



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2008 HCV 05214

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| BETWEEN | SANCHEZ WHITE | CLAIMANT |
| AND | CLEVELAND BEDASSIE | 1 ST DEFENDANT |
| AND | LESLIE ELLIS | 2 ND DEFENDANT |
| AND | MICHAEL BEECHER | 3 RD DEFENDANT |

AND

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| BETWEEN | MICHAEL BEECHER | ANCILLARY CLAIMANT |
| AND | CLEVELAND BEDASSIE | 1 ST ANCILLARY DEFENDANT |
| AND | LESLIE ELLIS | 2 ND ANCILALRY DEFENDANT |

Mr. Orane Nelson instructed by K. Churchill Neita & Company for the Claimant

Mr. Earl Delisser for the 1st and 2nd Defendants

Ms. Camille Wignall instructed by Nunes Scholefield DeLeon & Company for the 3rd Defendant

Heard: August 14, 2012 and April 1, 2014

Motor Vehicle Accident - Negligence

Gayle J

[1] The claimant's claim arose out of a motor vehicle accident which occurred on April 1 5, 2008 along the Prospect Main Road in the parish of Hanover. The accident

involved the claimant's Toyota Corolla motor vehicle licensed 9070 FE and a crane loader ('grabber') licensed SP1800 being operated by the second defendant and owned by the first defendant.

[2] As a result of the accident, the claimant suffered significant personal injuries including the loss of his right forearm.

The Claimant's Case

[3] The claimant gave evidence that he was driving his car along the Prospect Main Road towards Grange. He said that there is a corner along the road. On approaching this corner, he was unable to see beyond it, however, having cleared the corner, he immediately noticed the 'grabber' driven by the second defendant, Leslie Ellis, travelling in the opposite direction but on his side of the road. On the opposite side of the road there was a truck parked on the land and a car parked on the road beside the truck. This car is owned and was at the time in the control of the third defendant, Michael Beecher.

[4] He further claimed that at the time of the accident, the grabber was in the process of overtaking the third defendant's motor car. That in overtaking, the third defendant's motor car the grabber blocked his path. On being unable to turn right or left remained on his correct side of the road, thus colliding with the grabber.

[5] Under cross-examination by counsel for the first and second defendants, Mr. Delisser, the claimant stated that he was travelling "very fast" about 140 miles per hour. He also agreed with Mr. Delisser that he was aware of the signs in the vicinity of the accident which warned motorist of cane trailers crossing and was aware that he should be on lookout for them.

[6] Further, the claimant stated: "It was going so fast, I was unable to stop the vehicle. When I see the vehicle not stopping, I pull up my emergency and turned my steering wheel to the left. My vehicle was sliding to where the grabber was" He also stated that the grabber was moving about 10 to 30 KMH and that it was the right side of his vehicle that was sliding towards the grabber.

[7] The claimant stated that if he was within the speed limit, he would have been able to stop his vehicle, and that he got his driver's license four years prior to the accident.

[8] Under cross-examination by counsel for the third defendant, the claimant testified that the speed limit is 5KMH in built up areas. "It is a slight bend not a corner. One cannot see beyond the bend. I could not see the grabber when I was approaching the bend"

The Defendants' Case

[9] The second defendant denies that he was negligent as alleged by the claimant or at all and that the claimant was wholly negligent in causing the accident. He particularized the claimant's negligence as follows:

- a. Driving at a speed which was excessive in all the circumstances.
- b. Driving in manner which did not take into account the condition of the roadway which was muddy.
- c. Driving on the incorrect side of the road.
- d. Failing to keep proper look-out especially in view of the fact of warnings for cane trailers.
- e. Colliding with the grabber (cane loader) which was stationary on the soft shoulder of its correct side.

[10] Third defendant also denies any liability alleged.

Issue

[11] The contentious issues between the parties relate to the circumstances in which the accident occurred. The claimant's reason of the accident is diametrically opposed to the versions given by the defendants which bear striking similarities.

[12] In determining liability in cases of this nature, the credibility of the witnesses plays a critical role. The critical question is who it to be believed?

Finding and Reasoning

[13] The claimant alleged in documents filed on 4th November 2008 that the second defendant negligently negotiated a corner and collided with the third defendant's vehicle which was negligently parked along the roadway which then collided into his motor vehicle causing him to sustain injuries. Three years later, the commencing documents were amended to allege that the second defendant drove on the claimant's side of the road in an attempt to go around the third defendant's motor vehicle which was negligently parked along the said road. The inconsistencies here are glaring and amounted to a wholly different version of the accident.

[14] In examination-in-chief, the claimant said that at all times; he kept his vehicle on the correct side of the road. Yet, under cross-examination, he described how he had to apply hand brake and the vehicle slid sideways into the grabber.

[15] In his evidence-in-chief set out in his witness statement, the claimant deliberately made reference to the bend as a corner which he later admitted under cross-examination was a slight left hand bend. He also claimed that: "One is unable to see what is around the corner." However, a photocopy of the locus (which was agreed on by all parties) shows that on approaching the bend, one can see around the bend.

[16] The claimant is also unclear as to the position of the grabber when he first noticed it. In his evidence-in-chief, he said when he saw the grabber it was on his side of the road. Yet, under cross-examination, he said it was at the right back fender of the parked car. On this basis, I reject the evidence of the claimant as it relates to the position of the car.

[17] I find that the vehicle driven by the claimant was at all material times being driven faster than the range of proper speed for the prevailing road conditions. It was cane cutting season and there are warning signs advising of cane trailers crossing and the speed limit in the area is 50 KMP. I find that there was a sink hole. The excessive speed deprived the claimant of opportunities which would have been available to him had a proper speed been selected.

[18] The claimant's evidence is ostensibly riddled with inconsistencies, whereas the defendants have remained consistent throughout their evidence.

[19] Therefore, having assessed the witnesses and the evidence they presented. I accept the accounts given by the defendants as being truthful and consistent. The claimant has been less than truthful and frank in his account and gave numerous versions of how the collision occurred. This is highlighted in his first claim form which was later amended and his evidence-in-chief which miserably failed to stand up to rigorous cross-examination by counsel for the first and second defendants. His evidence must therefore be rejected as not being credible.

[20] Both the second and third defendants at all times maintained that the third defendant's vehicle which was not impacted, was stationary on the soft shoulders [not on the road] and the grabber was 10 to 15 feet behind his vehicle on the soft shoulder positioned so as to overtake. They also noted that the claimant was travelling on the incorrect side of the road and spun and slid into the grabber.

Conclusion

[21] The claimant has failed to establish negligence on the part of the defendants. On the evidence presented, I am of the opinion that on a balance of probability that the claimant was the sole cause of the accident which occurred on the 15th April 2008. Neither the second nor the third defendant contributed in any way. The claimant negligently drove his vehicle into the path of the first defendant's cane grabber being driven by the second defendant. The claimant was not driving on his correct side of the road when the accident occurred.

[22] The claimant is not entitled to recover any damages for the injuries he suffered as a result of the accident, though regrettably severe. Judgment for the defendants with costs to be agreed or taxed.