

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2007 – 03078

BETWEEN

NEAL THOMPSON

Claimant

v

LYNDON MURPHY

First Defendant

AND

MOTOR AND GENERAL INSURANCE COMPANY LIMITED

Second Defendant

Before the Hon. Madam Justice C. Pemberton

Appearances:

For the Claimant: Mr. W. James

For the First Defendant and the Second Defendant: Ms. C. Moore instructed by Mr S. Jurawan

JUDGMENT

[1] The Claimant, Mr Neal Thompson presented a claim for damages for personal injuries and damage to chattel, to wit his 21 seater maxi taxi HAP 9718. The particulars of claim did not include his excess or deductible. No evidence was led or elicited as to this figure.

[2] Both Defendants Mr Lyndon Murphy and his insurers, Motor and General Insurance Company Limited defended the claim. Mr Murphy counterclaimed for damage to his vehicle HAR 8356, a Toyota Cressida, Sedan.

[3] Both drivers plied their respective vehicles for hire. The trial proceeded on the basis of liability only.

[4] **FACTS**

This collision occurred on December 21st 2006 at or around 6:30 a.m. The two vehicles were travelling along the Churchill Roosevelt Highway, just after the traffic lights at the Maloney intersection. At the time, both drivers were proceeding west on the west bound carriageway. Mr Murphy's vehicle collided with the rear of Mr Thompson's vehicle causing damage to both vehicles.

[5] **MR THOMPSON'S CASE**

Mr Thompson filed the required Statement of Case to which he attached the following;

- Document dated February 02 2007 and styled "Third Party's Statement" signed by Mr Thompson;
- Medical Report dated January 30 2007 signed by Dr Daniel Potla, Consultant Orthopedic Surgeon;
- Interim Medical Report dated April 02 2007 signed by Dr N Singh for Dr Potla (Consultant)
- "Without Prejudice" correspondence.

No other documents were filed with the claim. There were no police reports filed or photographs of the accident.

[6] **PLEADINGS**

Mr Thompson pleaded that he was travelling west on the left lane, along the Highway at a speed of about 60-70 kmph. He turned on his left indicator light, reduced his speed and veered onto the left shoulder in order to allow a passenger to alight. At some time, Mr Murphy's vehicle collided into the rear of Mr Thompson's vehicle. Mr Thompson, pleaded the usual particulars of negligence, all of which I shall not reproduce here. Suffice it to say that Mr Thompson alleged that Mr Murphy was driving at a speed too fast in the circumstances; driving in a manner that he did not or could not avoid running into his, Mr Thompson's vehicle and failing to apply his brakes in time to avoid the collision. According to Mr Thompson these acts among others caused his vehicle to be pushed

forward off the shoulder of the road into a ditch where he was thrown through the front of the windscreen thereby sustaining personal injuries. In addition, his vehicle was damaged. This pleading was supported by the Third Party Statement given to Motor One Insurance Company, who on the face of the document is described as the Insurer of the vehicle which Mr Murphy was driving.

[7] **MR MURPHY'S AND MOTOR AND GENERAL'S CASES**

Both Mr Murphy and Motor and General filed defences. Mr Murphy as I said above filed a counter claim. Motor and General acknowledged that a collision took place between the two vehicles on the date in question and at the specified location. Beyond that they admitted to no other facts as pleaded by Mr Thompson with respect to the collision. The Company then pleaded "With regard to the Statement given to the Claimant's Insurance Company and the Medical Report marked "N.T. 1" and "N.T. 2" respectively are admitted". The impact of this pleading I shall deal with later.

[8] Mr Murphy, too, acknowledged that a collision took place at the time and place as stated by Mr Thompson but his account differs. Mr Murphy claims that Mr Thompson's vehicle without warning veered into his path. He immediately applied brakes but the collision was unavoidable. His vehicle came into contact with the rear end of Mr Thompson's vehicle. This he attributes to Mr Thompson's negligence in that *inter alia*, in that Mr Thompson failed to exercise any or any sufficient care in his management and control of his vehicle; he failed to keep any or sufficient lookout for other road users, especially himself and overtaking him when it was unsafe so to do. Mr Murphy did not attach any documents to his claim.

[9] **EVIDENCE**

MR THOMPSON'S CASE

MR THOMPSON'S EVIDENCE

Mr Thompson's contentions as gleaned from his witness statement include the following:

On the day in question, he was plying his vehicle for hire along the Highway, proceeding west along the left lane in the vicinity of the Maloney traffic lights. Just after crossing the lights, he heard the bell signaling that a passenger wished to

alight from the vehicle. In order to accede to this request, he turned on his left indicator and started to reduce his speed. He looked in his rear view mirror and veered to the left onto the shoulder. He was about to fully straighten the vehicle when he heard a loud crash to the back of the vehicle. He felt an impact to the vehicle. At that time he was travelling about 10 to 15 kmph. With the impact, the maxi pitched forward and flipped onto its side. The maxi slid straight off the shoulder of the highway and dropped about 5 feet off the side of the road partly into a ditch on to a lower road. The vehicle moved a further 15 feet along the ditch on its side.

Mr Thompson was thrown from the vehicle. While on the bank of the road, he observed that Mr Murphy's vehicle was damaged at the left front side.

[10]

CROSS EXAMINATION

Mr Thompson confirmed that he heard a bell about 3-4 seconds after he crossed the traffic lights. He had no problems seeing the road, or other vehicles. He confirmed that the road surface was not wet, nor was it really busy. Mr Thompson informed that his was the first vehicle in the line at the traffic lights, and there were vehicles in front of him when he crossed the lights. He confirmed that he was in the lane closest to the shoulder of the road when he crossed the lights. There were vehicles behind him, which he saw in his rear view and side mirrors. He confirmed his case that Mr Murphy's vehicle hit the rear of his vehicle. He did not see that vehicle before the impact. He denied overtaking Mr Murphy's vehicle and reiterated that he never saw the vehicle before the collision. It was put to him by Counsel that it would be fair to say that he did not know where the vehicle came from, to which he responded positively. He confirmed his speed of 60-70 kmph which reduced gradually to 10-15 kmph at about 400ft from the Maloney lights. Mr Thompson, under some piercing cross examination maintained his account that he veered to the left in order to allow the passenger to alight. He did not pull sharply. That he looked to the left and to the right, using his wing mirrors to ensure that there were

no cars on the shoulder and to ensure that it was safe. He denied that he placed his vehicle suddenly in the path of Mr Murphy's vehicle in order to allow the passenger to alight.

[11] **MR THEOPHILUS EDWARDS**

Mr Edwards appeared as a witness for Mr Thompson. He was driving a four door pickup on the date and time of the collision. He confirmed the time of the collision at about 6:30 a.m. and the conditions at the time, in that the place was lit. When he made the manouvre at the traffic lights, he went onto the right lane and saw the 21 seater Maxi Taxi ahead of him. That vehicle was on the extreme left lane. The vehicle had its left indicator light lit. He saw a green Toyota Cressida motor car about one car length ahead. He noticed that the Cressida was driving partly on the shoulder and partly on the road about 20 feet behind the maxi. I noticed four persons in the car and that they were laughing. The Cressida was moving at a fast rate of speed and the maxi which had its left indicator on was proceeding to slow down whilst moving onto the shoulder. The two front wheels and the back left wheel of the maxi were already on the shoulder, and the maxi was almost at a complete stop when the Cressida, still moving at a fast rate of speed suddenly swerved towards the highway, but not before coming into contact with the back right side of the maxi. He noticed that the driver had been thrown some distance away and came to lie on the bank of the road. He rendered assistance to the persons who appeared to be injured. He noticed that Mr Murphy came out of his vehicle, went on this cell phone and said that he bounced a car.

[12] **CROSS EXAMINATION**

Mr Edwards stated that he did not know Mr Thompson before the date of the collision. He rendered assistance on the day as he was coming behind the incident. He confirmed that he was at least one vehicle behind the car and the maxi. He was at the extreme right. The back of the maxi was about 17-20 feet ahead of him. There was another vehicle in the space. He confirmed that he was in the right lane and the maxi was in the left lane. There was no other vehicle ahead of him in the right lane. However, stated Mr Edwards, Mr Murphy's vehicle was ahead of him in the left lane. He confirmed that when he first saw the maxi he estimated the speed to be about 60 kmph and that it was moving towards the shoulder. He made this observation for about 10 seconds. About 4

seconds elapsed between his observation and the collision. Mr Edwards confirmed that both vehicles were on the highway before he entered at the Maloney intersection. He disagreed that the 4 seconds that it took him to observe the happenings around him were insufficient to assess the speed of a vehicle with the exception of his own vehicle. He confirmed that when the Cressida passed him he looked across and saw persons laughing in that vehicle. He was at the time talking to a co-worker in his vehicle. He disputed Counsel's assertion that the maxi moved from the right lane to the left lane in the path of the Cressida, without making any indication.

[13] **MR MURPHY'S AND MOTOR AND GENERAL'S CASE**

MR MURPHY'S EVIDENCE

Mr Murphy stated that he was involved in the accident on 21 December 2006, but on that day he was not plying his vehicle for hire. He was however transporting four employees to a job site. Mr Murphy remembers driving about 60 kmph in the left lane of the Highway on a dry road surface. At sometime before the collision, he veered into the right lane to overtake a slow moving vehicle. He used the precautions of lighting his right indicator, checking that it was safe and proceeded to pass the vehicle. He then checked to see that it was safe, lighted his left indicator and proceeded to the left lane. At this time, Mr Thompson was in the right lane and suddenly and without warning or indication, veered to its left and into the path of his vehicle. He immediately applied his foot brakes but was unable to avoid the collision, which due to the impact veered to its left. His vehicle came to a standstill on the shoulder. Mr Murphy asserted that he was driving at a medium rate of speed on a somewhat busy road. The "accident" he asserts was unavoidable because of Mr Thompson's reckless action. Because of that action, Mr Murphy asserts as well that he did not have time to take evasive action and the only thing he could have done in the circumstances was to apply his brakes immediately.

[14] **CROSS EXAMINATION**

Mr Murphy confirmed that he overtook a vehicle on the Highway that morning. That was before the collision took place. There were a car and a maxi in front of him. The car was about 7-8 feet in front of him. This was about one car length. After some discussion with Counsel, Mr Murphy admitted that he veered to the left to overtake the slow moving vehicle. When he returned to the left lane, he

saw the maxi about 10-15 feet in front of him. He stated that Mr Thompson swerved into this left lane about 10-15 seconds after he came back to the left lane, and was driving at a slower rate than he was. He stated in response to Counsel that the road was not very busy at that time. There was no need for him to be in a hurry as he did not have a time to get to work. His companions also enjoyed the same luxury.

[15] Mr Murphy stated that he made contact with the maxi at its right rear and stated that at the time of the collision the maxi was partly on the shoulder and partly on the road. In fact, about one half of the bus was on the shoulder. Mr Murphy stated that he too was partly on the shoulder as well. It was in a diagonal way. He disagreed with Counsel, when it was suggested that if his account was correct he would have collided with the back left of Mr Thompson's vehicle. He denied Counsel's assertion that he was driving at a rate faster than 60 kmph, that he overtook a vehicle on the right of him, that the maxi was always in the left lane, that the maxi was pulling onto the shoulder from the left lane when he collided with it, that the maxi had its left indicator lighted. Mr Murphy admitted that the maxi was slowing down. Mr Murphy refuted that if indeed he was about 10-15 feet away from the maxi and that the accident occurred in less than 2 seconds in the manner he indicated that he would have been able to avoid the collision, or that he would have hit the rear left of the maxi. He was not talking to his co-workers. In fact the journey to that time was in silence.

[16] Counsel confronted Mr Murphy on his evidence in chief that the only thing he could have done in the circumstances was to apply his brakes immediately. Under cross examination, Mr Murphy stated that to avoid the collision, he swerved to the left. He denied that he was driving carelessly or that he was not paying proper attention to the vehicles around him.

[17] **CLOSING ARGUMENTS**

MR MURPHY'S AND MOTOR AND GENERAL'S CASE

Counsel sought to argue that the facts as pleaded and evidence led proved that Mr Thompson was the cause of the collision through his negligence or that his negligence contributed to the collision in that he failed to see Mr Murphy's vehicle behind him and failed to use the appropriate caution when he was changing lanes. Counsel further contended that "this lack of due care and attention

which caused an emergency situation in the course of which” Mr Murphy collided with Mr Thompson’s vehicle. In other words, the defence of inevitable accident or agony of the moment was relied upon. Counsel states that I should take a dim view of the fact that Mr Thompson offered no explanation for how the accident occurred. Counsel however concedes that Mr Thompson’s witness, Mr Edwards gave an account of the collision.

[18] **MR THOMPSON**

Counsel countered that based on the evidence it would not have been unreasonable for Mr Thompson not to have seen Mr Murphy behind him. Mr Thompson’s evidence was honest and forthright and was not shaken on cross examination. This was not a feature of Mr Murphy’s evidence and for that reason Mr Thompson’s version of the collision is to be preferred. If that approach finds favour with the court then the defence of inevitable accident cannot be sustained.

[19] **ANALYSIS AND CONCLUSION**

It is Mr Thompson’s contention that Mr Murphy was the sole and proximate cause of the accident for not having exercised due care and attention and driving at a speed which, in no uncertain terms facilitated and in fact caused the collision. Mr Thompson places the liability for the collision squarely upon Mr Murphy’s shoulders. There is no evidence that this accident received any police attention. Mr Thompson produced one witness Mr Theophilus Edwards. Mr Murphy was given leave to lead evidence from two witnesses beside himself, but no one else appeared at the trial to stand with him. I note that the witness, Mr Edwards was totally disinterested. I accept that he was not acquainted with Mr Thompson before the accident and simply rendered assistance on the day in question.

[20] Mr Edwards fully corroborated Mr Thompson’s version of the collision. His evidence was clear and unambiguous. He was travelling at some distance behind the two vehicles. His recollection is that when the two front wheels and the back left wheel of the maxi were already on the shoulder of the road and had almost come to a complete stop, Mr Murphy’s Cressida which was moving at a fast rate of speed suddenly swerved towards the highway but came into contact with Mr Thompson’s right rear. Mr Murphy’s cross examination bears out this fact scenario as well.

[21] Mr Murphy's account of the collision to my mind raised some pertinent questions. Mr Murphy claims that Mr Thompson's movements were sudden and without warning. He claims to have applied his footbrakes but that the collision was unavoidable. Mr Murphy admitted seeing the maxi ahead of him allegedly in the right lane, but did not produce any evidence to show the distance between him and the maxi before the collision. If Mr Murphy's account is to be taken, then a probable scenario is that Mr Thompson's vehicle would have come into contact with Mr Murphy before he came to rest on the shoulder. Also, it is probable that the pattern of damage to the vehicles would have been different in that his front right would have connected with Mr Thompson's left rear. That is not the evidence of damage. Instead it is the other way around. Mr Murphy's front left connected with Mr Thompson's right rear.

[22] From the above, I now find that Mr Edwards was a credible witness and that his account of the collision accords with that of Mr Thompson.

[23] I now make the following findings of fact:

- That an accident occurred on 21.12.06 at about 6:30 a.m. between a vehicle driven by Mr Thompson and one driven by Mr Murphy.
- That Mr Murphy was transporting four persons in his vehicle at the time of the collision.
- That Mr Thompson's vehicle was driving in the right lane when he slowed and veered right onto the shoulder to attend to a passenger call;
- That Mr Thompson did not cut in front of Mr Murphy. He had no need to do so as he was already in the correct lane for making the manoeuvre;
- That Mr Murphy's right left collided with Mr Thompson's right rear.
- That collision caused the attendant damage suffered and injuries sustained by Mr Thompson.
- That Mr Murphy has not provided any evidence that Mr Thompson contributed to the collision.

I therefore find that the proximate cause of this collision was Mr Murphy's failure to obey the rules of the road which mandate that drivers must exercise due care, attention and caution as they conduct vehicles on the nation's roadways. Further, Mr Murphy failed to conduct and/or manoeuvre

his vehicle in such a way as to avoid the collision. He failed to apply his brakes in time to avoid the collision.

[24] **DECISION**

I find that Mr Murphy is 100% liable now give Mr Thompson judgment for the damage that he suffered as a result of the collision which took place on the 21st December 2006 on the Churchill Roosevelt Highway.

ORDER

1. That there be judgment for the Claimant against the Defendants on the Claim filed 21st August 2007.
2. That Damages be assessed by the Master in Chambers on a date to be notified by the Court Office.
3. That pre-judgment interest be paid at the rate to be determined by the Master and that post judgment interest be paid from the date of this judgment at the rate of 12% per annum until the date of payment.
4. That the Defendants do pay the Claimant's costs to be prescribed at the conclusion of the Assessment of Damages.

Dated the 30th day of September 2009.

/s/ Charmaine A. J. Pemberton
High Court Judge.