

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE**

CLAIM NO. CV2008-01368

BETWEEN

**MARLON BILLY**

Claimant

-And-

**NEAL & MASSY MOTORS LIMITED**

and

**GUARDIAN GENERAL INSURANCE COMPANY LIMITED**

Defendants

**Before the Honourable Justice James C. Aboud**

**Representation**

- Mr. Gosine appeared for the Claimant
- Mr. Jagai instructed by Ms. Maharaj appeared for the Defendant

**Dated: 11 May, 2011**

**JUDGMENT**

1. This is a dispute of fact concerning liability for a vehicular collision that occurred on 25 May 2007 at a multi-lane intersection governed by complicated traffic lights. Neither party called any witness from the Traffic Management Department to explain how the lights functioned on that day. Both counsel informed the court that since 2007 the intersection and its traffic light management system have changed. It was thus useless to convene a court hearing at the site. The collision occurred at the intersection of the Gulf View Link Road, La Romaine, (which the parties have agreed runs North/South in that area) and the South Trunk Road (which the parties have agreed runs East/West in that area). The collision took place at around 11.45 am on a Friday, which the witnesses all agreed was a very busy period in terms of road traffic.
2. The claimant was a passenger in motor vehicle PAK 2354 (“PAK”) that was travelling in a southerly direction on the Gulf View Link Road intending to cross over the intersection

and drive towards the Pizza Hut Shop which is located on the other side of the South Trunk Road. That road was not named in the evidence, but I will call it the Link Road Extension for want of its proper name. The first defendant was the owner of motor vehicle PCC 4608 (“PCC”) that was insured by the second defendant. PCC was driven by Larry Sukal. He was *en route* from San Fernando to Cedros using the South Trunk Road and travelling in a westerly direction.

3. The configuration of the lanes that converge at the intersection was not in dispute. I will describe the South Trunk Road. There are four lanes going in either direction on the South Trunk Road at its intersection with Gulf View Link Road. There are four lanes heading in a Westerly direction towards South Trinidad. The two centre lanes are ‘crossover’ lanes intended for traffic moving directly through and over the intersection on the South Trunk Road towards South Trinidad. The northern most lane is a filter lane intended for vehicles that wish to turn right (in a northerly direction) onto the Gulf View Link Road towards Gulf City Mall. The southernmost lane is intended for vehicles which intend to turn left (in a southerly direction) heading towards Pizza Hut on the Link Road Extension. PCC, driven by Mr. Sukal, was heading west (towards Cedros, South Trinidad) travelling on the more northerly of the two cross-over lanes, namely the lane closest to the filter lane of cars waiting to drive into Gulf View Link Road. He says that he had a green light. Traffic travelling in the opposite direction on South Trunk Road, namely, from South Trinidad towards the North have the same lane assignments, but in reverse.
4. The Claimant was seated in the left rear seat of PAK, a Nissan Bluebird, travelling on the Gulf View Link Road which likewise has four lanes. The two southernmost lanes are meant for vehicles that will drive across the East Bound Lanes of the South Trunk Road onto the West Bound Lanes. The next northerly lane, which is the lane that PAK was driving on, is a crossover lane for vehicles driving straight through the intersection towards Pizza Hut. The northernmost lane is meant for vehicles which are turning in an easterly direction onto the South Trunk Road. For vehicles leaving the Pizza Hut area on the Link Road Extension there are only three lanes. The most easterly lane is intended for vehicles that wish to enter the intersection and turn right onto the South Trunk Road heading east towards San Fernando. The most westerly lane is intended for vehicles which are simply turning west onto the South Trunk Road heading towards South Trinidad. The middle lane is intended as a crossover lane for vehicles that want to drive across the intersection onto the Gulf View Link Road towards Gulf City. Sitting in his car, PAH 7234, with a red light on this crossover lane was Dr. James Sinanan, a witness called on behalf of the defendants. I have drawn a plan of the intersection using the uncontradicted oral evidence of all the witnesses. I have also shown on what lanes the parties’ vehicles were travelling as well as some other agreed events that were taking

place at the intersection at that time. I will come to those events in due course. The plan is attached as an appendix to this judgment.<sup>1</sup>

5. The evidence discloses that all these lanes were controlled by traffic lights. The claimant says that he was paying attention to the lights at the intersection although he was seated in the back seat of PAK. He says that at 120 feet and again at 60 feet from the intersection, the driver of PAK travelling on the Gulf View Link Road had a green light that entitled him to cross over the intersection towards Pizza Hut on the Link Road Extension. He said that ahead of him was another car (vehicle “X” on the attached plan) which was in one of the two westerly lanes entering the intersection and driving west on the South Trunk Road towards South Trinidad. His memory of that vehicle’s make and colour was vague and Mr. Jagai submitted that his poor recollection might be a symptom of good invention rather than bad memory. Mr. Sukal, driving the first defendant’s vehicle on the South Trunk Road heading towards Cedros, South Trinidad, was in the lane next to the filter lane. He also claims he had a green light allowing him to cross over the intersection. He said that he first saw the green traffic light from some 500 feet away. He called a passenger in the vehicle as one of his witnesses who also testified that PCC had a green light. Mr. Sukal could not see PAK crossing the intersection because at that distance he was driving alongside a long queue of cars in the filter lane waiting to turn right on the Gulf View Link Road. This queue of cars is also shown on the plan in the appendix and marked “Q”.
6. The colour of two lights of the many lights at this controlled intersection is not in dispute. Firstly, Dr. Sinanan on the Link Road Extension had a red light. He was intending to crossover the South Trunk Road towards Gulf City. Dr. Sinanan did not see how the accident took place and only became aware of a collision after he heard the collision. Moreover, the only light he was certain of was his light, which was red. He said he could not see whether PCC or PAK had a green light. In cross-examination Dr. Sinanan said that traffic on Gulf View Link Road usually backed up quite a distance waiting on a green light. He said that when the lights changed, the two lanes driving over the East bound lanes of the South Trunk Road intent on turning onto the West bound lanes of that Road en route to South Trinidad, and the lane on the Gulf View Road intending to cross over the South Trunk Road to the Link Road Extension all moved together. He said that the filter lane heading east towards San Fernando had a yellow light to proceed with caution.

---

<sup>1</sup> I should point out that the plan was not adduced as evidence before me. I have drawn it using the uncontradicted evidence of the parties. In that sense it contains some of the findings of this court based on that evidence.

7. It is also not in dispute that the long queue of cars on the filter lane alongside which Mr. Sukal was driving had a red light. These cars were waiting on a signal to drive across the east bound lane of the South Trunk Road and enter the Gulf View Link Road towards Gulf City. From these two facts (the red light facing Dr. Sinanan and the red light facing the filter lane on the South Trunk Road) several factual probabilities emerge. Because of the uncertain and conflicting state of the evidence it is perhaps more accurate to say that several probative deductions can be made.
8. Dr. Sinanan's red light suggests either that the east/west traffic on the crossover lanes (on one of which Mr. Sukal was driving) had green lights or that the lanes emerging out of the Gulf View Link Road onto the South Trunk Road had green lights. I must assume that Dr. Sinanan's entry onto the South Trunk Road would be prohibited if either of the subject intersecting lanes had green lights. By itself, Dr. Sinanan's red light does not greatly assist in determining which of the two drivers had a green light. The probabilities of either driver having a green light by virtue of Dr. Sinanan's red light are equal.
9. With respect to the red light stopping the movement of vehicles on the filter lane on the South Trunk Road two possibilities emerge. Firstly that vehicles on the Gulf View Link Road lane intending to crossover the intersection to the Link Road Extension (on which lane the claimant was being driven) would have a green light. In addition, the two lanes from the Gulf View Link Road intending to enter the intersection and drive west onto the South Trunk Road towards South Trinidad would also have a green light. It would be impossible for vehicles on the South Trunk filter lane to proceed into Gulf View Link Road at the same time that three lanes of traffic are emerging from it. Secondly, the red light for the filter lane could also mean that traffic moving in both directions on the South Trunk Road had green lights. The filter lane cannot safely drive over the eastern bound traffic heading towards San Fernando unless those lanes were facing a red light. By itself, the red light on the filter lane does not properly explain which of the two cars had a green light. The probabilities of either driver having a green light by virtue of the red light facing the filter lane are, as before, equal.
10. The court was asked to adversely interpret the absence of the driver of PAK or either of its other two passengers as witnesses for the claimant. In *Wisniewski v. Central Manchester Health Authority [1998] PIQR Vol 7 324*, citing and relying on *Mc Queen v. Great Western Railway Company (1875) LR 10 QB 569*, such an interpretation would have been possible if certain conditionalities were met; among them, was the question whether the absent witness was available and not called, or whether he had a good reason for not attending. These cases were fully discussed and applied in *Ian Sieunarine v. Doc's Engineering HCA No. 2387 of 2000* (unreported decision of Madam Justice Rajnauth-Lee dated 24 May 2005). The cases suggest that the *prima facie* case of an opposing party would be strengthened if critical eye-witness evidence is not adduced. However, the defendants in this case did not ask the claimant why he didn't call any of

the other occupants of PAK as witnesses. In the circumstances I cannot say which of them is dead, or has migrated abroad, or is hiding from the scrutiny of this court. The absence of a corroborating witness therefore does not energise the *prima facie* case of the defendants as occurred in *Ian Sieunarine*.

11. It is unsafe for me to rely solely on my impression of the demeanour of these or any witnesses. The problems in this case are caused by an acute conflict of evidence. In fact, like the events that they narrated, the witnesses' demeanours are equally balanced by my assessment. The most that Dr. Sinanan could say, he being the only independent witness, was what ought to have occurred when the lights were different colours. He could not say exactly what happened just before the collision. While it is true that the claimant was a back seat passenger, and thus did not have the best view of what was happening ahead, I must recognise that some back seat passengers are 'back seat drivers' and, in fact, are fully aware of what lies ahead of the vehicle in which they are travelling. The claimant's demeanour was unshaken in cross-examination on this and other points. He insisted that PAK had a green light. Likewise the evidence of Mr. Sukal and his witness, who happened to be a junior employee of Mr. Sukal's employer. Generally, their demeanour was unshaken in cross-examination. They were both quite sure that they had a green light. The problems caused by an acute conflict of evidence arose in *Horace Reid v. Dowling Charles and Percival Bain, Privy Council Appeal No. 36 of 1987*. What the Privy Council said in that case was that where a case relies solely on the judge's impression of the demeanour of witnesses he should check that impression against contemporary documents, where they exist, against the pleaded case, and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged.
12. In trying to decide this case I must have regard to the unchallenged facts and matters, and, on the basis of these, attempt to determine the inherent probabilities of each party's case. It is not in dispute that Dr. Sinanan had a red light waiting to cross over from the Link Road Extension to Gulf View Link Road. It is also not disputed that the filter lane on the South Trunk Road had a long queue of vehicles facing a red light and waiting to drive into Gulf View Link Road. I have previously found that by themselves each of these red lights (that of Dr. Sinanan and that of the filter lane) do not assist or impair the rival contentions that PCC had a green light or that PAK had a green light. I must therefore ask myself what would be the correct driving behaviour if the two red lights were red at the same time. It seems to me that both parties are conceding that the two red lights were red at the same time. I must also have regard to Dr. Sinanan's evidence that the three lanes leaving Gulf View Link Road and entering the South Trunk Road all moved together.
13. Taking both of these matters into account the improbability of PCC having a green light is greater than the improbability of PAK having a green light. The green light for PCC

seems to me to be the more improbable of the two scenarios. Firstly, Dr. Sinanan's red light taken together with the evidence that all three lanes on the Gulf View Link Road moved together suggests that he was at a stop position in order to allow traffic to exit from the Gulf View Link Road. That traffic could not exit from Gulf View Link Road unless Dr. Sinanan on the Link Road Extension had a red light. This finding is corroborated by the uncontradicted evidence that the filter lane on the South Trunk Road had a red light at the same time as Dr. Sinanan. Such a red light would also be necessary to allow vehicles to exit from the Gulf View Link Road. Secondly, and most importantly, if indeed PAK broke a red light then it would have had to cross over the West bound lanes of the South Trunk Road coming from South Trinidad (which would have had green lights) and entered the West bound lanes on which PCC was being driven. Friday traffic at that intersection was described as very busy, especially at 11.45 am. For PAK to have crossed over a busy intersection without a scratch or other collision seems to me to be more improbable than for PCC to have faced a green light. If PCC had a green light PAK's driver would have been suicidal to have entered that intersection at that time on that day. The fact that no collision occurred on the East bound lane before PAK collided with PCC on the West bound lane suggests that PAK had a green light.

14. By stripping away what is inherently improbable one is usually left with what is inherently probable. What is inherently probable in this traffic light case sheds light on who on a balance of probabilities is entitled to judgment. In light of the above I have decided to give judgment for the claimant together with costs. I will now hear the parties on the issue of assessing the claimant's damages and costs.

**James Christopher Aboud**

**Judge**



