

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

**IN COMMON LAW**

**SUIT NO. C.L. 1996/C-102**

<b>BETWEEN</b>	<b>JANICE COCKETT</b> <b>(an infant by her sister</b> <b>Desreen Burnside –</b> <b>Peart as next friend)</b>	<b>PLAINTIFF</b>
<b>AND</b>	<b>GLADSTONE WILLIAMS</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>BOURNVILLE BRISCOE</b>	<b>2<sup>nd</sup> DEFENDANT</b>

Mr. R. Smellie for the Plaintiff instructed by Daly, Thwaites & Co.

Miss A. Walters for Defendants instructed by Brown, Llewellyn & Walters

HEARD: March 22, July 10, and 13, 2000

**G.G. JAMES J**

March 26, 1990 is a day the plaintiff is unlikely to forget. The plaintiff was ten years old at the time and was travelling on the bar of a lady's wheel bicycle being ridden by her sister. They were proceeding in a southerly direction down Maxfield Avenue. So too was an Isuzu motor bus known in every day parlance as a 'quarter million' bus. In the vicinity of Jordon Road, bus and bicycle collided leaving the rider Alicia Henry dead and the plaintiff, her sister, suffering from serious injuries to the right leg resulting in her hospitalization for a period of three months.

The plaintiff alleges that the accident was caused by the negligence of the first defendant and claims damages for her injuries.

The issues to be determined by this Court are not questions of law but rather questions of fact, that is, where should liability be placed for the unfortunate accident of March 26, 1990. This, however, does not make the determination of the matter any easier. Further, the Court is not aided by the fact that only two witnesses were called: the plaintiff herself and the first defendant who was the driver of the bus.

The Court is, therefore, faced with a situation of whose version of the events of that fateful day is more deserving of belief. The Court also has to bear in mind the fundamental principle of law that he who alleges must prove. The plaintiff alleges that the accident was caused solely by the negligence of the first defendant while the defence to this claim is that the accident was caused solely by the negligence of the rider, Alicia Henry. The burden of proof rests with the plaintiff. Therefore, she must prove on a balance of probabilities that the first defendant was indeed driving in a negligent manner at the time of the accident.

The evidence adduced by the plaintiff in examination in chief was that, on March 26, 1990, she and her sister Alicia Henry were travelling down Maxfield Avenue on a bicycle. They went around a bus parked on the

left-hand side of the road. There was no vehicle turning on to Jordon Road on the right of Maxfield Avenue heading towards Spanish Town Road and she could not recall seeing any bus coming down Maxfield Avenue. Under cross-examination, it emerged that Alicia was on the seat of the bicycle while the plaintiff sat between the seat and handlebars. Alicia had to stretch over the plaintiff's body in order to reach the handlebars. The accident happened in the vicinity of Jordon Road. The plaintiff denied that in the vicinity of Jordon Road Alicia swerved to the right as if to go onto Jordon Road. The Plaintiff also denied that the shortest route to her home would have been via Jordon Road. The plaintiff stated that the bicycle was almost in front of the parked bus at the time of the accident. She could not recall any other vehicle passing them while they were going around the parked bus. The plaintiff could not say whether any other vehicle was coming. She could not say anything about the vehicle that hit the bicycle. The plaintiff stated that Alicia was at all times going straight down Maxfield Avenue and at no time intended and attempted to turn onto Jordon Road and across the path of the 'quarter million' bus.

The only witness for the defence was the first defendant who was the driver of the bus. The driver confirmed that the bus was in fact heading in the same direction as the bicycle. They were riding to the extreme left when

he first saw them. It is his allegation that they rode into the path of the bus. The girls were alongside him to the left of the bus. They made a sudden turn from the left towards the right. He applied his brakes and swerved to avoid them but they kept coming into his path. They collided with the front left side of the bus. After impact the bus came to a stop on the extreme right hand side of the road. The first defendant also stated that there is no bus stop in the vicinity of Jordon Road. He was in third gear going at about twenty-five to thirty miles per hour. He also stated that there was no parked vehicle on the left going down in the vicinity of where the accident took place, that is, there was no parked bus as the plaintiff alleged. He also stated that he had never seen a bus stop in the vicinity of Jordon Road as one goes towards Spanish Town Road along Maxfield Avenue. After impact the plaintiff was found under the left rear wheel of the bus. She was near to the centre of the road. Under cross-examination the first defendant stated that they were two chains ahead of him when he started off from the bus stop at Bentley Avenue. That last bus stop was about three to four chains from the scene of the accident. The left side of the bus was about six feet from the curb just before they turned. The bicycle was about three feet from Jordon Road when the bicycle slightly turned. The bicycle was about four to five

feet in front of the bus at that point. When he swerved, the bicycle kept on coming in his path.

The defendant did not sound his horn. After impact the bus came to a stop about three to four feet from the point of impact. It was on the extreme right of the road and was straight along Maxfield Avenue with the back of the bus covering Jordon Road for about six feet. If the bus were six feet away from Jordon Road and the bicycle was four to five feet in front of the bus, logically the bicycle must have been one to two feet from Jordon Road.

The plaintiff said they were hit when they were at the front of the parked bus. The first defendant is denying that there was a parked bus in the vicinity of Jordon Road. The first defendant also stated that the bicycle was about three feet from the curb before it started to slant across the path of the bus. His placing of the bicycle at three feet from the curb could mean one of two things: either the cyclists had completed the manoeuvre of passing the parked bus (which leaves the Court with an implied statement that there was indeed a parked bus as the plaintiff contends) or there was in fact no parked bus and the cyclists were heading straight down Maxfield Avenue keeping to the left until they started to 'slant' across the path of the bus as alleged by the first defendant.

The plaintiff stated categorically that her sister did not intend to turn right onto Jordon Road while the defence is contending that Alicia intended to turn right onto Jordon Road as that would be the easiest route home. If it is found as a fact that Alicia intended to turn right onto Jordon Road, the question is whether she indicated this intention to other users of the road (and in particular to the bus being driven by the first defendant) or looked behind her to ensure that no other vehicles were behind her before she made the turn.

There is no dispute as to the positions of the plaintiff and the rider on the bicycle. That this was not the safest way to travel cannot be doubted. However, this fact is of little or no moment were the Court to find that Alicia had not intended to turn right and did not in fact begin to manoeuvre the bicycle in a manner that showed an intention to turn right onto Jordon Road. This is so because the case for the Defence rests not on the fact that Alicia did not have sufficient control over the bicycle but on the fact that Alicia's intention was to turn right, hence her reason for going slightly 'slant' across the path of the bus.

The first defendant in his evidence said that the bicycle started to turn slightly across his path. This means that given the fact that the bus was travelling at about twenty-five to thirty miles per hour and it was only four

to five feet behind the bicycle, the gap between the two would have been closed in a second or two. The plaintiff said that she and her sister were hit from behind. If they began to 'slant' across the path of the bus, at the point of impact their backs ought not to have been towards the bus. The bus would have collided with them at such an angle that their side was at least partially exposed to the bus.

The first defendant also stated in cross-examination that after colliding with the bicycle the bus came to a stop about three to four feet from the point of impact. He also stated that the back of the bus was covering Jordon Road for about six feet and that the bus was straight along Maxfield Avenue. If that is the case, the bus must have travelled at least twenty to twenty-five feet from the point of impact as the bus was estimated to be about thirty-five feet in length. Further, it is difficult to visualize a bus of that size swerving to the right in order to avoid hitting the bicycle, straightening up so as not to have any part of it protruding onto the sidewalk and still managing to stop only three to four feet from the point of impact.

The plaintiff said there was a parked vehicle and the collision occurred as the bicycle was "almost going in front of the parked bus". The first defendant has said there was no such vehicle parked in the vicinity of Jordon Road. While the plaintiff is unable to say whether her sister had

looked behind her before passing this parked vehicle, it is irrelevant as she had already completed the manoeuvre of going to the right in order to pass the parked vehicle. In fact the plaintiff stated in Court that the bicycle started to change direction, it was going around the bus to the left.

It was submitted by counsel for the defendants that the plaintiff had not discharged the burden placed on her to establish the first defendant's negligence on a balance of probabilities. What the plaintiff has done is to show that Alicia was heading straight down Maxfield Avenue. She could not say that she saw the bus driven by the first defendant behind them. The fact is however, that the 'quarter million' bus did in fact collide with the bicycle. It cannot be denied that cyclists in Jamaica sometimes give no indication as to what they are about to do next, however, the rider must have been aware of a bus of that size just four to five feet behind her. The driver himself said the bicycle strayed on the left side of the road from the moment he first saw them until it got to Jordon Road. The discrepancies in the first defendant's evidence were also pointed out.

I give judgment for the plaintiff in the sum of \$1,209,405, comprising:

General Damages	\$1,200,000
Special Damages	9,405



Interest on General Damages at 6% per annum with effect from 2<sup>nd</sup> May, 1997 to 13<sup>th</sup> July, 2000.

Interest on Special Damages at 6% per annum with effect from 26<sup>th</sup> March, 1990 to 13<sup>th</sup> July, 2000.

Execution of the judgment is stayed for six weeks.