

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Civil Division)

Claim No. 117 of 2015

BETWEEN:

PHILIP GRAZETTE

CLAIMANT

AND

LEVI FRANCIS

FIRST DEFENDANT

JENNIFER ANN BAYLEY

SECOND DEFENDANT

*Before the Honourable Mr. Justice Cecil N. McCarthy, Judge of the High Court
via Microsoft Teams video conference.*

Dates of Hearing: 24th March 2021; 30th March 2021

Date of Decision: 20th May 2021

Appearances:

Mr. Rudolph N. Greenidge for the Claimant

Ms. Phedessa R. Walker for the First and Second Defendants

DECISION

INTRODUCTION

[1] On the evening of 10 November 2014, Mr. Philip Grazette (hereinafter called “Mr. Grazette” or the “claimant”) was attempting to cross the Princess Alice Highway, Bridgetown in the vicinity of the Fishing Complex, when a collision occurred with a motor car registration number, SA-2370, driven by Ms. Jennifer Bayley (hereinafter called “Ms. Bayley” or “the second defendant”).

[2] As a result of the accident Mr. Grazette sustained multiple injuries, the most significant of which were fractures to the right knee lateral tibial plateau and the neck of the fibula.

[3] According to the second defendant the accident occurred at 6:25 p.m., while one of the witnesses for the claimant, Mr. Charles Fields puts the time of the accident at 7:00 p.m. Ms. Bayley describes the conditions at the time in these words:

“I recall that outside was dark so I was proceeding with greater caution.”

[4] Neither counsel dealt with the lighting on the road, nor was there any description of the colour of clothing worn by the claimant. It is therefore not clear what, if any part, the lighting or lack thereof, played in the accident.

- [5] What is clear is that Mr. Grazette is sure that he was struck by the motor vehicle driven by Ms. Bayley, while Ms. Bayley contends that Mr. Grazette stepped into the path of her motor vehicle. Ms. Bayley seems to be of the view that Mr. Grazette struck the vehicle and not the other way around, since on two occasions she answered “No” to counsel’s question on whether she struck the claimant.
- [6] The parties have assessed and agreed the quantum of damages arising from the injuries to Mr. Grazette but have requested the Court to determine the issue of liability. The claimant contends that Ms. Bayley is entirely at fault for his injuries, but Ms. Bayley insists that Mr. Grazette is entirely to blame for the accident.

THE PLEADINGS

- [7] The pleadings in this matter were filed very soon after the accident. It is therefore useful to examine what the parties thought was the cause of the accident.
- [8] The claimant’s statement of claim at paragraphs 4 to 7 set out the basis of his claim. Those paragraphs read:

“4. On or about the 10th day of November 2014 the Claimant was a pedestrian walking along Princess Alice Highway in the parish of Saint Michael in the vicinity of Savings Plus Supermarket.

5. *The Claimant was crossing from the northern side to the southern side of the road when motor vehicle SA 2370 driven by the Second Defendant exited the Fisheries Complex and struck the Claimant.*
6. *The Claimant states that before crossing the Highway he made sure that there was not immediate traffic on the road in either direction.*
7. *The Claimant states, and the fact is, that the said accident was caused entirely by the negligence of the Second Defendant.”*

PARTICULARS OF NEGLIGENCE

- i. *Making a right turn from the Fisheries Complex onto the busy Princess Alice Highway without ascertaining that such a manouvre could be made in safety.*
- ii. *Failing to observe or comply with the longitudinal road markings in the area as stipulated by Barbados Highway Code.*
- iii. *Failing to keep a proper lookout for other road users.*
- iv. *Failing to keep the said motor vehicle SA 2370 under her proper control.*
- v. *Failing to apply brakes in time or at all.*
- vi. *Driving at an excessive rate of speed in all the circumstances.*
- vii. *Failing to avoid the accident when she had the last opportunity to do so by the exercise of reasonable care.*
- viii. *Failing to see or to observe the Claimant, a pedestrian, in time to avoid striking him with her vehicle.”*

[9] The second defendant’s defence is set out at paragraphs 4 to 8. Those paragraphs state:

- “4. *The Second Defendant admits that the accident occurred on or about the 10th day of November 2014 along the Princess Alice Highway in the parish of Saint Michael but neither admits nor denies that it was in the vicinity of Saving Plus Supermarket as the location of the Supermarket is not within the Second Defendant’s knowledge.*
5. *Save that the First Defendant’s vehicle registration number SA-2370 exited the Fisheries Complex situate at Princess Alice Highway in the parish of Saint Michael paragraph 5 is denied. The Second Defendant states that the Claimant negligently stepped off the pavement and collided with the said vehicle SA-2370.*
6. *The Defendants deny paragraph 6 of the Statement of Claim. The Second Defendant states that the Claimant was standing on the pavement engaged in conversation with his back towards the highway when suddenly without warning attempted to dash across the said road into the path of the Second Defendant’s motor vehicle.*
7. *The Second Defendant will further state that the Claimant failed to take heed for his own safety by attempting to cross the said road without paying due care and attention to oncoming traffic and ensuring that it was safe to cross the busy public road when it was free from traffic.*
8. *As to paragraph 7 the Second Defendant denies that the said accident was caused by its negligence as set out in the Statement of Claim or at all. The Defendant will state that the injuries (if any), were caused by or contributed to by the negligence of the Claimant.*

PARTICULARS OF NEGLIGENCE OF THE CLAIMANT

- (a) *Failing to take any or any reasonable care to ensure his own safety while walking the public roads;*
- (b) *Failing to exercise due care and attention while crossing the public road;*
- (c) *Failing to keep a proper look out for vehicular traffic when attempting to cross or while crossing the road along the Princess Alice Highway in the parish of Saint Michael.*
- (d) *Speaking to another person and not paying attention to oncoming traffic on a busy highway;*
- (e) *Failing to make use of the pedestrian crossing on a busy highway;*
- (f) *Crossing the road when it was unsafe to do so.”*

THE ISSUES

[10] The issues for the court’s consideration are:

1. Did Ms. Bayley strike Mr. Gazette with motor car SA 2370, or did Mr. Gazette step into the path of a vehicle that had already stopped?
2. Was Ms. Bayley as driver of motor car SA-2370 negligent or was Mr. Gazette negligent in crossing the road?
3. Did Mr. Gazette cause or contribute to the accident and if so by what proportion should his loss be reduced to reflect his contributory negligence?

THE EVIDENCE

[11] Three witness statements were filed by or on behalf of the claimant and one witness statement was filed by the defendant.

[12] The claimant gave oral testimony on his own behalf and two witnesses gave evidence in support. The defendant gave oral evidence on her own behalf.

The Claimant's Evidence

[13] The claimant's witness statement was admitted into evidence. That statement reads in part.

- “3. *On the 10th day of November 2014, I was walking along Princess Alice Highway with my friend Charles Fields.*
4. *I was making my way back to the Fisheries Complex where I was to meet a friend.*
5. *I looked up and down to make sure that there was no immediate traffic in either direction and then I began to cross the road.*
6. *I was well across the road when a motor car bearing the registration number SA-2370 exited the Fisheries Complex at a very great speed and made a right turn on to the Princess Alice Highway.*
7. *I was struck by the said vehicle with such great force that I was airborne before coming to a resting position on the right side of the vehicle.*
8. *My after-accident position was on the right side of the vehicle and I was more on the right side of the street.*
9. *My friend Charles and some passersby ran to my assistance.*

10. *The driver of SA-2370, whom I now know as Jennifer Bayley, the Second Defendant, also came to my assistance. When she saw my condition she said "Oh Lord what I gone and do?"*
11. *Ms. Bayley made a right turn on the busy Princess Alice Highway when it was neither permitted nor safe to do so.*
12. *Ms. Bayley was driving her vehicle at an excessive speed in all the circumstances."*

[14] The claimant said he looked left and right and there was no traffic and he decided to cross the road and when he had proceeded about 8 feet across the road he was struck by the motor car which was driven by the second defendant.

[15] The claimant also mentioned that the accident took place 150 feet from a pedestrian crossing.

[16] He said that the right side fender of the defendant's motor car struck him on the right knee and he fell down on the right side fender.

[17] Mr. Grazette testified that she [the second defendant] took him about four (4) feet up the road before he fell off by the right side front wheel.

[18] Mr. Grazette's evidence was supported by Anthony Maynard. Mr. Maynard testified that he was leaving the Fishing Complex through the same exit as the second defendant. In fact he said that he was immediately behind Ms. Bayley's motor car.

His statement reads in part:

“I work as a cashier (supervisor) at the Bridgetown Fisheries Complex, Princess Alice Highway, Bridgetown, St. Michael, I recall the evening of 10th November, 2014.

I was leaving the Complex through the exit gate as usual. There was another car at the gate ahead of me.

*It is within my knowledge that you **cannot** in fact I should say **should not** turn right from the gate on to the Princess Alice Highway. I have seen many people do it without consequence. In other words they have turned right and got away with it.*

I have also seen the police report motorist who made the right turn on exiting the complex.

The fact of the matter is that there are two solid lines (one white and the other yellow) in the road and in order to get over to your left and proper side on exiting you must traverse these two solid lines which is an illegal and dangerous manoeuvre.

The vehicle ahead of me was SA-2370. I observed that a lady was driving. She rushed out of the gate and made a right turn. She crossed the solid lines.

I saw her car go towards a gentleman who was on the other side of the road attempting to cross.

When I saw that I said “Look how she gine lick down dat man!”

She hit him with the left side of her car but he ended up near to her on the right side.

Some fellows who saw what happened threatened to beat her. I went over and said to her

“Man you know that you wrong because you should not be turning right.”

[19] Mr. Maynard attributes the cause of the accident to the second defendant turning right on her exit from the Complex. He testified that this manoeuvre was unlawful.

[20] Mr. Charles Fields also gave evidence in support of Mr. Grazette.

[21] He gave a witness statement which was signed on 8 July 2016 and filed on 3 August 2018.

[22] That statement gives his account of the circumstances of the accident at paragraphs 4 to 11, which state:

“4. On 10th November, 2014 about 7:00 pm I was in the company of Mr. Philip Grazette, who is the Claimant in this matter.

5. Mr. Grazette and I were walking along Princess Alice Highway, St. Michael in the general vicinity of the Savings Plus Supermarket.

6. Mr. Grazette informed that he was going back over to the Fisheries Complex where he was to meet a friend.

7. Mr. Grazette and I waited outside of the road until there was a break in the flow of traffic at which time Mr. Grazette began to cross the road.

8. I remained on the sidewalk.

9. Whilst Mr. Grazette was crossing the road a motor car bearing the registration number SA-2370 exited the Fisheries Complex at great speed and made a right turn.

10. I was shocked to see the vehicle turn right since vehicles leaving the fisheries complex would generally make a left turn.

11. *The vehicle SA-2370 struck Mr. Grazette with great force causing Mr. Grazette to become airborne and to land on the bonnet of the car. Mr. Grazette then fell on to the street.”*

[23] In response to further questions put to him by counsel, Mr. Fields explained that at the time of the accident, he had stopped to talk to a friend, and that he was facing the Fishing Complex. He also testified that he saw when Mr. Grazette was struck by the motor car driven by Ms. Bayley.

[24] He said that about 5 seconds had elapsed between the car exiting the Complex and the collision with Mr. Grazette. He gave the width of the road at the point of impact as thirty feet or more.

[25] In cross-examination, Mr. Fields said that the car was travelling at about 20 miles per hour or so.

[26] Ms. Bayley gave evidence in her own defence. She also signed a witness statement. The material parts of the statement were contained in paragraphs 2 to 7, which read:

“2. On the 10th day of November 2014 at 6:25 p.m. I was driving vehicle registration number SA-2370 a Mitsubishi Lancer owned by the First Defendant. My intention was to leave the Bridgetown Fisheries Complex by making a right turn and entering onto the Princess Alice Highway towards the direction of Hincks Street Bridgetown.

3. *I recall outside was dark so I was proceeding with greater caution, especially since this too was around the busy Christmas period and in the vicinity of a busy Bus and Minivan Terminal which many people traverse. I came to the exit with the intention to head back towards Bridgetown and I stopped at the exit and waited for traffic to clear.*
4. *I am accustomed travelling this area and I know that there are broken lines in the road. While waiting, I noticed a man who I now know to be the Claimant, Philip Gazette walking and talking to a man on the left side of the road.*
5. *After making the right turn at about 20 kilometres he suddenly and without warning proceeded to cross the road with his head turned in the direction of the said man with whom he was talking to earlier.*
6. *I was startled when I saw this man suddenly stepping into the vehicle's path. In fact, he was not on the pedestrian crossing and the gate where I exited was the one closest to Savings Plus and therefore the pedestrian crossing was behind me and more in front of the Cheapside Bus Terminal.*
7. *Fortunately, I applied the brakes but Mr. Gazette was already upon the vehicle and eventually fell to the ground. I tried to compose myself and when I felt well enough, I exited my vehicle to lend assistance to him."*

[27] Ms. Bayley was permitted to amplify her statement. In the course of her evidence she said that she saw a man standing next to the supermarket and

when she approached the supermarket he stepped into her path. In response to the question: “*Did you recall how he was standing?*” Ms. Bayley responded: “*The man that was struck was backing the road.*” Ms. Bayley also said she was familiar with the area and she bought fish from the Fisheries Complex all the time.

[28] Counsel for the claimant, Mr. Greenidge, cross-examined Ms. Bayley. The opening questions put to her were important. Those questions are set out hereunder:

Q: Since the accident you have gone back to the Fisheries Complex to buy fish?

A: Yes.

Q: When you exit that same gate do you still make the right turn?

A: No.

Q: Would you say that you learnt your lesson?

A: [Long Pause] Yes Sir [faintly]

Q: Do you agree that the area is heavily trafficked?

A: Yes sir.”

[29] In response to counsel for the claimant, Ms. Bayley said that there were three lanes on the Princess Alice Highway, two lanes going out of Bridgetown and one lane going into Bridgetown.

[30] Later Ms. Bayley would say that there are no markings on the road. She was referred to her own witness statement in which she said at paragraph 4:

“I am accustomed travelling this area and I know that there are broken lines in the road.”

[31] Ms. Bayley changed her answer and said:

“I don’t remember.”

[32] In answer to questioning from counsel for the claimant, Ms. Bayley also confirmed that the accident did not take place near to a pedestrian crossing.

[33] Another important exchange between counsel for the claimant and Ms. Bayley is set out below:

“Q: Between the time you saw Mr. Gazette on the sidewalk and when he was struck how much time elapsed?”

A: I don’t know.

Q: When you struck him with your vehicle, what was he actually doing?”

A: I did not strike him, he stepped down and I stopped. And he threw himself down. I got out and asked him if he was alright. He said he was okay and the gentleman told him not to get up. “Don’t get up” “Don’t get up.”

Q: You said you did not strike him?.

A: No I did not.

Q: Put it another way, do you admit that it was the car that you were driving that struck him?”

A: No Sir.

Q: You said you did not strike him?.

A: No.

Q: Why did you not shun Mr. Gralette?

A: I stopped.”

Later Ms. Bayley said in response to further questioning from Mr. Greenidge:

“I saw him backing into the road and I stopped...”

THE SUBMISSIONS

Submissions of Counsel for the Claimant

[34] Counsel for the claimant, submitted that the accident was caused entirely by the negligence of the second defendant, Ms. Bayley.

[35] Counsel argued that she took the risk of making a right and unlawful turn onto the Princess Alice Highway which she knew was dangerous because it was an area that was usually very busy with traffic and pedestrians.

[36] Mr. Greenidge submitted that Ms. Bayley was travelling at a speed that was too great in the circumstances; that she failed to keep a proper look out; and she failed to stop or swerve in order to avoid colliding with the claimant.

[37] On the other hand, he contended that the claimant had taken all proper precautions. He had looked left and right to see that the road was clear

before proceeding to cross the road. The road was clear and then he proceeded to cross.

Submissions of Counsel for the Second Defendant

[38] Counsel for the wife, Ms. Phedessa Walker, mentioned the fact that Mr. Maynard testified that the claimant was struck by the left side of the car. She says this is consistent with the evidence of Ms. Bayley that the claimant had stepped into the road.

[39] Counsel asks the Court to reject the evidence about speeding. She says there are no experts on speeding and the evidence with respect to speeding cannot be relied on.

[40] In relation to the evidence that persons were reported to the Police for turning right at the exit of the Complex, counsel said the witnesses were unable to prove why the Police had stopped persons. She says that even the Ministry of Transport and Works was unable to say what road markings were there at the time of the accident.

[41] Counsel questioned why the claimant did not use the pedestrian crossing which she said was a few feet away. She argues that crossings are provided mainly for the safety of pedestrians and the claimant should have used the crossing.

[42] Counsel cited a number of cases which she says supported her submissions that the claimant was the author of his own misfortune. The cases mentioned in her oral submissions were:

Stapley v Cypsum Mines [1953] AC 663.

Maronowska v Richardson [2007] EWHC 1264; and

Birch v Paulson [2012] EWCA CIV 487

Counsel submitted that the claimant should be held 100% responsible for the accident.

ANALYSIS OF EVIDENCE

[43] The witnesses for the claimant testified that Ms. Bayley exited the Fishing Complex at great speed and took a right turn which they say was contrary to law.

[44] Mr. Fields said that the vehicle SA-2370 struck Mr. Grazette with great force causing Mr. Grazette to become airborne and to land on the bonnet of the car; Mr. Grazette then fell to the street.

[45] There is no doubt that Mr. Grazette sustained serious injury.

[46] On the other hand, Ms. Bayley testified that she was proceeding with great caution. She said that she saw the claimant walking and talking to a man on the left side of the road.

[47] She also said that after making the right turn at about 20 kilometres he suddenly and without warning proceeded to cross the road with his head turned in the direction of the man. Her evidence suggested that Mr. Grazette stepped backwards into the street and therefore paid no attention to her vehicle.

[48] Ms. Bayley went on to state that *“In fact he was not on the pedestrian crossing and the gate where I exited was the one closest to Savings Plus and therefore the pedestrian crossing was behind me...”*

[49] In her defence filed on 4th March 2015, Ms. Bayley had pleaded as follows:

“The second defendant admits that the accident occurred on or about the 10th day of November 2014 along the Princess Alice Highway in the parish of Saint Michael but neither admits nor denies that it was in the vicinity of Savings Plus Supermarket as the location of the Supermarket is not within the Second Defendant’s knowledge.”

[50] Ms. Bayley had testified in the following terms:

“I am accustomed travelling this area and I know there are broken lines in the road.”

[51] In answer to counsel for the claimant, Ms. Bayley would later say that there are no markings in the road, and when her prior statement was put to her by counsel, she responded that she could not remember if there were lines.

- [52] On two occasions in response to counsel for the claimant, she said that her motor car never struck Mr. Grazette, having forgotten that in responding to her own counsel, she had said that the car struck the claimant.
- [53] Having listened very carefully to the witnesses I have come to the conclusion that Ms. Bayley is not a witness of truth and where her evidence and of that the witnesses for the claimant collide I prefer their evidence.
- [54] No measurements were presented to the court, instead witnesses gave estimates. Though reference was made to the police report no attempt was made to have it entered into evidence in the case.
- [55] In terms of the evidence, both the claimant and Ms. Bayley contend that the road was clear. In those circumstances, it is difficult to understand why Ms. Bayley, moving from a stationary position, would have been unable to stop, slow down or swerve to avoid a collision with Mr. Grazette.
- [56] Ms. Bayley said it was dark but neither party explored this aspect of the matter. Ms. Bayley did not indicate that her vision was in any way impaired by the conditions.
- [57] In the circumstances it can be inferred that the accident was caused by Ms. Bayley taking an ill-advised right turn without keeping a proper look out and at a rate of speed that did not permit her to respond to the challenge of

controlling her vehicle when confronted with a pedestrian crossing the roadway.

ISSUES, LAW AND ANALYSIS

ISSUE I Did Ms. Bayley drive motor vehicle SA 2370 into the knee of Mr. Grazette or did Mr. Grazette step into the path of a vehicle that had been stopped by Ms. Bayley?

[58] This matter is a question of fact and is only an issue because Ms. Bayley consistently denied striking Mr. Grazette with the car.

[59] However, the evidence of the claimant and his two witnesses was clear, and for the most part consistent, and given in a manner that was believable.

[60] They all suggested that the second defendant was driving at a significant speed and collided with the claimant who had started to walk across the road.

[61] The court finds that the second defendant did drive the motor car SA 2370 into the knee of the claimant causing him the injury that he sustained.

ISSUE II Was Ms. Bayley, the driver of SA 2370, negligent?

[62] The 20th Edition of the authoritative legal text, Clerk & Lindsell on Torts, at paragraph 8.04 identify the ingredients of the tort of negligence as follows:

- “(1) the existence in law of a duty of care situation. i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in question on the class of a person to which the claimant belongs by the class of person to which the defendant belongs is actionable;*
- (2) breach of duty of care by defendant, i.e. that failed to measure up to the standard set by law;*
- (3) a casual connection between the defendant’s careless conduct and the damage;*
- (4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.”*

[63] Having concluded as a fact that Ms. Bayley as driver of SA 2370 collided with Mr. Grazette who was crossing the road, it now has to be decided whether Ms. Bayley was negligent in the sense described above.

[64] First, did Ms. Bayley owe a pedestrian trying to cross the Princess Alice Highway a duty of care?

[65] Clearly Mr. Grazette, as a pedestrian would be within that class of persons who can suffer harm if you drive carelessly. Mr. Grazette is therefore a person to whom a duty of care is owed.

- [66] Did Ms. Bayley breach her duty of care to Mr. Grazette? This will depend on whether her driving was consistent with the standard of a reasonable driver. The test is an objective one.
- [67] The particulars of negligence were identified by the claimant in his statement of claim and are set out in full in paragraph 8 of this judgment.
- [68] Having carefully reviewed the evidence I find that all the particulars of negligence have been proved.
- [69] My opinion is that the accident was caused by Ms. Bayley making a right turn out of the Complex when the road markings suggest that this was not permitted. Turning right required Ms. Bayley to traverse two lanes of traffic coming from Bridgetown while ensuring that the lane going in the direction of Bridgetown – the one that she wanted to enter, was also clear of traffic. This required her to look both left and right while having also to keep a look out for pedestrians who constantly were trying to get to the bus stand or into the Complex. It was an ill-advised manoeuvre which required patience and skill. Ms. Bayley exhibited neither.
- [70] Ms. Bayley has consistently denied striking Mr. Grazette with the car. The extent of Mr. Grazette's injuries as well as his convincing testimony and that of his witnesses, prove otherwise. The Court is in no doubt that Ms. Bayley

struck Mr. Grazette with great force and was unable to swerve or slow down because she was driving too quickly in the circumstances.

[71] I have therefore concluded that Ms. Bayley has primary liability for the accident.

ISSUE III Did Mr. Grazette cause or contribute to the accident and if so what proportion should his loss be reduced to reflect his contributory negligence?

Proof of Contributory Negligence

[72] The burden of proving contributory negligence is on the defendant. The standard of proof is on a balance of probabilities.

[73] To establish contributory negligence it must be demonstrated that the claimant failed to take reasonable care for his own safety and that his failure has contributed to the injury that he suffered (**Nance v British Electric Rail Co. Ltd. [1951] A.C 601, 611**); see also **Lewis v Denye [1939] 1 ALL ER 310, 316, 317**; **Davies v Swan Motor Co. (Swansea) Ltd 1949 2.K.B 29, (Davies)**)

[74] **Section 3 of the Contributory Negligence Act, Chapter 195** makes provision for the apportionment of liability with respect to contributory negligence.

That section states:

“... where any person suffers damage as the result of partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the persons suffering the damage; but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage.”

[75] In **Nance**, Viscount Simon in delivering judgment of the Judicial Committee of Privy Council at [1951] A.C. 611, said:

“When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove the satisfaction of the jury that the injured party did not in his own way interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff’s claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full.”

[76] Similarly, in **Davies** Lord Denning said at p. 291 2.K.B. 326:

“Whilst causation is the decisive factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of the reduction does not depend solely on the degree of causation. The amount of the reduction is such as an amount as may be found by the court to be “just and equitable, having

regard to the claimant's "share in the responsibility" for damage. This involves a consideration, not only of the causative potency of a particular factor, but also of its blameworthiness. The fact of standing on steps of the dustcart is just as potent a factor in causing damage, whether the person standing there be a servant acting negligently in the course of his employment or a boy in play or a youth doing it for a lark: but the degree of blameworthiness may be very different.

Speaking generally, therefore, the questions in road accidents are simply these: What faults were there which caused the damage? What are the proportions in which the damages should be apportioned having regard to the respective responsibilities of those at fault?"

[77] The Court accepts the evidence of the claimant that he looked left and right and ensured that the road was clear before attempting to cross the road.

[78] However, it seems to me that there are two matters that need to be examined in order to determine whether the claimant was part author of his own injury.

[79] First, was it reasonable and prudent to cross the road at the point where the claimant attempted to cross or should the claimant have walked to the pedestrian crossing which, he said was 150 feet away?

[80] Secondly, did he exercise reasonable care in the manner in which he crossed the road?

[81] In answer to questions with respect to the manner in which he walked, Mr. Grazette said he walked "normal". At another point in his evidence he used

the word “casually” and at another point he said he was moving at medium pace.

[82] The issue of contribution has been a difficult one in this case. There is no independently verifiable evidence concerning the width of the road; whether you are permitted to make a right turn out of the Fishing Complex; there are no measurements at all; no evidence of where the point of impact was; and no verifiable evidence of the distance of the pedestrian crossing from where the accident occurred.

[83] The weakness of the second defendant as a witness has not helped the situation. However, the Court is satisfied that there is some element of contributory negligence which arises from the frank answers of the claimant.

[84] Mr. Grazette deposed that there was a pedestrian crossing about 150 feet away. The court accepts this evidence as the only evidence with respect to this matter. Having chosen not to use the pedestrian crossing it is my view that you ought not to attempt to cross a three lane highway at “normal” walking pace even though you made sure the road was clear.

[85] As both parties have found out, the situation can change quite quickly. In the case of Mr. Grazette he then found that a motor car had exited the Complex and was colliding with him. In the case of Ms. Bayley, the pedestrian was in

the process of crossing and having seen Mr. Grazette she did not continue to keep a proper look out; she did not reduce her speed.

[86] Ms. Walker referred the Court to a number of cases. However I have not found these cases to be helpful except to show how diverse are the various ways in which an accident can occur. I agree with the sentiment that cases such as those involving contributory negligence are fact-sensitive. (See **Adams v Gibson [2016] EWHC 3209**. (see paragraph 50 of the judgment).

[87] The Court did, however, consider the two factors referred to by Denning LJ in **Davies**.

[88] Having looked at the facts I regard the causal potency of driving a motor car at significant speed onto a roadway that is known to be busy as more significant than the movement of a pedestrian at “normal speed”. On the other hand, the claimant may have avoided injury if he had crossed the road briskly bearing in mind that he was not traversing the road at a pedestrian crossing.

[89] On the facts, I am satisfied that the contribution of the pedestrian to the accident was not substantial.

[90] I assess that contribution at 20%.

DISPOSAL

[91] For the above reasons I make the following orders:

- (1) Judgment is granted to the claimant.
- (2) That the claimant's entitlement to damages shall be reduced by 20%.
- (3) That the second defendant shall pay the costs of the claimant to be assessed, if not agreed.

Cecil N. McCarthy
Judge of the High Court