

BARBADOS.

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 2169 of 2001.

BETWEEN:

RODNEY HOLDER

PLAINTIFF

AND

ANTHONY GREENIDGE

FIRST DEFENDANT

DAVID BOYCE

SECOND DEFENDANT -

Before the Honourable Madam Justice Margaret Reifer, High Court Judge (Acting).

2003: July 1

December 4.

Mr. Leslie Haynes Q.0 and Mr. Robert Clarke, attorneys-at-law for the Plaintiff

Mr. Elliott Mottley Q.C., and Mr. Stuart Mottley for the First and Second Defendants.

JUDGMENT

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THE FACTS

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- [1] The Plaintiff Rodney Holder was on the night of November 28th 1998 riding his pedal cycle registration number M — 36315 along Passage Road in the city. At the junction of Baxter's Road and the said Passage Road, an accident occurred between the Plaintiff pedal cyclist and motor vehicle registration number ZR - 265 owned by the First Defendant Anthony Greenidge and driven at the said time by his servant and/or agent David Boyce.
- [2] The Plaintiff filed a Writ of Summons on the 18th day of October 2001 and Statement of Claim on March 1st 2002 in which he alleges that the accident was caused by the negligent driving of the Second defendant and alleges in his particulars as follows:-

PARTICULARS OF NEGLIGENCE

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- (a) Failing to keep any or any proper look out and/or to observe or heed the presence of pedal cycle Registration No. M- 36315.
- (b) Failing to see pedal cycle Registration No. M-36315 in sufficient time to avoid striking it.

- (c) Driving at a speed which was excessive in the circumstances.
- (d) Failing to exercise or maintain any or any proper or effective control of the said motor vehicle Registration No. ZR-265.
- (e) Failing to stop, slow down, swerve or in any other way so to manage or control the said motor vehicle Registration number ZR-265 as to avoid the said collision.
- (f) So far as may be necessary, the Plaintiff will rely on the doctrine of Res Ipsa Loquitur".

[3] The Defendants in their joint Defence, deny that they were guilty of the alleged or any negligence, stating that the accident was caused wholly or in part by the Plaintiff's negligence. The Defendants state their allegations of negligence by the Plaintiff to be as follows:-

PARTICULARS OF NEGLIGENCE

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- (a) Failing to keep any or a proper look out or to observe or heed the presence or approach of the Defendant's motor vehicle;
- (b) Suddenly and without warning emerging from a minor road onto a major while riding a bicycle;
- (c) Exiting or attempting to exit a minor road when it was unsafe to do so and without regard for traffic travelling on the major road.

[4] Undisputed by the parties is the fact that the Second Defendant while

on Barbarees Hill Road, overtook the line of cars ahead of him,

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travelling for an undisclosed distance on the right side of the road, with the intention of turning right onto Westbury Road.

THE ISSUE OF LIABILITY

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[5] The only evidence given in this matter is by the Plaintiff. No Police

Report of the accident or independent corroborative evidence was produced. The Plaintiffs evidence on examination —in-chief is that on the 28h November 1998 he was riding his bicycle along Passage Road. On coming to the junction of Baxter's Road and Passage Road there were a parked car in the front of him, one of a line of cars to his right coming from the direction of Barbarees Hill. Straight across from this vehicle stopped in traffic, was Westbury Road. To his let was Baxters Road.

[6] The driver of this vehicle, no doubt observing his intention, honked

his car horn and gave him the go-ahead to cross the road. The Plaintiff alleges that he looked (up) in the direction of Barbarees Hill observing traffic backed-up along Barbarees Hill, he looked (down) in the direction of Baxters Road and after observing that nothing was coming from either side, he proceeded to cross the road in front of the car giving him the go ahead. He passed in front of this car and proceeded to cross the road heading onto Westbury Road. He alleges

that he was just about to cross over the line onto Westbury Road when he felt a sudden blow. His next conscious observation was that he was in an ambulance on his way to hospital. In cross-examination the Plaintiff admitted that after looking up and down he proceeded between the two stopped vehicles to cross onto Westbury Road. He did not look towards Barbarees Hill (up) again and he heard and observed nothing further until he was just about to cross over the line onto Westbury Road.

I accept the evidence of the Plaintiff, in particular that the accident occurred just as he was about to cross over the line from Baxters Road onto Westbury Road. This fact was not challenged in cross-examination. Established in this process, is the fact that the Plaintiff looked right, then left, then proceeded without looking right again. This fact forms the basis of the Defendants' claim of negligence on the part of the Plaintiff. However, in accepting the Plaintiffs' evidence, I have accepted the fact that the accident was not caused by his failing to look right again. I find the great and overwhelming negligence, in fact recklessness, to be that of the Second Defendant in evidently pulling out of the line of cars and speeding on the right side of the road in an effort (perhaps) to reach Westbury Road before

facing head-on any vehicles heading out of the city. The site of the collision and the fact that ZR- 265 hit the rear wheel of the pedal cycle suggests that the driver of this vehicle would have had the benefit of seeing the Plaintiff and his reckless and/or fast driving would have been the sole cause of the accident.

THE CLAIM FOR DAMAGES

EXPENSES

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[9] The Plaintiff incurred expenses of \$1,625.00 and these were agreed by the parties.

LOSS OF EARNINGS

[10] At the time of the accident the Plaintiff was employed at Steve's Building Works as an apprentice mason.. Counsel for the Plaintiff conceded loss of earnings for five (5) weeks at \$204.00 per week in the sum of \$1,020. And this was agreed by counsel for the Defendants.

Damages for Pain and Suffering and Loss of Amenities

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[11] The Plaintiff also claims damages for personal injury sustained when he was knocked to the ground. Admitted into evidence by consent were the Reports of his medical doctors as follows:-

- (1) Report of Doctor Lennbert Brathwaite of the Queen Elizabeth Hospital of July 29, 1999;
- (2) Mr. Winston Seale of June 5th 1999;

(3) Ms. Gail Carter of June 20th 2000; and

(4) Mr. Roger Thomas of November 27th 2000.

[12] These medical reports indicate that the Plaintiff suffered multiple lacerations to his face, left elbow, scalp, upper and lower limbs, with injuries of significance being a broken clavicle and multiple corneal