



[2016] JMSC Civ. 117

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2011HCV07357**

|                |                         |   |
|----------------|-------------------------|---|
| <b>BETWEEN</b> | <b>Sasha Neilson</b>    | <b>Claimant</b>                           |
| <b>AND</b>     | <b>Mark D Thomas</b>    | <b>Defendant/Ancillary Claimant</b>       |
| <b>AND</b>     | <b>Ian Thompson</b>     | <b>1<sup>st</sup> Ancillary Defendant</b> |
| <b>AND</b>     | <b>Gregory Williams</b> | <b>2<sup>nd</sup> Ancillary Defendant</b> |

**Mr. Paul Edwards instructed by Bignall Law for the claimant**

**Mr. David Henry instructed by Winsome Marsh for the defendant**

**Ms. Suzette Campbell instructed by Campbell and Campbell for the first ancillary defendant.**

**Heard: June 23, 24 and 30, 2016**

**Negligence - Collision at intersection of roadway governed by traffic lights - Duty of drivers.**

**TIE, J (AG)**

[1] The claimant herein sustained injuries when the vehicle in which she was travelling (driven by the second ancillary defendant) and a vehicle driven by the defendant collided at the intersection of the Bog Walk Bypass and Church Road in the parish of Saint Catherine. The intersection is regulated by traffic lights and each driver contends that the other disobeyed the light.

**The claimant's case**

- [2] The claimant asserts in her pleadings and evidence that on the day in question she was in the front passenger seat of a Corolla which was being operated as a taxi and which was being driven by Gregory Williams. It was her evidence that this vehicle travelled in the left lane along Church Road towards the intersection with the Bog Walk Bypass and stopped at the traffic light that displayed red, behind another vehicle. She explained that a left turn at the intersection would lead to Ewarton whilst a right turn would lead to Spanish Town. When the traffic light turned green, the vehicle that was in front proceeded across the road and the Corolla commenced turning right. It reached almost to the middle of the roadway when a red Honda motor car coming from the direction of Spanish Town broke the stop light and slammed into the right side of the Corolla. The claimant sustained injuries and was taken to a medical facility where she was treated.
- [3] Under cross examination she denied that the driver of the taxi tried to beat the light to get onto the Bypass.

**The defendant's case**

- [4] The defendant on the other hand lays blame at the feet of the taxi driver, hence the ancillary claim in which he seeks to be indemnified and seeks compensation for the damage to his vehicle and other associated losses. The defendant's position as contained in the defence, ancillary claim and his witness statement that was permitted to stand as his evidence in chief, was that the driver of the Corolla broke the red light. He explained that he was driving his Honda motor car along the Bog Walk Bypass, towards Ewarton and approached the intersection with Church Road, which intersection is regulated by stop lights. As he approached, the stop light changed to green and as he was about to proceed through the intersection he saw the Corolla approaching from his left. According to him, the driver of this Corolla disobeyed the red light that would have faced him. He thought that this driver would be turning left towards Ewarton and so he applied his brakes and swerved to his right. The Corolla however proceeded to turn right and they collided in the middle of the intersection, slightly more in the

right lane heading towards Spanish Town. The left front of his vehicle collided with the right front section of the Corolla causing the said Corolla to spin

- [5] Under cross examination he indicated that he slowed right before entering the intersection. According to him, he slowed because when approaching an intersection 'you approach with caution.' He was however unable to indicate what this speed was. On being pressed as to where he had in fact slowed down he said that he slowed about 30 feet away from the intersection. He said that when he approached the intersection the traffic light was red but when he went to enter same it was green, it having changed to green as 'I was just entering the intersection.' He explained that it was not necessary for him to stop since the traffic light changed to green as he approached. He stated that he was right at the entrance of the intersection when he saw the Corolla. He conceded that the point of impact occurred in the right lane heading towards Ewarton and hence the Corolla would have crossed the left lane that the defendant had been travelling in.

**The case for the ancillary defendant**

- [6] Not surprisingly, the ancillary defendant's position accords with that of the claimant, placing responsibility squarely on the shoulders of the defendant. As such a counter claim was filed seeking compensation for damage to the vehicle as well as other associated losses. The defence to the ancillary claim and the evidence of the driver was that he was on Church Road intending to turn right towards Spanish Town. He says that he stopped behind another vehicle at the traffic light which was on red. He noted that a vehicle was also behind him. When the light changed to green the vehicle ahead of him went straight across and he proceeded to turn right whereupon the Honda approached from his right, broke the red light and crashed into his vehicle.
- [7] Under cross examination he accepted that as a taxi driver his income is determined by the number of trips that he can make. He says that where he stopped at the stop light he could not see vehicles on the Bypass. He explained

that when the light changed green he looked up the intersection but saw nothing. He saw the Honda a second or two before impact. He said that he was not speeding as he had just moved off and was in the middle of the road when the accident happened. He denied that he proceeded into the intersection through a red light. In describing the impact to his vehicle he explained that there were two impacts. That the Honda crashed into the front of his vehicle, rebounded and then crashed into his driver's door. He insisted that there was a vehicle in front of and behind him, even though he was unable to indicate what happened to the vehicle behind.

- [8] The owner of the taxi (the first ancillary defendant) also gave evidence, however his evidence is of no assistance as regards the determination of liability.

#### **The issues**

- [9] The primary issue for the determination of the court is whether it was the defendant or the second ancillary defendant who disobeyed the traffic light which regulates the flow of traffic at the intersection. Thereafter, there being no dispute that the claimant was in fact a passenger in the Corolla and had sustained injuries, the issue for the court is the appropriate quantum of damages.

#### **Findings of fact and analysis**

- [10] There is no dispute as to the date, time and place of the collision; nor is there any dispute as to the fact that the intersection is regulated by traffic lights. The parties are agreed (as per the closing submissions of the defendant) that the claimant was a passenger in the taxi driven by the second ancillary defendant who was driving along Church Road and who proceeded to turn right at the intersection, to head towards Spanish Town. It is also agreed that the defendant/ancillary claimant was driving along the Bog Walk By-Pass intending to head towards Ewarton.
- [11] The case turns substantially on the credibility of the witnesses. The court must determine on a balance of the probabilities which driver disobeyed the traffic

light. Having considered the evidence in its entirety and having had the benefit of seeing the demeanour of the witnesses, I find that the claimant has proved to the requisite standard that the defendant disobeyed the traffic light and that he was negligent in entering the intersection in the manner that he did, thus causing the collision and the injuries sustained by her. Similarly, I find that the ancillary defendant has so established on the counter claim against the ancillary claimant.

**[12]** I considered the evidence of the claimant and found her to be a credible witness. Her evidence was in harmony with that of the ancillary defendant. It was her evidence that she did not know the ancillary defendant and there is no discernible motive on her part to seek compensation against the defendant as opposed to the owner and driver of the vehicle in which she was travelling. I accept that she was truthful when she indicated that the taxi driver stopped at the traffic light and only proceeded when the light had changed to green. I believe her evidence that the defendant broke the red traffic light that he would have faced and slammed into the taxi vehicle at such a force that the vehicle spun. Her evidence was not damaged under cross examination.

**[13]** In assessing the evidence of the ancillary defendant/ taxi driver, I regarded him as a forthright individual. He was not shaken under cross examination. I was not swayed by the submissions made by counsel for the defendant that his evidence was not believable as regards the presence of a vehicle ahead and behind him given that these vehicles were not affected by the collision. This was, to my mind, understandable given that the vehicle ahead had moved off and for obvious reasons the taxi driver would have been unable to speak to the movement of the vehicle behind upon receiving the green light.

**[14]** Similar submissions were made as regards his evidence that the defendant vehicle hit into him twice having rebounded after the first impact. Whilst on the face of it this is difficult to understand, I cannot rule it out as not having happened. The assessor's report itself is not conclusive as it indicates that "the damage seen *appears* consistent with a single impact." In any event, even if this

were not the case, I do not regard this as a slight on his credibility. I am satisfied that he truly believes that it happened this way. There was really no benefit to be gained by him deliberately creating such a fiction. Motor vehicle accidents are quick and dynamic events. One cannot expect witnesses to give a perfect recount. These issues raised by counsel for the defendant did not negatively impact his credibility. What is clear on the evidence is that the defendant did collide into the taxi.

**[15]** In evaluating the evidence of the defendant, I was dissatisfied with various aspects of his evidence.

**[16]** I find that the defendant's approach to the stop light was inconsistent with someone minded to obey the stop light. When questioned as to his approach to the lights, he indicated that when he approached the light it was red and that when he went to enter the intersection it was green. When asked how far away he was when it changed from red to green, his response was, "I was just entering the intersection." When asked where he slowed he said "right before entering the intersection." In response to a subsequent question he sought to point out the distance where he slowed, which distance was estimated to be 30 feet from the intersection.

**[17]** I find it most telling that a driver who is faced with a red light starts slowing "right before entering the intersection", particularly a driver who indicated that he was not anticipating the light changing to green, as was the defendant's testimony. I find his statement thereafter that he slowed a distance of 30 feet from the intersection to be disingenuous considering all his other responses which gave the clear indication that he slowed right before entering the intersection. The court noted that he also used a similar term in indicating when he first saw the Corolla. He said "right before entering the intersection." He explained .this in the following words, "I was right at the entrance of the intersection." I am satisfied that he slowed at the entrance of the intersection and not thirty feet prior.

- [18] I am of the view that a driver who intends to obey a red light would have commenced slowing long before entering the intersection. His evidence that he slowed right before entering the intersection is indicative of his disregard for the traffic light. In fact at another point in his evidence when asked why he slowed his response made no reference to the presence of the traffic light but instead indicated that “while approaching the intersection you approach with caution.”
- [19] I am further convinced that he disregarded the traffic lights given my findings as to his speed. I find that the defendant was travelling at a speed far exceeding that stated in his evidence. His description of the movement of the vehicles after impact lends credence to this finding. His evidence in chief was that his vehicle collided into the Corolla “causing that vehicle to spin in the road...” There was obviously a great deal of force from his vehicle as it is evident that his vehicle pushed the other vehicle away from the point of impact. The defendant’s vehicle on the other hand, continued in the general direction in which it had been travelling. This supports the ancillary defendant’s account that the defendant was speeding and that he (the ancillary defendant) had just moved off from a stationary position, awaiting the traffic light to change from red to green, and hence was moving slowly. Having found that the ancillary defendant entered the intersection having had the green light, the court is entitled to infer, unless the contrary is proved, that the lights were showing red the other way, that is on the side regulating the defendant’s movement. -**Wells v. Woodward** (1956) 54 LGR 142. Div Ct.. The ancillary defendant having received the green light, he was entitled to assume that no traffic would be crossing against the lights.- **Joseph Eva Ltd. v Reeves** [1938] 2KB 393.
- [20] Had the defendant been travelling at the speed of 50-55km.p.h as he stated and had he in fact slowed and approached the intersection with caution, he would have been able to take effective evasive action, particularly since he saw the Corolla enter the intersection and at no point does he allege that the Corolla was speeding. The defendant is not a credible witness.

[21] I find the evidence of the defendant that on seeing the Corolla he “couldn’t envision anyone pulling out and turning right” curious. There is no explanation for this belief. It seems to me that the defendant, having for whatever reason assumed that the Corolla would be proceeding towards Ewarton, believed that he could have continued on his way in this direction once the taxi man “held his left.” His assumption as regards the intended destination of the Corolla was wrong.

I therefore find that on a balance of the probabilities, the defendant disobeyed the traffic light and therefor failed in his duty to other road users when he entered the intersection. The claimant and ancillary defendant are entitled to compensation.

### **General Damages**

[22] In assessing the claimant’s injury, the court considered the various medical reports that had been admitted into evidence. The claimant sought medical treatment on the day of the incident from Dr. Mossop. He summarised her injuries as follows:-

- Trauma to the right side of face resulting in swelling of the face and severe pain to face
- Trauma to the right side of abdomen resulting in difficulty of micturition of movement
- Mild whiplash to neck resulting in stiffness of the neck and restriction of movement
- Trauma to back and right knee resulting in difficulty in walking for two weeks.

She was given medication, and referred for physiotherapy and instructed to wear a cervical collar. After five visits he concluded that she recovered completely.

[23] The claimant also visited Dr. Lawson in June and July of 2010. He diagnosed her with having-

- Acute Cervical strain/ whiplash injury;
- Acute mechanical lower back pain with right lower limb paraesthesiae;
- Sub-concussive blunt head injury with epistaxis (nose bleeding)
- Right TMJ dysfunction & mucosal cheek laceration
- possible foreign body to right eye
- acute musculoskeletal chest pain



- soft tissue injuries to right lower limb, breast & abdominal wall.

[24] The claimant was finally seen by Dr. Cheeks some two years after the incident. His diagnosis was:-

- Chronic lumbar strain
- Soft tissue injury to the infra- patellar region of her right leg.

He assessed her as having a permanent partial disability of 2% of the whole person.

[25] I have considered the decisions that were presented on behalf of the claimant of **Dalton Brown v Poncianna Brown and anor.** (Claim no. HCV 01358); **Yanique Hunter v Conrod Clarke et al** (claim no. 2011 HCV 05347 and **Olivia Dewar v Pauline Thomas** (claim no. 2009 HCV 00151). I found the cases helpful but noted that the injuries sustained by the claimant in the **Olivia Dewar** case whilst similar to Ms Neilson's, were much more serious than those suffered by the claimant in the instant case given that **Dewar** received abrasions to her face and was unable to use her right arm. **Dewar** was also in severe pain for about one year.

[26] The authorities presented on behalf of the defendant **Yanique Hunter v Conrod Clarke et al; Manley Nicholson v Ena Thomas & Anor;** and **Ricardo Asphall v David Daley** were also of much assistance to the court. I found the injuries suffered by the claimant in the case of **Manley Nicholson** however to be less severe given that the claimant therein, unlike Ms Neilson, had no whole person impairment.

Having considered the various cases, I am of the view that the sum of \$1,600,000.00 is reasonable.

**[27] Special damages**

Special damages were agreed by the parties at \$96,800.00 as regards medical expenses. I found that there was no evidence to substantiate her claim for extra help. I am of the view that her claim for transportation has been proved to the extent of \$22,000. The absence of receipts is understandable given the nature of public transportation. I find the sum of \$118,800 has been proved as regards special damages.

**[28] The order of the court as regards the claimant is as follows-**

Judgment for the claimant against the defendant. General damages in the sum of \$1,600,000.00 with interest of 3% from November 6, 2012 to June 30, 2016. Special damages in the sum of \$118,000 with interest of 3% from June 8, 2010 to June 30, 2016. Cost against the defendant to be agreed or taxed.

**[29] As regards the counter claim of the ancillary defendant, the following items of special damages were agreed-**

- Amount of loss to motor vehicle \$270,000.00
- Assessor's fee \$11,012.00
- Wrecker fees \$7,000.00

As regards loss of use, the evidence is that the taxi would earn approximately \$5,500 per day after expenses. I am of the view that loss of use for 3 months is reasonable being \$462,000.00

**[30] The order of the court as regards the counter claim of the ancillary defendant is as follows-**

Judgment for the first ancillary defendant against the ancillary claimant in the sum of \$750,012.00 with interest of 3% from June 8, 2010 to June 30, 2016. Cost against the ancillary claimant to be agreed or taxed.