mr. Findlay or Mr. Walters entitled?

ANALYSIS

Issue 1 – Was the accident caused by Mr. Findlay's or Mr. Walters' negligence?

[4] Mr. Donald Findlay lives at Fountain. He was on his way home along the main Vigie Highway when the accident happened. He was driving his Chrysler motor car registration number PT331. As he approached the roundabout towards Fountain he saw a Toyota Sprinter, registration number PU110 entering the highway from a minor road. He observed that it was heading in the direction of the Arnos Vale roundabout. He discovered later that it was being driven by Mr. Walters.

[5] Mr. Findlay explained that he saw the lights of the vehicle approaching the junction to the highway when he was about 40 feet away. He testified that he slowed down and proceeded to drive towards Fountain. He said that when he arrived at the junction Mr. Walters' car 'pulled from the minor road into the major road'. He averred that he veered to the extreme left in an attempt to avoid the collision but was unsuccessful. He indicated that Mr. Walters' vehicle from just past the front door to his rear door and the rear wheel struck the right fender of his car. He claimed that the impact caused his vehicle to swerve off the road and overturn. He explained that the point of impact was on the left side of the highway in his lane and that Mr. Walters' car had not yet crossed over fully to the other side. He denied that he was speeding or driving recklessly. He indicated that he did not apply his brakes but swerved.

- [6] He said that Mr. Walters came to his car, called him an angel and thanked him for saving his life by pulling away so far and verbally accepted responsibility for the accident. He had his vehicle towed, and evaluated and it was deemed a 'write off'. He testified that the right front bumper was mashed up, the wheel was damaged, the hood was sunk and the glass shattered. He produced photos of the vehicle. He indicated that he sustained personal injuries and had to seek medical attention.
- [7] Mr. Walters lives in Sandy Bay, a remote village on the Eastern side of the island. He testified that the accident took place around 10.00pm that night. Like Mr. Findlay, he was on his way home. He explained that when he approached the intersection of the road to Belair and Vigie Highway adjacent to Rampi's Shop, he looked towards the left along the highway to Belmont and towards the right, in the direction of the roundabout and saw no oncoming traffic from either direction. He then proceeded across the highway into the left lane to continue his journey towards the roundabout.
- [8] Mr. Walters testified that he had already crossed into his correct lane on Vigie Highway and was in the process of straightening up when without warning a vehicle suddenly struck the right back door of his car at excessive speed, causing it to spin out of control eventually come to rest in a driveway on the left lane leading towards the roundabout. He testified that he only recognized the vehicle on impact and did not recall seeing or hearing it when he exited the Belair road. He opined that Mr. Findlay must have been travelling at an excessive speed.
- [9] He stated that when he alighted from his vehicle he noticed that Mr. Findlay's vehicle had flipped over into the gap from which he had just exited and landed on its back. He said that he approached Mr. Findlay and told him 'man you nearly kill me annah man' to which Mr. Findlay responded that he was his angel. He indicated that he did not remember telling Mr. Findlay that he did not see him coming
- [10] Two persons who witnessed the accident testified for Mr. Findlay. They are Anthony Evans and Raphael Sandy. Mr. Findlay described Mr. Evans as his good friend but said that Mr. Sandy was not a friend of his. However, Mr. Sandy said that he knew Mr. Findlay for a long time and they were good friends. He also referred to Mr. Evans as his good friend. Mr. Walters' cousin Jimmy Bracken, also gave testimony. He was not present when the accident happened. He recalled hearing Mr. Findlay

speaking to someone at the scene and telling that person that this was his third 'write off'. He remembered examining Mr. Walters' car at the scene and observing that the right side from the passenger door to the rear had extensive damage.

[11] Mr. Sandy and Mr. Evans supported Mr. Findlay's account of how the accident happened. They alleged that immediately before the collision they were at fountain house adjacent to the intersection. Mr. Evans described the junction as a busy one. Mr. Sandy was sitting in his motor vehicle and Mr. Evans was standing outside conversing with him. They recalled seeing both vehicles. They observed as Mr. Walters' car approached the junction, slow down then emerge into the main road. Mr. Evans testified that at first Mr. Walters' car seemed to be about to enter the main highway, stopped and then ventured into the road before it was safe to do so. He refuted that the vehicle approached the highway carefully. He described it as coming out 'one time'. He recalled that by the time Mr. Walters' car entered the highway, Mr. Findlay's vehicle was close to him. Mr. Sandy described Mr. Walters' approach and entry to the highway as being 'unsure'. He said that Mr. Walters' vehicle approached normally and not rapidly.

[12] Mr. Evans testified that Mr. Findlay tried to pull away to avoid the collision but was unable to do so. He said that Mr. Walters' car went over to Mr. Findlay's side of the road. He said that He said that Mr. Walters' car went over to Mr. Findlay's side of the road. He and Mr. Sandy insisted that when the cars collided Mr. Walters had not yet crossed the white line to get to his side of the road. Mr. Evans recalled too that Mr. Walters inaccurately reported to the police that the accident happened higher up than it did. He opined that if Mr. Walters had taken the corner properly and crossed over to his side of the road, the accident would have been avoided. Mr. Sandy testified that he heard Mr. Walters tell Mr. Findlay that he accepted liability and will deal with his vehicle.

[13] Resolution of the factual disputes as to the cause of the accident turns largely on the credibility of the witnesses. Both accounts are so divergent that they cannot both be true. Mr. Findlay and his witnesses had coherent and consistent accounts of what transpired that night. They were not discredited regarding material elements of their testimony. Mr. Sandy and Mr. Evans were positioned at a shop which is situated adjacent to the point of impact. They therefore had the perfect vantage point from which to observe what transpired. I find their testimony to be credible and I believe them.

- [14] Mr. Walters was not a credible witness. He was evasive and was not forthcoming about the layout of the roadway where the collision took place. His version of what took place is quite unlikely for a number of reasons and is therefore rejected. Vigie Highway in the vicinity of the Belair intersection, is a long stretch of road with an unobstructed line of sight of up to 100 yards in opposite directions away from the intersection. For this reason, Mr. Walters would have likely had the same line of sight as did Mr. Evans and Mr. Sandy. They both report that they saw Mr. Findlay's vehicle approaching.
- [15] When asked, Mr. Walters replied that one can see to some extent. The court takes judicial notice that the road layout permits a clear view of the Vigie highway at the junction for an extended distance in both directions. Mr. Walters was less than truthful in his response. Unless Mr. Walters was distracted or had interruptions in his vision or visibility, he should have been able to see Mr. Walters' car approaching. I do not accept that he did not. I therefore reject his story. I infer Mr. Walters was either distracted or was not paying attention when he exited the Belair road onto the major highway.
- [16] Mr. Findlay submitted that Mr. Walters either saw his vehicle approaching and decided to exit the minor road nonetheless or did not take the necessary precautions to stop before venturing in to the major road. He contended that this constituted negligence on Mr. Walters' part and was the sole cause of the accident.
- [17] Mr. Findlay submitted that there was a particular duty on Mr. Walters to stop and make sure that the road was clear before proceeding from the minor Belair road onto the main Vigie Highway. He acknowledged that there was a corresponding duty on him to approach an intersection with caution, but that he had no obligation to stop and let out the occupant of the minor road, as he had the right of passage along the major highway,
- [18] He argued that the visibility towards Arnos Vale is over 200 yds and is well lit at nights, thus enabling Mr. Walters to see for some distance along that road. Mr. Findlay argued that Mr. Walters should have seen his vehicle if he had checked before exiting the minor road. He submitted that Mr. Walters must not have looked before doing so.
- [19] Mr. Findlay contended that the law stipulates that a motorist should not cross a road, turn on a road

proceed from one road into another or drive from a place which is not a road into a road unless he can do so without obstructing any other traffic. He relied on Regulation 25 (5) (g) made under the Motor Vehicle and Road Traffic Act¹ ('the Act') and the case of **O'Neil George v Germaine Baynes**². The referenced regulation prescribes the direction of traffic flow in Kingstown. Regulation 26 (5) (g) was probably intended. It states:

'Every driver of a motor vehicle shall comply with the following rules-

(g) He shall not cross a road or turn in a road or proceed from one road into another road, or drive from a place which is not a road, or form a road into a place which is not a road, unless he can do so without obstructing any other traffic on the road and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto.'

[20] Mr. Findlay submitted further that Mr. Walters violated the referenced regulation and drove negligently onto the Vigie highway thereby causing the accident, as demonstrated by the case of **Alex Baptiste v Eve Ballantyne and Arnett Thomas**³. He cited several other cases in support including **Cosmore Dennie v Louis Williams**⁴ in which the trial judge opined:

'With respect to stopping, the plaintiff stated that he took evasive action when he realized that the defendant was not stopping. In my opinion the defendant's action created a sudden emergency for the plaintiff, who faced with an emergency situation did the best he could to avoid the collision.'⁵

[21] Adapting that passage and applying it to the instant case, Mr. Findlay submitted that Mr. Walters came to a stop but did not remain stopped, rather that he 'moved off soon after so that the stopping came like a routine or reflex action at the intersection'. He accused Mr. Walters of not paying attention to the major road as he should have and created thereby an emergency situation for him. This contention accords with the testimony given by Messieurs Sandy and Evans.

¹ Cap. 483 of the Revised Laws.

² SVGHCV2004/0063.

³ SVGHCV2001/0251.

⁴ *Cosmore Dennie v Louis Williams* SVGHCV1992/124. The other cases referenced are *Winmark Ltd. v David Mathurin et al* SLUHCV2007/0119; and *John Mark Forshaw v Eric Williams Sothern Waste Management Service Ltd.* GDAHCV2009/0563.

⁵ *Ibid.* at page 3 of the *Cosmore Dennie* case.

[22] Mr. Walters submitted that Mr. Findlay identified the point of impact as being in the left lane facing the roundabout. He indicated that Jimmy Bracken inspected Mr. Walters' vehicle and noted that the right side from the passenger door to the rear had significant damage while the other vehicle appeared to be a total wreck.

[23] He acknowledged that motor vehicle drivers owe a duty of care to other road users as re-affirmed in the case of **Cheryl Edwards Administratrix of the estate of Janique Lewis v Etnel Mills**. In that case Rawlins J. explained that principle as follows:

'Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected inter alia to determine what other users of the road are doing. They are expected to manoeuvre their vehicles in order to prevent and avoid accidents. They are expected to use and observe proper signals, signals must be kept clear and unambiguous and as far as practicable in keeping with the Highway Code. They must exercise due care and attention at all times. This might at times require a driver to stop in order to have a proper look out so as to determine whether it is safe to proceed or to overtake another vehicle. It all depends upon the circumstances including the weather, visibility, the number of vehicles on the road, the presence of pedestrians and the state of the road.'⁶

[24] Mr. Walters contended that he and Mr. Findlay owed a duty of care to each other. He submitted that in deciding which of them breached that duty the court must apply the 'reasonable man test' articulated in **Blyth v Birmingham Waterworks Co.** ³⁷ and echoed by Justice Errol Thomas in the case of **Alex Losik v Eldeane Henry**⁸. Both Justices declared:

'Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.'

[25] Mr. Walters suggested that on that night Mr. Findlay drove on the highway and approached a busy intersection at high speed, in the wrong or opposite lane without any care or concern for a

⁶ ANUHCV1998/0168.

⁷ [1865] 11 Ex 781 per Alderson B.

⁸ ANUHCV2009/0068.

motorist exiting from a minor road who was entering the main road in his correct lane. He submitted that by doing so Mr. Findlay was in breach of his duty towards him.

[26] He quoted from the decided case of **Stewart & Associates v Richard Giraudy** where Justice Redhead described such conduct as negligent. He stated:

‘In my judgment the claimant was also negligent. He could have avoided the accident. He saw the defendant emerging from the exit some distance away. He says he was about one car length away he did not stop only slowed down. In my opinion he was unable to stop because of the speed at which he was travelling.

Whilst there is no duty generally to foresee that another will be negligent there are instances even so where a prudent man is to take precautions by anticipating the negligence of others, especially where experience commonly has shown such negligence to be likely or where resulting damage can be minimized.’⁹

[27] Mr. Walters submitted that it is commonly known that drivers or motorists would emerge perhaps carelessly from minor roads into major roads and prudent drivers should always anticipate that and take the necessary precautions to guard against such eventualities. He contended further that Mr. Findlay was driving along a straight road with clear lines of sight in either direction for hundreds of feet. He argued that because Mr. Findlay knew this road, having lived in the area, he was duty bound to take necessary precautions in looking out for any drivers emerging from the Belair main road, and should have been travelling at a speed which would have allowed him to stop or maneuver to avoid colliding with him. He concluded that Mr. Findlay was unable to stop because he was driving at an excessive speed. He contended that the case of **Trevor Nathaniel v Daniel Forde**¹⁰ is also illustrative in this regard. There is no evidence to support such a finding and I make no such inference.

[28] He also raised the issue of contributory negligence but it was not pleaded. The law requires that

⁹ SLUHCV2009/0494.

¹⁰ ANUHCV2012/0138.

contributory negligence be pleaded if it is being relied on as a defence.¹¹ The defence of contributory negligence is therefore not considered.

[29] The law imposes a duty on road users to exercise care while travelling on the roads. It imposes a duty on a driver to exercise special care at crossroads.¹² A driver emerging onto a major road from a minor road is obliged to give way to traffic on the major road. A driver on the major road has a parallel duty to exercise care to avoid collision with a vehicle emerging from a side road.¹³ No evidence was provided about the speed at which either vehicle was travelling. I cannot speculate. The area of damage to Mr. Walters' car is consistent with Mr. Findlay's and his witnesses' account of how the accident happened. Mr. Walters' decision to enter the highway at that time, was negligent and fell short of what a reasonable driver would have done in similar circumstances.

[30] Based on the evidence and findings of fact, Mr. Findlay has established on a balance of probabilities that in breach of his duty, Mr. Walters failed to give way but instead drove onto Vigie highway into the path of Mr. Findlay's oncoming vehicle when it was unsafe to do so. Mr. Findlay has also proven on a balance of probabilities that he took the requisite evasive action to avoid the collision by swerving his car out of the way. In that regard, he fulfilled his duty. I therefore find that that the accident was caused wholly by Mr. Walters' negligence.

Issue 2 - To what remedies is Mr. Findlay or Mr. Walters entitled?

[31] Mr. Findlay contended that once he has established that the accident was caused solely by Mr. Walters' negligence, he would be entitled to receive damages for his losses to the extent proven. He referred to the documentary evidence tendered and requested that judgment be entered for him. Mr. Walters accepted that damages would follow a finding of liability. He submitted further that the ordinary common law principles for assessing damages in tort, render a defendant liable for damage which flowed directly from the negligence whether or not it was reasonably expected. This is a correct statement of the law.

¹¹ Andrew Providence v Bryan Clarke [2003] ECSCJ No. 14; and Wakelin v. London & South Western Ry. (1886) 12 App. Cas. 41.

¹² Motor Vehicle and Road Traffic Act, Cap. 483, Regulation 26(5)(g)

¹³ Halsbury's Laws of England Vol. 89 (2011) para. 26.

[32] In view of my earlier finding that Mr. Walters' negligence caused the accident, it follows that he is liable to Mr. Findlay for the all loss which flowed naturally and reasonably from the accident. Mr. Findlay is entitled to damages for his injuries and damage to his motor vehicle, to be assessed on application to be made to the court. Mr. Findlay is also entitled to interest at the statutory rate¹⁴ from the date of assessment until full satisfaction. He is to file and serve his application for assessment of damages on or before 30th June, 2017.

Costs

[33] The general rule is that the successful party is entitled to recover costs. There is no reason to deviate from that rule in the case at bar. Accordingly, Mr. Walters shall pay to Mr. Findlay prescribed costs pursuant to CPR 65.5, to be calculated based on the amount awarded for damages.

ORDER

[34] It is ordered:

1. Judgment is entered for Mr. Donald Findlay for damages to be assessed on application to be filed and served on or before 30th June, 2017.
2. Mr. Wendell Walters shall pay to Mr. Donald Findlay interest on the judgment sum at the statutory rate of 6% per annum from the date of assessment to date of final payment.
3. Mr. Walters shall pay Mr. Donald Findlay, prescribed costs pursuant to CPR 65.5 (2) (a) to be determined at the assessment of damages.

[35] I wish to thank counsel for their helpful written submissions.

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Esco L. Henry
HIGH COURT JUDGE

¹⁴ Section 4 of the Interest Act, Cap. 27 of the Revised Laws of Saint Vincent and the Grenadines, 2009.