



[2024] JMSC Civ 170

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2017 HCV 02987

BETWEEN ROHANI WATSON CLAIMANT

AND CALVIN IRVING DEFENDANT

IN OPEN COURT

Mesdames Christine Mae Hudson and Judaska Shaw instructed by Messrs. K. Churchill Neita & Co. for the Claimant

Mr Leslie Campbell instructed by Messrs. Campbell McDermott for the Defendant

Heard: June 19, 2024, and December 5, 2024

Negligence – Motor vehicle collision – Vehicle parked on the roadway approaching a bend or curve in the roadway – Vehicle attempting to move around parked vehicle – The duty of care – The duty of care in terms of proper care – Reciprocated duty – Road Code – Breach – Effect – Breach creating no presumption of negligence – Road Traffic Act, sections 51(2), 53(1), 95(3), Island Traffic Authority Road Code, Part 2 – 35, 39(b), (c), (d) and (e) and 40

A. NEMBHARD J**INTRODUCTION**

- [1] The Claimant, Mr Rohani Watson, and the Defendant, Mr Calvin Irving, were involved in a motor vehicle accident which occurred on 10 April 2016. At approximately 2:00 p.m., Mr Watson was riding his motorbike in a westerly direction along the New Market Main Road, in the parish of Saint Elizabeth. Mr Watson was travelling towards Manock Corner and asserts that he was travelling at a speed of approximately twenty-five to thirty-five kilometres per hour (25kmh-35kmh). The corridor along which the parties were travelling is a dual carriageway.
- [2] On his approach to Kilmarnock District, in the parish of Saint Elizabeth, Mr Watson contends that there is a curve or a bend in the roadway, on his side of the roadway. Mr Watson proceeded around this curve or bend and observed a parked motor vehicle along the straight stretch of the roadway. As he was about to overtake the parked vehicle, he noticed Mr Irving's car coming around the stationary vehicle. He attempted to brake and pulled his motorbike further to his side of the roadway to avoid a collision. Unfortunately, the two motor vehicles collided and Mr Watson was thrown from his motor bike, causing him to fall to the ground and to sustain injuries to his person.¹ Consequently, Mr Watson alleges that because of Mr Irving's negligence, he suffered loss, damage and incurred expenses.²
- [3] For his part, Mr Irving maintains that he was travelling in an easterly direction and was driving a 2005 Honda Civic Sedan, registered 9989 FR. Mr Irving contends that on reaching a section of New Market, he lawfully overtook a motor vehicle which had stopped ahead of him. Mr Irving further contends that he executed this manoeuvre and was proceeding in his correct left lane, when Mr Watson

¹ See – Paragraphs 2-11 of the Witness Statement of Rohani Watson, which was filed on 12 July 2023

² See – The Amended Particulars of Claim, which was filed on 30 March 2022. See also, paragraphs 13-41 of the Witness Statement of Rohani Watson, which was filed on 12 July 2023

negligently negotiated a corner.³ This manoeuvre, Mr Irving avers, caused the motorbike to encroach on his [Mr Irving's] side of the roadway. Mr Irving further avers that Mr Watson collided into the right front side of his motor vehicle. Mr Irving maintains that, prior to the collision, he had brought his motor vehicle to a complete halt and was at all material times in his correct left lane.⁴

- [4] By way of a Claim Form, filed on 18 September 2017, Mr Watson commenced an action for Damages in Negligence, in respect of his injuries, loss, damage and expenses. In his Defence and Counterclaim, filed on 23 March 2018, Mr Irving counterclaims, alleging that the collision was wholly caused by Mr Watson's negligence. Mr Irving also alleges that he suffered loss and damage and was put to expense because of the collision.⁵

THE ISSUES

- [5] The following issues arise for adjudication: -
- i. Whether Mr Irving owed Mr Watson a duty of care.
 - ii. Whether Mr Irving breached that duty of care.
 - iii. Whether the collision was caused by the negligence of Mr Irving.

THE LAW

The claim in negligence

- [6] It is trite law that, in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that

³ See - Paragraph 3 of the Witness Statement of Calvin Irving, which was filed on 8 July 2020

⁴ See – Paragraph 4 of the Witness Statement of Calving Irving, which was filed on 8 July 2020

⁵ See – Paragraphs 5 – 10 of the Witness Statement of Calvin Irving, which was filed on 8 July 2020

the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty.

The burden and standard of proof

[7] It is equally well established by the authorities that, where a claimant alleges that he has suffered damage resulting from a defendant's negligence, a burden of proof is cast on him to prove his case on a balance of probabilities.⁶

[8] This principle was enunciated by Lord Griffiths in **Ng Chun Pi and Ng Wang King v Lee Chuen Tat and Another**.⁷ He stated at pages 3 and 4: -

"The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant might have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred..."

...it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established."

[9] In **Miller v Minister of Pensions**,⁸ Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, had the following to say: -

"That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not', the burden is discharged but if the probabilities are equal it is not."

⁶ See – **Kimola Merritt (suing by her mother and Next Friend Charm Jackson) and the said Charm Jackson v Dr Ian Rodriguez and the Attorney General of Jamaica**, unreported, Suit No. CL1991/M036, judgment delivered on 21 July 2005

⁷ Privy Council Appeal No. 1/1988, judgment delivered on 24 May 1988

⁸ [1947] 2 All ER 372, at pages 373- 374

[10] To establish a duty of care, there must be foreseeable damage, consequent upon the defendant's negligent act.⁹ There must also exist sufficient proximate relationship between the parties, making it fair and reasonable to assign liability to the defendant.

[11] Lord Bridge, in **Caparo Industries plc v Dickham**,¹⁰ spoke of the test in the duty of care, sufficient to ascribe negligence, in this way: -

“In determining the existence and scope of the duty of care which one person may owe to another in the infinitely varied circumstances of human relationships, there has for long been a tension between two different approaches. Traditionally the law finds the existence of the duty in different specific situations each exhibiting its own particular characteristics. In this way the law has identified as wide variety of duty situations, also falling within the ambit of the test of negligence.”

[12] At pages 573 and 574, Lord Bridge went on to say: -

“What emerges, is that, in addition to the foreseeability of damage, [the] necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the law as one of ‘proximity’ or ‘neighbourhood’ and that the situation should be one in which the Court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other.”

Causation

[13] A claimant is required to prove that the defendant's breach of duty caused, or, at the very least, materially contributed to the damage or loss sustained by him. A claimant must establish, on a balance of probabilities, a causal link between his injury and the defendant's negligent act.

⁹ See – **Roe v Ministry of Health and Others. Woolley v Same** [1954] 2 All ER 138 B-C

¹⁰ [1990] 1 All ER 568, at page 572

The 'but for' test

- [14] The authority of **Clements v Clements**,¹¹ McLachlin CJ provided a comprehensive analysis of the nature and application of the 'but for' test. He stated, as follows: -

“The test for showing causation is the ‘but for’ test. The plaintiff must show on a balance of probabilities that ‘but for’ the defendant’s negligent act, the injury would not have occurred. Inherent in the phrase “but for” is the requirement that the defendant’s negligence was necessary to bring about the injury – in other words that the injury would not have occurred without the defendant’s negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.

*The “but for” causation test must be applied in a robust common-sense fashion. There is no need for scientific evidence of the precise contribution the defendant’s negligence made to the injury. See **Wilsher v. Essex Area Health Authority**, [1988] A.C. 1074 (H.L.), at p. 1090, per Lord Bridge; *Snell v. Farrell*, [1990] 2 S.C.R. 311.*

A common-sense inference of “but for” causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant’s negligence probably caused the loss.”

Remoteness of damage

- [15] A defendant is only liable for the consequences of his negligent conduct which are foreseeable. He will not be liable for consequences which are too remote. In this regard, in **Roe v Ministry of Health and Others. Woolley v Same**,¹² Lord Denning posited as follows: -

¹¹ [2012] 2 S.C.R., at paragraphs 8-10

¹² *Supra*, at page 138 A-C

*“The first question in every case is whether there was a duty of care owed to the plaintiff; and the test of duty depends, without doubt, on what you should foresee. There is no duty of care owed to a person when you could not reasonably foresee that he might be injured by your conduct: see **Hay (or Bourhill) v Young and Woods v Duncan** ([1946]) AC 426, per Lord Russell of Killowen, and *ibid*, 437 per Lord Porter). The second question is whether the neglect of duty was a “cause” of the injury in the proper sense of that term: and causation, as well as duty, often depends on what you should foresee.”*

The duty of care in terms of “proper care”

- [16] Lord MacMillan expressed the duty of care in terms of “proper care” in **Hay or Bourhill v Young**.^{13 14} He had this to say at page 403: -

“...Then to whom is the duty owed? Again, I quote and accept the words of Lord Jamieson:

‘...to persons so placed that they may reasonably be expected to be injured by the omission to take such care.’

The duty to take care is the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed.”

- [17] Harris JA in the authority of **Glenford Anderson v George Welch**¹⁵ made the following pronouncements at paragraph 26 of her decision: -

“[26] It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty. It is also well settled that where a claimant alleges that he or she has suffered

¹³ ([1946]) AC 426

¹⁴ This principle was adopted by the Jamaican Courts in the authority of **Esso Standard Oil SA Ltd – Another v Ian Tulloch** [1991] 28 JLR 553: “all users of the road owe a duty of care to other road users”.

¹⁵ [2012] JMCA Civ 43

damage resulting from an object or thing under the defendant's care or control, a burden of proof is cast on him or her to prove his case on the balance of probabilities.

[27] ...

[28] In establishing a duty of care there must be foreseeable damage consequent upon the defendant's negligent act. There must also be in existence, sufficient proximate relationship between the parties making it fair and reasonable to assign liability to the defendant...

[29] Liability will be affixed to negligence where the defendant's act is the sole effective cause of the claimant's injury or it is so connected to it to be a cause materially contributing to it. The negligent act as a cause of a claimant's injury may arise out of a chain of events leading to liability on the part of a defendant but the claimant must so prove. Proof that a claimant's injury was caused by the defendant's negligence raises a presumption of the defendant's liability. However, the claimant must satisfy the court that his or her injury was caused by the defendant's negligence, or that for want of care, the defendant's negligence substantially accounted for the injury."

The duty of care enshrined in statute

[18] This duty of care is enshrined in the Road Traffic Act ("the Act"). Although the Act has since been repealed and replaced by The Road Traffic Act, 2018, the Court notes that this new legislation does not have retroactive effect. Therefore, the legislation in force at the time of this motor vehicle collision would be the earlier iteration of the Road Traffic Act. Consequently, any references in this Judgment to the Road Traffic Act is a reference to the Road Traffic Act with amendments up to 2015.

[19] Sections 51(2) of the Act indicates the rules of the road. It reads as follows: -

"51(2) Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions

of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection.”

The Island Traffic Authority Road Code, 1987

[20] The relevant portions of Part 2 of the Island Traffic Authority Road Code, 1987 (“the Road Code”) read as follows: -

“3. Keep as near to the left as practicable, unless about to overtake or turn to the right. Do not drive on a footpath or pavement by the side of the road.

7. Do not drive in a spirit of competition with other road users. Do not race other motorists on public highways: -

(a) Well before you overtake, or turn left, or right or slow down, or stop, use your mirrors (motorcyclists should always look behind, even if they have mirrors fitted), then give the appropriate signal.

(b) Always keep a special look-out for bicycles and motorcycles particularly when turning. Bear in mind that two wheelers are much less easy to be seen than larger vehicles and that their riders have the same rights to consideration as other road users and are more vulnerable...

(c) ...

(d) ...

(e) Motorcyclists who wear approved safety helmets reduce their possibility of death and serious head injuries considerably. All motorcyclists including pillion riders are encouraged to wear helmets.

8. Do not overtake unless you can do so without danger to others or to yourself. Before you overtake, make sure the road is clear far enough ahead and behind. Use your mirrors and if you are on a pedal cycle or motorcycle look behind and to your offside or right side. Signal before you start to move out. Be particularly careful at dusk, in the dark and in fog or mist, when it is more difficult to judge speed and distance.

Do not overtake at or when approaching the following locations:

(a) Pedestrian crossing;

- (b) Railway crossing;*
- (c) Road junction;*
- (d) Curve or bend;*
- (e) The brow of a hill;*
- (f) Humpback bridge;*
- (g) Where the road narrows.*

35. Before you pull out of a parking position look behind, signal your intention and make sure you can do so safely and with no inconvenience to the other road users.

39. Do not park or stop your vehicle: -

- (a)...*
- (b) at or nearer than 40' from a fire hydrant, a bus stop, hospital or school entrance.*
- (c) on a main road carrying fast-moving traffic.*
- (d) on the paved surface of a road when adequate soft shoulder area is provided.*
- (e) At or near a bend, the brow of a hill, or a humpback bridge.*

40. When you park or stop your vehicle pull in as close as possible to the left of the edge of the road or kerb."

[21] Section 95(3) of the Act is also relevant to these proceedings. This section reads:

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"95(3) The failure on the part of any person to observe any provisions of the Road Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings."

THE SUBMISSIONS

The submissions advanced on behalf of the Claimant

- [22] Learned Counsel Ms Judaska Shaw submitted that central to the issue of liability is the question of how the incident occurred. It was submitted that there are questions of fact to be determined based on the credibility of each witness.
- [23] It was further submitted that it is trite law that a driver of a motor vehicle on a public road has a duty to other road users to manage and or control his motor vehicle to prevent hurt, harm or damage one to the other. The law fixes him with a duty of care, which can be breached by a positive act of commission or by an omission. If by his commission or omission an accident occurs, because of his breach, he is responsible in law to that other who has been wronged. Such a duty of care and its consequent breach must result in damage to that other. A motorist intending to overtake a stationary vehicle must wait until he is certain that it is safe to do so. To support these submissions, the Court was referred to the authorities of **Blyth v Birmingham Waterworks Co.**,¹⁶ **Donoghue v Stevenson**,¹⁷ **Glenford Anderson v George Welch**¹⁸ and **Albourne Matthews and Winston Morrison v The Attorney General and Gregg Gardner**.¹⁹
- [24] Mr Watson maintained that Mr Irving suddenly and without any warning and or indication, attempted to drive around a stationary vehicle while it was unsafe to do so. Ms Shaw also submitted that this manoeuvre caused Mr Irving to encroach on Mr Watson's side of the road and to collide with him.

The submissions advanced on behalf of the Defendant

- [25] For his part, Learned Counsel Mr Leslie Campbell asserted that negligence arises where there is a breach of a legal duty to take care, the breach of which results in damage to a person to whom the duty is owed. Mr Campbell relied on

¹⁶ [1856] 11 Exch 781

¹⁷ [1932] UKHL 100

¹⁸ [2012] JMCA Civ 43

¹⁹ [2007] HCV 04547

sections 51(2) and 95(3) of the Road Traffic Act. It was submitted that all users of the road owe a duty of care to other road users. This duty of care, Mr Campbell asserted, was explained in the authority of **Bourhill v Young**.²⁰ It was further submitted that the authority of **Bourhill v Young** makes it clear that there exists a duty to take such reasonable care to avoid the risk of injury or damage to property. Reasonable care is the care which an ordinary skilful driver would have exercised under all the circumstances and includes avoiding excessive speed, keeping a proper lookout and observing traffic rules and signals. To buttress this submission, Mr Campbell also relied on the authorities of **Boss v Litton**,²¹ **Pamela Thompson et al v Devon Barrow et al**²² and **Jowayne Clarke and Authority Clarke v Daniel Jenkins**.

- [26] Additionally, Mr Campbell submitted that, with the only witnesses in this matter being Mr Watson and Mr Irving, the consideration of the issue of liability will rest on the credibility of the parties and the plausibility of their accounts as to how the collision occurred. In this regard, the Court was referred to the authority of **Calvin Grant v Pareedon and Pareedon**.²³

ANALYSIS AND FINDINGS

The duty of care

- [27] The first issue that arises for the Court's determination is whether, in the circumstances of this case, Mr Irving owed a duty of care to Mr Watson. To succeed in his claim in negligence, Mr Watson must prove, on a balance of probabilities, that Mr Irving owed him a duty of care; that he [Mr Irving] breached that duty of care; and that that breach caused him [Mr Watson] to suffer harm which was reasonably foreseeable.

²⁰ [1943] 1 AC 92

²¹ [1832] 5 C&P 407

²² CL 2001/T143, judgment delivered on the 22nd day of December 2006

²³ C.L 1983/G108

- [28] It is now trite law that there is a reciprocated duty of care that each driver on the road owes to others. This duty of care is to manage and control his motor vehicle in such a way as to prevent harm or damage to other users of the road. The duty is one that is limited to persons who are so placed that they may reasonably be expected to be injured by the omission to take such care. Undoubtedly, this duty extends to any passenger travelling in his motor vehicle.
- [29] In the circumstances of this case, the issue of whether Mr Irving owed Mr Watson a duty of care is not a complex one. The Court finds that Mr Irving owed a duty of care to Mr Watson, to manage and or control his motor vehicle with such care and in such a manner that would not cause harm or injury to other users of the road, including Mr Watson. This is a reciprocated duty of care which Mr Watson also owed to Mr Irving.

The credibility and reliability of the witnesses

- [30] In assessing the credibility and reliability of the witnesses in the instant case, as well as that of the evidence that it has heard, the Court will be guided by the observations of Lord Pearce (dissenting) in the House of Lords decision of **Onassis v Vergottis**.²⁴
- [31] Lord Pearce is quoted as follows: -

“Credibility involves wider problems than mere demeanour, which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following... Firstly, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly, and if so, has this memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over discussion of it with others? ... Lastly, although the honest witness believes that he heard or saw this

²⁴ [1968] 2 Lloyds Rep 403 at page 431

or that, is it so improbable that it is on a balance of probabilities that he was mistaken?

On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness.

All these...compactly are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process..."

[32] Both parties have given different accounts of the circumstances in which the motor vehicle collision occurred. The following evidence of Mr Watson bears repeating: -

"A: I was coming from New Market going to Payne's Town District. Before I reached to Kilmarnock Corner, I was riding, and I was on my side on the left side of the road. When I bend the first corner I saw a parked car. When I saw the parked car, I was about three car lengths away from the parked car. When I was about one length away from the car, I saw a blue car. When I go to pass the car that parked, the blue car came around and hit me.

Q: Do you agree that the motor vehicle completed the overtaking of the parked car?

A: No. He did not complete the overtaking.

Q: As you travel along that road you hit the Kilmarnock Entrance?

A: Never exactly reached there, Sir. I saw a parked car on the right-hand side of the road. I was near to the bushes on the left side of the road.

Q: You say that as you came alongside the parked car, the Defendant overtook?

A: Yes, and hit my bike.

Q: After this collision, where did you fall from the motorcycle?

A: On the left side of the road. I fell on my side of the road. When the car hit me, I fell on the left side of the road. I am in the bush side same way, but I don't fully in the bush side. I am trying to hold my left as much as I can.

Sugg: After you collided with the blue car you fell in the middle of the road.

A: No, Sir.

Sugg: That you were speeding when you left New Market.

A: On that Sunday, Sir, I never have no feelings to speed. I just bathe and I just leave my home...

Sugg: You were "dollying".

A: No Sir, I never think to dolly a bike. I have an elder in my community who always tells me to keep to my side. ...

Sugg: At no point did you see Mr Irving overtaking a parked car.

A: When I am coming, when I reached about one car length away from the parked car. When I reached the middle of the parked car, he overtake and hit me.

Sugg: You were not in the middle of the parked car. In fact, you were about two chains away from the parked car.

A: No sir.

Sugg: You came around a corner immediately before you slammed into the Defendant's car.

A: No sir. I came around the first corner. He is the one who came around the corner and hit me."

[33] Mr Watson avers that he was riding his motorcycle on the left side of the road and that, as he attempted to overtake the parked vehicle, Mr Irving did so and collided with him [Mr Watson]. On Mr Watson's account the collision knocked him from his motorbike and caused him to fall on the left side of the roadway.

[34] Conversely, Mr Irving's account of the circumstances of the motor vehicle collision is significantly different from that of Mr Watson. Mr Irving asserts that he had already overtaken the parked vehicle, which was parked on his side of the roadway, when he observed a motorcyclist which was coming in the opposite direction, and which was travelling in the middle of the roadway. Mr Irving

maintains that he had already cleared the parked vehicle and had travelled some distance from it when Mr Watson collided with him. Mr Irving avers that the collision caused Mr Watson to fall from his motorbike. Mr Watson fell in the middle of the roadway, behind his motorbike, and not close to the bushes on the left side of the roadway as Mr Watson contends.

[35] The following excerpt of Mr Irving's evidence is instructive: -

"A: I have been wearing glasses about ten (10) years. I see a lot without my glasses. I only need my glasses for far distances. On the day of the accident, I was wearing my glasses. I never drive without it. There was a vehicle on my side of the road.

Q: Did you drive upon and see the vehicle?

A: The vehicle was there when I was approaching.

Q: The surface of the road is good?

A: Yes, there were no potholes at that time.

Q: When you first saw the Claimant, how far was he from you?

A: When I passed the disabled car. Maybe about twenty feet, maybe. When I saw him, he was in the middle of the road.

Sugg: When you first saw him, he was on the extreme left side of the roadway?

A: No. I had passed the parked vehicle about two chains up the road.

Sugg: That is not true, Sir.

A: I already passed the car, and I am going two chains up the road and he is coming around the corner.

Sugg: You attempted to go around the parked car when the collision took place.

A: I passed the parked car about two times the length of this courtroom.

Q: Did any vehicle overtake you?

A: No.

Sugg: Down on the opposite side of the road?

A: There is a van coming down from New Market area. I stopped behind the parked car. Then I go around, and I have been doing like two lengths of this courtroom.

Sugg: The Claimant fell on his side of the roadway.

A: In the middle of the road behind my car.

Sugg: Your vehicle was on the rider's side of the roadway.

A: I am on my extreme left. I had nowhere else to go...

Q: After the collision, where did your car end up?

A: My car was on the left side of the road because I am going to New Market. My car ended up on the left side of the road all the way to the banking.

Q: Before the collision, where was your car?

A: All the way to the extreme left.

Sugg: The Claimant came around the curve in the road, that parked car was parked on your side of the road on a little straight.

A: It is a wide road. A big driving road. When you pass the car, you got to approach a corner. I saw the bike coming in the middle of the road. When he hit me, I was actually already stopped.

Q: Did you speak with the Claimant while he was on the ground after the accident?

A: No. The Claimant did not speak to me on the day of the accident."

[36] The single thread that is common to both accounts of the collision is that the two vehicles collided with each other and that Mr Watson was thrown from his motorcycle. In support of his Defence and Counterclaim, Mr Irving relies on a receipt bearing the signature of one Mr E. Smith, which appears to detail repairs which were effected to his motor vehicle.

[37] That receipt reads as follows: -

“The sum of \$50,000 for repaired damage inclusive of body work and spray on one (1) 2005 Honda Civic, colour blue, chassis #: JHME556805S200702 Sedan:

Towards bonnet, bumper, top fender, both right side doors, mirror, headlight, wind screen (damaged areas).”

[38] In an effort to prove his case, Mr Watson relies on four (4) medical reports. Among these reports is the medical report of Orthopaedic Associates, bearing the signature of Dr Grantel G. Dundas, FRCS, and dated 14 February 2022. In the section of the report which is entitled “History”, Dr Dundas states as follows: -

“Mr Watson was his own historian.

*Indications are that sometime close to 3:30 p.m. on Sunday April 10, 2016, he was an unhelmeted motorcyclist riding westerly through New Market in St. Elizabeth. A car travelling in the opposite direction overtook a parked vehicle around a bend in the road and encroached on Mr Watson’s side of the roadway. **A frontal collision occurred. Mr Watson was thrown into the air and landed on the windshield of the sedan.** He was not run over nor did the motorcycle fall on him.”*

[Emphasis added]

[39] This evidence corroborates Mr Irving’s evidence and is borne out by the evidence of the damage to Mr Irving’s motor car.

[40] Mr Irving asserts, at paragraphs 2 to 4 of his Witness Statement, which was filed on 8 July 2020, as follows: -

“2. On or about the 10th day of April 2016, I was travelling along the New Market Main Road in the parish of St. Elizabeth in my motor vehicle registered 9989 FR. On reaching a section of the roadway, I overtook a vehicle which had stopped ahead of me.

3. After overtaking the vehicle, I straightened up in my lane and was about to approach a corner when I noticed a motorcycle travelling in the opposite direction, coming around the corner at a very fast rate.

4. The motorcyclist rode from his side of the roadway onto my side of the roadway. On seeing this I immediately stopped to prevent him from colliding into my vehicle but was nevertheless unable to do so. He collided into the right front side of my motor vehicle.”

[41] Having regard to the principles enunciated by Lord Pearce in **Onassis v Vergottis**, the Court finds, on a preponderance of the evidence, that a common-sense approach does not support a finding in favour of Mr Watson.

Findings of fact

[42] The Court makes the following findings of fact: -

- i. That on 10 April 2016 at approximately 2:00 p.m., Mr Watson and Mr Irving were travelling in opposite directions along the New Market Main Road in the parish of Saint Elizabeth.
- ii. That Mr Watson was riding a motorbike and Mr Irving was driving a 2005 Honda Civic sedan registered.
- iii. That the New Market Main Road, in the parish of Saint Elizabeth, is a dual carriageway, which is wide enough to accommodate two lanes of vehicular traffic in both directions at the same time. One side of the roadway is bordered by the area’s natural vegetation and the other side has an embankment.
- iv. That on 10 April 2016 at about 2:00pm., there was a disabled/stationary motor vehicle parked on the side of the roadway which is closest to the embankment.
- v. That Mr Watson, while astride his motorbike, was travelling on side of the roadway which is closest to the area’s natural vegetation. Mr Irving was travelling on the side of the roadway which is closest to the embankment.

- vi. That the disabled/stationary motor vehicle was on Mr Irving's side of the dual carriageway.
- vii. That Mr Watson was riding closer to the middle of the roadway.
- viii. That Mr Irving had completed his overtake of the disabled/stationary motor vehicle and was in the lane closest to the embankment.
- ix. That Mr Irving saw the motorbike approaching and he brought his motor vehicle to a halt.
- x. That Mr Watson was closer to the middle of the roadway than he was to his side of the roadway.
- xi. That Mr Watson failed to adequately keep to the left of the roadway.
- xii. That there was a frontal collision between both motor vehicles, which resulted in the motorbike which Mr Watson was riding becoming airborne and landing on the windshield of Mr Irving's motorcar before falling in the middle of roadway.
- xiii. That Mr Watson failed to manage and or control the motorbike in a manner that would not cause harm or injury to himself or to Mr Irving's motor vehicle.
- xiv. That Mr Watson failed to manage and or control the motorbike in a manner that would not cause harm or injury to Mr Irving.
- xv. That Mr Watson breached the reciprocated duty of care which he owed to Mr Irving.
- xvi. That Mr Watson caused the motor vehicle collision and is liable in negligence.

- xvii. That because of the collision, Mr Watson sustained injuries to his person and was taken from the scene to the Black River Hospital for treatment.
- xviii. That because of the collision, Mr Irving sustained damage to his motor vehicle, specifically, the headlights, the right mirror, windshield, front bumper and right doors.
- xix. That Mr Irving suffered loss and damage because of the motor vehicle collision.

Inconsistencies in the evidence of Mr Watson

- [43]** The Court finds that there are aspects of Mr Watson's account of the circumstances in which the motor vehicle collision occurred which are not explained on his evidence. Firstly, it is significant to note that Mr Watson gives no evidence that he became airborne after the motor vehicle collision or that he collided with the windscreen of Mr Irving's motor car. Yet, that is the history which he provided, and which is contained in the medical report which was tendered in evidence on his behalf.
- [44]** Secondly, there is no explanation on Mr Watson's account of the circumstances in which the motor vehicle collision occurred which explains what would have caused the motorbike which he was riding to become airborne. This, in circumstances where Mr Watson asserts that he had brought the motorbike to a stop before the collision occurred. Nor is there any explanation of how it is that the motorbike came to have landed in the middle of the roadway, after the motor vehicle collision.
- [45]** More substantially, the Court finds that this aspect of Mr Watson's evidence lends credence to that of Mr Irving and to the circumstances in which he [Mr Irving] asserts that the motor vehicle collision occurred. That is, that Mr Watson was riding his motor bike in the middle of the roadway; that there was a frontal collision between the two (2) motor vehicles, which resulted in the motorbike becoming airborne; that Mr Watson collided with the windscreen of Mr Irving's

motor car and that Mr Watson landed in the middle of the roadway behind the motor car.

- [46] Additionally, the Court also finds that the evidence of the damage occasioned to the motor car lends credence to Mr Irving's account of the circumstances in which the motor vehicle collision occurred.

Conclusion

- [47] In the result, the Court finds that Mr Irving's account of the circumstances in which the collision occurred is more probable.
- [48] Consequently, the Court finds in favour of Mr Irving on the Claim and Counterclaim, on the issue of liability. The Court also finds that Mr Irving has proven his claim for special damages in the sum of One Hundred and Twenty-Six Thousand Three Hundred and Ninety-Two Dollars and Fifty cents (\$126,392.50).

DISPOSITION

- [49] It is hereby ordered as follows: -
1. Judgment is entered in favour of the Defendant against the Claimant on the issue of liability on the Claim and Counterclaim.
 2. Costs are awarded to the Defendant against the Claimant and are to be taxed if not sooner agreed.
 3. Special Damages are assessed and awarded to the Defendant against the Claimant in the sum of One Hundred and Twenty-Six Thousand Three Hundred and Ninety-Two Dollars and Fifty cents (\$126,392.50), with interest thereon at the rate of three percent (3%) per annum from 10 April 2016 to the date hereof.
 4. Messrs. Campbell McDermott are to prepare, file and serve these Orders.