



[2016] JMSC Civ. 225

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 01453

BETWEEN	GREGORY COOPER	CLAIMANT
AND	VAUGHN ANTHONY WILLIAMS	DEFENDANT

IN OPEN COURT

Ms. Antonia S. Armstrong and Mrs. Tanya Walters Powell instructed by Jordon & Francis for the Claimant

Mr. Garth E. Lyttle and Ms. Renee Malcolm instructed by Garth E. Lyttle & Co. for the Defendant

Heard: February 11, May 30 and December 19, 2016

Negligence – Collision involving Motor Car and Motor Cycle – Question of Liability

McDONALD J

[1] The Claimant's claim is for damages for negligence in that on the 9th of January 2012, the Defendant negligently drove, managed and or manoeuvred his motorcar onto Whitehall Avenue from the entrance of a private premises without due care and/or attention, causing the Claimant's motorcycle to collide into the rear of the Defendant's motorcar.

[2] Paragraphs 4 and 5 of the Particulars of Claim state:

4. In particular the Claimant will prove that immediately prior to the accident the Defendant's motor vehicle was travelling along White Hall Avenue, from the

direction of Red Hills Road, towards the entrance of the private premises. On reaching the vicinity of entrance [sic], along White Hall Avenue, the Defendant, suddenly, violently and without warning caused the front of his motor vehicle to violent [sic] and with great speed veer left, curbing into the entrance of the private premises, and then swerve across White Hall Avenue in a U-turn like manner, in order to head back into the direction from which the vehicle was originally travelling i.e. back into the direction of Red Hills Road. The Claimant will further prove that Defendant [sic] made this turn less than a very short distance away from a blind corner along the said road. The Claimant will also prove that the Defendant's negligent manoeuvre was done at a point when his, the Claimant's motorbike was travelling along White Hall Avenue and heading in the direction of Red Hills Road. The Defendant's negligent manoeuvre was done at a point manifestly unsafe to do so; when the Claimant's motor vehicle was only moments away from passing the entrance in question.

5. As the Defendant's sudden wanton and violent change of direction was without any warning, the Claimant had no time within which to stop, swerve and/or make any or any real attempts to prevent the accident from occurring. As a consequence the Claimant's motorbike collided into the left rear bumper of the Defendant's motor vehicle.

- [3] The allegation of negligence against the defendant has been particularised in paragraph 6 of the Claimant's Particulars of Claim:

Particulars of Negligence of Defendant

The Defendant was negligent in that he, his servant and/or agent:

- (a) Failed to keep any or adequate look out;*
- (b) Failed to maintain a safe speed in order to avoid a collision;*
- (c) Failed to drive in a safe manner;*
- (d) Failed to stop, slow down, sound his horn, or swerve to avoid colliding with the motorbike which the Claimant drove;*
- (e) Drove, managed or controlled the Honda motorcar into the path of the motorbike which the Claimant drove causing him to collide into the rear of the motorcar;*
- (f) Failed to see the motorbike which the Claimant was riding in sufficient time to avoid the collision or at all;*

(g) Proceeded from a private entrance at a time when it was manifestly unsafe to do so;

(h) Attempted an inherently unsafe change of direction (U-turn) manoeuvre at a time and at a point along White Hall Road where it was manifestly unsafe to do so;

(i) Failed to give any or any adequate warning to motorists travelling on a major road of his intention to proceed from a private entrance onto a major road;

(j) Drove his motor vehicle in a manner contrary to the provisions of the Road Traffic Act and Regulations.

The Claimant's Case

[4] The Claimant in his witness statement, treated as his evidence-in-chief, said that on the day in question at about 4 p.m. he was riding a motorbike licensed 4037 H along White Hall Avenue, Kingston 8 in the direction of Red Hills Road. It was sunny and the road was dry. On reaching the vicinity of 79 White Hall Avenue, there is a private premises which has a wide white gateway where people usually make U-turns.

[5] The Claimant alleges that he had seen a motorcar coming up the road from the direction of Red Hills, however on reaching the said gateway at 79 White Hall Avenue, the driver suddenly made a U-turn into the path of his motorbike. The driver did not toot his horn or give any kind of warning that he was going to turn.

[6] The Claimant said he was at a point in the road where he would have been clearly visible to the driver. When the driver made the U-turn he was so close to him that he had no time to swerve to avoid the collision, and so he hit into the back of his motor vehicle. The collision caused him to be thrown into the air and he landed on the ground on his face. He was conscious throughout the whole ordeal.

- [7] The male driver exited the car and said to him “You neva see me?” to which he replied “Then big man, you neva see me? Cause me deh pon my right of way.” The driver did not respond. A large crowd gathered and some of them helped him to get off the ground and put him into the vehicle he had collided into. When he entered the car he noticed that there was a female occupant inside.
- [8] He was taken to the Kingston Public Hospital where his wounds were dressed and he was given injections and x-rays He was told that his thigh, hip and knee were fractured and would have to be surgically pinned up. He spent at least two (2) months in hospital before he was discharged. Upon release from hospital he attended the Constant Spring Police Station where he gave a statement.

In cross-examination

- [9] The Claimant said that the Defendant made a U-turn right in front of the motorcycle. He cut inside the gateway and made a U-turn right in the gateway. It was just one turn. He said “If yu mek the U-turn in the middle of the road it couldn’t tek.”
- [10] He said the Defendant made the U-turn at the gateway so he could get a wider turn. He said that when he reached to White Hall Avenue he saw the motor vehicle. Normally two (2) vehicles would just pass, one going down and one coming up. He did not expect someone would just make a U-turn right there. The car was one car length from him when it turned. He pointed out a distance of 10 to 12 feet in Court to demonstrate the distance. The car went to the left into the driveway and came back out and made the right.
- [11] He stated that the motorcycle collided into the back of the car. He was thrown in the air from the impact and landed at the side of the vehicle. He did not fall in front of the car, he “found” his body over the right side of the car. The bike dropped behind the car. When the Defendant made the U-turn it was so close to him that he had no time to swerve to avoid the collision, so he hit the back of the Defendant’s motor vehicle. When the Defendant made the U-turn he could not

just dash across the road he pulled over on the left and just made the U-turn. He was conscious enough to know that the vehicle did not hit him.

- [12] At the time the accident occurred i.e. the U-turn when the vehicle reached that point in the road there was no road space on the right of the vehicle. The motorcycle went into the back of the motor car mostly over on the left. He could not go over on the right because the majority of the vehicle was over on the right. He said “which part mi lick the car right at the iron light post. He was not riding hard. It was during the time the Defendant was making a U-turn that the accident occurred. He said that when he ran into the back of the car, it did not stop it still was driving.
- [13] Some inconsistencies arose in the Claimant’s evidence, but the Court has to look to see whether they go to the root of the matter and discredit the witness. It is the Claimant’s evidence in cross-examination that after the collision he crawled on his hands and put himself in the vehicle. In his witness statement he said that some members of the crowd helped him get off the ground and put him into the car.
- [14] In his witness statement the Claimant said that White Hall Avenue is a narrow stretch of road with a blind corner. When asked in cross-examination if he knew the width of the said road where the accident occurred, he said he did not know. It was suggested to him that it was wide and he agreed.
- [15] Further, in cross-examination, he said there are two corners before the location of the accident, one being Dan’s Corner and the other being Whiteheaven Corner. He said one can take two minutes to walk from Whiteheaven Corner to where the accident occurred. He also said that one corner is on the top side and the other down the bottom and the accident occurred in the middle between the two corners.

The Defence

[16] The Defendant has denied in his pleadings that he was negligent as alleged and that the accident was caused or wholly contributed to by the negligence of the Claimant. At paragraph 7 of the Defence, the Claimant's particulars of negligence are set out as follows:

Particulars of Negligence of the Claimant

- a. *Driving his aforesaid motorcycle at a speed which was excessive in all the circumstances.*
- b. *Failed to have any or any proper look out or at all.*
- c. *Attempting to overtake the Defendant's vehicle in a manner when it was manifestly unsafe to do so and thereby caused the said accident.*
- d. *Failed to stop, to slow down or manoeuvre his vehicle in such a manner so as to avoid this accident.*
- e. *Failed to see the presence of the Defendant's motor vehicle on the said road and as a consequence colliding into the back of the said vehicle.*
- f. *Driving his said motorcycle without due care and attention and thereby caused the said accident.*
- g. *Attempting to overtake the Defendant's motor vehicle which was unsafe so to do and thereby caused the accident.*

[17] The Defendant went on to deny all allegations of damage, loss and or injuries suffered by the Claimant and asserted that the Defendant, himself has suffered loss and damages and incurred costs which were particularised as follows:

Particulars of Special Damage of the Defendant

- | | |
|--|----------------------|
| a) <i>Cost of repair to said vehicle</i> | <i>\$ 220,000.00</i> |
|--|----------------------|

b) *Loss of use of vehicle for 8 days* 32,000.00
at \$4,000.00 per day

Total Claim **\$252,000.00**

[18] At paragraph 10, the Defendant set out his counterclaim as follows:

And the Defendant Counter-Claims

10) *By reason of the matters said in paragraphs 1 – 9 the Defendant counter-claims:-*

a. *Damages*

b. *Interest on any amount this court finds due and payable to the Defendant*

c. *Cost and Attorneys cost*

The Defendant's Case

[19] The Defendant gave a diametrically opposed version to the Claimant's case. He said that on the day in question his motor vehicle was in a parked position on the left hand side of White Hall Avenue, as he was waiting on someone from 78 White Hall Avenue. While his vehicle was stationary and he was waiting around his steering, he looked in his rear view mirror and saw two (2) motorcyclists driving their motorcycles towards his car. Other motor vehicles were travelling in the opposite direction.

[20] The Defendant said he felt a hard jerk coming from the back of his vehicle and saw the body of a man "dropped" before his vehicle. At no time did the front of his vehicle touch this man who turned out to be the Claimant.

[21] The motorcycle damaged the centre of the back of his vehicle. At no time did he make a U-turn in the road, moreover there is nowhere on White Hall Avenue that can accommodate a U-turn. He did not drive out of any yard and into the

Claimant's motorcycle. The accident was wholly caused by the Claimant failing to exercise proper control of his motorcycle and thereby collided in the back of the vehicle.

In cross-examination

[22] The Defendant said that he was waiting for a friend to get out of the vehicle as he had taken her to her daughter's address that evening. When asked about his previous statement that his vehicle was parked and that he was waiting on someone from 78 White Hall Avenue, he responded that he is saying the same thing and that there is not much difference.

[23] His car was parked at 79 White Hall Avenue, on the left hand side of the road and he was there for 5 to 6 seconds talking to the lady before she came out of the vehicle. He then said that the person never came out of the vehicle before the collision.

[24] It is noted that at paragraph 7 of the Defence, the Defendant said *inter alia* that the Claimant and another motorcyclist were driving their motorcycles behind the Claimant's vehicle abreast to each other in the same direction as the Claimant's vehicle, when both motorcyclists attempted to overtake the Defendant's vehicle which was then in a parked position, when the Claimant's motorcycle collided into the back of the Defendant's vehicle.

[25] In cross-examination, the Defendant said that he did not know if the Claimant was trying to overtake. He maintained however that the two (2) statements were not inconsistent.

[26] The Defendant's attention was drawn to the Assessor's Report for his vehicle and he agreed that most of the damage listed concentrated to the left of the vehicle, most damage to the rear of the vehicle with emphasis to the left side.

[27] The Defendant said that when parked letting off the lady, the left side of his vehicle was towards the gate, and he got licked/hit into the gate column (left front

bumper) and that is why the control arm bend and the car mash up, write off. He asserted that he could not have made a U-turn at 79 White Hall Avenue, nor on White Hall Avenue at all. He denied apologizing to the Claimant or admitting any guilt for the accident.

[28] The Defendant also said that he knew of the Claimant from he was a little child coming up from White Hall Avenue and that he asked him for his number and that he took his number. The Claimant lived on White Hall Avenue for the past ten (10) years, so he has seen him coming to and fro, but they never spoke.

The Law

[29] It is settled law that in order for a Claimant to succeed in a claim for negligence, he must prove on a balance of probabilities –

- (i) that the Defendant owed him a duty of care;
- (ii) a breach of that duty of care; and
- (iii) damage resulting from the breach.

[30] Generally, users of the road owe a duty of care to their fellow road users. In particular, drivers of motor vehicles are required to exercise reasonable care so as to avoid causing injury to other persons and/or damage to property. As such all drivers are required to observe and obey the rules of the road, these rules are set out in the **Road Traffic Act**. This Act defines “motor vehicle” as follows:

“motor vehicle” means any mechanically propelled vehicle intended or adapted for use on roads.

Further, section 11(1) classifies motor vehicles, it states:

11.-(1) Motor vehicles shall, for the purposes of this Act and regulations made thereunder be divided into the following classes –

(a) ...

(b) ...

(c) motor cars; that is to say motor vehicles {not being classified under this section as motor cycles ...

(d) private motor cars...

(e) motor cycles; that is to say, motor vehicles (not being classified under this section as "invalid carriages") with less than four wheels and the unladen weight of which does not exceed eight hundred weight;

(f)...

(g)...

[31] Based on the foregoing, it is clear that the provisions of the **Road Traffic Act** apply both to the Claimant, a driver of a motor cycle and the Defendant, a driver of a motor car. Both parties have a statutory duty to take such action as may be necessary to avoid an accident and the breach by one driver shall not exonerate the other driver from this duty (see: section 51(2)).

[32] Counsel for the Claimant cited section 103 of the **Road Traffic Act** which states

—

103.- (1) Regulations may declare which road is to be considered a principal road and where two or more roads intersect the driver of a vehicle of any description before turning into, or crossing, the principal road shall not drive a vehicle so as to obstruct any traffic on the principal road and shall comply with such directions as may be contained in such regulations.

(2) Any person who contravenes any of the provisions of this section or fails to comply with any direction contained in such regulation shall be guilty of an offence.

[33] I do not find this section to be applicable. Counsel for the Claimant has without more asserted that White Hall Road is a principal road and no such regulation has been relied upon or furnished. Even if there is a regulation which declares White Hall Road a principal road, this section speaks to the obstruction of traffic on a principal road where there is an intersection with another road. This simply does not accord with the Claimant's case which is that the Defendant attempted to make a U-turn from the gateway of a private residence; not that he turned into or crossed White Hall Avenue from another road.

[34] Both counsel for the Claimant and counsel for the Defendant cited section 32(1) of the **Road Traffic Act** which states —

32. – (1) *If any person drives a motor vehicle without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence and shall be liable on conviction thereof to a penalty not exceeding five thousand dollars.*

[35] It should be noted that section 32(1) of the **Road Traffic Act** provides for the offence of careless driving and as such it is my view that reliance on this section for the proposition that drivers ought to exercise due care and attention/reasonable consideration for other road users, is somewhat misplaced. This proposition is however correct and it is settled law that all users of the road owe a duty of care to other road users (see: *Esso Standard Oil SA Ltd & Another v. Ian Tulloch* [1991] 28 JLR 557 and *Elizabeth Brown v Daphne Clarke et al* [2015] JMSC Civ. 234 at paragraph [30]). Further, this obligation is provided for in the Road Code, which comprises directions for the guidance of persons using the road. It should be noted that the failure to observe the Road Code does not of itself render a person liable to criminal proceedings but any such failure may be relied on in civil proceedings as tending to establish or to negative any liability which is in question (see: section 95 of the **Road Traffic Act**).

[36] Part 2 of the Road Code advises drivers as follows –

1. *Before you attempt to move from a parked position wait until there are no vehicles near enough to cause an accident. Give the proper hand or indicator light signals before moving off. Look out for overtaking vehicles. Check your rear view mirror/mirrors.*

3. *Keep as near to the left as practicable, unless about to overtake or turn to the right. Do not drive on a footpath or pavement by the side of the road.*

6. *Before you slow down, stop, turn or change lanes, check your rear view mirror, signal your intention either by hand or indicator light signals and make sure you can do so without inconvenience to others. Never make a sudden or “last minute” turn; it is very dangerous.*

7. (e) *Motorcyclist who wear approved safety helmets reduce their possibility of death and serious head injuries considerably. All motorcyclist including pillion riders are encourage to wear helmets.*

8. *Do not overtake unless you can do so without danger to others or to yourself. Before you overtake, make sure the road is clear far enough ahead and behind. Use your mirrors and if you are on a pedal cycle or motorcycle look behind and to your offside or right side. Signal before you start to move out. Be particularly careful at dusk, in the dark and in fog or mist, when it is more difficult to judge speed and distance.*

35. Before you pull out of a parking position look behind, signal your intention and make sure you can do so safely and with no inconvenience to the other road users.

- [37] Additionally I wish to adopt my brother, Morrison J's helpful summary of some of the provisions of the Road Code at paragraph [25] of his judgment in *Albourne Matthews et al v The Attorney General et al* Claim No. 2007HCV04547 delivered on the 1st of July 2011 –

[25] Selected relevant features of the Road Code include, according to Part 2 of the Road Code (1987), not exceeding the speed limit; keeping as near to the left as is practicable; always being able to stop one's vehicle well within the distance for which one can see the road to be clear; not travelling too close, to the vehicle that is in front of one's vehicle. Importantly, with respect to the last mentioned rule is the following: "Always leave enough space between you and the vehicle in front so that you can pull up safely if it slows down or stops. A good rule of thumb in good conditions is to allow at least one vehicle length for each 10 miles per hour you are travelling..."

- [38] Finally, Counsel for the Claimant submitted and I accept that it is an established principle that the driver of a vehicle who is changing direction bears the greater duty of care before undertaking his manoeuvre. Reliance was placed on the case of *Pratt v Bloom* 1958 Times 21 October Div Court as found at page 85 in **Bingham and Berrymans' Personal Injury and Motor Claims Cases** 12th edition. Per Streatfield J: The duty of a driver changing direction is (1) to signal and (2) to see that no one was incommoded by his change of direction and the duty is greater if he first gives a wrong signal and then changes it.

Analysis

- [39] While I have accepted the principle from *Pratt v Bloom*, its applicability will depend on whether or not I accept the Claimant's version of events, i.e. that the Defendant was in fact changing directions.
- [40] The Court had the benefit of a Police Report and an Assessor's Report in relation to the motor car; these were provided by the Claimant and the Defendant, respectively.

[41] The Police Report (headed 'Police Traffic Accident Report') dated the 28th of March 2012 provides the particulars of accident. This includes the date, time and location of the accident as well as the details of the Investigator. What is particularly useful to the Court are the conditions, it was stated that it was sunny, the road was dry and there was bright visibility (the accident taking place at 4 p.m.). Additionally, a sketch is provided to the Court which depicts how the collision likely took place as well as the findings of the Investigator. The findings were stated as follows –

Investigations carried out revealed that the motorcyclist was travelling along White Hall Avenue heading in the direction of Red Hills Road. On reaching the vicinity of 79 White Hall Avenue, the driver of the Honda motor car drove out on the road without due care and attention, causing the motorcyclist to collide into the rear of the vehicle. Both vehicles were damaged. The driver of the motor car is at fault.

The motorcyclist, Gregory Cooper, sustained a broken leg as a result of the collision.

The findings contained in the Police Report clearly support the Claimant's account. It is noted that this report was made some two (2) months after the accident took place.

[42] The Assessor's Report states that the point of impact is the rear section of the motor car which was caused as a result of a collision. Further a subsequent collision to the left front corner resulted in moderate damage. A brief description of the damage is as follows –

Right tail lamp lens – broken

Rear bumper – gouged and torn

Rear panel – crumpled and intruded

Trunk floor – buckled, crumpled and torn

Rear floor crossmember – kinked and twisted

Tailgate – deformed and kinked

Rear inner structure – pulled inwards

Front bumper - scuffed at left

Left front suspension – set back

Left front control arm – buckled

It was further stated in the report that, “*the damage is consistent with the statement given. Insured’s vehicle was rear ended by a motor cycle. There was a secondary collision to the left front suspension.*” The total amount of loss was stated as \$220,400.00 for ‘repair basis’ or \$220,000.00 for ‘loss basis’. The Defendant is claiming the latter.

[43] *Prima facie*, it seems that the Assessor’s Report could support either account. It is not in dispute that the Claimant’s motor cycle collided into the rear of the Defendant’s motor car. It is to be noted however that the Claimant has failed to give any explanation as to how the car sustained damage to the front left of the motor car, this in my view is an important omission. What this Court is tasked with is determining how the collision took place i.e. whose account ought to be accepted. I must point out that based on (1) the Claimant’s account that at the time the accident occurred i.e. the U-turn when the vehicle reached that point in the road there was no space on the right of the vehicle. The motorcycle went into the back of the motor car mostly over on the left. He could not go over on the right because the majority of the vehicle was over on the right and (2) the sketch by the Investigator, I would have expected that the damage to the rear of the motor car would have been concentrated to the left side. However, this is not borne out by the Assessor’s Report which notes damage not to the left rear but to the left front (suspension, control arm and bumper) and general damage to the rear of the car (bumper, panel, floor crossmember, tailgate etc.) but what is particularly noteworthy is that it specifically states that it was the right tail lamp lens that was broken.

[44] To my mind the right tail lamp lens being broken would seem to be cogent physical evidence tending to support the Defendant’s account. Namely, that the Claimant, along with another motorcyclist, was attempting to overtake his stationary motor car which was parked to the left side of the road and that there

was oncoming traffic on the right side. Nonetheless, I must take into account the evidence that the Defendant gave in cross-examination, namely that he did not know if the Claimant was trying to overtake. However, this by itself does not destroy the Defendant's credibility. I have also taken into account his testimony when his attention was drawn to the Assessor's Report, he agreed that most of the damage was concentrated to the left of the motor car. He did not however specify whether he meant the left front or the left rear, but it must be logically inferred that he meant the left front as he went on to explain that he got "*hitched into the gate column and that is why the control arm bend the car mash up, write off.*" Lastly, it is noted that in his Witness Statement the Defendant contended "The motor cycle damaged the centre of the back of my vehicle."

[45] It has been opined that in determining liability the Court ought to have regard to the physical evidence. In *Calvin Grant v David Pareedon et al.* (Supreme Court Civil Appeal No. 91/87, delivered on the 4th of October 1988) the Court of Appeal commended the approach of Theobalds J regarding the careful consideration of physical evidence as eminently reasonable and logical. At page 3 of the said judgment, the reasoning of Theobalds J was enunciated as follows –

*Where there is evidence from both sides to a civil action for negligence involving a collision on the roadway and this evidence, as is nearly always usually the case, seeks to put the blame squarely and solely on the other party, **the importance of examining with scrupulous care any independent physical evidence which is available becomes obvious.** By physical evidence, I refer to such things as the point of impact, drag marks (if any), **location of damage** to the respective vehicles or parties, any permanent structures at the accident site, broken glass, which may be left on the driving surface and so on. **This physical evidence may well be of critical importance in assisting a tribunal of fact in determining which side is speaking the truth.** (emphasis added)*

[46] In the case at bar, the physical evidence (in particular the damage to the right tail lamp lens) tends to support the Defendant's case and the Particulars of Negligence of the Claimant (set out at paragraph [16] herein) in particular that the Claimant drove his motorcycle without due care and attention and attempted to overtake the Defendant's motor vehicle which was unsafe to do so and thereby

caused the accident. In the circumstances I would dismiss the Claimant's Claim and allow the Defendant's Counterclaim.

Disposal

[47] It is hereby ordered –

1. Judgment entered in favour of the Defendant against the Claimant with damages assessed as follows:

Special damages in the sum of \$252,000.00 with interest at 3% p.a. from the 9th of January 2012 to today's date.

2. Cost to the Defendant to be agreed or taxed.