



[2016] JMSC Civ. 177

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2010 HCV 05585

BETWEEN	DANIEL MUIRHEAD	CLAIMANT
AND	CONSTABLE W. POWELL	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN CHAMBERS

Ms. Oraina Lawrence instructed by Kinghorn and Kinghorn attorneys at law for the claimant

Ms. Marlene Chisholm instructed by the Director of State Proceedings for the defendants

Heard: 4th April and 19th October 2016

TORT - NEGLIGENCE - MOTOR VEHICLE ACCIDENT - PERSONAL INJURY CLAIM - LIABILITY - QUANTUM OF DAMAGES - "*Res Ipsa Loquitur*"

BERTRAM LINTON, J (AG.)

[1] Mr. Daniel Muirhead, the claimant, is a taxi driver, and is seeking damages for personal injury from the defendants, as a result of a collision that occurred on the 14th June, 2008, in the vicinity of Darlington drive, Old Harbour in the parish of St. Catherine. The first defendant, then a constable of police was driving a car owned by the government of Jamaica. Based on the pleadings, the oral evidence

and the submissions herein the court is left to decide on the question of liability, and then depending on the answer, go on to make orders as to what damages are appropriate. The accounts as to the way the accident occurred differ, and as such an initial determination as to who the court believes must be made.

The Claimants Case

- [2] Mr. Muirhead maintains that he was travelling along Darlington drive, a vehicle stopped to allow him to cross over onto Old Harbour road. While he was in the process of doing so, the first defendant travelling on West Street and coming from the same direction as the vehicle that had allowed him across, overtook the line of traffic and collided into the right side of his motor car before he could complete crossing to the Old Harbour main road.
- [3] There was another vehicle ahead of the 1st defendant's vehicle and travelling in the same direction, which appeared to have been travelling with the 1st defendant, and was driven by an Inspector Duncan. That vehicle had swerved to avoid hitting the claimant's vehicle. He acknowledges that Darlington Drive is a minor road which leads onto the intersection of East and West Street and says that when the motorist stopped to allow him to cross over, he proceeded with caution and with a view to ensuring that the road was clear.
- [4] When he determined that it was safe to go forward, and had begun his maneuver, that is when he saw the white police vehicle driven by Inspector Duncan overtook the other vehicles and speed towards him, followed by the vehicle that the 1st defendant was in. There were no flashing lights and no siren As a result of the collision, he sustained serious personal injury and asks the court to find that the 1st defendant's negligence was the cause of the collision.

The Defendant's Case

- [5] Counsel for the defendants deny that the 1st defendant was negligent and suggests that even if he was, then the collision was contributed to by the negligence of the claimant.
- [6] The defendants say that the 1st defendant was travelling easterly along Old Harbour main road when the claimant emerged without warning from the minor road and into the path of the vehicle he was driving. They do not dispute that it was the 1st defendant's vehicle that hit the claimant's car or that there was damage to the right driver door and right front fender on the claimant's car. It is the claimant's account of how the collision took place that they challenge. He insists that his vehicle was not over taking the line of traffic and that the collision took place in his correct lane and on his side of the road.
- [7] The first defendant says that he was travelling directly behind Inspector Duncan's vehicle along West Street towards East Street. They were on special operations duty, going from one location to another. No siren or flashing lights were being used by either of the vehicles in which the police were travelling. On reaching the intersection of East and Darlington streets in the vicinity of the clock; he saw the claimant's vehicle coming from the direction of Darlington Street and drive into the path of Inspector Duncan's vehicle. He said, "When I saw Duncan swerve, I was a car length and a half behind him, when the Probox (the claimant's vehicle) swerved I was a car length and a half from him"
- He immediately applied his brake, steered the vehicle to his right and blew the horn vigorously, but the claimant continued in his path and it was then that the collision occurred.

Discussion and Analysis

[8] The critical question here is who is to be believed.

In making a decision as to who was negligent it is necessary for me to examine both accounts of the accident and juxtapose this with the physical evidence of the impact and the evidence of the roadway and the positions of the vehicles. I do not intend to repeat the evidence of each witness or the detailed submissions of the parties, but will reference as much of it as I consider necessary to explain the reasons for my decision.

[9] I was generally impressed with the evidence of the claimant and believe it to be the more plausible account of the circumstances of the collision. I accept as truthful that the 1st defendant was overtaking the line of traffic that morning and was driving at a relatively fast rate of speed in comparison to the other traffic on the road going in the same direction which was travelling bumper to bumper as described by the claimant.

[10] In addition both drivers agree that Inspector Duncan was travelling ahead of the claimant and detected him in time so as to swerve to avoid an accident. The 1st defendant was in a position to see the claimant who had already emerged from the minor road at the instance of the motorist who was at the head of the line of traffic. It is not that this gave the claimant the right to be there, but it was the actions of the 1st defendant and his overtaking at the intersection that would have been unexpected, travelling as he did at a fast rate of speed without the benefit of a siren or flashing lights if indeed he was on special operation and continuing into the intersection despite seeing the near collision with Inspector Duncan that precipitated the collision.

[11] The 1st defendant said in his evidence that he had the right of way and that was why he did not yield to the vehicle already in the intersection. This saw the 1st defendant running directly into the front driver door of the claimant's vehicle even though that vehicle had caused Inspector Duncan's vehicle to swerve out of its

path and he was about one to one and half car length behind Inspector Duncan's vehicle.

[12] I am satisfied that on a balance of probabilities the 1st defendant was travelling at a fast rate of speed and to the right of the line of traffic going in his direction and presented an immediate unexpected obstruction to the claimant's vehicle at an intersection which was not controlled by any traffic signals. The claimant's vehicle must have been already directly in front of the 1st defendant just as it was directly in front of Inspector Duncan who had to swerve to avoid it. In these circumstances it was not for him to assert a right of way because he was circumventing the proper lane and the proper line of traffic. He had a duty based on the Road Traffic Law to stay in the line of traffic and allow the claimant to complete his maneuver as the claimant was already engaged in the intersection at the instance of the motorist at the head of the proper lane of traffic.

Damages

[13] As a result of the collision the claimant sustained injuries disclosed as:-

- 1) Mild whiplash to the neck
- 2) Acute Muscular Sprain/strain
- 3) Anxiety syndrome

[14] It is trite law that special damages must be pleaded and specifically proven; as no receipt was tendered for any **special damages** claimed **no amount is be awarded under this heading.**

[15] The evidence of the claimant is that after the collision and while he was at the police station he began experiencing pain in the head, right shoulder and back. He attended upon Dr. Francis Kpormego for his injuries and was seen in relation to them on six different occasions. He was given sick leave as his body was said to be traumatized. The amount of days was not specified, and this would have been useful in determining what the doctor estimated would have been a likely period of cessation of his pain and trauma.

[16] It is conceded that persons are different in the way their bodies react to trauma, but it is often the level of treatment required that is a good indication of the seriousness of the effects of the accident and the compensation that is appropriate.

[17] The claimant submitted that a reasonable range for compensation was \$1,000,000 - \$1,200,000 based on the authorities that accorded with his injuries and were useful guides.

- i) **Trevor Benjamin v Henry Ford Claim No. 2005HCV 02876** where Anderson, J awarded \$700,000 for soft tissue damage, when updated with the current CPI, this sum yields approximately \$ 1,033,908.04.
- ii) **Talisha Bryan v Anthony Simpson and Andre Fletcher Claim No. 2011HCV 05780** where the claimant was awarded \$1,400,000 and when updated yields approximately \$1,511,764.70
- iii) **Bruce Walford v Garnett James Fullerton and Rohan George Gordon [2012] JMISC CIV. 190** where the claimant was awarded \$700,000 and using the current CPI updates to approximately \$841,090.91

[18] The defendants submitted cases as well for consideration these were:-

- i) **Lascelles Allen v Ameco Caribbean Incorporated** Claim No. 2009 HCV03883 where a taxi driver was diagnosed with whiplash injury, had pain in his neck and side and was awarded \$600,000 in 2011, after having recovered within six months of the injury and undergoing some sessions of physical therapy.
- ii) **Pamela Thompson and others v Devon Barrows et al** (Unreported) CL 2001/T143 delivered December 2006 where Miss Thompson suffered mild whiplash injury to the neck and complained of pain to the neck, lower back and shoulder and was awarded \$250,000 which updates to approximately \$571,000 using the CPI for April 2016

- iii) **Deloris Briscoe v JUTC and Omar Mitchell** (Unreported) [2015] JMSC Civ.200 delivered 2015 where the claimant was assessed as having mild whiplash and prescribed oral and topical analgesics as well as a soft collar for two weeks .She was awarded \$700,000 for general damages.
- iv) **Peter Marshall V Carlton Cole and Alvin Thorpe** Khan's volume 6 at page 109.The claimant suffered whiplash ,sprain, swollen and tender wrist and lower back spasm .His award updates to some \$801,000.

[19] The claimant's evidence clearly indicates that his injuries were not serious. He could not remember if he had done x-rays or any other form of tests and the medical report did not indicate that or any other type of diagnostic assessment. He was not recommended to wear a collar or to do physiotherapy sessions. His full treatment consisted of pain killers and rest. He also seemed to have what the doctor called anxiety syndrome but no details were given as to the basis for that diagnosis or any treatment undertaken for it.

[20] In the circumstances I believe a reasonable sum for general damages would be \$600,000 and would fall between the awards in the Pamela Thompson and the Deloris Briscoe cases and I so order.

1. Interest is awarded on that sum at a rate of 3% from the date of service of the claim form to the date of judgment.
2. Costs are awarded to the claimant to be agreed or taxed.