

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006-03369  
HCA S-155 of 2001

BETWEEN

ANGELA GRAHAM

CLAIMANT

AND

COOBEAR RAMNATH

DEFENDANT

AND

ELISHA D. YOUNG AND  
BABY DOLL JAGGER

THIRD PARTIES

Before the Honourable Mr. Justice A. des Vignes

**Appearances:**

Mr. Vijay Deonarine  
Instructed by Ms. Reeyah Chattergoon for the Claimant

Mr. Shastri Persad for the Defendant

Mr. Reshard Khan for the Third Parties

**REASONS**

1. On the 10<sup>th</sup> December 2010, I dismissed the Claimant's claim with costs to be paid by the Claimant to the Defendant. I also granted leave to the Defendant to withdraw the

Third Party claim against the Third Parties, with no order as to costs and granted leave to the Claimant to appeal against my decision.

2. With respect to the costs to be paid by the Claimant, I adjourned the matter to the 14<sup>th</sup> January 2011 to hear submissions from the Claimant and the Defendant on the quantification of costs. Subsequently, on the 8<sup>th</sup> April 2011, I ordered the Claimant to pay to the Defendant prescribed costs assessed in the sum of \$24,000 based on a value of the claim of \$100,000 stipulated by the court.
3. I now set out hereunder my reasons for the dismissal of the claim and my orders with respect to costs.

### **Summary of Facts**

4. On the 6<sup>th</sup> February 1997 a collision occurred between motor vehicle PY 8891 and HAO 854 along the Uriah Butler Highway in the vicinity of the Grand Bazaar traffic lights. The Defendant, Coobear Ramnath, (hereinafter referred to as "Ramnath") was the owner and driver of PY 8891 and Elisha Young and Baby Doll Jagger (hereinafter referred to as "Young" and "Jagger" respectively) were the owners of HAO 854, with Young being the driver thereof.
5. The Claimant, (hereinafter referred to as "Graham") and Hardeo Gangoo (hereinafter referred to as "Gangoo") were passengers in HAO 854, driven by Young, and were both injured in the collision.

### **The Court Actions**

6. This accident gave rise to three separate legal actions:
  - (i) Petty Civil Court Action No. 819 of 1998, Young v. Ramnath (hereinafter referred to as "the Petty Civil action");
  - (ii) HCA No. S-146 of 2001, Gangoo v. Young, Jagger and Ramnath (hereinafter referred to as "the Gangoo claim");

- (iii) The present action, Graham v. Ramnath, (as Defendant) and Young and Jagger (as Third Parties) (hereinafter referred to as “the Graham claim”).
7. In the Petty Civil Action, Young claimed against Ramnath damages for damage to HAO 854 and on the 8<sup>th</sup> March 2001, judgment was entered by consent in favour of Young for \$9,733.00 with costs of \$1,360.00.
  8. In the Gangoo claim, Gangoo sued Young, Jagger and Ramnath as Defendants claiming damages for the personal injuries and consequential loss arising from the collision. This action proceeded to trial before Gobin J. on the 15<sup>th</sup> July 2004 and the learned Judge found that Young and Jagger were solely liable to Gangoo for damages for negligence and dismissed the claim against Ramnath. Young and Jagger were ordered to pay Gangoo general damages and special damages and to pay Gangoo and Ramnath’s costs.
  9. In the Graham claim, on the 1<sup>st</sup> February 2001, Graham filed an action against Ramnath claiming damages for negligence as a result of the personal injuries and consequential loss she sustained in the collision but did not join Young and Jagger as Defendants.
  10. On the 27<sup>th</sup> May 2002, Ramnath issued Third Party proceedings against Young and Jagger claiming an indemnity from them in respect of Graham’s claim or alternatively contribution to the extent of Graham’s claim as well as damages for the damage caused to his vehicle.
  11. On the 14<sup>th</sup> July 2004 Graham applied to amend her claim to join Young and Jagger as Defendants but this application was withdrawn on the 20<sup>th</sup> October 2004.
  12. On the 12<sup>th</sup> May 2005, Ramnath amended his Defence to include the following pleas:
    - (i) by virtue of the judgment in the Gangoo claim, Young and Jagger were estopped from alleging that Ramnath was liable for the collision and from denying that they were liable for the accident;

- (ii) Graham, even though not a party to the Gangoo claim, was also bound by the judgment therein and estopped from alleging that Ramnath was liable for the accident;
  - (iii) the judgment entered in the Petty Civil Action was a compromise order entered into without admission of liability without intending to bind the parties thereto and which did not bind the parties thereto on the issue of liability.
13. On the 22<sup>nd</sup> August 2005, Young and Jagger delivered a Defence to the Third Party Claim in which they denied liability to Ramnath for damages to his motor vehicle on the grounds that the claim was statute barred, the cause of action having arisen more than four years before the filing of the Third Party Notice. They also denied liability to indemnify Ramnath on the basis that the collision was caused wholly or in part by the negligence of Ramnath.
14. By Notice filed on the 11<sup>th</sup> January 2007, the Graham claim was converted to the Civil Proceedings Rules 1998.
15. On the 14<sup>th</sup> August 2007, Graham served a Re-amended Reply in which she pleaded that Ramnath was estopped from denying liability for the accident by reason of the judgment entered by consent in the Petty Civil Action and the failure of Ramnath to disclose the judgment in the Gangoo claim.
16. On the 20<sup>th</sup> March 2008, pursuant to the Order of Best J. made on the 17<sup>th</sup> March 2008, Graham filed a Notice of intention to apply to the Court at the trial of the matter on the 14<sup>th</sup> July 2008 to determine the preliminary issue of whether this action is res judicata and/or whether the defence of Ramnath constituted an abuse of the Court's process and/or whether Ramnath was estopped from denying negligence in this action by virtue of either:
- (a) The Consent Order entered in the Petty Civil Action; or
  - (b) The judgment in the Gangoo claim.

**The Issues**

17. The questions I was called upon to answer on the Graham's application, therefore, were:

- (a) whether Ramnath could successfully avoid liability to Graham on the ground of res judicata based on the judgment in the Gangoo claim which absolved him from any liability for negligence; or
  - (b) whether the defence of Ramnath amounted to an abuse of process and that he should be held liable to Graham based on the consent judgment entered against him in the Petty Civil action.
18. In my approach to the resolution of these issues, I bore in mind that the object of the courts must be to do justice between the parties with expedition and without undue technicality.<sup>1</sup>
19. The undisputed facts revealed that all three actions arose out of the same accident. Although Young had the benefit of the consent judgment against Ramnath in the Petty Civil Action, neither she nor Jagger sought to rely on that judgment by way of estoppel in their defence to the Gangoo claim. Gangoo sued Young, Jagger and Ramnath alleging negligence against them all and the matter proceeded to trial on liability. The learned Judge found in favour of Gangoo against Young and Jagger but found that Ramnath was not negligent and dismissed Gangoo's claim against him with costs.
20. In this action, Graham only sued Ramnath and did not pursue her application to join Young and Jagger as Defendants. In any event, by the time the Third Party proceedings were brought by Ramnath against Young and Jagger, more than four years had elapsed since the accident and therefore, any claim by Graham against Young and Jagger would most likely have been met by a defence of limitation.
21. The essence of Graham's claim was that Ramnath was solely liable to her in negligence and it was only in the Reply that she sought to refer to and rely upon the consent judgment in the Petty Civil Action to answer the plea of estoppel raised by Ramnath in his Amended Defence.

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<sup>1</sup> **Wall v. Radford [1991] 2 All ER at 751c per Popplewell J**

### **The Submissions**

22. According to Graham's Attorneys, the judgment in the Petty Civil action against Ramnath, being the first in time, should give rise to an estoppel against him and he should be held liable to Graham. Further, they argued that this Court should ignore the judgment of Gobin J. in the Gangoo claim because it was second in time and it was arrived at by reason of non-disclosure of a material fact, namely the judgment in the Petty Civil Action. Therefore, since Ramnath consented to judgment in the Petty Civil Action, he should be held liable to Graham in this action for damages to be assessed. They also argued that Graham should be permitted to rely on *res judicata* or issue estoppel even though she was not a party to the earlier litigation.
23. Ramnath's Attorneys argued, however, that since it was open to Young to plead *res judicata* in the Gangoo action and he failed so to do, he was deemed to have waived any reliance thereon and he was now cross-estopped from raising *res judicata* in the Graham action. Further, by reason of Young's waiver, the judgment in the Petty Civil Action was superseded by the judgment in the Gangoo action which became the only judgment which could be relied upon as *res judicata*. Therefore, since Young was estopped as aforesaid, Graham could not seek to rely on the judgment in the Petty Civil Action to support a plea of estoppel against Ramnath and the judgment in the Gangoo action "reigned supreme".
24. They also argued that the Court is entitled to look behind the terms of the Consent judgment in the Petty Civil Court action as set out in the Magistrate's Court Extract to consider the circumstances that led to the entry of the consent judgment and to determine whether the Ramnath had in fact conceded liability. Further, they submitted that the Consent judgment was akin to a compromise judgment and the Court should infer either that the judgment was entered by consent for an *ex gratia* settlement or was intended to be for the Petty Civil Court action only and not for the inference of liability in future matters.

### **Reasons**

25. In my consideration of the respective arguments, I bore in mind particularly that the consent judgment entered in the Petty Civil action was in favour of Young against Ramnath. In my opinion, the Magistrate's Court Extract speaks for itself and, without any

evidence as to the circumstances in which that judgment was entered, I did not agree with the submissions made by Ramnath's Attorneys that this Court should look behind the terms of the judgment and draw the inferences suggested. Therefore, taking that judgment at its face value, I accept the submission made by Graham's Attorneys that Young could have relied on that judgment to support a plea of estoppel against Ramnath in the Gangoo action.

26. However, the facts were clear that when the Gangoo claim was brought against Young, Jagger and Ramnath, Young and Jagger failed to plead *res judicata* based on the fact that Ramnath had already consented to judgment in the Petty Civil court. By failing to do so, Young and Jagger waived their right to rely upon the judgment in the Petty Civil action and proceeded to trial before Gobin J. and submitted to the jurisdiction of Gobin J. to determine who should held liable to Gangoo for negligence in the collision.<sup>2</sup>
27. The issue to be considered, therefore, was whether Graham should be permitted to rely upon the very consent judgment entered in favour of Young in the Petty Civil Action in circumstances where Young and Jagger had waived reliance thereon when they failed to raise it before Gobin J.
28. In my opinion, when Young and Jagger waived reliance on the judgment in the Petty Civil Action, they submitted to the jurisdiction of the High Court to determine, on the merits, the issue of liability for negligence for the collision which occurred on the 6<sup>th</sup> February 1997.
29. Accordingly, bearing in mind that Gobin J. had the opportunity to hear the evidence brought by Gangoo against both drivers in the accident and she held Young and Jagger wholly liable to Gangoo and relieved Ramnath of any liability for the accident, I was of the view that it would have been absurd and an abuse of the process of the Court to uphold the submissions of Graham's Attorneys. The practical consequence of Graham's submissions would have been that in the Gangoo claim Gangoo had succeeded in his claim against Young and Jagger and failed against Ramnath after a trial on the merits and yet Graham would succeed in her claim against Ramnath based on a judgment entered by consent in the Petty Civil action, when both Gangoo and Graham's claims

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<sup>2</sup> **Spencer Bower, Turner and Handley, The Doctrine of Res Judicata, para. 373; Republic of India v. India Steamship Co. Ltd [1993] A.C. 410 at 423 B.**

arose out of the same set of facts with allegations of negligence made against the drivers of both vehicles.

30. Accordingly, in the exercise of my inherent jurisdiction to do justice between the parties with expedition and without undue technicality, I found that it would be an abuse of the process of the court to permit Graham to rely on the consent judgment in the Petty Civil action to establish liability against Ramnath. Further, I was of the opinion that Ramnath was entitled to rely on the plea of *res judicata* by way of defence to Graham's claim based on the judgment of Gobin J. in the Gangoo action.
31. Therefore, since Graham had only named Ramnath as a Defendant to her claim and Young and Jagger had only been joined as Third Parties at the instance of Ramnath, I decided that Graham's claim against Ramnath should be dismissed with costs and granted leave to the Defendant to withdraw his claim against the Third Parties, with no order as to costs.

### **Costs**

32. After the dismissal of Graham's claim, I began to hear Attorneys on the appropriate rule which governed the assessment of costs. I was first told that the parties had agreed that the costs should be computed under Part 67.5 of the Civil Proceedings Rules but when I began to announce an Order that the claimant's action be dismissed with costs to be paid by the Claimant to the Defendant agreed in the sum of \$14,500.00, Counsel for the Claimant indicated to me that although he was agreeable to the figure for costs, he intended to appeal my order and would seek my leave to appeal. At that stage, Attorney for the Defendant, Ms. Manohar informed me that she was no longer willing to consent to an order for costs of \$14,500.00 under Part 67.5 and she wanted an opportunity to consult with her senior, Mr. Parsad on the appropriate order for costs to be made in the circumstances. Subsequently, after allowing an opportunity to Ms. Manohar to consult with Mr. Parsad and to Ms. Subero to consult with Mr. Khan, Mr. Parsad appeared before me to indicate that he was not consenting to an order for costs in the amount earlier stated and that he wished to make submissions on the issue of costs. After hearing some submissions from Mr. Parsad as to whether the application was a procedural application or not and whether Part 67.5, 67.11 or 67.12 applied, I indicated that although my order stood for the dismissal of the Claimant's claim with costs to be



paid by the Claimant to the Defendant, I wanted to hear full submissions from Attorneys for the Claimant and the Defendant on the applicable rules governing the award of costs and I adjourned the matter to the 14<sup>th</sup> January 2011 to hear submissions on the methodology of assessment and quantification of costs.

33. On the 14<sup>th</sup> January 2011, I heard submissions from Attorneys for the Claimant and the Defendant and gave directions for the Defendant to file written submissions on or before the 28<sup>th</sup> January 2011 and for the Claimant to file written submissions in reply on or before the 14<sup>th</sup> February 2011. On the 8<sup>th</sup> April 2011 I ruled that the Claimant do pay to the Defendant prescribed costs pursuant to Part 67.5(2)(b)(ii), assessed in the sum of \$24,000.00, based on a stipulated value of the claim of \$100,000.00 as determined by the Court.

**Dated this 3<sup>rd</sup> day of October, 2012**

**André des Vignes  
Judge**