

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2004 HCV 00918

BETWEEN	DERRICK MUNROE	CLAIMANT
AND	GORDON ROBERTSON	DEFENDANT

Ms. Marion Rose-Green instructed by Marion Rose-Green and Company for the Claimant.

Mr. Charles Campbell instructed by Khan and Khan for the Defendant.

Heard on the 17th and 18th day of June, 2009

G. Brown, J. (acting)

The Claimant was a Refrigeration and Air Condition Technician and resided at Bonito Crescent, Mandeville in the parish of Manchester. He brought an action in negligence seeking to recover damages arising from a motor vehicle accident.

The Claimant alleged that on the 11th day of October 2002 at about 9:30 a.m., he was driving his motor car along the Old Harbour Road in the direction of Spanish Town. He was going to Kitson Town to repair refrigerators. On reaching the intersection with the Gutters Main Road, he observed the Defendant's motor car drove on to the Old Harbour Road and attempted to overtake him. He then observed a truck coming in the opposite direction. The Defendant then swerved to the left to avoid a collision with the truck and collided into the right rear bumper of his vehicle. The right side of his motor car was damaged. He also suffered personal injuries.

The Defendant was a Truck Driver and resided at Lakemore Gardens, Spanish Town in the parish of St. Catherine. He denied the Claimant's account of the accident and filed a counter claim for the damage to his motor car.

He alleged that he was driving along the Gutters Main Road when he observed the Claimant's stationary motor car on the left side of the road. As he was about to pass the car, it suddenly made a U Turn to go in the opposite direction thereby causing a collision. The front of his motor car collided with the Defendant's right door and right quarter panel.

The Defendant also alleged that the Claimant admitted his negligence and had agreed to repair his car. He told him that he was sorry for the collision which he blamed his son who he said had told him that it was safe to turn.

These allegations were denied by the Claimant who also alleged that it was the Defendant who had admitted his negligence and agreed to repair his damaged motor car. He maintained that he was alone in the vehicle and therefore had no conversation with a little boy. However the latter did admit that he saw no one in the Claimant's motor car at the time of the accident.

There was also a dispute between the parties as to where the accident occurred. The Claimant alleged that it was on the Old Harbour Bypass Road; the Defendant on the other hand denied this and contended that the Claimant was not driving along that road. He said in cross examination that ***"he was on the Gutters Main Road approaching the intersection when he first saw the Claimant's stationary vehicle. It was coming out of Gutters Road onto Old Harbour Road. When he was about two cars lent away the Claimant made a U Turn to go in the opposite direction."***

This statement clearly contradicted the Defence as filed; at paragraphs 3 and 4 he said:

"Save that on the 11th October 2002 there was a collision between the Claimant's vehicle 5025 DU and my vehicle 1697 BY on the Old Harbour Bypass near Gutters in St. CatherineI was travelling on the said Bypass Road towards Spanish Town"

The Defendant was bound by his own pleadings. Thus, where the accident occurred was not an issue as the parties had agreed that it was on the Bypass and not on the Gutters Road as he now asserted. This was a serious contradiction which must affect his credit and the veracity of his case. He was indeed quite familiar with area and knew the roads.

The Claimant's motor car could not be driven and was later removed from the scene by a wrecker. He had the damage assessed. Photographs of the damaged vehicle and the assessor's report were exhibited. It showed damage ***to the lower section of the right rear door, right rear wheelhouse panel, right rear lamp and rear bumper "as a result of an impact to the right rear section."*** This appeared to be consistent with his version that the defendant collided into his car as he swerved from the right lane to avoid a head on collision with an approaching vehicle. The Claimant's loss was estimated to be one hundred and twenty four thousand four hundred dollars (\$124,400.00).

The Defendant on the other hand was able to drive his vehicle away from the scene. He took the Claimant to his home, to seek medical treatment and also a body shop in Mandeville. He later had the damage to his vehicle assessed at eighty six thousand seven hundred and five dollars (\$86,705.00). The assessor's report showed that the damage was to the front of the vehicle including the left front fender.

The Claimant denied that the damage was as a result of the collision and claimed that the defendant told him that his wife hit the car before the date.

It was the Defendant's contention that ***"the impact between the vehicles was between my front and the right side of his vehicle involving the right door and right quarter panel."*** This would seemingly be consistent with his claim that the Claimant had made a U Turn to go in the opposite

direction, causing him to collide into the right side of the latter's car. The position of both cars would have created a 'T' on impact with damage to the front of the Defendant's car. There would also be severe damage to the Claimant's motor car including the right door post. However the assessor's report did not disclose any damage to the latter area.

The parties did not call any independent witnesses to support their case. They relied solely on their testimonies and witness statements.

The Claimant's account of the incident differed substantially from the Defendant's on every important detail.

He was consistent that the collision occurred on the Old Harbour by-pass Road and not on the Gutters Main Road. He was driving from Mandeville on his way to Kitson Town. He had not driven on the Gutter's Main Road and had no reason to do so.

The damage to his vehicle did not show any damage to the right door post which would be consistent with the Defendant's version.

Thus, on a balance of probability, I accepted the Claimant's version of the accident.

I was of the opinion that it was the Defendant who drove onto the by-pass road from the Gutters Main Road and was attempting to overtake him. He then observed a truck approaching in the opposite direction. In an attempt to avoid a head on collision with this truck the Defendant swerved to his left and collided with the Claimant's motor car.

He was solely to be blamed.

PERSONAL INJURY

In her written submission, counsel for the Claimant had urged the court that an award of \$1,000,000.00 would be reasonable for pain and suffering and loss of amenities. She relied on a

medical report from Dr. Christopher Rose who examined the Claimant for the first and only time in 2008 i.e. 6 years after the accident. He diagnosed Mr. Munroe as having chronic mechanical back pains but did not treat him.

Dr. Robert Edwards had examined the Claimant on the day of the accident. In his report dated October 22, 2003 he states as follows: *"this is to certify that I examined in relation to a motor vehicle accident on October 10, 2002. He was complaining of:*

(1) Pain in sternal region of the chest

(2) Lower back pain.

Significant Examination findings were confined to the anterior chest and the lower back

(a) Tenderness in the region of the left costochondral joints with increased tenderness during respiration and all chest movements.

(b) Tenderness in the lumbar region in all ranges of motion

He was given:

The(re) has been no permanent irreparable deformity or disability.

There was a fourteen day period of Partial disability.

He is fully recovered."

The Claimant also exhibited a medical report from Dr. Derrick A. Ledford dated 24th April 2003.

It reads:

"This is to certify that I treated Derrick Monroe on the 20th October 2002. At the time he complained for pain in the head and neck, the shoulder and the anterior chest. He also complained of blurred vision. On examination he had tenderness in the anterior head, left shoulder and mid anterior chest, anteriorly. He said his problem were due to a motor vehicle accident in which he was involved on the 10th October, 2002. He was seen at the Mandeville Public Hospital on the day of the accident. He was also referred to the Ophthalmologist for the blurred vision."

There was no report from the Ophthalmologist to explain whether the blurred vision was as a result of the motor vehicle accident. Two receipts dated August 22, 2003 and September 15, 2003 from Dr. J. A. Edwards were exhibited for eye exam and glasses. In the circumstances they were disregarded in assessing the damages.

In her written submission Ms. Rose-Green asked that *"the court...not to consider Dr. Edward's diagnosis as conclusive as he is not a specialist in orthopedics and is therefore not able to give expert advice with respect to this aspect of Mr. Munroe's illness."*

The Claimant in his witness statement dated the 23rd October, 2007 stated as follows at paragraphs 19 to 23:

"I continued to feel pain in my chest for about nine months. I felt back pains for over one year and I had to visit a doctor due to the constant back pains. I was unable to sit down for long due to pain. My right knee was swollen for months. I could hardly turn my neck because of pain.

I woke up with back pains most mornings. It was difficult for me to get out bed due to back pains. I used ointments to rub my back but this helped for a little while. My back felt sore, especially if I had to bend.

I cannot lift anything heavy because of the pain in my back. I cannot stand or walk for long periods due to pain in my back and pain in my left leg.

I had constant headaches, especially in the back of my head. The back of my head felt tender for several weeks and medication did not help. I could not stand or walk in the sun for any long period due to constant headaches.

I was unable to work for one year and five months, as I experienced constant pain and discomfort....."

The Claimant painted a dismal picture of the pain and suffering that he had endured since the accident and still affect him up to today. Thus, Dr. Rose had recommended a programme of physical therapy to assist him which he has not commenced.

The burden of proof was on the Claimant to show on a balance of probability that these injuries were as a result of the accident.

I found this argument to be disingenuous and preposterous as Dr. Robert Edwards (whom he referred to as my doctor) in his medical report had asserted that the Claimant was fully recovered. This was one year after the accident. Dr. Edwards would have examined him before coming to this conclusion and if he was in pain he would have disclosed it to him.

I also found it strange that he did not complain to Dr. Ledford for pains to the back when he visited him 10 days after the accident. The complaint was for pain in the head and neck, the shoulder and the anterior chest.

He did not return to see either doctor for treatment except to obtain medical reports even though he said he was feeling such excruciating pains. If he had seen a third doctor within a year of the accident as he is now saying, one would have expected a report from that doctor.

He commenced proceedings on the 20th April 2004 and was examined by Dr. Rose in 2008 for the sole purpose of obtaining a report to tender into evidence. He was never treated by him for his injuries. His evaluation and opinion was clearly based on what was told to him by the Claimant.

The Claimant's actions were clearly inconsistent with a person who was seriously injured and was in constant pain. He could not produce any medical report to support his assertions.

I therefore concluded that the injuries he had sustained were not serious and he had recovered fully as stated by Dr. Edwards. His period of disability was stated to be fourteen days.

I therefore awarded the sum of \$300,000.00 to the Claimant for general damage.

SPECIAL DAMAGE

The Claimant alleged that his monthly income as self-employed refrigerator technician was \$60,000.00 or more. He did not produce any documentary evidence to support his claim. In the circumstance no award was made for loss of income.

At the commencement of the trial the sum of \$195,200.00 was agreed for special damage.

Judgment for the Claimant as follows:-

Special Damages: \$195,000.00 with interest @ 3%.

General Damages: \$300,000.00 with interest @ 3% from the date of service with costs to be agreed or taxed.