IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1977/R153

BETWEEN FRANCO RAMSAY PLAINTIFF

AND IVAN BROWN DEFENDANT

A. G. Gilman for plaintiff.

R. S. Pershadsingh, Q.C., for Defendant.

January 28; July 30, 1980

Theobalds J.

In this action, the plaintiff, Franco Ramsay, seeks to recover damages in negligence from the defendant, Ivan Brown. The claim arises out of a collision between two motor vehicles along the Mountain View Avenue, in the parish of St. Andrew, on the 6th June, 1977. The plaintiff, the evidence disclosed, was proceeding north along Mountain View Avenue, that is, from the Windward Road end towards the Old Hope Road end. The plaintiff's case is that a car owned by and registered in the name of the defendant was driven so suddenly out of Cartridge Road into the path of the plaintiff's motor vehicle that it was impossible for the plaintiff to avoid colliding with it. The plaintiff's contention was that a Triumph car owned by the defendant disobeyed a stop sign at the junction of Cartridge Road and Mountain View Avenue which required traffic entering Mountain View Avenue from Cartridge Road to stop before entering the major road. The defence was that this Triumph car, owned by the defendant, did not disobey the stop sign but was proceeding gradually along the extreme westerly side of Mountain View Avenue, when it was the plaintiff's car, driven from south along Mountain View Avenue, which came into collision with the defendant's vehicle and that it was the plaintiff's negligence that solely caused or alternatively, contributed to the accident. The defendant counter-claimed for damages to his motor vehicle and other attendant loses arising therefrom.

It can thus be seen that on the issue of negligent

driving of one or other or both of the respective vehicles, the case is not a complex one. Indeed, on that issue per se, there would have been no necessity whatever to reserve judgment. What makes the case complicated is the imprecise nature of the pleadings filed on both sides, and the battery of authorities, some relevant, some not so relevant and some totally irrelevant which were submitted and which one was obliged to read before relegating each authority to their respective category abovementioned.

The first example of lack of precision in the pleadings, emerges from paragraph 3 of the Statement of Claim which is in these t erms:

> " On or about the 6th day of June 1977 the Plaintiff was lawfully driving his said motor vehicle along the Mountain View Avenue in the parish of Saint Andrew when the defendant's said motor vehicle was so negligently driven managed and/or operated that it collided into the plaintiff's said motor vehicle.
>
> /the emphasis is mine/

It would seem, therefore, that mere ownership of a vehicle places responsibility for any damage caused by its use on the owner, or so this Statement of Claim sought to establish. With the number of motor vehicles stolen daily in the Corporate Area alone, it would seem to follow that were this principle correct ownership of a motor vehicle would be a liability rather than an asset. Be it observed that no attempt is made to either name or identify the driver or to state in what capacity (vis-a-vis the owner) he was driving. The authority cited for this proposition is the well-known case of Barmaid v. Sully /1931/ 47 T.L.R. 557 D.C. which had established that in an action for negligence arising out of a motor vehicle collision the fact of ownership of the vehicle is some evidence that it was being driven at the material time by the owner or by his servant or agent. The evidence in this case disclosed, and I so find, that one Ernest Brown was driving and one Ivan Brown /the defendant/ was the registered owner of the Triumph car. It has not been suggested that Ernest Brown was at any time the servant of this defendant, so one has to look closely to see whether Ernest Brown would possibly fall within the established definition of agent as recognised by Denning J. in Ormond v.

Crosville Motor Services Limited [1953] 2 A.E.R. 753, i.e. "one who with the owner's consent is driving the car on the owner's business or for the owner's purposes." This is necessary because it must be borne in mind that Barmaid and Sully made it quite clear that the presumption of master and servant or principal and agent may be rebutted by proof of the actual facts. I have no difficulty in finding that this particular vehicle [the Triumph] was being used at the time of the accident by Ernest Brown solely for his own purposes and that Ernest Brown cannot therefore be the agent of this owner/defendant so as to make him vicariously liable. The driver may have been using it with the consent or permission of the registered owner but such permission per se is not sufficient to make the owner vicariously liable for the negligence of the driver, for agency and not permission is the basis of liability. It was urged by learned counsel for the plaintiff that the payment for the repairs on his own car indicates that the owner/defendant Ivan was ipso facto recognizing that Ernest was acting as his [Ivan's] agent at the time of the accident. This is clearly not so, as payment of a repair bill can be attributed to any number of other reasons, the variety and scope of which could be virtually unlimited. The situation where there is joint ownership of the offending vehicle is no different. Indeed, it has been suggested that the very fact that each joint owner has an equal right to use the vehicle [as was the situation here] shows that when one joint owner is driving it, otherwise than in pursuance of a request by the other, he [the driver] ought to be regarded as driving it on his own behalf. [See the dicta of Lord Cross of Chelsea in Launchbury v. Morgans (1973) A.C. 145]

I had mentioned earlier in this judgment that in my view the pleadings on both sides were imprecise and have given an instance of such from the Statement of Claim. The Defence and Counter-claim was in the following terms: " The Defendant specifically denies that he disobeyed a Stop sign. The Defendant says that his vehicle was on the extreme westerly side of Mountain View Avenue when

the plaintiff's motor vehicle was so negligently driven, managed, maintained and/or controlled by himself that it collided with the defendant's vehicle." Now evidence was led that the defendant's car did stop at the Cartridge Road intersection with Mountain View Avenue from which point it proceeded across Mountain View Avenue with the intention of entering a Reserved Road on the eastern side of Mountain View Avenue, slightly north of Cartridge Road. The Defence and Counterclaim filed made no mention whatever of this but instead left one with an impression that the defendant's vehicle was parked in a position on the western side of Mountain View Avenue when it was hit in this position by the plaintiff's vehicle. Bearing in mind that a counterclaim is in effect a separate action brought by the defendant against the plaintiff, the necessity for clarity in the pleading is beyond question. Further, after the case for the plaintiff had been closed, a belated attempt was made to amend the defence by the introduction of a further paragraph, the effect of which would have been to introduce for the first time at last, evidence in disproof of the presumed capacity or status in which Ernest was driving. The application to amend was refused.

On the question of negligence, there is an issue as to whether or not there was, on the morning in question, any stop sign erected at the intersection of Cartridge Road and Mountain View Avenue, controlling traffic from Cartridge Road. The plaintiff swore there was a stop sign there and he stands alone. The defendant driver, Ernest Brown, swore there was no stop sign, only a white line; but he conceded that such a white line required him to stop and also that he knew it was his duty to stop as vehicles on the major road /Mountain View Avenue/ had the right of way. In the light of this admission therefore it matters not that two of the defendant's witnesses corroborate Ernest Brown in saying that there was a white line but no stop sign. The duty to stop is clearly admitted, but in my view, it goes further than that. A prudent, reasonable driver, after bringing his vehicle to a hult, would not procede until it was safe so to do. Ernest Brown, in my judgment, proceded at a time

when it was patently unsafe so to do. His contention "if he /the plaintiff/ was driving normal he could have stopped before the collision" is of no avail for the plaintiff contends that he was driving normally and I believe him to be a witness of truth in that regard. I accept that the plaintiff was doing no more than twenty-five to thirty miles per hour, on his extreme left and that it was the sudden emergence from the minor road into his path, of the defendant's car, that was the sole cause of this collision. The statement by Ernest Brown that after the plaintiff's van hit his car, it /the van/ proceded about one yard or so and stop" is not consistent, in my view, with his fifty to sixty miles per hour estimate of the van's speed when it hit him. I accept the plaintiff's evidence that he saw the vehicle coming across and applied his brakes but to no avail. The defendant's allegation that there was over one chain of dragmark left by the plaintiff's vehicle has not been substantiated. I say this for two reasons; first of all, no measurements were taken not even by the police officer who investigated, and secondly, if there were dragmarks of that length, on the surface of the Mountain View Avenue, there has been no evidence to link same with the plaintiff's vehicle. I accept the plaintiff's evidence that drag marks "for about six feet in length were left by his vehicle."

On the issue of liability, vis-a-vis, the party sued, the plaintiff's claim fails for two reasons. Firstly, I find from the evidence that Ernest Brown was driving at the time of the collision and that he was not driving as a servant or agent of the defendant. Ivan Brown cannot, therefore, be liable. Secondly, the plaintiff's duty in any claim for special damage is to quantify his losses and specifically prove them. An estimate by an assessor is not sufficient to prove the actual cost of repairs. The two other items listed on the Statement of Claim, viz, Assessor's fees and loss of use would not be recoverable from Ivan Brown, in view of my finding that the driver, Ernest Brown, was not acting as Ivan's servant or agent. Had Ernest been joined as a defendant (as is

usual) then certainly these two items would have been recoverable on this evidence.

With respect to the Counterclaim by Ivan Brown, in view of my finding that Ernest Brown is entirely at fault, the Counterclaim fails. On the claim, there will be a judgment for the defendant with costs to be agreed or taxed. On the Counterclaim, judgment for the plaintiff with costs to be agreed or taxed.