THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO

Claim No. CV 2009-01623

BETWEEN

AVINASH BARSATEE	Claimant
AND	
FARZAN RAHIM	First Defendant
CAPITAL INSURANCE LIMITED	First Co-Defendant
VAUGHN WILLIAMS	Second Defendant
JERON NURSE	Third Defendant

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES:
Mr. Shastri Parsad, Attorney-at-law for the Claimant
Mr. Dipnarine Rampersad and Mr. Rashan Khan, Attorneys-at-law for the First Defendant and First Co-Defendant
Mr. Dale Scobie, Attorney-at-law for the Second Defendant

REASONS

1. On the 12th November, 2014, I dismissed a preliminary point which had been advanced on behalf of the defendants and co-defendants, who had argued that the instant proceedings constituted an abuse of the Court's process.

2. My reasons for dismissing the preliminary point are set out below.

3. On the 8th May, 2009, the claimant, Avinash Barsatee instituted these proceedings against the defendants and co-defendants. The claimant sought damages for loss and damage occasioned by reason of a motor vehicular accident which occurred on the 18th May, 2005.

4. The claim form was accompanied by a statement of case. On the 19th July, 2009 a defence was filed on behalf of the first defendant and first co-defendant.

5. The Court gave standard pre-trial directions on the 16th April, 2010. On the 16th October, 2013, permission was granted to the claimant to discontinue this claim against the second defendant. Just prior to the hearing of the pre-trial evidential objections, learned attorneys-at-law brought to my attention, that there was a related matter CV 2008-00642 ***Farzan Rahim v. Vaughn Williams and Others***, in which the claimant, Farzan Rahim was the same as the first defendant in the proceedings before me. The related matter had been determined by the Honourable Justice Rajkumar. An appeal had been filed and by the 16th October, 2013, the appeal had been determined[1].

6. It was common ground that CV 2008-00642 ***Farzan Rahim v. Vaughn Williams and Others*** arose out of the very collision which gave rise to the proceedings which at the time engaged my attention. The collision had occurred on the 18th May, 2005. Farzan Rahim at the date of the collision had been the owner and driver of HBF 5707. By his action in CV 2008-00642, which had been heard and determined by the Honourable Rajkumar, J., Farzan Rahim contended that the collision had been caused by the negligent driving of Jeron Nurse and that Vaughn Williams was vicariously liable since he was the owner of the vehicle which was being driven by Jeron Nurse. Jeron Nurse failed to appear in the proceedings before Rajkumar, J. and judgment was entered against him in default of appearance.

[1] CA No. 220 of 2009 Vaughn Williams v. Farzan Rahim

7. In the proceedings before him, Rajkumar, J. considered two (2) issues:

   - the issue of liability, and
   - whether Jeron Nurse, defendant was acting as servant or agent of the first defendant, Vaughn Williams when the collision occurred.

8. Rajkumar, J. determined liability in favour of the claimant Farzan Rahim and decided that Vaughn Williams was vicariously liable for the negligent action of the driver Jeron Nurse.

9. On appeal, the Court of Appeal did not overturn the finding of Rajkumar, J. on the issue of liability. However, the Court of Appeal allowed the appeal in respect of the issue of vicarious liability and held that Vaughn Williams was not vicariously liable.

10. In the proceedings before me, the claimant, Avinash Barsatee, had been a passenger in HBF 5707 which was owned by the first defendant, Farzan Rahim. The second and third defendants in the matter before me were respectively the first and second defendants in the claim before Rajkumar, J.

11. Following the decision of the Court of Appeal in CA No. 220 of 2009, the defendants contended before me that it was an abuse of process to re-litigate this claim having regard to the Court of Appeal decision. It was accepted that the claimant had not been represented in the earlier proceedings.

12. In the course of their written submissions, learned attorneys-at-law for the first defendant and co-defendant cited the case of ***Bradford & Bingley Building Society v. Seddon & Ors***[2] in which Lord Justice Auld formulated the following test.

> "*The task of the Court being to draw the balance between the competing claims of one party to put his case before the Court and of the other not to be unjustly hounded by the earlier history of the matter."*

[2] Bradford & Bingley Building Society v. Seddon & Ors [1994] 4 All ER 217

13. Learned attorneys for the first defendant and the co-defendant pegged their case, not on the doctrine of *res judicata* but, on the right of the Court to protect itself against abuse of process.

14. In the course of his written submissions, learned attorney Mr. Parsad, referred to the case of ***Nana Ofori Atta II***[3] in which Lord Denning had this to say,

> *"the general rule of law is that no person is to be adversely affected by a judgment in an action to which he was not a party because of the injustice of deciding an issue against him in his absence…"*

15. Learned attorney, Mr. Parsad also referred to the case of ***Gleeson v. Wippell***[4] in which Vice Chancellor Megarry had this to say,

> *"A defendant ought to be able to put his own case in his own way and, to call his own evidence. He ought not to be concluded [sic] by the failure of the defence and evidence adduced by another defendant in other proceedings unless his standing in those other proceedings justifies the conclusion that a decision against the defendant in them ought fairly and truly to be said to be in substance a decision against him. Even if one leaves on one side collusive proceedings and friendly defendants, it would be wrong to enable a plaintiff to select the frailest of a number of possible defendants, and then to use the victory against him not merely in terrorem of other and more stalwart possible defendants, but as a decisive weapon against them."*

16. It was my view that the principle, as expounded by Megarry V.C. in ***Gleeson v. Wippell***[5] was also applicable to a claimant who had not been a party in earlier related proceedings.

[3] Nana Ofari Atta II [1957] 3 All ER 559
[4] Gleeson v. J. Wippell & Co. Ltd [1977] 1 WLR 510

17. It was my view that it would have been unjust in these proceedings for the claimant to be bound by a decision in which he had no opportunity to be heard and in which he had no opportunity to call evidence or to advance his own case. In my view, as well, the issues which arose before me were different from those adjudicated upon by the Court of Appeal. In the latter, the Court of Appeal considered whether Vaughn Williams was vicariously liable. In the instant claim the Court is required to consider liability as between a driver and a passenger.

18. It was my view that the issues in both cases were different and that it would have been unjust to prevent the claimant from prosecuting his own case. Accordingly it was my view that the preliminary point of the first defendant and the co-defendant ought to have been dismissed.

Dated this 10th day of March, 2016.

M. Dean-Armorer
Judge

[5] Gleeson v. J. Wippell & Co. Ltd [1977] 1 WLR 510