



[2017] JMSC Civ 3

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CLAIM NO. 2010 HCV 05031

BETWEEN	LEIGHTON SAMUELS	CLAIMANT
AND	LEROY HUGH DALEY	DEFENDANT

Mr. Leonard Green for the Claimant

Mrs. Suzette Campbell for the Defendant

Negligence – Motor Vehicle Collision – Overtaking line of Traffic – Claimant Jumped Queue – Liability – Road Traffic Act-

December 1, 2016 and January 12, 2017

WINT-BLAIR, J(AG)

Facts

The claim concerned a motor vehicle collision which occurred on the 13th day of March, 2008 between both parties.

[1] The undisputed facts are that the claimant was riding a motorcycle registered 3242G. The defendant was driving a Toyota Townace Minibus registered 3234ER. Both parties were proceeding in the same direction along Watson Taylor Drive in Lucea, Hanover. There was a collision between both vehicles in the vicinity of Central Avenue which is a minor road on the right as one proceeds towards Lucea. Watson Taylor Drive is divided in by an unbroken white line in the vicinity of Central Avenue.

[2] The dispute is one of liability. The witness statement of Leighton Samuels says that at about 5:30pm he was driving his motorcycle in the vicinity of Rusea's High School. He slowed for a large number of school children who were on the road. He saw a line of traffic ahead including the defendant's vehicle which was then two car lengths ahead. The vehicles were headed for the 'filter road on the left'. There was no oncoming traffic that he could see so he put on his right indicator, sounded his horn twice and attempted to pass the line of traffic on the right. As he was attempting to pass the defendant's minibus it pulled out of the line of traffic without warning and collided with the motorcycle. The claimant was thrown from the motorcycle and landed on a sign post, the bike ended up in a gutter further up the road.

[3] In cross-examination the claimant admitted that there is an unbroken white line in the centre of Watson Taylor Drive which means no overtaking. He also called the left lane of the two lane Watson Taylor Drive the filter lane, indicating that this lane was for traffic going towards Lucea. He said:

"Vehicles on main road to the town that's what I call the filter lane, there were no indicators on to go left. We drive on the left in Jamaica, it's the filter lane."

[4] The defendant's witness statement says that he was driving in the left lane from the direction of Negril, he intended to make a right turn onto Central Avenue. He slowed, put on his right indicator, waited for an oncoming vehicle to pass, noticed two vehicles had stopped behind his, checked his mirror, then proceeded to make the right turn onto Central Avenue. It was while he was so engaged that he, having crossed over the unbroken white line, noticed a motorcycle which had passed the two vehicles behind his on the right and collided into the right back section of his minibus. Both motorcycle and rider were thrown into a ditch. He took up the claimant who kept saying, "I never see the indicator." The defendant took the claimant to Lucea Hospital.

The claimant sustained injuries as described in the medical summary report from of Dr. V. Suman dated October 27, 2008 and the report of Dr. S. Smith of Cornwall Regional Hospital dated June 28, 2010.

[5] Mr. Green submitted that in terms of liability the claimant put forward a more credible narrative of events. He asked the court to reject the notion that the claimant having seen the defendant's indicator and the bus positioned to make the right turn would then attempt to overtake the minibus. It was more probable that the claimant was overtaking the line of traffic when the defendant who was ahead of him in the line swung to the right of the line colliding into the claimant's motorcycle.

[6] Mrs. Campbell submitted that the defendant was negligent in that the defendant breached the provisions of the Road Traffic Act, as well as the accepted principles and standards of driving. There was no filter lane or slip road to the left of Watson Taylor Drive. There was one main road with one lane for each direction. She relied on cases where the collision was caused when one driver jumped the queue which I found of great assistance.

[7] The claimant evidently does not know the provisions of the Road Traffic Act in respect of overtaking. He proceeded to pass a line of traffic on his own account crossing an unbroken white line in the vicinity of an intersection. He wore no helmet for there is no evidence that he had. He simply did not want to wait in the line of traffic and caused the collision. Whether the line of vehicles was stationary or stopped is immaterial as the claimant jumped the queue. The case of **Powell v Moody** (1966) 110 Sol Jo 215, Times, 10 March, CA on similar facts as the instant case held that:

“Any vehicle which jumped a queue of stationary vehicles was undertaking an operation fraught with great hazard and which had to be carried out with great care. There was always difficulty in such circumstances of seeing what was happening especially emerging from the gaps.”

On a balance of probabilities, the claimant was responsible for causing the accident by his failing to obey the rules of the road and heeding the provisions of the Road Traffic Act. He is liable in negligence for causing damage to the defendant's vehicle.

Orders:

Judgment is hereby entered for the defendant with costs to be taxed if not agreed.