

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-03518

BETWEEN

VIKRAM BABOOLAL

Claimant

AND

BRENT RAMOUTAR

First Defendant

MOTOR ONE INSURANCE COMPANY LIMITED

Second Defendant

Before the Honorable Mr. Justice V. Kokaram

Appearances:

Mr. Ramoutar for the Claimant

Mr. I. Khan and Ms. Panday for the First and Second Defendants

JUDGMENT

Introduction

1. This is a classic running down action where the two versions of the accident by the Claimant and the Defendant are diametrically opposed. On 30th July 2008 a collision occurred between the Claimant's pick up van registration number TCE 2694 ("the Claimant's motor vehicle") and the Defendant's motor vehicle registration number PBA 7886 ("the Defendant's motor vehicle") in Carapichaima. Prior to the collision the Claimant's motor vehicle was on the Datta Yoga Road and the Defendant was travelling in a westerly direction along the Orange Field Road, Carapichaima executing an overtaking maneuver.
2. The Claimant contends that his vehicle was at a standstill at the "stop line" on the Datta Yoga Road, which was some 4 to 6 feet from the Orange Field Main Road ("the main road"). He looked both left and right to see if it was clear to proceed unto the main road. The Claimant observed that there was a parked car on the southern side of the main road just before the Datta Yoga Road. He also observed on his left side (to the East of the Datta Yoga Road) the Defendant's motor vehicle was the third of three vehicles travelling in a westerly direction along the main road. The Defendant pulled out from behind the second vehicle and proceeded to overtake the two cars ahead of him then tried to pull back on his side but came upon the said parked car. The Claimant contends that the Defendant tried to pull to his right to avoid colliding with the parked car and came across directly unto the path of the Claimant's motor vehicle (which was still at a standstill in the Datta Yoga Road). The Claimant alleges that the Defendant's motor vehicle collided with the undercarriage and chassis of the Claimant's motor vehicle. According to the Claimant on impact his vehicle "lifted in the air for a second" and then dropped back on the Defendant's motor vehicle which was now under the front or "nose" of the Claimant's motor vehicle.

3. The Defendant denies that he was proceeding behind two vehicles. He contends that he was travelling in a westerly direction along the main road and was overtaking the parked car. According to the Defendant it was when he had almost passed the parked car that he saw the Claimant's motor vehicle coming out of the Datta Yoga Road. He says that the Claimant was about 10 feet away from the Defendant's motor vehicle and the Claimant's motor vehicle was angled to make a left turn onto the main road (to proceed East along the main road and in the opposite direction of the Defendant). The Defendant sounded his horn and slammed his brakes and attempted to swerve away from the Claimant's motor vehicle. However there was insufficient space to completely swerve away and it was the right front of the Claimant's motor vehicle, according to the Defendant, which collided with the entire right front of the Defendant's motor vehicle. After the collision the Defendant's motor vehicle ended up on the extreme left (southern) side of the main road.

4. By his claim form dated 29th September, 2009 the Claimant claims against the Defendant damages for personal injuries and loss as a result of the collision. One of the main issues of fact to be determined by the Court is whether the point of impact between these two vehicles was on the main road as contended by the Defendant or on the Datta Yoga Road as contended by the Claimant. Shredding the different layers of the Attorneys' closing submissions and their client's conflicting versions of the collision, this claim narrows to a determination as to whether the Claimant's motor vehicle was at a standstill behind the stop line on the Datta Yoga Road when the collision occurred. The claim also brings into sharp focus the corresponding obligations of motorists when proceeding from a minor road unto a major road and when executing an overtaking maneuver in the vicinity of a minor road. On my assessment of the facts in this claim the collision occurred on the main road as the Defendant contended. The Defendant was in my view not blameworthy for the accident.

The Evidence:

5. There were two witnesses for the Claimant, the Claimant who was the driver and his back seat passenger. The Defendant was the sole witness for his case. Another eye witness for the Claimant was unavailable at the date of trial and accordingly his witness statement was not tendered into evidence. There were no photographs, plans, sketches, estimates nor police reports tendered into evidence in this claim¹. To determine the credibility of the witnesses in this claim the Court cross checked the demeanor of the witnesses under cross examination against the plausibility of their respective stories and their respective pleaded cases.
6. I found the Defendant a more credible and reliable witness. His version is a more plausible explanation of the accident and consistent with the pleaded case. Conversely it is the Claimant's version which is more implausible and in material areas his evidence was deficient and contradictory.
7. The Claimant: The Claimant maintained that he was at a standstill behind the stop line on the Datta Yoga Road when this accident occurred. However his testimony was shaken under cross examination. There were several long pauses in his responses under cross examination and some questions were not answered. It appeared to me that his bold disposition turned into an almost quite concession that his version may not be accurate.

¹ The Claimant's application to admit a police report of this incident dated 16th February 2009 by means of a hearsay notice was dismissed. The Defendant filed a "counter notice" on 21st June 2010. The Claimant failed to comply with rule 30.7 (5) (6) (7) and (8) CPR. Additionally, and despite the Claimant's failure to comply with the rules, the Court's discretion will not be exercised in his favor where there is an acute conflict of fact and the report purports to address a factual issue which is hotly contested. In the absence of cross examination to test the truth of its contents no weight can be attached to the report even if it was admitted.

8. There were several material inconsistencies in his evidence which I shall highlight:

- First he contends in his evidence in chief that the Defendant was in the process of overtaking two vehicles travelling west before the Defendant arrived at the parked car. The Claimant alleges that it is when the Defendant tried to pull back to his side to complete the maneuver of overtaking the two cars, that he saw the parked car and then tried to pull away to the right coming into the Datta Yoga Road. Under cross examination he repeated this story. There are a number of difficulties in accepting this evidence:

(a) This version is inconsistent with the pleaded case. The statement of case states that the Defendant “overtook a stationary motor vehicle and came over to the wrong side and collided with the Claimant’s motor vehicle.” This is a materially different version from the evidence in chief. The pleading suggests on its face that the Defendant probably gave far more clearance than was necessary in executing the maneuver to overtake the parked car which caused the collision. There was no mention of any other vehicle(s) which the Defendant was overtaking.

(b) The introduction of these two cars ahead of the Defendant in the Claimant’s evidence in chief is, firstly not corroborated by his witness. Second it now suggests the speed at which the Defendant was travelling.² Third the Claimant’s story has now changed from a version that the Defendant overtook one parked car to a version where the Defendant was pulling away to his right to avoid the parked

vehicle after overtaking two vehicles and so collided with the Claimant's motor vehicle. Fourthly, from that version it is safe to say that the Claimant is now saying that had this Claimant not executed the maneuver of overtaking the two cars this accident would not have occurred. Fifth the Claimant's attorney at law never put to the Defendant the case that the Defendant was overtaking two vehicles coming down the main road towards the Claimant. Finally when pressed in cross examination the Claimant says that the fact that the Defendant was overtaking the two vehicles is the cause of the collision. This is inconsistent with his pleading.

(c) The Claimant's evidence on the two cars seemed confused in cross examination. In his evidence in chief the Claimant says when he first saw the Defendant he was "the third of three cars" and then pulled out to overtake. Under cross examination however he said he first saw the Claimant when he was "speeding down in a westerly direction and the cars on the side."

(d) Further at one stage the Claimant said he first saw the Defendant on the side of the two cars. This overtaking manoeuvre he observed some 80 feet away from the Datta Yoga Road. Then he said he first saw the two cars when the Defendant was mashing his brakes skating into him. At that point the Defendant was only 10 feet away from him. Then he said that he observed the two vehicles when they were 40 feet away, slowing down. The Claimant's own account of

² It stands to reason that a motorist will need more speed to overtake two moving vehicles rather than one

the Defendant's maneuver is therefore contradictory and unreliable.

(e) It is now trite law that the Claimant must state all his material facts in support of his case in his statement of case. The requirements of signing a certificate of truth is not to be treated lightly. It highlights the greater responsibility to properly "plead" your case under the CPR. In some instances parties can be held in contempt for deviating from his statement in his statement of case. When the Claimant was confronted with this inconsistency in versions between his evidence in chief and statement and case he simply had no answer to account for this. At worst this testimony destroys the Claimant's case at best it is a relevant consideration in finding this witness as not a credible witness. If this new fact was as important as he maintained in cross examination why did it not find its way in the pleadings?³

- The Claimant contends for the first time in his cross examination that the road was wet. The Defendant specifically mentions in his evidence that the road was dry. This was left unchallenged under cross examination. I accept that the Claimant sought to introduce the wet conditions on the road to bolster a claim that the Defendant "skidded" into the Claimant. It really came as an afterthought in his cross examination and when pressed by the Defendant's attorney at law that

stationary vehicle.

³ CJ Sharma similarly approved of the trial court taking into account the inconsistencies between a party's testimony and his pleaded case. "The trial judge is in my view entitled in these circumstances not to rely on the appellant as a witness of truth. He was also entitled to conclude if the evidence was truthful, why they not found their way in the pleadings. In my view this was a perfectly valid approach by the trial judge to assist him together with other matters to determine the matter on a balance of probabilities." CA 106 of 2001 *Alice Mohammed v Jeffrey Bacchus*.

he did not say this in his statement of case he replied that rain had “fell earlier.”

- The Claimant accepts under cross examination that the eastern corner of Datta Yoga and the main road is what is termed colloquially a “blind corner.” There was a concrete wall and tree at the corner of that road which will obscure the view of oncoming traffic from the west. Mr. Ramnarine (the Claimant’s witness) accepted that if you stop at the white line you cannot see the oncoming Western traffic on the main road. This in my opinion highlights a greater degree of caution that must be exercised by the Defendant and drivers on the Datta Yoga Road when entering the main road.
- The Claimant’s witness Chris Ramnarine was the back seat passenger in the Claimant’s motor vehicle. His evidence in chief simply states that the Claimant came to a complete stop and after a few seconds he heard a loud bang of the collision. However remarkably this witness volunteered details of the Defendant’s maneuvers which in his view caused the accident when he was silent in his evidence in chief on this material aspect of the case. He volunteers seeing the two cars even though he is in the back seat and cannot see oncoming traffic because it is a blind corner. He offers that the Claimant had to come into the Datta Yoga road to overtake the parked car and that the main road was not wide enough for the Defendant to overtake the parked car. Incredibly, he did this, according to Mr. Ramnarine, because there was now another vehicle ahead of the Defendant coming against him in an easterly direction. This was the first time mention was made of yet another car now coming in the opposite direction of the Defendant. This in my view is yet another “phantom car” to explain the implausible. The Claimant’s case virtual collapsed when finally Mr.

Ramnarine said that they were waiting by the stop line for 5 minutes before the collision occurred. This conflicts with the Claimant's evidence that this happened "suddenly."

9. The Defendant: The Defendant remained unshaken in cross examination. The Defendant stated that he saw the Defendant's motor vehicle emerging from the Datta Yoga Road while he was overtaking the parked car. He sounded his horn and the Defendant mashed brakes. However having regard to the concession by Mr. Ramnarine that the right side of the Claimant's motor vehicle was hit by the Defendant it is more probable that this collision would have occurred on the main road not the Datta Yoga Road. It is then after that collision would the Defendant's motor vehicle continue travelling further westward further down the main road to its place of rest. It is improbable that the Defendant would swerve into the Datta Yoga road and then collide with the right side of the Claimant's motor vehicle.

The respective versions:

10. The plausibility of the respective versions favours the Defendant. Indeed for the motorist on the main road for the overtaking the parked vehicle opposite the Datta Yoga Road it will be difficult to see all the traffic coming from the Datta Yoga Road into the main road. The converse is true, the motorists in the Datta Yoga Road will not have a clear view of the western traffic on the main road. The Datta Yoga road being a minor road with a specific mandate to stop by "a stop sign" and a "white line", the onus is on the Claimant to come to a complete stop before proceeding further. A collision could only occur if the Claimant was on the main road itself. There is no reason to believe that in overtaking a parked car the Defendant will come so far over into a the minor road when there is no oncoming traffic and there is enough room for him to overtake the parked vehicle on the main road itself. For the accident to occur on the Datta Yoga Road there must be either terrific speed so that the Defendant could not control his vehicle or some obstacle ahead of the Defendant

was present to cause him to deviate from the oncoming traffic and swerve some six feet into the Datta Yoga road. On both these aspects the Defendant's evidence remained unshaken. He never veered into the Datta Yoga Road. It is more credible that the collision occurred on the main road, that the Defendant was overtaking the parked car, and while doing so he was confronted by the Claimant's motor vehicle emerging from the minor road turning west against the Defendant's vehicle. For this reason the right side of both cars came in contact with one another.

11. In my view therefore the collision occurred on the main road in the manner as explained by the Defendant.

Contributory Negligence:

12. Having regard to my findings I also hold that there was no negligence at all on the part of the Defendant. He was executing a perfectly normal maneuver. He must overtake the parked vehicle. There was absolutely no reason, nor "alarm bells" concerning emerging traffic on the Datta Yoga corner for him to slow down. There was no oncoming traffic, there was no traffic behind him. He placed his indicators on and executed this maneuver when suddenly the Claimant's motor vehicle (carrying construction workers at 4:30 pm leaving a job site) came out and angled east on the main road. There was no time to avoid the collision. At best the Claimant sounded his horn and mashed brakes. Regulations 27 and 28 of the Highway Code states:

“(27) When approaching a junction with a sign marked “Stop” and white line at the corner, you are to slow down gradually and stop before the white line. Proceed only when the major road is clear.

(28) At a junction look right, then left, then right again. Do not go until you are sure that it is safe to do so.”

The Defendant in emerging onto the main road did so without ensuring that it was safe to do so. The onus lies on the Claimant to emerge cautiously and in these circumstances of this case he should bear full responsibility. In *Watkins v Moffat* (1967) 111 Sol Jo 719 and *Humphrey v Leigh* [1971] RTR 363 p 106 two principles emerge which assist in ascertaining liability where there is a collision between vehicles at an intersection of a major and minor road:

1. The driver of the vehicle on the minor road bears a heavy burden in attempting to persuade the Court to find either (1) that the driver of the other vehicle was liable; or (2) the driver of the other vehicle had contributed to his own downfall.
2. There is no duty on a driver who is on the major road to take his foot off the accelerator and poise it over the brake every time he approaches an intersection or side road, in anticipation of having to stop short of the intersection.

Of course the issue of contributory negligence is fact specific and all the circumstances must be assessed. For the reasons I have set out above the Defendant was executing a legal maneuver on the main road consistent with his obligations under regulation 50 of the Highway Code.⁴

⁴ (50) Before overtaking consider if it is necessary. To overtake look in your rear view mirror, make sure that nothing is about to overtake you and see that the road ahead is clear. "Clear means that there is no vehicle approaching from in front; that there are no parked vehicle or road repairs in front of the vehicle that you are about to overtake; that the vehicle in front is not itself overtaking and that there is sufficient space on the left to get back in land after overtaking. Make a right turn signal. Sound your horn, observe the vehicle in front. When you have sufficient space to overtake, you do so on the right, then travel about three to four car lengths and get back to the left side. Do not cut in on the vehicle you are overtaking.

The Claimant created the danger for which the Defendant is not to blame.

13. I accordingly dismiss the Claimant's claim with prescribed costs to be paid to the Defendant in the sum of \$14, 000.00.

Dated this 8th day of July 2010.

.....
Vasheist Kokaram

Judge