IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2007 HCV 04359

BETWEEN	JO-ANN LYN	CLAIMANT
AND	NICKIE McFARLANE	1ST DEFENDANT
AND	KEIRON FRASER	2ND DEFENDANT

Danielle Archer instructed by Kinghorn & Kinghorn for the Claimant.

Georgia Hamilton instructed by Georgia Hamilton & Company for the Defendants.

Heard: February 12 and April 1, 2010

Campbell, J.

(1) On the 31st October 2007, the claimant filed a Claim Form and Particulars, alleging that she was a passenger in PC 0526, which was in collision with the defendant's vehicle registered 4966 ES. The 2nd defendant on the 1st April 2008, filed a defence, in which it alleged that the claimant was never a passenger in PC 0526, and admitted liability specifically on those allegations. The claimant proceeded to amend her claim and particulars to assert that she was a passenger in 4966 ES. The defendants maintained in their amended defence that the claimant was never a passenger in the 2nd defendant's vehicle.

(2) The claimant's application for an interim payment was withdrawn on the 24th March 2009, when it was ordered that an amended Claim and Particulars be served.

(3) The main issue joined between the parties was that the claimant was not in the 2nd defendant's vehicle. The 2nd defendant argues that the claimant having now placed herself in the 4966 ES is not to be believed.

(4) Her son's evidence is of little assistance to the claimant's case. He was singularly unimpressive, clearly an intelligent young man, his demeanour in the witness brought his credibility into sharp focus. He was unable to say whether or not a fee was paid to board the claimant's vehicle. He did not recall the make or colour of the vehicle or how old he would have been at the time of the accident. There is a conflict between the claimant and her son as to whether it was raining at the time of the accident.

(5) The claimant said she had not known the driver before, she had not offered him a fare. Neither did she know the other passenger who was in the vehicle before that day. She claimed that her son and herself had been offered a ride by the 2nd defendant.

(6) The medical certificate tendered does not give any additional weight to the claimant's case. It is dated 28th March 2007, it contains no information as to when the claimant was examined. The doctor was no longer available, having departed the island. Although the certificate notes an injury to the eye, there is no mention of any treatment for that injury observed. There were no receipts tendered in support of the claim. The witness has not said that she was examined by Dr. Karnam, who prepared the certificate. Dr. Karnam has not said he examined the witness.

(7) The police report is also unhelpful; it omits any reference to injuries to passengers of the bus. The 2nd defendant's witness summary on which the Counsel for the claimant relies in her able submissions, states that there was some nine passengers in the bus and he noticed that

"some of the passengers sustained injuries." I have a great difficulty in accepting the claimant's and her son's evidence as to their presence in the car that day.

The Quantum of Negligence

(8) The Amended Particulars of Claim particularized the negligence of the defendant as follows:

(iii) Driving too fast a rate of speed in all the circumstances.

(v) Colliding with motor vehicle registration number PC 0526.

(vii) Failing to see motor vehicle registration number PC 0526 within sufficient time.

(vii) Failing to apply his brake within sufficient time or at all.

(ix) Driving suddenly into the path of motor vehicle registration number PC 0526

(x) Colliding into the front section of motor vehicle registration number PC 0526.

(xi) Driving on the incorrect side of the road.

(xii) Failing to stop, slow down, swerve, or otherwise conduct the operation of the said motor vehicle so as to avoid the said collision.

(9) The evidence as to the circumstances of the accident, as contained in the witness statement of the claimant is to the effect that, "About half an hour into the journey, while we were on our way up it began raining a little harder and on approaching a deep left hand corner before you get to the man selling the corn on the right, the car spun out and we slapped into the driver's side of the bus and the bus went a little way out like it was facing the precipice."

She said she heard a lot of screaming.

(10) The claimant's son's version, as contained in the witness statement was to the effect,

We proceeded towards Kingston. We were going up a slope in the area called Spur Tree Hill. It was a left curb but the driver lost control because the roads were damp. It wasn't raining but it was humid. He lost control and there was a mini-bus coming down and we collided with them.

That was the totality of the evidence as it concerned the circumstances in which the accident took place. There was no evidence of speeding. There as no evidence that the car was driven suddenly in the path of PC 0526. There is no evidence to support the allegation that the car collided into the front section of the bus, in fact the mother's evidence on the point is that the car slapped into the driver's side of the bus.

(11) A skid is not evidence of negligence, without more. In **Laurie v Raglan Building Co**. paragraph 9.35 of **Bingham's** Motor Claims Cases skid by itself is neutral; it may or may not be due to negligence.

The case **Brayshaw v Pratt** (1947), referred to at paragraph 9.36 of **Bingham's** motor vehicle cases, a case where the defendants was being driven at average speed on its correct side when suddenly skidded and turned right across the road onto the pavement on the wrong side of the road. The court held that the presence of the vehicle on the footpath implies negligence until evidence was given that notwithstanding the occurrence, the driver was in fact exercising all reasonable care. The court held that the defendant had failed to discharge the onus of establishing that the accident happened without any negligence on her part.

(12) Although the 2nd defendant did not give evidence, there was, on the claimant's case, abundant evidence from which to infer that the 2nd defendant exercised all reasonable care. Joseph Butler, provides an explanation as to how and why the vehicle became out of control, he

said the driver lost control because the road was damp. The mother said the car spun out of control. There was no evidence that he had applied the brake which could have caused the skid. There was evidence, however, that he did brake in an unsuccessful attempt to prevent the skid. There was no evidence that the defendant had driven suddenly in the path of DC 0526. Neither is there evidence that the defendant's motor vehicle had been driven on the incorrect side of the road. As have been pointed out, the driver of the defendant's vehicle had no occasion to apply his brake prior to the skid, and had done so after the skid.

As distinct from **Brayshaw's** case, the court has before it evidence negativing negligence. To my mind, the 2nd defendant has discharged the onus of establishing that the accident happened without any negligence on his part.

I find for the defendants, with costs to the defendants to be agreed or taxed.