

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1983 G.108

BETWEEN	CALVIN GRANT	PLAINTIFF
A N D	PAREEDON & PAREEDON	DEFENDANTS

Mrs. Khan for Plaintiff.

Messers. Heron Dale of O.G. Dale & Co. for Defendants.

17th & 18th April, 1986

JUDGMENT

THEOBALDS, J.

In this action the plaintiff, one Calvin Grant, seeks to recover damages for negligence against the first defendant as driver and the second defendant as owner of motor vehicle, registration No. N.D. 5478. The events complained of are of some antiquity, the endorsement to the writ filed on the 26th day of May, 1983, stating that:

"On the 27th day of July, 1977, the first named Defendant, being the servant and/or agent of the second named Defendant, so negligently drove, managed and/or controlled the said Motor Vehicle N.D. 5478, the property of the second named Defendant, on the Seaforth to Trinityville Main Road near the Font Hill Crossing in the Parish of St. Thomas that it collided with the Plaintiff's pedal cycle damaging same and causing him severe personal injuries and resulting disability, loss and expense".

The Statement of Claim at paragraph 3 thereof is in similar terms again describing the site as "on the Seaforth to Trinityville main road near the Font Hill crossing in the parish of St. Thomas,

but here the plaintiff's case was that the Pedal Cycle which the plaintiff had been riding and which was stationary at the material time" was hit by the motor vehicle driven by the first defendant.

There are also the usual and standard forms of particulars of negligence stated such as driving at too fast a rate of speed having regard to the material conditions at the time and driving without keeping any proper and/or sufficient lookout. Those particulars which are of relevance to this claim and which will be adverted to during the course of this judgment are No. (2) "swerving into the Font Hill Road at a time when it was dangerous to do so" and No. (6) "swerving away from a parked truck on the other side of the road at such a speed and in circumstances that endangered the plaintiff". There is a defence and Counterclaim filed in which agency is denied and which seeks to place liability squarely or partially on the plaintiff, and by which a claim for repairs to the motor vehicle and attendant loss of use is spelt out. The important particulars of negligence given in the Counterclaim are:

- (a) Riding from a minor road into a major road without first making sure it was safe to do so.
- (b) Failing to stop before entering a major road.
- (c)
- (d)
- (e)
- (f) Riding into the side of the Defendant's motor vehicle.

It would be helpful at this stage to describe the geography of the locale and to outline the facts which appear from the pleadings to be not in dispute.

At about 7 a.m. on the morning of the 27th July, 1977, the plaintiff, then a young man of 19 years of age, was riding his pedal bicycle down the Font Hill road to a point where it enters the main road leading from Seaforth to Trinityville. It was along this said main

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road that a car being driven from Seaforth to Trinityville by the first defendant was proceeding. This road can appropriately be described as a T-junction with the Font Hill Road (the minor road) branching off on the left as one proceeds towards Trinityville from the direction of Seaforth. There was no other moving traffic on the road. It was at or near this intersection that a collision took place. The plaintiff suffered severe injuries particularly to his left side of his head, his left eye, and his left forearm was broken. The left side of the car from a point ahead of its left front wheel back to the left rear pivot window was damaged.

The plaintiff himself was the only witness as to fact in support of his case who did give any account as to how the accident happened. He says that at about 7 a.m. on the morning of the 27th July, 1977, he rode his freewheel pedal cycle down the slight grade of the Font Hill road, reached to the intersection with the main road, came to a halt and remained stationary in this position with his right foot on the ground and his left foot on the pedal. The front wheel of his bicycle was on the Font Hill road at a distance estimated between 6 - 7 feet from the driving surface of the main road and at a distance of 3 feet to the plaintiff's immediate left was a stone wall. It was while in this position the plaintiff asserts that he saw and heard a car approaching from his right at what he described as a very fast rate of speed. This car was then about 2 chains away and there was no other moving traffic on the road; the plaintiff claimed that a truck was parked on the opposite side of the main road facing Seaforth at a distance which he estimates at 10 feet away from his stationary bicycle. The inconsistency in his evidence begins to emerge for if he was 6 - 7 feet back from the driving surface of the Trinity to Seaforth main road and the stationary truck was 10 feet away from him it would simply means that the truck would have been blocking the path of any vehicle proceeding on its correct half of the road from

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Seaforth towards Trinityville. N'est pas? But the plaintiff goes on. He estimated the main road as 20 feet in width and opines that in spite of the status quo, there was sufficient space for the defendant's car to pass between himself and the stationary truck. There is sharp issue in relation to this truck between the plaintiff and the defendant's driver who swore that at no time was there any truck parked on the Seaforth to Trinity main road. It is that the plaintiff is seeking in some way to account for and explain his statement as to the sudden and obviously dangerous manoeuvre which he claims that the defendant's driver made in attempting a last minute swing left up the Font Hill road? Bear in mind that at the speed which the plaintiff himself described as "very fast" at a distance of no more than 2 chains from the point of impact, it is difficult to accept that the defendant's driver ever contemplated turning left up the Font Hill road.

Far more plausible and it is the defendant's case that he was proceeding straight along the Seaforth to Trinityville Road and at no time did he intend to turn left on the Font Hill Road. It is convenient at this stage to proceed with the defendant's driver's case. While he was proceeding along the main road he reached up to the intersection on his left when he suddenly saw in a flash what turned out to be a cyclist coming into the side of his car from the Font Hill road. The cycle hit against the left front fender of his car between the bumper and his left front wheel. It was a right hand drive Morris Oxford and the driver was alone. He is frank enough to say that he did not actually see where the cycle came from as he was looking in front of his car, but it would be reasonable to infer and logical to assume that the cycle had come from the Font Hill road. The defendant's driver claimed that after hitting his left front fender the cycle scraped the duco along the side of the car, the left front door, the left side to the left rear pivot window and

ended up about 10 feet from the Font Hill elbow. This was corroborated by a Police Officer, one Acting Corporal Milton Collins, who investigated the accident. I was not too happy with the Acting Corporal's evidence because he purported to give his evidence purely on the basis of his recollections as he was not able to locate his Accident Report Booklet. Although he was not discredited in cross examination in answer to certain questions from me, he was forced to agree that his memory had failed him in relation to at least three important aspects of the case. It was urged on the plaintiff's behalf that having failed to see the cyclist before the impact amounted to a failure on the part of the driver to keep a proper look out - item 3 of the particulars of negligence. In the circumstances of this particular case I would not accept this submission for it is clear that when coming from a side road into a main road the driver or rider of a vehicle should select such a moment as to allow him to enter the main road with safety. Although it is the business of persons driving on the main road to approach a crossing with caution this rule does not require a driver to cover the brake as he approaches a side road in case someone should shoot out of it. See Humphrey v. Leigh /1971/ RTR. 363

Where there is evidence from both sides to a civil action for negligence involving a collision on the roadway and this evidence, as is nearly always usually the case, seeks to put blame squarely and solely on the other party, the importance of examining with scrupulous care any independent physical evidence which is available becomes obvious. By physical evidence, I refer to such things as the point of impact, drag marks (if any), location of damage to the respective vehicles or parties, any permanent structures at the accident site, broken glass, which may be left on the driving surface and so on. This physical evidence may well be of crucial importance in assisting a tribunal of fact in determining which side is speaking the truth. The plaintiff's

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version of this accident is, in my view, entirely inconsistent with the damage or injury to his person. It is clear from the medical evidence that the bulk of this damage is concentrated to the left side of his body. His left arm was broken, his left eye was damaged and the left jaw and left side of his face. If he was indeed seated on his bicycle as he described and was hit in that position by a car coming from his right and making a sudden swing left up the Font Hill road then it would follow that the impact would have been to his right (not left) side. The concentration of injury to the plaintiff's left side is far more consistent with his having ridden out from the minor Font Hill road into the major road and having made a right turn in the direction of Seaforth. In this situation, the left side of his body would have been exposed to the car coming from the Seaforth side and a glancing blow to the left front of the vehicle would have resulted in the scrape along the vehicle's left. It is after the hit and the scrape along the left side of the motor car that the plaintiff's head (now lowered by the falling bicycle) would have come into contact with the left rear pivot window of the motor car.

Positioned as the plaintiff claims that he was it would not have been possible for the car to have hit him and damaged his left side so extensively and at the same time to have avoided crashing into the 3 feet high stone wall, 3 feet immediately to the plaintiff's left.

The Acting Corporal identified the area of most damage to the car as being on the left front fender nearest to the front wheel. He also identified the rear pivot window, Exhibit 3, and claimed that when he saw it on the 27th July, 1977, there was hair on it. He also observed broken glass and blood stains at a point along the Seaforth to Trinity ville Road about three feet out on the main road. It was also the Acting Corporal's evidence that he interviewed the plaintiff on more than one occasion and also visited the site with him sometime after his discharge from Hospital. At each interview the Acting Corporal claims

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to have gotten a different version of the accident from the plaintiff, and more importantly on attendance at the locus it was the Acting Corporal's evidence that the spot pointed out by the plaintiff was 30 - 35 feet from the spot where he, the Acting Corporal, had previously discovered the broken glass and blood stains on the road surface. If the Acting Corporal is to be believed, his on the spot investigations was productive of no evidence on which criminal proceedings could have been laid against the first named defendant.

There is no question that this plaintiff received extensive injuries as a result of this accident but in a collision case a person who receives injuries on the highway cannot recover unless the person in charge of the vehicle was guilty of negligence in its management. See Holmes v. Matten (1875) L.R. 10 Ex. 261 and Pollock on Torts 15th Edition, p. 132. I can find no evidence of negligence on the part of the driver. The claim therefore fails. There will be judgment for the defendants on the claim and Counterclaim. On the Counterclaim for the second defendant against the plaintiff for the \$370.00 costs of repairs and \$1,200 loss of use totalling \$1,570.00 with costs to be agreed or taxed.