

BARBADOS.

[Unreported]

IN THE SUPREMECOURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1583 of 1992

BETWEEN:

DENNIS TULL

(PLAINTIFF)

AND

ANGELA CALLENDER

(FIRST DEFENDANT)

MAURICE CALLENDER

(SECOND DEFENDANT)

No. 1218 of 1997

BETWEEN:

MARCIA WELCH

(PLAINTIFF)

AND

DENNIS TULL

(FIRST DEFENDANT)

VICTOR JONES

(SECOND DEFENDANT)

ANGELA CALLENDER

(THIRD DEFENDANT)

MAURICE CALLENDER

(FOURTH DEFENDANT)

[CONSOLIDATED]

Before the Honourable Mr. Justice E. Garvey Husbands, Judge of the High Court.

1999: March 29

April 16,20

2000: July 10,11 & 12

2001: January 8,9, 10 & 15

2002: May 8,9,21 22 & 23

2003: January 14 & 16

December 11.

Mr. John Connell Q.C. for Mr. Dennis Tull and Victor Jones with Mr. Leslie Haynes and Miss. Traece Codrington.

Sir. Henry Forde QC with Mr. Erskine Holmes for Mrs. Angela Callender and Mr. Maurice Callender.

Miss Cicely Chase, and Miss Annice Granville/Mr. Peter Alleyne for Ms. Marcia Welch.

DECISION

[1] On the 10th July, 1991, an accident occurred on Wildey Road, St. Michael, near McEneaney building and the Barbados National Bank sometime between 9.00 and 9.30 P.M. between the motor car MN503, owned By Angela Callender and driven by Maurice Callender and motor omnibus B105 driven by Victor Jones and owned by Dennis Tull MN 503 was travelling in the direction of Bridgetown and B105 was travelling in the opposite direction. Both drivers gave evidence and each maintained that he was on his left and proper side at the time of the accident. Callender said that he had stopped and the driver of the minibus came and collided with his vehicle. Jones on the other hand said that the car swerved and came and collided with the bus when he had stopped. The final position of each vehicle was not helpful in concluding which driver was telling the truth. Both vehicles were extensively damaged and Callender who had as his passenger Marcia Welch was taken to the Queen Elizabeth Hospital very seriously injured. Welch was also taken to the hospital with serious injuries.

[2] There was a yellow line which demarked the centre of the road and each vehicle was finally positioned on its side within the yellow line.

[3] The Court considered all of the evidence before it paying due regard to the liability of each driver, since this was the gist of the case. No one gave cogent evidence as to the point of impact even though both drivers said the accident occurred on his side.

[4] In Baker v. Market Harborough Co-operative Society Ltd: Wallace v Richards (Leicester) Ltd. [1953] I.W.L.R. 1472, a motor lorry and a motor van, in the hours of darkness, descending hills in opposite directions, met at the bottom. The two vehicles had collided whilst the offside front wheel of one or other, or perhaps both, was over the "cat's eyes" which demarked the centre of the road. The Court held that the inference was that both drivers were negligent in not keeping a proper look-out and hugging the centre of the road. In the absence of evidence that one was more to blame than the other, the blame should be apportioned equally.

[5] In the instant case the Court is not able to say with confidence which of the vehicles was over the centre line, and there was no cogent evidence suggesting that one driver was more to blame than the other. The road was wide enough that both vehicles could pass without any difficulty, and clearly on the evidence both parties cannot be telling the truth.

[6] The Court therefore finds that where one or both drivers were to blame and it could not decide which, the proper inference to draw was that both were equally liable to blame.

[7] Therefore the claim of Marcia Welch succeeds against Maurice Callender 50% liability and Victor Jones and Dennis Tull 50% liability. The claim against Angela Callender is dismissed since there is no evidence that Maurice Callender was acting as her servant or agent at the time of the accident.

[8] Miss. Welch's claim is not entirely satisfactory in that suspicion surrounds the length of time which elapsed in some instances between the

time of the accident and the time of complaint about any injury and no satisfactory explanation was given for this. Perhaps there is none.

[9] It is my understanding that Counsel have agreed upon damages.

E. Garvey Husbands

Judge of the High Court.