



[2013]JMSC Civ. 16

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009 HCV06736

BETWEEN	IGOL COKE	CLAIMANT
A N D	NIGEL RHOOMS	1 ST DEFENDANT
A N D	ADRIAN ANDERSON	2 ND DEFENDANT
A N D	COMMISSIONER OF POLICE	3 RD DEFENDANT
A N D	ATTORNEY GENERAL OF JAMAICA	4 TH DEFENDANT

Ms. Sharon Gordon-Townsend instructed by Gordon & Watson, for the Claimant.

Mr. David Johnson instructed by Samuda & Johnson, for the 1st Defendant.

Tamara Dickens instructed by Director of State Proceedings,
for the 2nd and 4th Defendant.

HEARD: December 3, 4 and 5, 2012, January 24 and February 1, 2013

Motor Vehicle Accident – Negligence – No case Submission – Defendant not put
to election – Credibility of Claimant.

ANDERSON, J.

JUDGMENT ON CLAIM

[1] This Claim has arisen as a consequence of a traffic accident which occurred on May 29, 2008 on the roadway commonly termed as the ‘Spanish Town Bypass’ and in the immediate vicinity of where there is a filter lane which enables vehicles to move off of the Spanish Town bypass and turn into March Pen Road. The accident occurred at about 5:50 p.m. on that day.

[2] The Claimant was, at the material time, a passenger in a police service vehicle which was engaged in a collision with the vehicle which was owned and being driven by the First Defendant at the material time, that being a Nissan Sunny motor vehicle with licence no. 3538 BX. The Claimant was seated in the left front passenger seat of the police service vehicle and that vehicle is a right hand drive vehicle. Along with him in that vehicle at the material time and driving that vehicle, then was the second Defendant.

[3] The Third Defendant – being the Commissioner of Police, was removed as a party by Order of the Court which was made prior to the commencement of trial and during the trial, arising from a no case submission which was made on behalf of the Second and Fourth Defendants and which was upheld by the trial Court, Judgment on the Claim was awarded in favour of the Second and Fourth Defendants. Thus, it is only the Claimant and the First Defendant who are parties to this Claim, now remaining before this Court, for adjudication.

[4] When the Particulars of Claim were filed on December 21, 2009, those Particulars were certified as being true, by the Claimant. Interestingly enough, those Particulars which suggest therein, exactly how the accident allegedly occurred and also, the Particulars of Negligence being alleged against the First Defendant, read as follows:- 'On or about the 29th of May, 2008 the Claimant was a passenger in Toyota Corolla motor car registered 303672 which was driving on Spanish Town bypass, at the intersection of March Pen Road, in the parish of Saint Catherine, beside Nissan Sunny motor car registered 3538 BX when the Defendant negligently drove the Nissan Sunny motor car causing it to go into the opposite side of the road and collide with a vehicle driving in the same direction and then to swing back in front of the Toyota Corolla car causing the said Toyota Corolla motor car to collide into the side of the Nissan Sunny motor car near to the rear which resulted in the Claimant suffering injuries, loss and expenses.'

PARTICULARS OF NEGLIGENCE OF THE 1ST DEFENDANT

- (a) Driving at an excessive speed in the circumstances;
- (b) Changing lanes when it was not safe to do so;
- (c) Failing to observe the Toyota Corolla registered 303672 which was in the process of passing in the turning lane to the right;
- (d) Failing to keep any or any proper lookout;
- (e) Failing to keep the said motor vehicle under any or proper control;
- (f) Failing to stop, slow down, to swerve or otherwise so manger (sic.) or control the vehicle.

[5] At trial, that paragraph of the Claimant's Particulars of Claim, was amended in significant respects, but nonetheless, in the particular circumstances of this particular case, the original Particulars as set out above, are worthy of some consideration by the trial Court and also repetition, for the purposes of the rendering of this Judgment.

[6] Only two persons testified at trial, these being the Claimant and First Defendant respectively. They each provided to this Court, dramatically different versions as to how the police service vehicle and the First Defendant's vehicle collided on the relevant occasion.

[7] The Claimant's version is succinctly set out in paragraph 3 of the Claimant's witness statement, which as such, came to form part and parcel of his overall examination-in-chief evidence at trial. In paragraph 3 of his witness statement, the Claimant averred as follows: 'upon reaching the part of the Spanish Town bypass going to the entrance of March Pen Road Constable Anderson indicated to turn right and drove into the turning lane while the traffic light was green and was starting to turn right to go to March Pen Road. We were passing a Nissan Sunny motor car registered 3538 BX that was in the lane to the left which is for traffic coming from the same direction as we were but going straight ahead. The Nissan Sunny motor car suddenly swerved right and collided into the left side of the police service vehicle which I was in. I was thrown

forward and hit my knee. The service vehicle them (sic.) slide to the right into the middle of the road and Constable Anderson stopped the vehicle.'

[8] It goes without saying, that the events of the relevant occasion for present purposes must have been fresher in the Claimant's mind, as of December 21, 2009 (when the Particulars of Claim was filed), then they would have been on May 24, 2012 (when the Claimant's witness statement was filed). This Court is therefore left to wonder why it is that the Claimant's recollection of the relevant events as at the date when his witness statement was certified by him as being true, would be in fact truthful, whereas, the dramatically different account of the relevant events, which was also certified by the Claimant as being true, that being contained in his original Particulars of Claim, is clearly not true, this notwithstanding that the Claimant's original Particulars of Claim was certified by the Claimant as being true, on Deceriber 21, 2009 (the date of filing.)

[9] The Claimant has, at all material times, held the occupation of: District Constable. As such, he ought to know and it is believed by this Court that he does know the importance of signed documents and also the importance of the certification of documents by him, as being true whether for Court purposes, or for that matter, for any purpose whatsoever, since a Special Constable's integrity and/or honesty should never be such as to even be seriously questionable. In the case at hand however, not only has the Claimant's integrity and honesty been seriously called into question by the First Defendant, but also and perhaps most importantly, by the actions of the Claimant himself, in having certified as being true, original Particulars of Claim which if his evidence as given to this Court during trial concerning same, is to be believed, are patently untrue, at least insofar as some of the most important assertions as made in paragraph 6 thereof, are concerned. The Claimant's honesty and integrity in respect thereof, are even more seriously questionable, bearing in mind that the Claimant had filed Amended Particulars of Claim which were also certified by the Claimant as being true and which was filed on April 12, 2010. In that Amended Particulars of Claim, only one correction was made to that which was asserted and certified by the Claimant as

being true in paragraph 6 of the original Particulars of Claim, that being that the licence plate number of the police service vehicle, was changed in that paragraph, from 303672 (as per the original Particulars of Claim) to 203672. Thus, it is apparent to this Court, that even as of the date when the Claimant certified his Amended Particulars of Claim as being true, the Claimant was even as of then, not concerned as to stating the truth either in his original or amended Particulars of Claim and thus, deliberately sought to mislead the Court therein. Even if the Claimant did not in fact know why the accident was caused, perhaps because he was not paying any, or any careful attention to the events leading up to the collision between the police service vehicle and the Defendant's motor vehicle at the material time, then he would still have been deliberately misleading this Court, by having stated in his original and also in his amended Particulars of Claim, that which he could not, if he was not sufficiently personally aware of the relevant events in that regard, have honestly and with integrity, certified as being true.

[10] In the circumstances, this Court agrees entirely with defence counsel that this is a significant factor to be taken into account, in determining whether or not the Claimant has proven his Claim. Having taken the same into account and bearing in mind that the Claimant's account of the relevant events, as testified to by him from the witness stand, is unsupported by anyone during the trial, this Court has formed the view that the Claimant's account of the relevant events, is entirely lacking in credibility. This Court's view in that regard though, is buttressed by other important details. These are outlined in some of the subsequent paragraphs of this Judgment.

[11] One of those 'other important details' is derived from something stated in the expert report of Dr. Randolph Cheeks, which was admitted into evidence at trial. That is as regards the history of the event which ultimately resulted in the Claimant's injuries. That 'history' was recorded by Dr. Cheeks on March 10, 2009, when the Claimant was seen and examined by him, for the purpose of assessing the Claimant's status at that time, in relation to the injuries which he had allegedly sustained arising from the relevant motor vehicle accident. That evidence was admitted on the ground that it related to an

account of the relevant event and his knowledge or lack of knowledge thereof, as was related by the Claimant to Dr. Cheeks, which is markedly different from the account of same as has been provided to this Court at trial by the Claimant.

[12] In that account as was related to Dr. Cheeks, it is recorded by the doctor, that the Claimant had related to him that he was in his usual state of good health until May 29, 2008, when, while travelling as a front seat passenger in a motor vehicle, he sustained injuries when that vehicle was involved in an accident with another vehicle. The doctor goes on to state in his report, immediately thereafter, that – ‘To the best of his recollection he recalls being seated in the front passenger seat of his vehicle and he remembers hearing the sound of the collision and being jerked towards the dashboard. He next recalls forcing the door on the passenger side open and making his exit from the vehicle.’

[13] That being the account of the relevant event as provided by the Claimant to his attending physician at that time, namely Dr. Cheeks, it is surprising that if the Claimant does in fact know exactly what sequence of events led up to the relevant collision, why it is that he mentioned none of this to Dr. Cheeks. To this Court, it appears as though the account as provided by the Claimant to Dr. Cheeks is correct, insofar as the Claimant it seems, only recalls hearing the sound of the collision whereupon he was jerked forwards, towards the dashboard. This would serve to explain why it is that the Claimant’s account of the relevant events has been dramatically changed from what it was in December, 2009, to what it became in May, 2012. This may very well be because, in truth and in fact, the Claimant does not really know exactly what caused the collision. As such, the Claimant did not relate what he did not know, to Dr. Cheeks. All in all though, this casts further significant doubt as to the truthfulness of the Claimant’s version of events. These things must, of necessity, be fatal to the Claimant’s Claim, as it is he and he alone, who bears the burden of proving his claim on a balance of probabilities, so as to leave this Court more satisfied than not, that his account of events immediately preceding the relevant collision, are true. This Court has not been satisfied of same. To the contrary, the Claimant’s account of events as given to this Court, has,

far more than not, in fact satisfied this Court, that such account of events immediately preceding the relevant collision, is nearly certainly untrue, or at the very least, not an account which the Claimant can speak to by means of first-hand knowledge, as to the truthfulness thereof.

[14] Considered in that context, it is entirely understandable why, at the close of the Claimant's case, the Defendant decided to make and did in fact make, a no-case submission. The Defendant was not put to his election in respect thereof. It used to be the law that if, in a civil case, a Defendant wished to make a no case submission, he had to be put to his election first. In such a circumstance, if he chose to make a no case submission and the same were thereafter made unsuccessfully, then the Defendant could not thereafter be permitted by the trial Court to call any evidence for the defence whatsoever. See: **Laurie v Raglan Building Co. Ltd.** [1942] 1 K.B. 152. This however, is no longer applied without any exception, in England, and there are a few recent cases which have made this legal point, clear. In exceptional circumstances the Defendant may not be put to his election. See: **Boyce v Wyatt Engineering** [2001] EWCA Civ. 692 & **Miller v Cawley** [2002] The Times, 6th September, 2002. Accordingly, this Court did not require the First Defendant to elect and even though his no-case submission was unsuccessful, it accounts for why it was that he was permitted by this Court, to present evidence on his own behalf, in defence against the Claim.

[15] In his evidence, he essentially contended, during his evidence-in-chief, as per paragraphs 2 & 3 of his witness statement, that while driving his Nissan Sunny motor vehicle along the Spanish Town bypass, at about 5:20 a.m. on May 29, 2008, he was driving in a line of traffic when he felt an impact to the rear of his motor vehicle, which caused his vehicle to spin across the road and collide with another motor vehicle. He then looked behind him to see what had impacted with his motor car and then observed a police radio car zig-zagging down the road, with fire gashing beneath it. That police car was travelling in the direction in which he had been proceeding. That police car had licence plate No. 303672 and was being driven by the Second Defendant.

[16] Under cross-examination, the Claimant gave some important further detail to the Court and it is that while he was driving along, heading straight, rather than going along, via the filter lane, to March Pen Road, the vehicle which was immediately ahead of him, stopped in front of him and pulled over to the farthest left side of the roadway. As such, Mr. Rhooms contends that then put on his right indicator and looked in his inner car rear-view mirror and also in his right side mirror, prior to turning his vehicle at an angle to the right and proceeding to then pass by, or in proper legal terminology, overtake that vehicle while still proceeding straight ahead. The Claimant's counsel has contended that he did not safely overtake that vehicle and that it was during the course of overtaking same that the First Defendant's vehicle, whilst angled to the right, impacted with the vehicle in which the Claimant had been travelling at the material time.

[17] There is no dispute that the relevant police service vehicle suffered damage to its left front side, as a consequence of the sole collision in which it was involved on the relevant day, whereas the First Defendant's vehicle suffered damage to its entire right side – from front to back, arising from the two collisions in which it was involved, one immediately after and undoubtedly, as a direct consequence of the other.

[18] The First Defendant really cannot account for how the first collision occurred, since, according to his evidence, his vehicle was collided with from behind. He has no doubt made that which can be taken as being no more than a logical deduction – but only logical if his evidence be true, that the first collision came from a vehicle which hit into his vehicle from behind. This Court really cannot assess the overall truthfulness of this account as it is lacking in sufficient detail to properly enable this Court so to do. This Court has already pointed out in this Judgment though, that the burden of proof rests on the Claimant. Thus, unless the First Defendant's evidence as given, has sufficiently assisted the Claimant in proving his Claim, then the Claim cannot succeed.

[19] This Court is not of the view that the First Defendant's evidence as given, has assisted the Claimant in proving his Claim. The Defendant's vehicle was going straight ahead at the material time, whereas the vehicle in which the Claimant was then

travelling, was about to enter the filter lane in order to thereby turn right and into March Pen Road. This Court therefore does not see how a turn of the front of his vehicle, at and towards the right, would have, or should have, resulted in an impact with the vehicle in which the Claimant was then a passenger. That latter – mentioned vehicle would undoubtedly, insofar as it was then about to enter into the right filter lane, have been angled towards the right. In the circumstances, I do not believe that it was the First Defendant's improper overtaking of the stationary vehicle ahead of him, that caused the relevant accident. I do not though know, nor am I in a position to logically deduce from the entire evidence as presented before this Court during trial, what caused the relevant accident.

[20] In the circumstances, the Claimant has failed to prove his Claim and Judgment on the Claim is awarded to the Defendant. Costs of the Claim are awarded to the Defendant, with such costs to be taxed, if not sooner agreed.

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Honourable Kirk Anderson, J.