[2013] JMSC Civ 162

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV02067

BETWEEN	**CLIFTON BECKFORD**	**CLAIMANT**
A N D	**WINSTON BLACKWOOD**	**DEFENDANT**

Mr. Kevin Page instructed by Page & Haisley for the claimant

Mr. Leslie Campbell instructed by Campbell & Campbell for the defendant

Heard: July 17 & 19, 2013

NEGLIGENCE – ADMISSION OF NEGLIGENCE – NO ADMISSION AS TO DAMAGE OR LOSS – NO ADMISSION OF CAUSATION – WHETHER COURT SHOULD ENTER JUDGMENT ON ADMISSION – WHETHER COURT SHOULD ENTER SUMMARY JUDGMENT EVEN THOUGH SAME WAS NOT APPLIED FOR

Anderson, K., J.

Ruling on Application to Order Judgment on admission:-

[1] In respect of this claim, the claimant filed his claim form and particulars of claim on April 3, 2013. The claimant's claim pertains to a motor vehicle accident which occurred on June 9, 2012 while the claimant was driving his motor vehicle at the Naggo Head roundabout in Portmore, St. Catherine. The claimant has alleged, in his particulars of claim, that the defendant so negligently drove and/or operated the motor vehicle which he had then been driving, that he caused and/or permitted the same to violently collide into the rear of the claimant's motor vehicle. The claimant has further contended in his particulars of claim, that as a consequence, he has sustained serious personal injury and continues to suffer loss and damage. In his particulars of claim, the

claimant has, as required, particularized his injuries and claimed special damages for medical expenses and transportation.

[2] Interestingly enough, in his particulars of claim, the claimant has not claimed any damages arising from any alleged damage to his motor vehicle. In fact he has not, in his particulars of claim, stated specifically, that there was any damage to his motor vehicle at all – this even thought he has contended that the defendant's motor vehicle, 'violently collided' into the rear of his motor vehicle.

[3] The defendant has filed an acknowledgement of service and a defence. The former was filed on May 16, 2013 and the latter on May 17, 2013. In the acknowledgement of service, the defendant has informed this court, that he was served with the claimant's claim form and particulars of claim on April 6, 2013. This would therefore mean that the defendant's acknowledgement of service was filed out of time, but his defence was filed within time. See rules 9.3(1) and 10.3(1) of the Civil Procedure Rules (hereinafter referred to as 'the CPR') in this regard.

[4] Understandably though, the claimant has not taken issue with the failure to file the acknowledgement of service within time, since, if the defendant has filed a defence which has a reasonable prospect of success, it would be pointless to do so. Instead, the claimant has chosen to seek judgment on admission, arising from that which he contends is the admission as contained in the defendant's defence, that he negligently caused the relevant collision between the two (2) motor vehicles on June 9, 2012.

[5] **Rules 14.1 and 14.2 C.P.R.** are applicable to the matter at hand. These rules specify the manner in which a judgment on admission may be made and in essence provide that a party may admit the truth of the whole, or any part of any other party's case and may do so by giving notice in writing, such as by means of a statement of case, or by letter, before or after the issue of proceedings.

[6] There is no doubt that the defendant has admitted the collision between the relevant vehicles on the relevant date and has also admitted that such collision was negligently caused. He has made those admissions in his defence, which, by virtue of **rule 2.4 of the C.P.R.** constitutes, at this juncture, his 'statement of case'. Has the

defendant though, admitted enough such that a Judgment on admission ought to be entered against him, as is sought by the claimant's application for court orders filed on May 28, 2013? Despite the valiant efforts of counsel for the claimant, suggesting that this court should do so, I find that this court in fact should not do so, as legally, it cannot.

[7] This court cannot, to my mind, do so, as liability has not been admitted by the defendant. The defendant has admitted to having negligently caused his vehicle to collide with the claimant's vehicle. Is that admission enough to constitute an admission of liability in a claim for damages for negligence?

[8] In a claim for damages for negligence, unlike a claim for trespass to the person, loss is not presumed. Thus, whenever one claims damages for negligence, it must always be proven, in order for liability of the defendant to be properly established, that the negligent actions of the defendant in relation to the claimant, caused the claimant's loss and indeed also, it must be proven by the claimant that he suffered loss, arising from the defendant's negligent actions in relation to him, in order for liability for the tort of negligence, to have been properly established. Thus, in the text – **Winfield and Jolowicz Tort, 13th ed.** [1989], the learned authors have stated, at page 72, that:

> *'Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff. Thus its ingredients are: a) a legal duty on the part of A towards B to exercise care in such conduct of A as falls within the scope of that duty; b) breach of that duty; c) consequential damage to B*.'

Thus, as Lord Wright explained in **Lochgelly Iron and Coal Co. Ltd. v. McMullan** – [1934] A.C.1, at page 25:

> *'…. in strict legal analysis, 'negligence' means more that heedless or careless conduct, whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.'*

Equally too therefore, in the text – **Commonwealth Caribbean Tort Law, 3rd ed.** [2003], authored by **Gilbert Kodilinye**, the learned author has specified, at page 64 of

that text, that there are thus, three (3) elements to the tort of negligence – *'a) a duty of care owed by the defendant to the plaintiff and b) breach of that duty by the defendant; and c) damage to the property resulting from the breach.'*

[9] It is abundantly clear to this court, that the defendant has joined issue with the claimant, on two particularly important aspects of his claim, these being, whether the collision between the two (2) vehicles ought properly to be described as 'violent' (as the claimant has described it) or alternatively, as one in which the defendant's vehicle 'barely brushed the bumper' of the claimant's motor vehicle (as the defendant has described it). The second issue therefore, is the critical one and it, of course, to some extent, would follow from the first, that being, whether, as a consequence of the defendant's negligence, the claimant has suffered any loss and/or damage.

[10] If a trial were to hereafter be proceeded with therefore, it is apparent to this court, that the claimant will have to prove damage and/or loss suffered by him as a consequence of the relevant accident. This is an issue of liability and not a matter that should be, or indeed even can lawfully and properly be addressed by the parties on an assessment of damage hearing. The claimant, at a trial, must prove that the defendant's negligent wrongdoing was a cause, albeit not necessarily the sole cause, of the claimant's injuries. See: **Halsbury's Laws of England, vol. 34** para. 3 and See: **Hyman and Williams v. Schering Chemicals Ltd**. [1980] Times, 10th June. See also **Halsbury's Laws of England, 4th ed., vol. 12**, para. 1141.

[11] This is why it comes as no surprise to this court that in two cases that were cited to this court and relied on by the defendant in opposition to the claimant's application, it was held that an admission of negligence in a particular case where the claim is for damage for negligence, should not be acted on by a court in such type of case, as constituting a basis for the entry by that court, of a Judgment in admission. See: **Rankine v. Garth Son & Co. Ltd**. [1979] 2 All E.R. 1185; and **Blundell v. Rimmer** [1971] 2 All E.R. 1072. **The White Book 2000 edition**, also sets out that this is so, at para. 14.3.4 thereof.

[12] Two final matters ought now to be addressed for the purpose of this ruling and the first is that although in his defence, the defendant has clearly stated that he is making no admission as to injuries, loss and/or damage allegedly suffered by the claimant as a consequence of the negligently caused collision between the relevant two (2) vehicles, the defendant has also clearly stated, in para. 5 of his defence, that – '*The defendant does not intend to contest liability for his accident.'* This is indeed a regrettable assertion, but nonetheless, to this court, it is apparent from the overall remaining tenor of the defence in other respects, that the defendant is not accepting liability at all. Of course too, it is open to the defendant to amend his defence so as to delete that inconsistent assertion as quoted immediately above. To my mind though, in order to order judgment on admission, that admission must be clearly made and not in doubt since it is only where it is clear to this court that the defendant has no valid defence, that the defendant should be prevented from contesting liability at a trial. That has always been the approach of the courts.

[13] Finally, this court has been asked to, if not minded to enter Judgment on admission, enter summary judgment in the claimant's favour. This court will not do so, bearing in mind that, by virtue of the provisions of **Rule 11.13 of the C.P.R.**, an applicant seeking court orders, is precluded from, on the hearing of that application, asking for any relief in respect of which no notice has been given, unless the court gives permission. In the matter at hand, no such permission was ever sought by the claimant's counsel and thus, none such was, or even could, properly have been granted. At this stage, certainly, this court cannot give such permission, as both sides have already been heard in respect of the application as filed.

[14] In any event though, the grant of summary judgment ought not to be made, in circumstances wherein the defendant has a defence which has a realistic prospect of success – See **rule 15.2 of the C.P.R.** in this regard. For reasons already provided, I am of the view that the defendant's defence, is, at present, at the very least, even more than just an arguable one and thus, the defendant should be enabled to have his day in court to contest his liability as alleged.

[15] Thus, the claimant's application for court orders as filed, is dismissed with costs to the defendant.

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Hon. Kirk Anderson, J.