

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1993/B-361

BETWEEN	PAT BELLINFANTI	PLAINTIFF
A N D	NATIONAL HOUSING TRUST	FIRST DEFENDANT
A N D	GEORGE RAINFORD	SECOND DEFENDANT
A N D	THE ATTORNEY GENERAL	THIRD DEFENDANT

CONSOLIDATED WITH

SUIT NO. C.L.1993/S368

BETWEEN	HEADLEY SAMUELS	PLAINTIFF
A N D	NATIONAL HOUSING TRUST	FIRST DEFENDANT
A N D	GEORGE RAINFORD	SECOND DEFENDANT
A N D	THE ATTORNEY GENERAL	THIRD DEFENDANT

Mr. H. Robinson instructed by Patterson, Phillipson and Graham for Plaintiffs.

Mr. L. Morgan instructed by Nunes, Scholefield, DeLeon and Company for first and second defendants.

Miss A. Ferguson and Mrs. S. Reid-Jones instructed by Director of State Proceedings for third Defendant.

Heard: November 8, 11, 12, 13, 1996 and February 3, 1997

KARL HARRISON J.

Let me first of all apologise for the delay in delivering this judgment. The plaintiffs who have brought their claims against the defendants are seeking to recover damages for negligence arising out of a motor vehicle accident which occurred on the 19th day of March, 1993 along Panton's Hope main road in the parish of Portland. The actions were consolidated by Order of the Master at the hearing of the Summons for Directions.

Both plaintiffs were passengers in a motor vehicle driven by the second defendant and owned by the first defendant. The third defendant has been made a party to these proceedings pursuant to the provisions of the Crown Proceedings Act whereby it is being alleged that a vehicle which was assigned to the Commissioner of Police was being driven by a servant and/or agent of the crown acting within the scope of his duties at the material time of the accident.

The first defendant by way of a counter-claim has alleged that as a result of the negligence of the third defendant's servant and/or agent, the first defendant has suffered loss and damage and incurred expenses. This defendant also filed and served a Notice on the third defendant seeking an indemnity and/or contribution against the plaintiffs' claims. Third Party Directions were issued and it was ordered by the Master of the Supreme Court on the 25th day of July, 1994 that the first and second defendants deliver a statement of their claim to the third defendant and that the question of liability of the third defendant to indemnify the first and second defendants be tried at the trial of this action. The first defendant filed and served its statement of claim against the third defendant whereupon the third defendant served its defence and counterclaimed against the first defendant for the cost of repairs to the service vehicle.

#### SUMMARY OF THE EVIDENCE

The evidence presented by both plaintiffs show that sometime after mid-day on the 19th March, 1993 Mr. Bellinfanti was seated in the left front passenger seat of the first defendant's motor car whereas Mr. Samuels was seated in the rear. They were on their way to Kingston and were travelling along Panton's Hope main road in the Parish of Portland.

The road surface was wet. The driver was descending a slope and on reaching a point where the roadway is straight, an accident occurred between their vehicle and a motor car driven by a police officer. Mr. Bellinfanti in his testimony, describes how the accident took place. He states inter alia:

"I could see bend in road in the distance. It was a left hand bend from my direction. We were going reasonably slow because of conditions of the road. I saw an on-coming vehicle coming in our direction. When it was out of the bend...it was partly on our side of the road. I would not say that total width of car was on my side. A significant part of on-coming car was on our part of the road and that's why it struck me.

Driver of my vehicle pulled over to left in as much as he could and stopped.

The on-coming vehicle was veering back to its side of the road but unfortunately he was not able to get back to his side in time and he struck our vehicle."

He also told the court that the second defendant was travelling on his left side of the road before he pulled further to the left. He explained that there was a

precipice to their immediate left hence, that was the reason why his driver had pulled over as much as he could. It was his view that two vehicles could nevertheless pass comfortably at this point.

Mr. Samuels' account of the accident is as follows:

"...we were opposing each other. My vehicle going towards St. Thomas from Port Antonio direction. The accident happened so fast... suddenly our driver pulled over on the left and stop. In the process of asking him what happened I heard "bang." A red car had come into our car. I never see red car before I heard bang. Where I was I could not see it."

Detective Harrington Forrest who was the driver of the police vehicle was leading a motorcade on the occasion of the visit of The Hon. Edward Seaga to the parish of Portland. He recalls the following sequence of events:

"I was travelling at approximately 20-25 m.p.h. ahead of motorcade. This about 12:00 p.m...."

I was travelling on left hand side of road. The rain ceased and I was travelling up slope of a hill, when reaching a section near to the slope I saw a silver looking car came suddenly over the slope on my side of the road that is the left hand side.

I shadowed my brakes, rested foot over the brake pedal, swerve further to my left to avoid a collision with the vehicle. It was unable to as it hit the right hand side of my vehicle to the front.

There is bend approaching slope. It would be a right hand bend for the plaintiff's vehicle. The accident occurred after the plaintiff's vehicle had passed the bend and come up the slope and over..."

The Sergeant admitted under cross-examination that the accident took place on a straight stretch of road about one chain from a bend that he had negotiated. He denied negotiating a right hand bend shortly before the collision. He also denied that he had come around on the right hand side of the road. He said he did not stop when he saw the vehicle coming towards him on his side of the road neither was there enough time for him to have blown his horn nor to have flashed his lights.

Detective Corporal Riley who was a passenger in the right front seat of the police vehicle, testified initially that the accident had taken place at the brow of a hill. Under cross-examination he agreed however, that it had occurred on a

straight stretch of road. He gave the following account of how the collision took place:

"...As we approached brow of hill immediately I saw a silver colour car came over the hill at 45-50 m.p.h. on our side. I observed car for about two seconds.

It was raining slightly. I could see quite well.

When car came over I realised it would hit vehicle I was in so I braced the dash board and it came over and slam into car I was in."

POSITION OF VEHICLES AFTER ACCIDENT WIDTH OF ROAD AT POINT OF IMPACT AND DAMAGES TO THE VEHICLES

Under cross-examination Mr. Bellinfanti told the court that he was unable to recall the position of the vehicles after the collision. He was hurriedly removed from the scene having regard to injury to his right eye. Mr. Samuels who was also taken to the hospital due to an injured arm testified that the road was blocked after the accident. He said however, that his vehicle was on his left side of the road and that he was pulled out through the right door.

According to Sgt. Forrester, his driver's door was almost resting on the side of a hill. He could barely leave the vehicle from his left front door. He had to walk around the back of the car in order to go to the front because the front was almost resting on the embankment. He also agreed that the road was blocked. He claimed that the front of the first defendant's vehicle was over on his side of the road "unto the front of my vehicle" and the back of the vehicle was over on the left "as if it were across the road." In order to clear the road, the police pushed his vehicle down the road and civilians "bumped" the first defendant's vehicle on to its side of the road.

Corporal Riley testified that after the collision his vehicle was on the left and the first defendant's vehicle was in the middle of the road.

Both Sergeant Forrester and Corporal Riley saw damages to the front windscreen, the right front headlamp, and right front fender of the police vehicle. The right front wheel of that vehicle was punctured. Exhibit 5 which was agreed between the parties reveals that upon inspection of the first defendant's motor car the motor adjusters concluded that the damages were as a result of an impact at the off-side front. The following damaged parts were observed:

Bonnett, wheel arch guard, headlamp, right hand front fender, right hand front door, bumper, chassis leg, grille, side shield, dashboard, wiper blade and corner lamp.

Sergeant Forrester did agree that there was no head on collision and that it was almost a "sideway" collision - his right front and the other vehicle's right front colliding. The damages on both vehicles are therefore supportive of an impact at the "off-side" front.

Sergeant Forrester estimated the width of the road at the point of impact to be between 16-28 ft. No white lines are in the centre of the road. He estimated his car which was a Geo Prizm to be between 4ft. 6ins. to 5ft. wide and the other vehicle, a Toyota Corolla, to be about 8 ft. wide.

#### SUBMISSIONS ON LIABILITY

Mrs. Jones, Counsel for the third defendant, admitted during her address to the court, that Mr. Bellinfanti was not shaken by cross-examination and that he was an excellent witness. She said, likewise were Sergeant Forrester and Corporal Riley excellent witnesses and not shaken by cross-examination. According to her, the case had to be decided on the sequence of events leading up to the accident and the position of the vehicles after the collision.

She has placed heavy emphasis on the position of the vehicles after the collision and submitted that both witnesses called on behalf of the third defendant have corroborated each other in every material particular respect as to how the accident happened and how the vehicles were positioned after the collision. Unfortunately for Mr. Bellinfanti, he was unable to assist the court on the position of the vehicles. She submitted therefore, that the third defendant's witnesses have been totally unopposed as to the position of the vehicles. It was further submitted that since Mr. Samuels did not see how the collision occurred Mr. bellinfanti's account has not been corroborated.

Mr. Robinson submitted on the other hand, that the plaintiffs have discharged the burden of proof placed on their shoulders and that a case has been made out in negligence against the defendants. He further submitted that Mr. Bellinfanti's evidence was clear and both Mr. Samuels and himself were not witnesses with an interest to serve. The court should on the other hand act cautiously where Sergeant Forrester's evidence is concerned as he could have an interest to serve, he being the driver of the police vehicle. According to Mr. Robinson there were two versions of this accident,

































