



[2020] JMSC Civ 95

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2014 HCV 03878

BETWEEN	SONIA BROWN	CLAIMANT
AND	JASON BARRIFFE	2ND CLAIMANT
AND	KIRK HENRY	1ST DEFENDANT
AND	TYRONE WILLIAMSON MILLER	2ND DEFENDANT

BETWEEN	KIRK HENRY	ANCILLARY/ CLAIMANT
AND	FREDERICK BARRIFFE	1ST ANCILLARY/ DEFENDANT
AND	JASON BARRIFFE	2ND ANCILLARY/ DEFENDANT

Petrina Williams instructed by Zavia Mayne and Company for the Claimants and the Ancillary Defendants.

Racquel Dunbar instructed by Dunbar and Company for the 1st Defendant/Ancillary Claimant.

Negligence - motor Vehicle accident - Breach of Duty of Care - Failure to obey the traffic light - Both Drivers alleging they had the Green light.

Heard 7th and 8th October 2019, 3rd February 2020, 27th March 2020

THOMAS, J

INTRODUCTION

[1] This case arises out of a motor vehicle accident which occurred on the 19th of March 2014 at the intersection of Caledonia Avenue and Half Way Tree Road. The Claimants in the Main Claim are alleging that:

They were travelling along Old Hope Road heading in the direction of Down Town Kingston. On reaching the intersection of Caledonia Avenue and Half Way Tree Road, Mr. Jason Barriffe had the green light to proceed. While proceeding through the intersection on the green light Mr. Tyrone Miller the agent and driver of the Defendant's/Ancillary Claimant's vehicle who was travelling in the opposite direction along Half Way Tree Road while attempting to make a right turn on Caledonia Road collided with their vehicle. They sustained injuries and damage.

The Defence/Ancillary Claim

[2] The Defendant/Ancillary Claimant Mr. Kirk Henry is alleging that the accident was caused when the 2nd Claimant Mr. Jason Barriffe, driving as agent of the 1st Ancillary Defendant, Mr. Federick Barriffe, disobeyed the traffic light showing to the traffic traveling along Old Hope Road, drove through the intersection at a fast rate of speed and collided with the Ancillary Claimant's /1st Defendant's vehicle while Mr. Miller was in the process of a making a right turn onto Caledonia Road in compliance with the green filter light showing to him. He further alleges that damage was caused to his vehicle.

The Evidence

[3] The evidence of the 1st Claimant Ms. Sonia Brown is that:

On the day in question she was travelling in the back seat of the motor vehicle driven by Mr. Jason Barriffe. They were travelling along Old Hope Road Mr. Barriffe proceeded on the ball green light in the direction of Down Town Kingston when the Toyota Coaster Bus owned by the Defendant/Ancillary Claimant and driven by Mr. Tyrone Miller and going in the opposite direction along Half Way Tree Road failed to observe the ball green light and attempted to turn unto Caledonia Avenue and collided in the motor vehicle in which she was travelling. She alleges that as a consequence of the collision she suffered injuries.

[4] On Cross-Examination she states that:

From the stoplight (Silver Slipper) she could see the intersection with Caledonia Avenue. She agreed that Old Hope Road is a fairly straight road from Hi-Lo Supermarket. She agrees that when you reach the intersection, the road widens and there are two lanes. The accident occurred between 5 to 6 o'clock that morning. No other vehicles were on road. She agrees that it was dark. She entered the vehicle from Caledonia avenue. She was up all night, she was not working and he was not at a party, she was hanging out with friends. She did not know Mr. Barriffe before. She sat in the back seat. Mr. Barriffe and his friend were in the front. He was not driving fast. She had a clear view ahead of her. She agrees that she could not see the light facing the bus. Her driver was going through the green light. When she saw the light turn green, she was on Old Hope Road. She did not see the light change from red to green. Having seen only the green light showing they proceeded. The first time she saw the green light, was when the car was going through the intersection.

[5] Her evidence on cross examination continues as follows:

At no time prior to the accident did the car she was travelling in stopped. It never slowed down. It continued at the same speed. Before it drove through the intersection, it did not stop. The first time the car stopped, it hit up with the bus. The car was in the left of the two lanes. The front of the car was damaged. When the car hit into the bus, she hit her head on the back seat. The first time she saw the bus was when the bus was making the turn. The first time she saw the bus was when it was coming across the lane. From Hi-Lo she could see all the way down to the intersection.

[6] She further states that:

When the bus hit the car, the car flew to the gully. She did not climb over the left front passenger seat to come out. The car had four doors and she did not move over to the left front passenger seat to come out. There was a guy in the front seat. The guy head hit up on the dash board. The bus turned on the red light. It should have waited. She does not know if the bus had on the head light but she knows that the car had on its headlight.

[7] Mr. Jason Barriffe states that:

On the day in question he was driving along Old Hope Road. Ms. Brown and another person were passengers in the vehicle. On reaching the intersection of Caledonia and Half Way Tree Road he proceeded on the ball green light when the Toyota coaster bus PC 5390, travelling in the opposite direction failed to observe the ball green light and attempted to turn unto Caledonia. Avenue. The bus collided with the right front section of the motor vehicle he was driving. putting it closer to the gully.

[8] His evidence on amplification is that:

When the police came, they escorted him to the station. They had summoned him about a licence. He never did a breathalyzer test. He was living with his father Fredrick Barriffe at the time of the accident. He doesn't

know a body man called Mr. Green on Omara Road. Since the accident Mr. Barriffe came to his business place asking for money. He told him he was not giving any money because he was not at fault; he was injured as well. He was never living on Omara road. He admits that he was quarrelling because they broke the stoplight and ran into him. His headlights were on for them to see properly. It is not true that he came out of nowhere. He was not drunk; he was just moving from point A to Point B.

[9] On cross examination he states that:

He was travelling from the road Silver Slipper Plaza is on towards downtown; it is a straight road. He could see the intersection from Silver Slipper Plaza a far way down. The road was clear; his car was the only one coming down that morning. After he reached Silver Slipper Plaza he could see down to Cross Roads. When he first saw the bus, his car was approximately 15 feet from the bus. When he first saw the bus, he said he was going through the intersection. The whole of the front of his car mash-up. He was trying to slow down but the left side of the bus spun and tear off his car, that is, the left front of the bus. He agrees that his car was unlicensed. He lives in Stony hill and was moving the car from Rippon road to downtown. The guy in the car with him, he was staying at the guy's house. He picked up the female passenger on Rippon Road.

[10] His evidence continues as follows:

When he first saw the light it was on green. He was at Silver Slipper Plaza. He doesn't know the distance. He never saw the light on red. As he approached it he was travelling at a very low speed, he as taking his time knowing that the motor vehicle was not licenced. He cannot give an estimate, but he was travelling at a speed that is below the speed limit; he expected the speed limit in the area to be about 35 KMPH. He said he was going at about 15 KMPH and was going at that same speed when the accident occurred. After he hit the vehicle, the bus man drove over to the

gully and parked. The bus man came to assist him after the accident. The bus came to a stop in the same lane for the motor vehicle exiting Caledonia Rd. He says it is not true that he failed to observe the red light. He states that he had the green light coming down and he does not know if Mr. Miller had the filter light. He says he did not try to stop or swerve away. He could not swing because it was unexpected.

- [11] As it relates to liability two witnesses gave evidence on behalf of the Defendant Ancillary Claimant. Ms Pauline Marcia Davis states that she was a passenger in the staff bus, which left Half Way Tree at 5:30 going towards Cross Roads. She was in the front passenger seat of the bus. They were a few of them in the bus at the time, meaning other persons with her. She was sitting beside Tyrone the driver. They left Half Way Tree drove along Half Way Tree Rd towards Carib. They made a left on to Old Hope Rod. When they reached the intersection with Caledonia Ave both the ball and the filter lights were on green so they had the go ahead to make the right turn unto Caledonia or to go on Old Hope Road. When they started to turn at the light, she saw the car coming down Old Hope Road at full speed, it had on no head light. Her driver swung to the right. Even though it swung, the car came into the bus and hit into the left side of the bus. It did not try to stop.
- [12] She states that herself and Robert ran to the car to see if they were ok, and that it was a female that was driving the car. She was sitting on the right of the car. There was a tall white man sitting beside her. She saw her at the steering wheel at the right side of the car. The door could not open because the front of the car was crumped back into it so the girl had to crawl to the left front passenger seat to come out, there was another man, sitting at the back of the car. He got up from the back seat like he was sleeping. She further states that the girl came out and went across the bridge where the bus was parked, holding her head down. She saw she had a cut at the front of her forehead. Robert got a taxi and put her into it so she should go to the hospital. The white man walked away. She agrees that there were no other vehicles on the road when the accident happened.

[13] On cross examination she states that:

She left Half Way Tree 5:30 as generally, she is to reach work at 6 am. Had it not been for the accident she would not have reached work late. Mr. Miller was not speeding. When Mr. Miller went to the intersection, there were two green lights. The green ball light and the green file light. Mr. Miller did not proceed through the light when it was not safe to do so. Where the bus reached at the light she could see straight up the road. She could see Silver Slipper Plaza and her vision was clear.

[14] The car, she states, did not have on its head lights. She insists that no man was driving the vehicle, it was a female. She could see the car when the bus hit the car, but she came out of the bus to see the vehicle and she saw the man in the back seat. She could not see him from inside the bus.

[15] Mr. Miller's evidence is that on the particular day he drove down Half Way Tree Road. When he reached the intersection at Old Hope Road, the light was on red. He stopped, the light changed to green so he made a left turn onto Old Hope Road. He then, he put the car into the right lane to turn onto Caledonia Rad. As he was in the process of turning right on the ball green and the green filter light he saw a vehicle appear from nowhere. He was turning right and holding his brake. He almost went into the lane for the oncoming traffic on Caledonia road. Luckily, there were no vehicles on that side, but the other car kept on coming and collided into the bus.

[16] He further states that:

The entire front of the car collided into the left front wheel section of the bus. The car stopped upon impact with the bus. He saw that the radiator was leaking when he came out and looked at the bus. He saw green fluid on the road. The left front fender was bent up. The man came out and said to him that he mashed up his car.

[17] On cross examination he states that:

The staff was expected to get to work at 6 am. He was not late that morning nor was he speeding. It was a bit dark and his headlights were on for him to see better. When he turned on to Old Hope Road, he would have been facing a straight set of road. He did not see the Volvo from a distance. It just appeared at him with the speed with which it was coming. He said if the head lights were on, he would have seen it. The green ball and the filter lights were on when he turned. He did not get to reach on Caledonia Road.

[18] He denies that he tried to beat Mr. Barriffe to make the right turn. He asserts that he did swerve to avoid the collision.

The Issues and Applicable Law

[19] Both the Claim and the Ancillary Claim are grounded in negligence. Therefore, the general principle as it relates to any negligence case are applicable to this case
These are:

- i. Whether a duty of care is owed by the Defendant to the Claimants and the Ancillary Defendant to the Ancillary Claimant.
- ii. Whether any duty of care owed has been breached and
- iii. Whether the relevant party /parties suffered damages arising from the breach. These principles were laid out in the judgment of Lord Atkin in the case of ***Donoghue v Stevenson*** - [1932] A.C. 562 and expounded on in the case of ***Glenford Anderson v. George Welch [2012] JMCA Civ.43*** by Harris JA.

[20] Lord Atkin stated that:

“you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? ... persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to

the acts or omissions which are called in question (See page 580 of that judgment)

[21] Speaking on the issue Harris, JA stated that:

“there must be evidence to show that a duty of care is owed to the Claimant by the Defendant, that the Defendant acted in breach of that duty and that the damage sustained by the Claimant was caused by the breach of that duty”: (See page 26 of the Judgment in ***Glenford Anderson v. George Welch*** (Supra))

Discussion

[22] There is no dispute on the evidence that the parties in both the claim and the ancillary claim were road users at the time of the accident. That is the first Claimant and Second Claimant/ Ancillary Defendant were allegedly driver and passenger respectively. The 1st Defendant/Ancillary Claimant was the owner of the motor vehicle involved in the accident that was being driven by his agent Tyrone Miller. It is trite law that all users of the road owe a duty of care to all other road users. (See ***Esso Standard Oil S.A. Ltd. & Anor. vs Ivan Tulloch*** [1991] 28 J.L.R. 553 and ***Richard Lowe v Joseph Lloyd Thompson*** [2017] JMSC Civ 90)

[23] Therefore, the main issue to be resolved in this case is which road user breached the duty of care owed to the other motorist and passenger. While much has been said on both sides, the resolution of this issue in light of the evidence simply turns on which motorist had the green light to go at the time of the collision. Both sides are insisting that they had the green light to go at the time of the collision. Based on the documentary evidence from the National Works Agency with regards to the sequence and the timing of the lights at the intersection both drivers would not have had the green light at the same time. This evidence also reflects that at the time in question there is no reason to believe that the traffic lights were malfunctioning.

[24] Therefore, the issue becomes one of credibility to be determined on the evidence to include the demeanour of the witnesses. The Claimant on each claim, that is the Claim and the Ancillary Claim has the burden to prove their claim on a balance of probabilities. In the case of *Miller v Minister of Pensions* [1947] 2 All ER 372) Denning J said:

"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."

[25] Therefore, in light of the fact that there is a claim and an ancillary claim the burden is on Claimants and the Ancillary Claimant to establish that it is more probable the driver of his (her) motor vehicle had the green light to go at the time of the accident.

[26] Having examined the evidence in totality, to include the demeanour of the witnesses, I find that the witnesses of the Defendant Ancillary/Claimant in both their demeanour and viva voce evidence appear to be more credible than the Claimants/2nd Ancillary Defendant.

[27] The evidence of the 1st Claimant is that she first saw the light when her driver entered the intersection. It is also her evidence that she could have seen the light from the region of Silver Slipper Plaza, which both Claimants admit is some distance from the intersection. Additionally, in her evidence she states that she never saw the light on red. She states that all the time she was on Old Hope Road she saw the light on green, but then she says that the first time she saw the green light was when the car was going through the intersection. I also note her evidence that during the time she was in the vehicle her driver never slowed or stopped.

[28] Mr Barriffe also supports this aspect of her evidence that he never slowed or stopped. He asserts that when he first saw the light on green he had passed Silver Slipper Plaza. Further when he first saw the bus it was 15 feet away and he was already going through the intersection. On his version therefore, the bus would have had to travel at least 15 feet in order to collide in his motor vehicle. If this is

so I would not expect the impact to be at the front of his car. I expect it to be concentrated to the middle or the back. However, in light of the fact that the impact was to the front of both vehicles, both would have had to reach the intersection at the same time if both were moving before entering the intersection. Additionally, I find that the Claimants' evidence that Mr. Barriffe was travelling at a slow speed lacks credibility. This is in light of the evidence that he did not slow down or swerve in order to avoid the collision. In essence it is my view that were Mr. Barriffe travelling at a slow speed of 15KMPH it would not have been difficult for him to break or swerve at the time of the collision. Therefore, I do not find the Claimant's version credible.

[29] The case of the 1st Defendant /Ancillary Claimant appears to be more credible. His witnesses strike me as being more candid than the Claimants on the material issues.

[30] I find Ms Pauline Marcia Davis to be consistent in her evidence on the material issue before this court. From her vantage point in the front passenger seat of the 1st Defendant's motor vehicle being driver by Mr. Miller, I find that she was in a good position to view the circumstances that led to the collision. Her evidence that when Mr. Miller attempted to make the turn he had both the ball green and green filter was consistent throughout. Her evidence that the car was coming at full speed and did not stop when viewed in light of the evidence of the Claimants appears to be more probable. This is light of the evidence of the Claimants that the car did not swing or stop or even attempted to do so. I take note of her evidence that she indicates that it was the female (the 1st Claimant) she saw around the steering wheel and that the 2nd Claimant was in the back seat. However, I do not find it necessary to make a finding on that as such an issue was not raised in the Defence or the allegations in the Ancillary Claim.

[31] Mr. Miller also strikes me as a witness of truth. His evidence that at the time that the collision occurred he was attempting to make a legitimate right turn at the intersection on the ball green and filter light has not been discredited. Additionally,

his evidence that it was at that juncture that the car being driven by the first Claimant which was speeding, collided in the left front wheel section of the motor vehicle he was driving has not been discredited on cross examination.

[32] Counsel for the Claimants his asking me to accept as a fact a statement in the police report that was tendered in evidence on the Claimant's case that "the driver of the Toyota Coaster Motor Truck that was proceeding from the direction of Half Way Tree turned right to enter unto Caledonia Avenue on the ball green traffic light and collided into the Volvo 240GL motor Car ..." However, I find that I am restrained from accepting this as a statement of fact for the following reasons.

- i. There is no evidence that the police witnessed the accident.
- ii. There is no evidence that this particular statement was attributed to Mr. Miller or that he accepted this statement as the truth.
- iii. During the course of the trial the report was not shown to him. Neither was the particular statement in the report put to him. He was never asked if the statement was truth.

[33] I also assess the evidence in light of the evidence of Mr. Michael Sanderson, Operations Manager at the National Works Agency contained in a letter and report which was admitted into evidence as exhibit 8.

[34] He states that on the 19th day of March 2014, there are no records indicating any malfunction of the traffic signals at the intersection of Old Hope Road and Caledonia Avenue The report indicates the sequence of the workings of all the lights that governs the intersection which he describes in phases.

[35] However, I find that the relevant phases for the issue that I am required to determine is phase 4, 5 and 6. The lights in Phase 4 govern the Old Hope Road South Bound Lane traffic. That is traffic on the road travelling in the direction the Claimants were travelling That is Old Hope Road travelling in the direction of Slipe Road.

- [36]** Phase 5 governs the traffic on the Old Hope Road North Bound. That is the traffic on the road travelling in the direction Mr. Miller was travelling in after making the left turn from Half Way Tree Road; and Phase 6 governs the traffic making the right turn from Old Hope Road unto Caledonia Avenue. That is the direction in which Mr. Miller was travelling when he attempted to turn right unto Caledonia Avenue from Old Hope Road.
- [37]** According to the evidence contained in the report Phases 4 and 5 will show a green ball light for 30 seconds. At the expiration of the 30 seconds, phase 4 shows a red ball light while phase 5 continues to show a green ball light simultaneously with phase 6 showing a green right turn arrow light. This arrow is shown for 37 seconds. At the expiration of 37 seconds, phase 6 green right turn light terminates and phase 5 shows a red ball light. This evidence of Mr. Sanderson contained in his report has not being challenged. Therefore, I find as a fact that the evidence contained in the report is credible.
- [38]** In light of this evidence it is clear that the green light ball light facing Mr. Barriffe and Mr Miller would come on at the same time. I accept the submission of counsel for the Claimants that as long there was oncoming traffic Mr. Miller was not allowed to make the right turn on the ball green light. However, what is very instructive for me is that the ball green light facing Mr. Barriffe would only stay on for 30 sections. Thereafter it turns to red. While this is happening the green ball light facing Mr. Miller would remain on for another 37 second simultaneously with the filter green light for the right turn that would come on at the end of the first 30 seconds.
- [39]** The evidence of Mr Barriffe is that he never saw the light on red. He saw the light on green from as far as Silver Slipper Plaza. Though there is some contradiction on her evidence on this issue the evidence of Ms. Brown is that she could have seen the intersection from as far as Hilo Supermarket. She said she never saw the light turn from red to green.

[40] I find that it is reasonable for me to conclude, and I so conclude that the light had changed from red to green before Mr. Barriffe reached in the vicinity of Hilo Supermarket. This is in light of the fact that

- i. The green light facing him would only remain on for 30 seconds at a time before it changed to red.
- ii. His evidence is that he did not see the light changing from red to green.
- iii. Based on his evidence he would have already been a distance away from the intersection before the thirty seconds started to run.

[41] In fact, Mr. Barriffe cannot say when that thirty seconds started to run having not seen the light change from red to green. Therefore, I find that it is more probable that the thirty seconds would have run out before he reached that intersection. That is, it is more probable that the light facing him would have changed to red before he reached the intersection. This in essence would essentially mean that once his light changes to red, the ball light facing Mr Miller would continue to show green and the filter light would come on displaying green giving Mr. Miller the right to make the right turn on to Caledonia Avenue.

[42] Additionally, Mr. Barriffe's evidence is that he saw the bus coming from the opposite direction. Utilizing this court's knowledge of the area, it would not be correct to describe the traffic travelling from Half Way Tree Road towards Slipe Road as travelling in the opposite direction to traffic travelling from Old Hope Road towards Slipe Road. These roads would be more or less parallel to each other.

[43] There is no challenge on the evidence that Mr Miller entered the intersection having turned from Half Way Tree Road to Old Hope Road. Therefore, if Mr Barriffe saw Mr. Miller 15 feet away in the opposite direction he could only have seen him on Old Hope Road at the intersection facing him. Therefore, the only logical inference from this evidence is that Mr. Miller was already making his way into the intersection, when Mr. Barriffe saw him. Additionally, Mr. Barriffe's evidence that the vehicle being driven by Mr. Miller was 15ft away when he says it also suggest

to me that at the time Mr. Barriffe was 15 away from the intersection when he saw the vehicle being driven by Mr. Miller. In light of this evidence also, I find that it is more probable that it was Mr. Barriffee that speeded into the intersection when Mr. Miller was about to make the right turn. This is also viewed against the background of the evidence given by Claimants that Mr. Barriffe neither swerved or stopped. It was the collision that forced the vehicle to a stop.

[44] Consequently, I find that the evidence of Mr. Miller and Ms. Davis when assessed in light of the evidence of Mr. Sanderson appears to be a more likely version of how the accident occurred. In essence I accept the version of the witnesses of the Defendant/ Ancillary Claimant as the truth as to the cause of the collision.

[45] Therefore, I make the following finding of fact:

- (i) On 19th of March 2014 Mr. Miller was in the intersection of Old Hope Road, Caledonia Avenue and Half Way Tree, attempting to make a right turn on Old Hope Road.
- (ii) When Mr. Miller attempted to make the right turn the ball and filter lights facing him were showing green. Consequently at that juncture the light facing Mr Barriffe who was travelling along Old Hope Road towards the intersection was showing red.
- (iii) Mr. Barriffe speeded into the intersection when the light facing him was showing red. In so doing the car that was being driven by Mr. Barriffe collided in the motor vehicle that was being driven by Mr. Miller.

[46] Therefore, I find that on a totality of the evidence the accident was caused by the negligence of Mr. Barriffe failing to obey the traffic signal. That is on reaching the intersection instead of stopping as the traffic light, facing him was showing red he proceeded through the intersection Claimant without have due regard for the other road users, thereby colliding with the vehicle owned by the Defendant/Ancillary.

Contributory Negligence

[47] I take note of Mr. Miller's evidence that he took evasive measures to avoid the collision by applying his brakes and swerving. However, I also make the observation that of his evidence he states that he did not see the car, from a distance, it just appeared at him with the speed with which he was coming and that if the head lights were on, he would have seen it.

[48] Ms. Dunbar submits that Mr. Miller cannot be faulted for not seeing the car until the accident was imminent. She relies on the case of **Hickman v. London Central Bus Co. Ltd.** [2013] EWHC 1703 (QB) in which the court stated that:

“a failure to see something is not necessarily negligent; ... if a reasonably careful driver could reasonably not have seen the Claimant it could not have been negligent for Ms. Gordon not to have done so.”

She also points the court to the authority of **Hill v. Phillips & Anor - Solicitors Journal Volume 107, Part 2, July - December 1963 page 890**, in which the court found a lorry driver negligent for leaving an unlighted obstruction on the road when it was a danger to oncoming vehicles. The court expressed the view that a motorist was not negligent if he did not see what was not visible. Ms Dunbar further submits that Mr. Miller would have been concentrating on looking in the direction he was going, i.e. towards Caledonia Road direction. He therefore would not have been looking to his left up Old Hope Road. In fact, it would have been careless of him to be doing so instead of watching where he was going.

[49] However, while I agree with counsel that Mr. Miller cannot be faulted for the main cause of the accident I depart from her as it relate to issue of contributory negligence. Evidently, while I find that the accident in the main was caused by the Claimant Mr. Barriffe failing to obey the red light I find some element of contributory negligence on the part of Mr. Miller, the agent of the Defendant/Ancillary Claimant. The principle of contributory negligence rest on the

failure of a Claimant, in this case the agent of the Ancillary Claimant to act as a reasonable and prudent man in these circumstances where he ought reasonable to have foreseen that if he did not act as a reasonable and prudent man, he might cause damages to himself, (in this case to his principal's bus) taking into account the possibility of others being careless. (See Denning, L.J. in: **Jones v Livox Quarries Ltd.** - [1992] 2 Q.B. 608, at 615),

[50] Ms Davis states that from the position that she was sitting beside Mr. Miller she could see that the car did not have on its head lights; she further states that when the bus reached at the light she could see straight up the road. She could see Silver Slipper Plaza. She was able to see the car coming at a speed. Therefore Mr. Miller as the driver was in a position to see and should have seen, and anticipate that Mr. Barriffe would have tried to beat the light in light of the speed he was travelling. In that event Mr. Miller, should have proceeded with greater caution. That is, I find that Mr. Miller did not act as a reasonable and prudent man in these circumstances where he ought reasonable to have foreseen that if he did not act as a reasonable and prudent man, he might cause damages to himself, (in this case to his principal's bus) taking into account the possibility of others being careless.

LIABILITY

[51] On The Claim I find Judgment for the Defendant.

On the Ancillary Claim I find Judgment for the Ancillary Claimant.

I find 20% Contributory Negligence on the part of the Ancillary Claimant

DAMAGES

[52] The evidence of Mr. Kirk Henry the owner of the motor bus and the Ancillary Claimant on the issue of damages is as follows:

When he examined the bus he observed that the front left fender of the bus was smashed in, up underneath the chassis to the wheel. The front bumper was bent. The radiator was leaking. The left corner light and headlights were broken. The front grille was also broken. He told Mr. Frederick Barriffe that he was going to use Mr. Green to fix the bus. Mr. Frederick Barriffe said he knew him and was comfortable with him so they met around by Mr. Green which was walking distance from where Mr. Barriffe lived on Omara Road. He also saw the son, Mr Jason Barriffe there at Mr. Green that day.

[53] Mr. Henry further states that:

He later got an estimate from George O. Mars Repairs Services where Mr. Green, the body man works. The estimate was for \$241,423.78. He got this estimate 2 to 3 days after the accident. (This estimate of repairs was admitted into evidence as exhibit 6.) He repaired the bus a week after the accident. He paid for the repairs. He did not get receipts from a lot of places. He did not get receipts for everything. He did get receipts for some of the things he did.

[54] He also produced a Pro-Forma invoice from Berts Auto Parts giving an estimate of the cost of the parts as detailed below:

1 Front Bumper Toy/Coaster 20 -	\$58,555.00
1 Sealed Beam (semi) Inner 24 -	\$ 1,765.00
1 Sealed Beam (semi) Outer	\$ 2,175.00
Radiator Toy/Coaster 1HZ 93	\$143,615.00
Grille Toy/Coaster 93	\$ 20,198.00

Head Lamp LH (Sealed Beam)	\$ 7,050.00
Head Lamp RH (Sealed Beam)	<u>\$ 7,050.00</u>
Sub-total	\$240,408.00
GCT	<u>\$ 39,667.32</u>
Total	\$280,075.32

[55] On cross examination Mr. Henry states that:

When he got the call about the accident he went straight to the accident scene first, at the stoplight. He did not go to the police station when he first got to Crossroads. In his statement he did mentioned getting an estimate for repairs for his bus. At the time when he was involved in the accident it was his intention to repair the bus because based on what his mother told him he was going to leave it to God. He got the estimate from George Omars Repairs because that was the person the Claimant's father felt comfortable with.

[56] He insists that there was such an agreement between himself and the Claimant's father. Counsel for the Claimant has submitted that Mr Henry's claim is not genuine and that it was only upon being sued he decided to make a claim. However, there is evidence from the 1st Claimant, Mr. Barriffe that Mr. Henry tried to exercise a claim for damages from him albeit not through the formal process. He admits that after the accident Mr. Henry came to his business place asking for money. He told him he was not giving any money because he was not at fault; he was injured as well. The inference from the evidence is that this was before the claim was filed. Mr. Henry denies that the reason why he proceeded to fix his vehicle was because he knew Tyrone was at fault and caused the accident. He also refutes the suggestion that he did not have any intention of recovering for repairs to the vehicle because he knew Tyrone was responsible for the accident. He explains that the reason why he did not get any receipts at all was because Mr. Federick Barriffe agreed to repair the bus.

Discussion

[57] This evidence of Mr. Henry and the documentary evidence as it relates to the damage to the bus, is supported by the evidence of Mr. Miller in which he states that the impact caused the radiator to leak and that the left front fender was bent up.

[58] I accept the evidence of Mr. Miller and Mr Henry in relation to the damage to the bus. I also accept the documentary evidence on which Mr. Henry relies in relation to the estimate of repairs. In light of the fact that the sum claimed in Mr. Henry's pleading for special damages is \$241,423.78. I find that Mr. Henry has sufficiently proved the sum of is \$241,423.78 for special damages. Consequently, I make the following orders:

Damages awarded to the Ancillary Claimant as follows

Special Damages	-	\$ 241,423.78
Less 20%	-	<u>\$ 48,284.75</u>
Total		\$ 193,139.03

Interest 3% from the 19th of March 2014 to the 27th of March 2020.

Cost to the Ancillary Claimant to be agreed or taxed.