

NML

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
CL R 138 OF 1998**

BETWEEN	JOSLYN RICKMAN	CLAIMANT
	(also called Isaiah Rickman)	
AND	THORPE'S TRANSPORT LTD.	DEFENDANT

Mr. Forsythe instructed by Forsythe and Forsythe for the claimant

Mr. Adolph Edwards for the defendant

July 6 and 13 2004

Sykes J (Ag)

NEGLIGENCE (MOTOR VEHICLE ACCIDENT)

The claimant, Mr. Joslyn Rickman, also known as Isaiah Rickman, was hit on October 3, 1997, by a bus driven by Mr. Joel Ragbeer, who was employed by the defendant. This accident took place along the Hagley Park Road just above the light controlled intersection with Waltham Park Road as one travels from Three Miles to Half Way Tree. The claimant's case rests upon the principle of vicarious liability. To succeed, he must establish that Mr. Ragbeer, at the time of the accident, was acting within the scope of his employment and also that he drove the bus negligently. It is agreed that Mr. Ragbeer was within the scope of his

employment. The question is, was Mr. Ragbeer negligent when he hit Mr. Rickman?

The claimant alleged that Mr. Ragbeer ran the red light and hit him as he was crossing Hagley Park Road. The defendant says that it was the claimant who caused his own injury by stepping out, from among mini buses that had stopped on the left side of Hagley Park Road, into the path of the bus driven by Mr. Ragbeer.

The layout

I will briefly describe the scene of the accident so that my decision can be properly understood. This description is gleaned from the evidence. Hagley Park Road is one of the main thorough fares in the Corporate Area that runs from north to south. It runs from Three Miles in the south to Half Way Tree in the north. Waltham Park Road is another major thorough fare that runs west to east. Both roads intersect. At the intersection there are stop lights that regulate and control the flow of traffic.

If a person walks along Waltham Park Road, coming from the direction of Molyne's Road, and gets to the intersection with Hagley Park Road there is a petrol station on the right side of Waltham Park Road but across Hagley Park Road. This petrol station is on one corner of the intersection. It therefore would be on the right side of Hagley Park Road as one travels from Three Miles to Half Way Tree. Thus if one walks to the intersection in the manner indicated, goes across Hagley Park Road and continues on Waltham Park Road the petrol station would be to one's right. This side of Waltham Park Road I will call the gas station side. At the intersection a person would be able to see vehicles traveling from Three Miles to Half Way Tree and vice versa.

Hagley Park Road is wide at this intersection. There are four lanes which are clearly marked and in addition there is an island in the middle of the road dividing

the intersection into two lanes going up to Half Way Tree and two lanes going down to Three Miles. The person who walks to the intersection from the direction of Molynes Road would also see, if he looks to his left (that is in the direction of Half Way Tree), that minibuses and taxis stop from time to time on the left side of the road. When the mini buses or taxis stop on the left side of Hagley Park Road they obstruct the left lane thereby leaving one free lane to take traffic up to Half Way Tree. They stop a short distance up from the intersection of Hagley Park Road and Waltham Park Road as one travels to Half Way Tree.

The path of the claimant

Mr. Rickman was a vendor of bottles. He said that he collected bottles from all and sundry and sold them to Denoes and Geddes. On the day in question he had "parked" his cart and donkey at premises along Waltham Park Road and then proceeded to walk to Hagley Park Road. He was walking from the Molynes Road direction to Hagley Park Road.

His witness statement, which stands as his examination in chief, did not clearly indicate on which side of Waltham Park Road he was walking. When cross examination began, he initially stated that he was walking on the gas station or right side of Waltham Park Road as one approaches Hagley Park Road. However as cross examination progressed he seemed to accepted that he had walked on the left side of Waltham Park Road as he walked to Hagley Park Road. It was clear to me that despite the age of Mr. Rickman he was not confused. He clearly knew which side was left and which was right. If I am wrong that he said he began crossing on the gas station side of Waltham Park Road what I would say is that at best his evidence was unclear. He said at one point that he started to cross the road on the gas station side. Almost immediately after giving that answer he said he crossed on the side where the taxis and minibuses stop. This would be the left side of Waltham Park Road at the intersection with Hagley Park Road. There was

no re examination to make it clear what exactly he was saying about where he crossed.

As I said I formed the impression that he accepted that Mr. Rickman agreed that on the evening of the accident he walked on the left side of Waltham Park Road down to the Hagley Park Road intersection. He clearly and unambiguously concurred with the suggestion that on the evening of the accident there were buses and taxis in the left lane just above the intersection going in the Half Way Tree direction. He agreed that the lights of motor vehicles that were traversing Hagley Park Road were on. He assented to the suggestion that generally and on the evening in question he could, while standing at the intersection, see for a quarter of one mile in either direction.

The impact

The claimant stated that he was crossing the road when it was safe to do so when he was hit by the bus driven by Mr. Ragbeer. The witness statement at paragraph 6 states that he has a clear recollection of the accident and that he knew that the driver ran the red light. This clarity turned to fog under the power of cross examination. He said that he really did not know what hit him or even how the accident occurred.

The defendant says that the claimant stepped out into the path of the oncoming bus which had the right of way because the stop lights were on green. Mr. Ragbeer said he was traveling at approximately 30 mph when he suddenly saw the claimant, some 15 feet away, in the path of his bus. He swerved to avoid hitting him but was unsuccessful.

Mr. Ragbeer's account is supported by Mr. Alwyn Sinclair who was a passenger in the bus at the time of the accident. Mr. Sinclair does not give any testimony of the speed of the bus. He said he cannot say whether a vehicle is traveling fast or

slow. This is somewhat surprising since he is a tanker driver by profession. However I do not make much of this since his overall credibility was good.

Both witnesses for the defendant say that Mr. Rickman came out from between two buses that had stopped on the left side of Hagley Park Road at the intersection of Hagley Park Road and Waltham Park Road. Mr. Rickman had agreed in his testimony that if one attempts to cross the road in the manner indicated by the defence witnesses while minibuses are parked in the manner stated by the witnesses then one's view of both the stop lights and traffic coming from Three Miles is obstructed.

I accept the account given by the defence witnesses. Mr. Ragbeer was particularly impressive. His evidence was clear, pristine and free from blemishes. His demeanour was that of man sworn to tell the truth. Mr. Rickman's account was severely eroded by Mr. Edwards under cross examination. Mr. Rickman shifted ground on critical areas. Indeed such was the nature of his concessions that by the end of his case the only issue between him and the defence was whether he attempted to cross the road behind the buses or did he attempt to cross having emerged from between two buses.

An attempt was made to sully the character of Mr. Sinclair by suggesting that he was a strange man because he assisted in taking Mr. Rickman to the hospital and paid the registration fee. Nothing is strange about this. As Mr. Sinclair said, he was simply helping a person who was in need of help.

Findings

Based upon the above I have come to the following conclusions:

- (a) as one stands on the left side of Waltham Park Road at the intersection of Waltham Park Road and Hagley Park Road one has a clear view of vehicular traffic for at least a quarter of one mile in either direction along Hagley Park Road;

- (b) minibuses and taxis coming from Three Miles up Hagley Park Road going in the direction of Half Way Tree stop in the left lane of the two lanes. They stop just above the Hagley Park Road and Waltham Park Road intersection;
- (c) when these minibuses and taxis stop at the place indicated at (b) that left lane is obstructed thus reducing the lanes to one;
- (d) if one crosses in front of the minibuses that stop in the left lane one's view of the stop lights and traffic coming up Hagley Park Road from Three Miles is obscured;
- (e) on the evening of the accident minibuses had stopped in the left lane in the manner and with the effect as already described;
- (f) Mr. Rickman came to the intersection at a time when minibuses had stopped in the left lane;
- (g) he attempted to cross from between two buses;
- (h) when he emerged from between the buses he was in the free lane in which the bus driven by Mr. Ragbeer was proceeding from Three Miles to Half Way Tree along Hagley Park Road;
- (i) Mr. Ragbeer was driving within the speed limit;
- (j) when he saw the claimant he was a mere 15 feet away;
- (k) the claimant was hit and sustained injuries;

Conclusion

Mr. Ragbeer was not negligent in any way whatsoever. The claimant was completely at fault. Thorpe's Transport Services Limited is not liable for the claimant's injuries. Judgment is entered for the defendant with costs to be agreed or taxed.

