

IN THE SUPREME COURT OF JUDICATDURE OF JAMAICA

CLAIM NO. C.L. 2000/P008

BETWEEN	NICHOLAS PHINN	CLAIMANT
A N D	DAVID SIMMS	DEFENDANT

Mrs. S. Campbell instructed by Campbell & Campbell for the Claimant

Miss S. Orr and Mrs. V. Miller-Thwaites instructed by Crafton Miller & Company for the Defendant.

HEARD: 16th, 17th & 20th May 2005

SMITH, J.

1. This suit arose from a motor vehicle accident which occurred on the 23rd day of November 1996 in the vicinity of the intersection of Hagley Park Road and York Avenue in St. Andrew.
2. The Claimant Mr. Nicholas Phinn's evidence was that he was riding his bicycle from York Avenue, intending to make a right turn onto Hagley Park Road to proceed to Three Miles.
3. On reaching the intersection of Hagley Park Road and York Avenue he stopped with the front wheel of his bicycle on the dirt area on Hagley Park Road and the tip of his front wheel touching the asphalt.

4. Mr. Phinn stated he was positioned in this manner so that he would have a good view of the vehicles coming from Three Miles proceeding towards Half Way Tree.
5. After stopping in that position the Claimant said he looked to his left towards the Half Way Tree direction to ensure that the roadway was clear. There were no vehicles coming from that direction.
6. As the Claimant turned to look to his right the Defendant's car which was coming from the direction of Three Miles drove too close to the dirt area along Hagley Park Road and hit the front wheel of his bicycle. The impact, threw him off his bicycle and onto the windscreen of the car, he then rolled off onto the bonnet of the Defendant's car and fell to the ground.
7. The Claimant said he subsequently woke up some 3 days later in the University Hospital suffering from pain and injuries. His right hand, was swollen and bandaged, his right foot and his head were swollen and he had cuts and bruises to his left hand. On his right thigh he had a cut from his groin to his knee.
8. The Claimant remained in hospital for 2 weeks and thereafter was treated in the out patients department of the hospital for his injuries.
9. The Defendant Mr. Simms and his witness Det. Sgt. Andrew Hill's account of the collision was vastly different from that of the Claimant.

10. In summary their evidence was that on the 23rd day of November 1996, the Defendant was driving his Honda Civic motor car which he operated as a taxi along Hagley Park Road proceeding in the direction of Half Way Tree.
11. The Defendant was traveling at about 30 – 35 miles per hour when on reaching the intersection of Hagley Park Road and York Avenue the Claimant rode his bicycle at a very fast speed from York Avenue onto Hagley Park Road without stopping at the intersection.
12. The Claimant was in the process of making a right turn onto Hagley Park Road when his bicycle collided into the left front section of the Defendant's motor vehicle.
13. The Claimant was then propelled onto the wind screen of the Defendant's vehicle breaking it on impact. Mr. Phinn then rolled off the bonnet into the roadway in front of the Defendant's car.
14. Claimant was subsequently taken away to the Hospital by a passing Police vehicle, due to the injuries he sustained.
15. It was submitted by the Claimant that the Defendant was negligent for the following reasons;
 - (a) He failed to keep a proper look-out.

(b) He was traveling at a tremendous speed to generate enough speed to rip the front wheel of the bicycle out of the fork.

16. The Claimant also submitted that the location of the accident was of great significance. He contended that there was no dispute that the accident took place at the intersection of Hagley Park Road and York Avenue. However, what was in dispute was the point of impact.

17. The Claimant further submitted that the physical damage to the Defendant's car, the damage to the Claimant's bicycle and the surrounding circumstances supported the Claimant's case that he was not actually on Hagley Park Road when the Defendant's car hit his bicycle. It was argued that on a balance of probabilities the Claimant's evidence as to how the accident took place was to be preferred to that of the Defendant.

18. On the other hand it was submitted by the Defence that there was an obligation by the Claimant to take special care when entering a major road from a minor roadway. Therefore the Claimant who was riding his pedal cycle from a minor road (York Avenue) onto a major roadway (Hagley Park Road) ought to give way to traffic on the major road way and enter that major road with caution, keeping a proper look out at all times.

19. In addition it was submitted on behalf of the Defendant that a driver along a major roadway was under no duty to drive in such a way so as to be

able to stop short should a car or in this case a pedal cycle be driven straight across his path out of a side road. The case of **Humphrey v Leigh and Another** 1971 Road Traffic Reports 363 C.A. was cited in support of this proposition.

20. DISCUSSION

The first issue for determination is that of liability. Both parties are contending that it was the other party who was liable.

21. On a careful examination of the evidence it may be concluded that the following facts are not in issue.

- (a) That a collision took place in the vicinity of Hagley Park Road and York Avenue at approximately 1:30 p.m. on the 23rd day of November 1996.
- (b) That the Claimant who was riding his pedal cycle and the Defendant who was driving his Honda Civic motor car were the parties involved in that collision.
- (c) That the Claimant was traveling along York Avenue prior to the collision and the Defendant was proceeding along Hagley Park Road in the direction of Half Way Tree.

- (d) That Hagley Park Road is a major roadway and York Avenue is a minor road off Hagley Park Road.

22. The following facts are in dispute:

- (a) Whether or not the Claimant had stopped at the intersection of York Avenue and Hagley Park Road.
- (b) Was the complainant stationary at the time of the collision.
- (c) Was he traveling at a fast rate of speed when he came to the intersection.
- (d) Whether or not he rode out into Hagley Park Road from York Avenue and collided with left front section of the Defendant's car.

23. The evidence of the Claimant was that he stopped at the intersection, with his legs on either side of his bicycle. The Defendant and his witness stated that the Claimant never stopped.

24. The Claimant said he was stationary on the dirt section of the road with the tip of his bicycle against the asphalted section of Hagley Park Road when the Defendant drove too close to the side of the road and collided with him. The Defendant's case was that at no time was the Claimant ever stationary. From the first time Defendant and his witness saw him he was riding at a fast rate of speed from York Avenue onto Hagley Park Road.

25. The Claimant denied that he rode out into Hagley Park Road from York Avenue. He stated that the collision did not take place as described by the Defendant and his witness, but it was the Defendant who drove too close to the side of Hagley Park Road and collided with him.

26. In support of his case the Claimant submitted that there was an internal conflict in the Defendant's case, when the Defendant said his car was closer to the middle of the road at the time when the collision occurred. While his witness Det. Sgt. Hill said he was closer to the left side.

27. What was very instructive to the Court on that particular aspect of the evidence was that both Defendant and his witness agreed that from where the Defendant's car was traveling on the road to the edge of the roadway on the left was 3 – 4 feet, so that in my view did not amount to a substantial conflict.

28. The Claimant and the Defendant spoke to the Claimant falling onto the windscreen of the Defendant's vehicle and that the force at which he fell on the wind screen broke it. The Claimant then fell on the bonnet of the car and then rolled off onto the road. On a careful consideration of the evidence it was observed that the Claimant's evidence was that he was stationary with his legs on either side of his bicycle when the Defendant's speeding motor car hit the front wheel of his bicycle. The Defendant's version was that the

Claimant was speeding out of York Avenue when he collided with the Defendant's motor car.

29. It is my view that the Defendant's account was more probable. Where a bicycle was traveling at a high rate of speed and collided into a motor car which was bigger, then the vehicle would stop the momentum of the bicycle, breaking its speed. The momentum of the Claimant would however continue and hence he would be propelled onto the windscreen of the motor car. I rejected the Claimant's account because if he was stationary when he was hit by the car then I would have expected him to have been thrown from the bicycle and maybe fall further up Hagley Park Road. I would not expect him to be propelled onto the windscreen of the defendant's car.

30. CONCLUSION

(a) I find that there was an obligation by the Claimant to take special care when entering a major roadway from a minor road, keeping a proper look out at all times. On the evidence presented the Claimant did not enter Hagley Park Road with due care and caution nor did he keep a proper look out.

(b) I further find that the Claimant failed to stop at the intersection. I found it amazing when the Claimant said that he intended to make a right turn onto Hagley Park Road to go to Three Miles

and he looked "left" towards where the traffic was to his "off-side" instead of looking to his "right" from where the on coming traffic was proceeding. When he was cross examined about this he said he did not consider it important which side you looked when crossing.

- (c) On the question of liability it is the considered view of this Court that on a balance of probabilities the evidence of the Defendant and his witness is to be preferred to that of the Claimant. Det. Sgt. Hill was a very honest and compelling witness for the Defendant. As a result I find that the collision was caused by the negligence of the Claimant and that his reckless riding resulted in the damage done to himself and the Defendant's vehicle.

- (d) Judgment for the Defendant on the Claim and Counter-claim in the sum of \$120,500.00 for Special Damages (loss of use of his motor vehicle and damage to his windscreen) with interest at the rate of 6% p.a. from the 23rd day of November 1996 to the date hereof.

Costs to be taxed if not agreed.

