

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW

(1) SUIT NO. C.L. 1984/G033

BETWEEN	COLIN GRAHAM	PLAINTIFF
A N D	ST. ANN PARISH COUNCIL	FIRST DEFENDANT
A N D	THE ATTORNEY GENERAL	SECOND DEFENDANT

(2) SUIT NO. C.L. P078/1984

BETWEEN	CARLON PARSONS (AN INFANT) by Alice Annakie her guardian and next friend)	PLAINTIFF
A N D	COLIN GRAHAM	FIRST DEFENDANT
A N D	STANLEY GRANT	SECOND DEFENDANT

(3) SUIT NO. C.L. F012/1988

BETWEEN	ESTELLA FFLOKES	PLAINTIFF
A N D	STANLEY GRANT	FIRST DEFENDANT
A N D	COLIN GRAHAM	SECOND DEFENDANT

(4) SUIT NO. C.L. S027/88

BETWEEN	MAY SMITH	PLAINTIFF
A N D	STANLEY GRANT	FIRST DEFENDANT
A N D	COLIN GRAHAM	SECOND DEFENDANT

Dr. Adolph Edwards for Colin Graham and Stanley Grant.

Mr. Pusey for the Attorney General.

Mr. Patrick Brooks and Mrs. Winsome Gordon-Somers for Parsons instructed by Nunes, DeLeon and Company.

Mr. Clarke Cousins for Fflokkes and Smith instructed by Rattray, Patterson and Rattray.

Heard: May 11, 12, 13, October 21, 1994  
& February 10, 1995.

LANGRIN, J.

These actions have been consolidated. They arise out of an accident which occurred on 17th February, 1983 on the Alderton main road in the parish of St. Ann.

Stanley Grant, driver of motor bus licensed FP.0756 owned by Colin Graham while proceeding with passengers along the Alderton main road, slowed down to allow another vehicle to overtake when the motor bus he was driving overturned in a gully resulting in loss and damage to the vehicle. The passengers Carlen Parsons, Estella Fflokkes and May Smith suffered injuries.

There are two central questions which I have to determine and these are stated as follows:-

- (1) Whether the roadway collapsed due to the negligence of the Highway Authorities thereby causing the motor bus to lose support from its left side and toppled over into a gully or
- (2) Whether the driver of the motor bus so negligently drove, managed or controlled the motor bus causing the bus to hit the wall and overturn.

Let me now turn to an examination of the first question which is primarily concerned with the first suit in the consolidated actions.

At the point of the accident there was a dry packed stone wall about one and one half feet above the road. The Carriage Way at point of accident was 18.4 feet. Oswald Mattis a registered professional Civil Engineer and a partner of Mattis Demain Beckford and Associates Limited gave evidence and produced a report and sketch plan. He visited the site for the first time in August, 1983 some six months after the accident. A conclusion of his opinion is stated as follows:

"Our findings are that the wheel load on the edge of the pavement surcharged the dry packed stone wall which failed in shear; caused a soil slip, failure of the pavement, lateral and vertical movement of the front wheel of the Bus; shifting of the Centre of Gravity to a point of instability hence overturning."

Mr. Mattis admits that his findings were based on what he had seen six months after the accident and if anything had changed since the accident and his visit then his findings would have been incorrect. However he concluded that the stability of the wall

could have been affected by an impact from a bus on the day of the accident.

The driver of the bus, Stanley Grant, appears to have left the island a few months after the accident and has not given any explanation of how the accident happened.

Mr. Clarke Cousins correctly made the following submissions on the expert testimony of Mr. Mattis:

- (1) He admitted in his evidence that density, moisture and porosity were all factors affecting soil mechanics.
- (2) There was an admission that sharing strength is a function of soil mechanics.
- (3) There were no tests conducted to determine any of those factors.
- (4) Road Construction was not his field of concentration.

Mr. Pusey adopted the submissions of Mr. Cousins and submitted further that there is no evidence before the Court that the Government of Jamaica actually constructed the road. Further there was no evidence that the construction of the wall was in fact under the supervision of the defendant. The responsibility of the main road does not advert to a wall which adjoins the road. There was no evidence that there was any negligence in the construction of the wall at the time it came in existence.

It is trite law that the liability of the Highway Authority is governed by Common Law. In the case of Attorney General v. Todmorden Borough Council (1937) 4 ALLER. 588 Goddard J. at p.593 stated as follows:

"..... one cannot bring an action against a highway authority for failure to carry out the duties of repairing and maintaining the highways which the law imposes upon them. If, in the course of their duties with regard to the highway, the highway authority commit an act of misfeasance - that is to say, some negligent act of commission - then, as a consequence of that act, an action can be brought."

The significance of this statement is that an action can only be maintained on the basis of misfeasance. In the instant case the plaintiff has failed to establish any evidence of an act

of misfeasance. I understood Dr. Edwards to have made this concession.

Further, Mr. Mattis has not succeeded in putting his conclusions entirely beyond doubt. His evidence was not sufficient to displace what in my judgment is the result of the other evidence in this case. To outweigh the factual evidence the opinion evidence had to be shown to be infallible. This was not so in this case.

I now turn to the second question which is whether the driver of the motor bus so negligently drove, managed or controlled the motor bus causing the bus to hit a wall and overturn, resulting in injury to the passengers.

The injured plaintiffs grounded their claim in negligence. The particulars of negligence in the main are as follows:

1. Driving without due care and attention on a narrow road.
2. Driving an overloaded motor-bus with respect to both the authorised number of passengers and the maximum laden weight permitted.
3. Mounting a kerb rubble stone wall and causing the bus to overturn.
4. Failing to slow down, stop, swerve or in any way so to control the bus as to prevent same overturning.

I prefer the evidence of Estella Fflokas when she testified that she heard a big sound when the bus hit the wall. The road was narrow and the bus was overloaded. Her demeanour in the witness box impressed me, and I have no doubt in my mind that she spoke the truth.

On the evidence before me I make the following findings of fact. The road was narrow and the bus had slowed down to enable another vehicle to pass. There was a dry packed stone wall bordering on the left hand side of the road. The bus was overloaded with passengers and goods. It hit the stone wall, mounted it and turned over.

In my judgment the evidence and particularly that of Fflokas and May Smith supports the conclusion that the bus hit the wall

which caused both the wall to collapse and bus to overturn resulting in injury to the passengers.

It is on the basis of the aforesaid reasons that judgment was entered for the Attorney General in Suit C.L. G033/84. The suit was discontinued against the St. Ann Parish Council. Judgment is entered for the plaintiffs in the remaining three suits.

Let me now turn to the assessment of the damages.

In so far as General Damages on the second suit is concerned the medical reports agreed on state that Carlton Parsons, age 16 years complained of tenderness Lumbo Sacral region of spine, tenderness on right side of jaw and tenderness ligamentum patella of right knee. There was fluid in her right knee joint. She was unable to attend school for six months. I make an award for Pain & Suffering and Loss of Amenities of \$50,000. Special damages agreed at \$351.

Regarding the third claim the agreed medical certificate indicates that the plaintiff Estella Fflokcs suffered from a fracture of the left fibula, confirmed by Xray, fractures of two left metatarsals, laceration to the head and laceration to the left leg. She spent one week in hospital and was incapacitated for a period of 10 weeks. She testified that she had plaster cast on foot for two months and walked with the aid of crutches for three months.

Mr. Cousins cited the case of Miller v. Hamilton, C.L. 1987/M349 in support. The injuries are similar. Harrison J. made an award of \$50,000 in June 1990. When updated to the money of today the sum would be \$238,000 for pain and suffering. I so award.

Special Damages assessed at \$1800.

I now deal with the damages on the Fourth Claim. This claim is that of May Smith. The particulars of injuries show a fracture of the fourth and fifth lumbar spine, torn right acromioclavicular ligaments and injury to left costochondral junction. She remained in hospital for three weeks. In her evidence she said her spinal chord was injured and her right shoulder was broken. She experienced considerable pains up to the present time. I make an award of \$275,000 for Pain & Suffering and Special Damages at \$1885.

Summary

(1) Suit No. C.L. 1984/G033

Judgment for the Defendant, Attorney General with costs to be agreed or taxed.

(2) Suit No. C.L. P078/1984

General Damages:

Pain & Suffering - \$50,000

Special Damages 351

Judgment for the plaintiff in the sum of \$50,000 as General Damages and Special Damages \$351 with interest at 3% from the relevant dates. Cost to be agreed or taxed.

(3) Suit No. C.L. F012/1988

General Damages

Pain & Suffering \$238,000

Special Damages 1,800

Judgment for Plaintiff in the sum of \$238,000 as General Damages and Special Damages \$1800 with interest at 3% from the relevant dates. Costs to be agreed or taxed.

(4) Suit No. C.L. S027/88

General Damages

Pain and Suffering \$275,000

Special Damages 1,885

Judgment for the plaintiff in the sum of \$275,000 as General Damages and Special Damages \$1885 with interest at 3% from the relevant dates. Costs to be agreed or taxed.