

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2008/1109

BETWEEN:

**ROMANUS BOYCE
THECLA DESCARTES**

Claimants

and

**KETHA AUGUSTE
VICTOR AUGUSTE**

Defendants

CLAIM NO.: SLUHCV2009/0434

BETWEEN

**LOUIS DE LEON
JOSEPHINE DE LEON**

Claimants

and

**WAYNE QUINTYNE
ROMANUS BOYCE**

Defendants

APPEARANCES

Gerard Williams for the Claimants in Claim 1109 of 2008 and for the Defendants in Claim 0434 of 2009

Diana Thomas for the Defendants in Claim No 1109 of 2008

Delia Daniel for the Claimants in Claim No. 0434 of 2009

2017: March 6th, May 8th

2017: May 10th

JUDGMENT

- [1] **SMITH J:** The parties in these consolidated claims (except for Ketha Auguste and Wayne Quintyne) were all involved in a traffic accident in 2006 on the Castries/Vieux Fort main road. Those involved suffered injuries to varying degrees ranging from minor to grave and sustained loss and damage as well. Romanus Boyce said Victor Auguste was at fault and filed a claim against him. Victor Auguste said Romanus Boyce was at fault and counterclaimed against him. The De Leons suffered injuries as third parties to the accident and claimed against Mr. Boyce, but not against Mr. Auguste.
- [2] The trial commenced on 28th July 2014 before Wilkinson J to determine who was at fault, what loss and damage had been proved and by whom. The Court notes that though Mr. Quintyne was a defendant in claim no. 0434 of 2009, the claim did not proceed against him. He had filed a defence on 4th July 2013 denying that he was the owner of the motorcycle and that he had sold it a decade prior to filing his defence. The parties apparently accepted this.
- [3] At the trial, Mr. Boyce and Ms. Descartes' witness statements stood as their evidence in chief and each was cross-examined. Michael Doussa did not file a witness statement. He attended court and gave evidence in compliance with a witness summons issued on the application of counsel for the Augustes. The trial was then adjourned because of the unavailability of Mr. Boyce's witness, Beulah Gilbert. The trial did not continue until 6th March 2017 before this Court as Wilkinson J had been assigned to another jurisdiction. When the trial continued before me, Beulah Gilbert, Victor Auguste, Ketha Auguste and Louis De Leon were each called to give evidence. Their witness statements stood as their evidence in chief and they were cross-examined.
- [4] The facts, which are not in dispute, are that on the 15th May 2006, Romanus Boyce, a police officer, was driving a motorcycle (PC3055) with Thecla Descartes as pillion rider in a northerly direction towards Castries on the Castries-Vieux Fort main road. Louis De Leon and his wife, Josephine De Leon, were also travelling in a northerly direction towards Castries in a white Toyota Corolla (5365). Mr. Boyce overtook them. Coming in the opposite direction on the same road was Victor Auguste who was driving a Mitsubishi Lancer car (PD4091) owned by his daughter, Ketha Auguste, who

was not in the car.

- [5] It is also not in dispute that somewhere in the vicinity of the community of La Caye, Dennerly, around 3:30 p.m. the car driven by Mr. Auguste and the motorcycle driven by Mr. Boyce collided. As a result of the impact, Mr. Boyce's motorcycle was propelled into the air, burst into flames and landed on the bonnet of Mr. De Leon's car. Both Mr. and Mrs. De Leon were very seriously injured. Mr. Boyce and Ms. Descartes also suffered injuries.

The Boyce-Descartes Narrative

- [6] Mr. Boyce and Ms. Descartes' narrative is that they were on the motorcycle travelling on the left and proper side of the road heading to Castries. They had overtaken Mr. De Leon but had returned to their side of the road and were going at about 35 mph. Mr. Auguste was coming in the opposite direction at a high speed, attempted to overtake a truck in front of him, was unable to get back to his side of the road in time and collided into them, propelling them into the air. The motorcycle was also propelled into the air, exploded into a ball of fire and landed on the bonnet of Mr. De Leon's car. Mr. Boyce suffered lacerations, abrasions, a fracture and whiplash. Ms. Descartes suffered lacerations and fractures. The motorcycle was a write off. The accident was caused by the negligence of Mr. Auguste who, they claimed, was liable to pay them \$5,000 for the value of the motorcycle, \$860.00 for Mr. Boyce's medical expenses and \$400.00 for Ms. Descartes medical expenses, for a total of \$6,260.00 as well as general damages.

The Augustes' Narrative

- [7] The Augustes' narrative is that Mr. Auguste was driving the Mitsubishi Lancer on the left and proper side of the road from Castries to Vieux Fort when Mr. Boyce overtook Mr. De Leon's Toyota Corolla and collided into the Lancer being driven by Mr. Auguste who did not suffer any serious injuries. The Lancer was a write off. The accident was caused solely by the negligence of Mr. Boyce. Mr. Auguste neither caused nor contributed to it in any way. EC Global Insurances Co. Ltd. paid to Ketha Auguste the sum of \$33,264.45 for the loss of her vehicle. Mr. Boyce is liable for that said sum as a debt due and owing by him to her for the account of her insurance company as well as the sum of \$1,520.00 incurred as policy excess. They also claim that Mr. Boyce is liable to pay general damages and interest.

Mr. De Leon's Narrative

- [8] Mr. De Leon was 76 years old at the time of the accident. He and his wife were traveling in his Toyota Corolla in the direction of Castries on his left and proper side of the road. A family friend, Bibiana Auguste, was in the back seat. A motorcycle travelling in the direction of Castries overtook his car. He did not see if one or two persons were on the motorcycle because of how fast the motorcycle was travelling. Shortly after the motorcycle overtook him he heard a loud noise like an explosion. He saw something like a rocket coming toward the car. It smashed the windshield. He smelled gas and fumes before being enveloped in flames. He did not see how the accident happened. So serious were their burns and injuries that he and his wife were taken by air ambulance to the Jackson Memorial Hospital in Florida, USA.
- [9] The Traffic Accident Report of The Royal St. Lucia Police Force dated 22nd August 2007 stated that Mr. Boyce would be prosecuted for the offence of careless driving.

The Evidence given at trial

The evidence of Mr. Boyce

- [10] Mr. Boyce's testimony was given before Wilkinson J. I did not have the opportunity to observe his demeanor as a witness. I am obliged to assess his evidence solely on the basis of the transcript of the proceedings. A close review of that transcript reveals that, in his testimony, Mr. Boyce basically maintained his version of how the accident occurred. However, under cross-examination by Ms. Thomas, counsel for the Augustes, certain important admissions were made. He admitted that he did not register his motorcycle with the Traffic Department. He insisted that he had a cover note for the motorcycle but admitted that it was not included in the documentary evidence he placed before the court. He said he told his insurer about the accident but admitted that did not make a claim to them for his motorcycle after the accident. There was a clear contradiction in his statement given to the police, on the one hand, and in his witness statement on the other hand. In his statement to the police he said that Mr. Auguste's car hit Mr. De Leon's car, while in his witness statement he said it was his motorcycle that hit Mr. De Leon's car. Notwithstanding this, he insisted under cross-examination that these were not two different versions. Plainly, they were.

The evidence of Ms. Descartes

- [11] Under cross-examination, Thecla Descartes supported Mr. Boyce's version of how the accident occurred. She insisted that they were not in a hurry but admitted that when Mr. Boyce picked her up she was late for work. She was supposed to get to work at Windjammer in Gros Islet at 3:00 p.m. The accident occurred about 3:30 p.m. around the La Caye/Greenfields area. Her evidence that Mr. De Leon's car was the only vehicle Mr. Boyce overtook was contradicted by Mr. Doussa who stated that the motorcycle that overtook him on the Fond D'Or Hill was the same one involved in the collision that he came upon.

The evidence of Ms. Gilbert

- [12] Beulah Gilbert testified on behalf of Boyce and Descartes. She lived across from where the accident occurred and claimed to have witnessed the whole thing. It is significant that, notwithstanding this, she was not interviewed by nor gave any statement to the police. Instead, she provided a witness statement supporting Boyce's version of events in 2013 – seven years after the accident – following a visit from Mr. Boyce. This cannot but raise a judicial eyebrow.
- [13] Under cross-examination, Ms. Gilbert was resolute that she saw exactly how the accident happened. It had happened in front of her house. She had come to the roadside to scold her son for wasting water in drums standing on the side of the road. The road was clear so she could see both up and down. She was facing the road straight. She saw when the motorcycle overtook the car and returned to its left and proper side of the road and she also saw when Mr. Auguste's car pulled out from behind a blue truck, overtook it and collided into the motorbike.
- [14] Ms. Gilbert expressed herself with certainty. But, as can happen when witnesses state they are absolutely certain of exactly how events transpired, even years after the event, an Achilles' heel was exposed in her evidential armour. She maintained, under cross-examination, that she was not confused about where the motorcycle overtook Mr. De Leon. When confronted with Mr. De Leon's version of where that overtaking took place, she breezily dismissed it saying that if Mr. De Leon stated that the overtaking had taken place earlier, there would be no reason for the collision.
- [15] In her witness statement, she had stated that Mr. Auguste's silver car had "come from behind a big

water truck heading south which then proceeded to overtake that truck”. As mentioned earlier in the judgment, Michael Doussa had given evidence at court in response to a witness summons. He was the driver of a water truck that had come on the scene of the accident and had helped to out the fire. He stated that he was in fact heading north in the direction of Castries. At the continuation of the trial before me, Mr. Williams, counsel for Boyce, applied to the court to amend Ms. Gilbert’s witness statement to read “blue truck” instead of “big water truck”. This was a small but hardly inconsequential amendment. Ms. Thomas naturally objected and the application to amend was not permitted. Ms. Gilbert’s testimony then changed under cross-examination to say that Mr. Auguste overtook a small blue truck, not a big water truck. The water truck was behind the blue truck going south. When confronted with the statement of Mr. Doussa, that he was in fact going north, Ms. Gilbert cavalierly stated that if the driver of the truck said he was coming from south going north, he would be lying. She admitted that she made the witness statement around the time of the visit from Mr. Boyce sometime in 2013 but that it was not possible that Mr. Boyce might have suggested to her his version of the events that occurred in 2006.

The evidence of Mr. Auguste

[16] Mr. Auguste, under cross-examination by Mr. Williams, appeared to be forthright and direct. He maintained his version of events. No inconsistencies in his statements were revealed. No admissions contrary to his version of events were elicited under cross-examination. He had been driving for about 48 years. He had never taken a defensive driving course. The Lancer he was driving was a second-hand car which had good brakes and good tires. He denied he might have been driving faster than 30-35 miles per hour. He denied that there was any vehicle in front of him. When he saw Mr. Boyce coming toward him he slowed down to about 20 mph. Even though he had slowed to 20 mph he left a brake impression of 14 feet 5 inches. Mr. Williams, counsel for Boyce and Auguste, vigorously contended that if Mr. Auguste had in fact slowed to 20 mph he could not possibly have left a 14.5-foot brake impression from his left rear tire which was the measurement noted in the police report.

The evidence of Mr. De Leon

[17] For having suffered such critical injuries, Mr. De Leon was remarkably magnanimous – even cheerful – under cross-examination from Mr. Williams. The last thing he could recollect was the

bike overtaking him. He heard a bang. He saw like a rocket coming towards the car. He smelled gas and fumes and then caught fire. He did not actually see how the accident happened. Right now he is a Medicare patient but he was not before. When the accident happened he became a Medicare patient. He was not aware that there was a burn center in Martinique or in Guyana. His son had made the decision to fly him to the USA.

The evidence of Ms. Auguste

- [18] Under cross-examination, Ms. Auguste stated that she had been living between Mon Repo and Castries. She worked three days per week in Castries. Following the accident she had to rent a car. She could not remember what kind of vehicle it was. A car would probably have been cheaper than an SUV. Her vehicle was a complete write off. Her insurers paid for her vehicle and paid for the rental of a vehicle. Her insurers took care of everything. If anything had not taken care of by her insurers, it would have been something small. The insurance company would like to be compensated from Mr. Boyce. She had used her vehicle to do other things, not just going to work.

Analysis of the Evidence to determine Fault

- [19] Having reviewed the totality of the evidence, I am not inclined to believe Mr. Boyce's version of how the accident happened for the following reasons. Firstly, a portion of his police statement is plainly inconsistent with his witness statement as to whether it was his motorcycle or Mr. Auguste's car that hit Mr. De Len's car, yet he denied there was any inconsistency. This goes to his forthrightness as a witness. Secondly, he insisted he had a cover note but never pleaded it or produced evidence of this or made any claim to his insurers; he admitted that he did not register the motorcycle with the traffic department. This tends to undermine his credibility.
- [20] Ms. Descartes' testimony that they were not hurrying tends to be undermined by her statement that she was supposed to be at work for 3:00 p.m. It is not in dispute that the accident occurred around 3:30 p.m. The Court, having travelled to the scene of the accident on a site visit, takes judicial notice that, had the accident not occurred, it is reasonable to surmise that they would have taken at least another thirty minutes to reach Windjammer in Gros Islet where Ms. Descartes worked. These circumstances incline the Court to the view that it is likely that they were hurrying to get Ms. Descartes to work. Her evidence that Mr. De Leon's car was the only vehicle Mr. Boyce

overtook is contradicted by the Mr. Doussa who stated that the motorcycle had overtaken him. This also tends to undermine the credibility of Ms. Descartes.

[21] The credibility of Ms. Gilbert's evidence is grievously undermined by her admission that she gave her witness statement some seven years after the accident, following a visit from Mr. Boyce. Any remaining credibility was virtually depleted when that crucial piece of her evidence that she saw Mr. Auguste overtake a big water truck was contradicted by its driver, Mr. Doussa, who said he was going in the opposite direction. She then altered her evidence to say it was a blue truck. In short, the Court simply does not believe that Ms. Gilbert was being truthful as a witness.

[22] Much was made of the fact that the photographs in evidence showed that Mr. Auguste's car was more on the right side of the road which would be consistent with him being on the wrong side. The photograph indeed showed Mr. Auguste's car, at the point of rest, being across the road facing the verge of the road on the right side. Mr. Auguste's evidence is that his car was hit by the motorcycle on its front right hand side and this is what spun it out of control and across the road. Ms. Thomas asked the court to "take judicial notice of physics behind both kinetic energy and momentum". Tempted though I may be, I must respectfully decline. In the absence of any forensic analysis by an expert of the accident scene, I feel unable to draw any inference from the position and location of the vehicles. Judging from the police report, the police thought Mr. Boyce was the one who drove carelessly.

[23] I feel equally unable to draw any conclusion from the location of accident debris found near the tire of Mr. Auguste's car on the right hand side of the road facing Vieux Fort as shown in the photographs. Mr. Williams contends that this is consistent with the accident having occurred on the right hand side of the road facing Vieux Fort. Another probable explanation however is that the momentum from the impact could have propelled the debris to the point where it came to rest. Again, in the absence of any forensic analysis of the accident scene, I am disinclined to draw any inferences from the placement of debris from the accident.

[24] Although, I believe Mr. Auguste was probably going more than 20 mph when the collision occurred, I am nevertheless inclined, on a balance of probabilities, to believe his version of how the accident

happened. Mr. De Leon's evidence that he was overtaken by a motorcycle that was going fast supports Mr. Auguste's narrative. The evidence of Mr. Boyce and his witnesses revealed not only significant contradictions but also a motive for why they were speeding. I therefore find that, on a balance of probabilities, Mr. Boyce caused the accident by driving his motorcycle in a negligent manner. I do not find that Mr. Auguste contributed to the accident in any way.

Special Damages

[25] On the question of damages, the Augustes fully pleaded, particularized and proved their special damages claimed. This was not disputed by Mr. Boyce and Ms. Descartes in their written closing submissions.

[26] The De Leons also fully pleaded and particularized with detail their special damages in the schedule of special damages contained in their joint statement of claim. They provided supporting documentation for their special damages. Mr. Boyce and Ms. Descartes offered no evidence whatsoever to rebut any aspect of the special damages claimed. Neither was there any attempt to impugn the evidence of special damages in their closing submissions. The standard applicable to the proof of special damages is the balance of probability. I find that the De Leons, through their evidence-in-chief, have established the value of a claim for special damages. The value of that claim for special damages was not challenged. Since it does not appear to me that the claim is unreasonable, I find that the only course of action properly open to me is to accept the claim for special damages in full. In the circumstances, I find that the De Leons have proven their case for an award of special damages as claimed.

General Damages

[27] In relation to their claim for general damages for pain, suffering and loss of amenities, the injuries they respectively suffered were fully pleaded and particularized in their statement of claim. The medical reports for Mr. De Leon exhibited to his statement of claim revealed that he sustained inhalation burns as well as second-degree burns to the face, chest and right forearm. He suffered chronic respiratory failure and was in a coma and on a ventilator for respiratory support for over two months. He was assessed as having sustained extensive burn injuries over 50% of his body. He underwent extensive skin grafting surgeries. He continues to suffer discomfort from his injuries.

His face, chest, arm, fingertips and thigh are badly scarred. Though retired, he had continued to work on contract as a road construction supervisor. Because of the accident he could no longer work, resulting in loss of earnings and enjoyment of life.

[28] The cases of **Lloyd v Poon Tips Ltd**¹ and **Liverson Sandy v Antigua Public Utility Authority and Fileman De Jesus**² submitted by Ms. Daniels, counsel for the De Leons, provided some guidance as to how courts in this region have assessed similar burn injuries. Ms. Daniels asks the court, in all the circumstances, to award an amount of \$70,000.00 for pain, suffering and loss of amenity. Mr. Boyce has not put forward any submissions on what the general damages to the De Leons should be in the event that they were successful. In fact, both Mr. Boyce and Ms. Descartes each submitted that, if they were successful, they would each be entitled to an award of general damages in the sum of \$100,000.00 for their injuries. Their injuries were plainly not as serious as those suffered by the De Leons. The Court does not consider the amount claimed on behalf of Mr. De Leon to be unreasonable. In fact, it is well within what the court might have considered reasonable in the circumstances.

[29] In relation to Mrs. De Leon, the medical reports exhibited to her statement of claim showed that she suffered pre-renal failure due to inadequate rehydration in the immediate hours following the burns. She was placed on dialysis to reverse the damage to her kidneys. She continued to receive physical therapy and nursing care from her home by health providers. Her disfigurement and scarring included scars, discoloration to her skin, particularly the right facial and upper right arm and loss of right temple hair. She is apparently left traumatized by the accident and is reluctant to be driven long distances which affects her enjoyment of the countryside. In the circumstances, I find that the sum of \$45,000 claimed as general damages for pain and suffering and loss of amenity is quite reasonable.

¹ 19 T.T.J. (IV) 163

² Antigua and Barbuda, Civil Suit No ANUHCv1998/0156

DISPOSITION

[30] I therefore make the following orders:

- (1) The claim of Romanus Boyce and Thecla Descartes against Ketha Auguste and Victor Auguste in claim No. SLUHCV2008/1109 is dismissed;
- (2) Judgment is entered for Ketha Auguste and Victor Auguste on their counterclaim in claim no. SLUHCV2008/1109;
- (3) The Claimants Romanus Boyce and Thecla Descartes are to pay the Defendant Ketha Auguste and Victor Auguste the sum of \$34,766.45 with interest thereon at the rate of 3% from the date of the accident until the date of judgment and thereafter at the rate of 6% from the date of judgment until payment.
- (4) The Claimant Romanus Boyce is to pay to the Defendants Victor Auguste and Ketha Auguste prescribed costs pursuant to Part 65.5 of the CPR 2000.
- (5) Judgment is entered for the claimants Louis De Leon and Josephine De Leon against the defendants Romanus Boyce and Thecla Descartes in claim no. SLUHCV2009/0434.
- (6) The Defendants Romanus Boyce and Thecla Descartes are to pay the Claimants Louis De Leon and Josephine De Leon special damages as follows
 - (i) Special damages to Louis De Leon in the sum of \$113, 514.98 with interest at the rate of 3% from the date of the accident until the date of judgment.
 - (ii) Special damages to Josephine De Leon in the sum of \$5,514.82 with interest at the rate of 3% from the date of the accident until the date of judgment.
- (7) The Defendants Romanus Boyce and Thecla Descartes shall pay to the Claimants, Louis De Leon and Josephine De Leon, the general damages in the sums of \$70,000.00 and \$45,000.00, respectively, with interest at the statutory rate of 6% per annum from the date of the accident to the date of this judgment and interest on the global sum from the date of the judgment until the date of payment.

- (8) The Defendants, Romanus Boyce and Thecla Descartes, shall pay to the Claimants Louis De Leon and Josephine De Leon prescribed costs pursuant to Part 65.5 of the CPR 2000.

**JUSTICE GODFREY P. SMITH, SC
HIGH COURT JUDGE**

BY THE COURT

REGISTRAR