



[2012]JMSC Civ. 161

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 1999 C.L. W. 118**

|                |                               |                                 |
|----------------|-------------------------------|---------------------------------|
| <b>BETWEEN</b> | <b>CLARENCE WELLINGTON</b>    | <b>CLAIMANT</b>                 |
| <b>AND</b>     | <b>LEONARD BISHOP</b>         | <b>1<sup>ST</sup> DEFENDANT</b> |
| <b>AND</b>     | <b>SCORPIO MOTORS LIMITED</b> | <b>2<sup>ND</sup> DEFENDANT</b> |

**Ms. Marion Rose-Green instructed by Marion Rose-Green and Company for  
Claimant**

**Mr. A. Pearson instructed by A. Pearson and Co. for the defendants**

**HEARD: 17<sup>th</sup> May 2011 and 12<sup>th</sup> November 2012**

***Motor vehicle accident- Negligence – Credibility- whether 1<sup>st</sup> defendant was  
driver of vehicle***

**CORAM: MORRISON, J**

[1] I regret to say that despite repeated reminders to Counsel, as if those reminders were intended to be supervisory, I have yet to lay my eyes on the written submissions that were importuned of the court to facilitate, which submissions were ordered to be filed by 31<sup>st</sup> May 2011.

[2] Nevertheless, the delivery of this judgment being long overdue is the over-ripe result of the non-receipt of Counsels' expected helpfulness.

[3] Simply put, the Claimant on the 18<sup>th</sup> July 1997 was driving his Austin motor car along the Waltham Park Road, St. Andrew when on nearing its

destination of New Era Restaurant on the said road an accident ensued resulting in structural damage to its left side and physical damage to the person of the Claimant. The time of the accident was given as 10:30pm. The Claimant has laid the blame for the accident at the feet of the Defendants.

[4] The second Defendant is no longer a going concern its business having ceased in 2002. It does not have any assets or liabilities, It owned the other vehicle that was involved in the accident. The first Defendant, at the material time, was one of three shareholders of the second Defendant. The Claimant's assertion that the first Defendant was the driver of the second vehicle at the material time has been repudiated.

[5] In determining the issues of culpability I am at once to say that I prefer the evidence of the defence witnesses to that of the Claimant. The issue of the identity of the driver of the second vehicle being one of the fulcra on which liability turns is determined against the Claimant. This is what the Claimant had to say when he was taxed in cross-examination; "I didn't say that Mr. Bishop was driver of vehicle; I 'marked' him; his head was bald. That is the reason. We didn't speak at the scene. I know his face. I didn't know his name at the time."

[6] Visual identification, as experience has shown, is a notoriously unreliable area of evidence. The fact of its untrustworthiness in the sphere of criminal trials does not lessen its impact in a civil trial so as to treat the judicial strictures associated with it in a less than advised way. Bearing in mind that the accident happened in the night, in the dark at that; that it happened quickly; that the Claimant was ushered from the scene of the accident in quick time; that the Claimant's 'I know his face', mere pronouncement is not enough, I incline to the view that the Claimant, though apparently sincere, may be sincerely mistaken. The penumbra of doubt as to the visual veracity of the first Defendant being the driver of the second vehicle has been uncompromisingly shaken by the evidence of Mr. Donald Brown, witness for the Defendants. This court accepts him as a witness of truth. It was he who was the driver of the second vehicle at the time of the accident.

[7] To return to the narrative, the Claimant asserts that as he intended to negotiate a right turn into the New Era premises, "I turned my right (electrical) blinker on, middled the road as usual, checked my rear view and it was clear- road was clear – nothing was coming up or down. Turning in New Era by turning right that's when I got the hit. I was in gate way when I was hit. This was on right side of the road."

[8] This explanation by the Claimant was refuted by Mr. Brown who said that he had not seen the Claimant's vehicle until he Mr. Brown was close up. According to Mr. Brown, Mr. Wellington's vehicle made a sudden turn. At the very least, it could not be, as asserted by Mr. Wellington, that it was 'clear to proceed' and across traffic travelling in the opposite direction at that. I am to pronounce this piece of evidence as an unmixed and unmitigated inexactitude. I find the Claimant's evidence to be unreliable.

### ***THE LAW***

[9] In order for a Claimant to succeed in an action for negligence he has to prove that he was the victim of a careless act done to him by a person who owed him a duty of care and that he suffered damage as a result.

[10] There is a duty on the driver of a motor vehicle to observe ordinary care or skill towards persons using the highway who he could reasonably foresee as likely to be affected.

[11] In this latter context, the duty of a driver changing direction is first to signal his intention so to do and, second, to see that no one was incommoded by his change of direction.

[12] I find on a balance of probabilities that the Claimant was the cause of the accident. Judgment is hereby entered for the Defendants. They are to have their costs agreed, if not agreed, then those costs are to be taxed.

