

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

**HIGH COURT
CIVIL DIVISION**

CV No. 1638 of 2010

BETWEEN:

**STAR APPLE INC.
T/A EMERALD CITY SUPERMARKET**

CLAIMANT

AND

**THE ATTORNEY GENERAL
IAN ABSOLOM**

**FIRST DEFENDANT
SECOND DEFENDANT**

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the
High Court**

**Dates of Hearing: 2016 July 18th, September 26th, December 9th,
2017 April 10th**

Date of Decision: 2018 January 17th

Appearances:

Mrs. Marguerite Woodstock-Riley Q. C. in association with Ms Lydia Farley,
Attorneys-at-Law for the Claimant

Mr. Rudolph Greenidge in association with Mr. Lorimer Denny Attorneys-at-
Law for the Defendant/Ancillary Claimant

Ian Absolom, the Ancillary Defendant in person

Decision

Introduction

[1] This is an action for damages arising from an accident occurring in
December 2004 at Sterling in the parish of St. Philip.

- [2] The Claimant filed action by way of Claim Form together with Statement of Claim on December 6th 2010 against the Attorney General.
- [3] The Attorney General filed an ancillary claim in February 2012 against the Ancillary Defendant Ian Absalom seeking to be “indemnified against the Claimant’s claim and the costs of the action.”
- [4] Or in the alternative that the Claimant’s injury and loss were caused by or contributed to by the negligence of the Ancillary Defendant.
- [5] The said accident involved the three parties above-mentioned, but there is no dispute that the Claimant’s authorised agent was not at fault; this matter is therefore a determination of fault as between the Attorney General (Ancillary Claimant) (sued herein in his representative capacity) and Ian Absalom (Ancillary Defendant) (the driver of the third vehicle in the collision), with consideration of the apportionment of blame/liability between these two parties.
- [6] The Claimant and Ancillary Claimant have made it clear to the Court that there is no dispute as to the quantum of damages as pleaded in the Statement of Claim in this matter.

The Pleadings Summarised

- [7] The Claimant’s employee, one Richard Alleyne, was driving the Claimant’s vehicle, this being a shuttle bus Mitsubishi L300 van motor vehicle registration number P8459.

[8] Paragraph 6 of the Statement of Claim sets the scene in graphic detail, when it states as follows:

“6. Upon rounding a corner on Sterling Road the said employee of the Claimant observed the Defendant’s vehicle overtaking a white Isuzu lorry motor vehicle registration P4477. The Claimant’s employee pulled over the Claimant’s vehicle to the side of the road partially placing the said vehicle on the sidewalk.”

[9] The Defendant’s vehicle was driven by a Desmond Hinds, its lawful agent/permitted driver. It was a Land Rover Van motor vehicle registration number MP1156, and was in the service of the Ministry of Transport and Works.

[10] Paragraph 7 is significant to the Claimant’s case of negligence against the Ancillary Claimant. It states as follows:

“7. The Claimant’s employee further observed that the said lorry had on its indicator signalling an intention to turn. The Lorry then began to turn, upon which the Defendant’s vehicle collided with the lorry and lost control.”

[11] It was after losing control, that the Ancillary Defendant’s vehicle zigzagged, hit the curb, overturned, skidded and collided with the Claimant’s vehicle.

Issue to be determined

[12] The issue for determination is quite simply whether the Defendant/Ancillary Claimant and the Ancillary Defendant/Absalom were negligent and/or contributorily negligent.

Evidence

[13] In addition to the witness statements the parties were cross-examined.

The Case for the Claimant

[14] The case for the Claimant was as outlined above, and is simple in so far as there was no allegation of negligence on their part. Their authorised driver was on his left and proper side and at the time of the accident was stopped and pulled over as far to the left side of the road as he could, in an effort to avoid any collision.

[15] The Claimant's pleadings and evidence laid the blame squarely on the Defendant/Ancillary Claimant. Paragraph 9 of the Statement of Claim states as follows:

“9. The said collision was caused by the negligent driving, management and control of the Defendant's motor vehicle by the employee of the Defendant.

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT AND/OR ITS EMPLOYEE/AGENT OR PERMITTED DRIVER

- (a) Failing to keep proper look out on the road.
- (b) Failing to overtake in a proper manner.
- (c) Failing to travel at a safe and proper speed.
- (d) Overtaking when it was unsafe to do so.
- (e) Failing to stop, slow down, or in any other way to so manage or control the Defendant's vehicle so as to avoid the collision;
- (f) Driving on the wrong side of the road.”

[16] The Claimant's position remains that the Defendant/Ancillary Claimant was through his negligence the cause of this accident.

[17] It is noteworthy that this position was supported by a Royal Barbados Police Road Traffic Accident Report, which under the heading “Brief Statement of Particulars of Accident” stated as follows:

“Investigation revealed that all three (3) vehicles were travelling along Sterling Road, P4477 and MP1156 were going towards Six Roads and P 8459 in the opposite direction when the driver of MP1156 overtook

P4477 which was making a right turn into a cart road, collided with the right front of P4477 and lost control, overturned and collided with P8459 which had stopped on its left and proper side, and caused the injuries to all parties and the damages to the vehicles. The driver of MP1156 caused this accident by overtaking improperly and charges of driving without due care and attention and driving without reasonable consideration for other persons using the road have been brought against him and are pending trial.”

[18] It is curious that the Investigating Officer who signed off on this Report was not called to be cross-examined in view of the position taken in this matter by the Defendant/Ancillary Claimant.

[19] A Witness Summary and oral evidence was given by Tomilson Bynoe, a Director of the Claimant. This evidence was primarily formal and did not speak to the circumstances of the accident.

[20] Such evidence was given by the Witness Statement of the driver of their vehicle, Richard Alleyne, who also was tendered for cross-examination. His account mirrored the position taken by the Claimant in its Statement of Claim. This evidence placed a significant burden on the Ancillary Claimant, because it supported the Claimant’s case that the driver of MP1156 was at fault. Not only does it place this driver in the position of being the overtaking driver, but this witness’s evidence, unbroken by cross-examination, was that the truck had its right indicator on when MP1156, driven by Desmond Hinds, attempted to overtake it.

The Case for the Ancillary Defendant

[21] There were no pleadings for the Ancillary Defendant, Ian Absalom, and this Court summoned him to give his recital of the events of that day.

[22] This is his recital of the critical events:

“On that day I was approaching Six Roads now pass Sterling Home, there is a project that is there now, but it was prepping for a while and I was delivering some rubble there. There was about four cars behind me and I indicated to turn and as I also went to make a hand signal out, I glanced away into making my turn and also I went to make a hand signal out, I glanced away into making my turn and something just told me to pull my hand in and when I drew my hand in, the land rover government vehicle pass me doing a rapid pace. He clipped my right side mirror and swerved 224 ft from clipping my mirror left to right. I saw no indication of brake lights cause I came to a halt when he clipped my mirror. I saw no indication of brake light on his vehicle trying to stop the vehicle. He swerve left to right, left to right and slammed into the Emerald City shuttle to eastern side of St. Philip.”

[23] Mr. Absalom is suggesting that the driver Desmond Hinds was not one of the four cars behind him; in other words, he overtook four cars before overtaking him. Mr. Absalom stated this a little later in his recital:

“I said to Mr. Hinds how can you see I not have my indicator on, when there 4 cars behind me and you weren’t behind me. After that the police did measurements from the vehicle that was involved in the accident and measured 224 ft between clipping my mirror and slamming into Emerald City shuttle. That is exactly what happen at the scene.”

[24] Mr. Absalom appears to be inviting the Court to find that the measurement of 224 feet from point of impact, indicates that the Land Rover was travelling at an excessive rate of speed.

[25] Mr. Absalom insisted that his load that day was of topsoil, and that he could not have had a lot of grass hanging from the back of his truck.

The Case for the Defendant/Ancillary Claimant

[26] This party’s Defence of May 2011 took the position that the damage to the vehicle of the Claimant “was not caused by any negligence in the use

or operation of the vehicle owned by the Defendant” and that the collision was ‘solely’ caused by the negligence of Ian Absalom the driver of “P4477”. The alleged Particulars of Negligence are as follows:

“PARTICULARS OF NEGLIGENCE

- (a) The said Ian Absalom was not keeping a proper look out.
- (b) He failed to take any special care to ensure that the brake lights or indicator lights in the back at the back of the lorry were not covered or hidden by the overhanging load being transported.
- (c) He failed to observe behind him and alongside him the presence of vehicle MP1156 which was driven by Desmond Hinds the servant or agent of the defendant.
- (d) If the said Ian Absalom had checked he would have seen that a collision would have occurred as a result of his manoeuvre.
- (e) The said Ian Absalom was driving in a very slow manner totally inconsiderate to the traffic behind him.
- (f) The said Ian Absalom should have checked to ascertain whether it was safe to make the right turn.
- (g) He failed to manage or control the motor lorry so as to prevent the accident.”

[27] The Witness Statement of driver Desmond Hinds supports this stated position, the key allegations being that P4477 was driving very slowly (as though something was wrong with the vehicle; although, it is noted that in cross-examination by Mr. Absalom, Mr. Hinds denied that he said this), that there was no indicator flashing at the back of the truck, that the driver only gave a hand signal just as he was alongside the truck, the truck struck the Land Rover causing him to lose control, overturn striking the Claimant’s van before coming to a stop.

[28] Counsel for the Ancillary Claimant argued that if Mr. Absalom had been keeping a proper look out he would have seen Mr. Hinds behind or alongside him, and he could have refused or declined to make the right turn or even jammed on his brakes and allowed Mr. Hinds to pass without the accident occurring.

[29] Counsel submitted that “the whole question of easing his speed, then stopping, the slowly driving off etc. when coupled with the fact that there was a bundle of grass on the back of the truck” should have alerted Mr. Absalom to the fact that there was need for him to use his hand signal to indicate his intention to turn right.

Discussion

[30] There is guidance provided to road-users on the issue of Overtaking by the **Road Traffic Regulations, 1984**, as follows:

“Regulations 31(5) The driver mentioned in paragraph (1) shall,

- (b) when overtaking other vehicles, keep to the right or off side of the other vehicles, except where traffic signs indicate otherwise;
- (c) when being overtaken by other vehicles, except on roads where traffic signs indicate otherwise, drive as close to the left side of the road as possible to allow those other vehicles to pass, and in every case, whether or not he is being overtaken, he shall drive so as to give as much space as possible for the passing of other traffic, and shall not speed abreast any vehicle when that vehicle is overtaking him.

Regulation 31(6) The driver mentioned in paragraph (1) shall not

- (a) drive to overtake other traffic unless he has a clear and unobstructed view of the road, and when overtaking other traffic he shall make sure that the road ahead is clear for a sufficient distance to enable him to overtake and return to his proper side before meeting any traffic coming from the opposite direction; or

(b) overtake other traffic, except on roads where traffic signs indicate otherwise

- (i) while is going around a corner,
- (ii) where roads intersect or fork,
- (iii) where the road passes over the brow of a hill or over a humpbacked bridge, or
- (iv) where, in any case, he cannot see sufficiently far ahead to overtake with safety.”

[31] Further guidance can be found in the **Barbados Highway Code Third Edition 2010 rule 7.27 to 7.33.**

Findings

[32] Having reviewed the evidence in this matter, documentary and oral, and evaluated the oral evidence and the persons who gave that oral evidence, this Court made the following findings of fact:

1. That driver Desmond Hinds overtook the other vehicle when it was unsafe to do so. The accident occurred in the vicinity of a blind corner and the cross-examination of Desmond Hinds suggests that he was aware of the existence of the corner when he gave this response to cross-examination by Ms. Farley:

“I would not say it was an unsafe point, due to the fact that if I had saw de Emerald City vehicle, I would have stop. I wasn’t close to de corner so that is why I decide to overtake.”

This Court interprets this as an admission that he was aware of the existence of the blind corner, but in an exercise of poor judgment determined that he had enough room to overtake before reaching the corner.

2. This Court accepts the evidence of Ian Absolom that he had his right indicator on, and that he also used a hand signal to indicate his intent to make a right turn. This significant evidence is corroborated by the Claimant's servant and/or agent Richard Alleyne, who this Court found to be a good and believable witness.
3. The evidence of driver Desmond Hinds that the truck carried a load of grass obscuring the tail light is rejected.
4. In view of the above findings, this Court therefore places some credibility on the evidence of Ancillary Defendant Ian Absolom that, when he looked into his rear view mirror there were four (4) vehicles behind him and that the Land Rover was not one of them.
5. That it is reasonable to infer from the measurement of 224 feet (mentioned above) that the Land Rover was travelling at an excessive speed.

Disposal

[33] In the premises, this Court rejects the case for the Ancillary Claimant and in doing so, finds him liable for the accident that occurred on the 8th December 2004, by reason of the negligence of its authorised driver.

[34] There is no finding of negligence on the part of Ancillary Defendant, Ian Absolom.

[35] Judgment is given against the Ancillary Claimant in favour of the Claimant in the amount claimed, (\$33,733.78).

[36] The Ancillary Claimant shall pay interest on this sum at the rate of 6% from the date of filing of the Claim Form until payment.

[37] The Claimant is awarded the costs of this action in an amount to be agreed or assessed.

MARGARET A. REIFER
Judge of the High Court