[2015] JMSC Civ. 136

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2010HCV 01706

BETWEEN	**LOU ANNE BARCLAY**	**CLAIMANT**
AND	**DOREEN LEVY**	**1ST DEFENDANT**
AND	**DAAMAR LEVY**	**2ND DEFENDANT**

Racquel Dunbar instructed by Racquel A.S. Dunbar, Attorney-at-Law for the Claimant

Lawrence Haynes for Defendants

Negligence - Motor car collision – Defendant entering major road from minor road - whether Claimant caused or contributed to the collision.

Heard: 23rd and 26th February 2015

Cor: Batts J.

[1] This judgment was delivered orally on the 26th February 2015. The Claim is in negligence and is in consequence of a motor vehicle collision. There is no claim for personal injuries. The Claimant seeks to recover the value of damage to her motor vehicle and the Defendants have defended and counterclaimed for the damage to their vehicle. It calls for the resolution of one factual issue.

[2] Only the Claimant and the Second Defendant gave evidence. There were no supporting witnesses. Damage reports in respect of both vehicles were tendered and admitted by consent.

[3] I have carefully considered all the material before me as well as the documentary and oral evidence. The parties were cross examined on their respective witness statements. I do not intend to recite that evidence in the course of the judgment. I will refer to evidence only to the extent necessary to explain my decision.

[4] It has been common ground between the parties that this accident occurred along Hope Road in the parish of St. Andrew. The Claimant was proceeding along Hope Road which was a major road. It is also common ground that the Defendant was in the process of manoeuvring his vehicle from Phoenix Avenue (a minor road) onto Hope Road. It was his intention to turn right from Phoenix Avenue and proceed along Hope Road in the direction of the University of the West Indies. The Claimant was also proceeding in the direction of the university. It was also common ground that Hope Road has four lanes of traffic at the point of the collision. Two lanes going in one direction and two lanes for traffic going in the other direction.

[5] The Claimant contends that she was in the outer right lane of the two lanes for traffic going in the direction of the University of the West Indies. She then saw a blur of green, instinctively swerved to her left and pressed brakes but there was traffic in the lane next to hers. There was a collision with the front right fender of her car. It was the Defendants' vehicle which had collided with hers and it was an "old green station wagon"

[6] The Second Defendant says that he exited Phoenix Avenue to turn right because vehicles heading towards Half-Way-Tree on Old Hope Road stopped to give him way. He proceeded "gingerly" across Hope Road and was about to make the right turn into the third lane on Hope Road. That lane is the righter most of the two lanes for traffic heading in the direction of the University. The Second Defendant states further that as he was about to "make the turn" he saw the Claimant's motor vehicle proceeding at a fast rate of speed in the fourth lane (that is the leftmost lane for traffic heading in the direction of the University. The Claimant's vehicle collided into a vehicle in front of hers in that lane and then swerved suddenly into the said third lane (righter most for vehicles going towards the University). This manoeuvre, according to the Second Defendant caused the Claimant's vehicle to collide with the Defendants' vehicle.

[7] Having seen and heard the witnesses I was impressed by the Claimant and accept her as a witness of truth. I do not accept the Second Defendant's account of the accident. I prefer the Claimant's evidence for the following reasons:

i. When giving evidence and even during Mr. Haynes' pointed cross examination the Claimant remained consistent with her account. She was also not afraid to say that there were certain things she had not seen and was only told.

ii. I accept that she was badly shaken by the accident. The car was fairly new and the damage to it, as she stated, terribly

upset her.

iii. The physical evidence is supportive of her account. The photo of her right front fender confirms that impact was to the right side front area. There was on the evidence of the photos no frontal collision.

iv. The estimate from “Gussey’s Garage” (exhibit 6) on which the Defendant relied is not inconsistent with the Claimant’s account. It was the left front fender and door of the Defendant’s vehicle which was damaged. This is consistent with the Defendants’ vehicle making a right turn onto Hope Road and colliding with the Claimant’s vehicle which is proceeding in that same direction. It would have to be the left of the Defendants’ vehicle colliding with the Claimant’s vehicle.

v. In this scenario it really matters not whether the Defendants’ left side hit the Claimant’s or whether the Claimant’s right side hit the Defendant’s. The area of damage was likely to be the same on each vehicle particularly if, as the Claimant stated, she attempted to swerve to her left.

vi. The absence of evidence of direct frontal damage to the Claimant’s vehicle suggests there was no collision between the Claimant and another vehicle in the fourth lane as the Defendants suggests. See exhibit 3 photos # 3 and 4, no damage to the front of the bonnet.

vii. The damage which appears to be minor, to the left of the Claimant’s car, is more probably than not due to contact with the vehicles to the left of the Claimant’s vehicle. She said vehicles were to her left and this prevented her swerving further left. Her evidence as to what her sister said in that regard is hearsay and lacks any probative value. I accept that in the circumstances the Claimant in her state of panic and anxiety may not have felt or been aware of a minor impact after the collision with the Defendant.

[8] Other than my positive impression of the Claimant as a witness there are other reasons why I find for the Claimant in this matter. In the first place I find it rather odd that the Defendant who is gingerly crossing two lanes of traffic to enter a third, would observe the Claimant colliding into the rear of another vehicle and still continue his manoeuvre. Further if he did observe the Claimant collide with another vehicle it must be that this occurred in front or to his side. He could not have observed it happening behind him. All he had to do is to stop to allow the Claimant to proceed. In other words a collision with the Claimant could only occur if having seen her he nevertheless continued in the attempt to enter the fourth lane. Otherwise the accident, if the Defendants' account is correct ought to have occurred in the lanes for vehicles heading towards Half- Way-Tree.

[9] Secondly, the Second Defendant is manoeuvring from a minor onto a major road. It was his duty to ensure the way was clear before doing so. It is obvious that it was not safe to do the manoeuvre for otherwise there would prima facie have been no collision. The Defendant in oral evidence said he stopped three times in the process of that manoeuvre. This he does not mention in his witness statement. He explains the omission by saying stopping is part of the "process" and therefore was included in the statement. If that is so and if he were that careful then I again say the collision ought not to have occurred. This is because the Defendant would have been able to remain in the second lane (of two going to Half-way-Tree) and not enter the third lane (for traffic going to the university direction), if he saw the Claimant's car speeding and colliding as he said.

[10] For all the aforementioned reasons I find on a balance of probabilities that the accident was caused by the Second Defendant who negligently attempted to enter the Hope Road from Phoenix Avenue at a time and in a manner when it was unsafe to do so.

[11] As far as damages go I make the following award:

a) Cost of repairs $665,178.08
GCT 109,753.80
774,928.88

b) Cost of Assessors Report $19, 270.00

c) Loss of use for nine(9)
Working days at $600 per day $5, 400.00
Being (4,200 per week /7)
$799,598.88
{As recommended by the expert assessors. The Claimant's evidence to the contrary is hearsay and does not prove to my satisfaction it was a reasonable delay}

Interest will run on damages for the 29.11.08 to the date of this judgment. Costs to the Claimant to be taxed if not agreed.

David Batts
Puisne Judge