

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2007-01001

BETWEEN

EVARIST RAGBIR

Claimant

AND

PETER LEOTAUD

First Defendant

GULF INSURANCE COMPANY LIMITED

Second Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

Delivered - May 2009

APPEARANCES:

Mr. Rennie K. Gosine for the Claimant

Mr. Jagdeo Singh instructed by Ms Amina Hasnain for the First and Second defendants

Judgment

Issue

I am asked to determine whether the claimant can sustain a claim in negligence against the defendants as a result of a collision that occurred between the claimant's vehicle – (a panel van) and the first defendant's vehicle – (a 4 ton truck) - along the Arima Old Road (the said road) on April 24 2006.

Facts:

The following facts are common to the parties

- i) The Claimant's vehicle - TBG 9812 was proceeding in an easterly direction - along the said road.
- ii) The 1st defendant's vehicle - Registration No. TBN 3661 was proceeding in the opposite direction - along the said road.
- iii) The claimant's vehicle was being driven in the northern lane of the said road immediately before the accident.
- iv) The defendant's vehicle was being driven in the southern lane of the said road.
- v) The roadway was 14 or 15 feet wide.
- vi) In the vicinity where the collision occurred there is a bend in the said road.
- vii) There is a drain on the northern edge of the roadway and there is no shoulder there.
- viii) The photographs taken by the adjuster who inspected the claimant's vehicle, which were tendered by consent, showed damage to the entire front of the claimant's vehicle but particularly concentrated on the right front.
- ix) The claimant's vehicle did not collide with the front of the 1st defendant's vehicle but with its side.

Disputed facts

The claimant claims that defendant's truck, in coming around a bend, on the said road came over onto the northern side of the roadway where it came into contact with the claimant's vehicle.

The defendants contend in their defence that the 1st defendant's vehicle had come to a standstill off the roadway and as a result of the collision the 1st defendant's vehicle was pushed further off the roadway.

Issue

Whether as the claimant claims the collision occurred on the claimant's side of the said road when the 1st defendant's truck came onto the claimant's side of the road or whether, as the defendants contended, the claimant lost control of his vehicle, skidded and came into contact with the 1st defendant's vehicle which had come to a standstill off the roadway.

Disposition

I find on a balance of probabilities that the collision occurred on the northern side of the road as contended by the claimant and that the Defendants are liable for such of the claimant's loss and damage as he has been able to prove.

Disposition

Accordingly the defendants are liable to the claimant in respect of his damage and there shall be judgment for the Claimant for damages to be assessed by this court in default of agreement.

The Defendants are to pay the Claimant's costs to be assessed by this court in default of agreement.

Analysis - The evidence

Evidence was led from:

- (i) the investigating police officer,
- (ii) the claimant
- (iii) his wife, who was in the vehicle at the time of the collision
- (iv) the adjuster,
- (v) the circulation manager of the claimant's former employees
principals on the claimant's earnings.

The investigating police officer - PC Bernard

This witness testified that he visited the scene of the accident, that he saw the Claimant on the scene in an ambulance just before he was taken to hospital and that the Claimant then told him he had skidded. He took measurements at the scene and recorded his observations in his diary and in the station diary. Extracts from his diary and the station diary were tendered into evidence. The diary entry leaves unclear the identity of the person who told him about the alleged skid

The alleged statement by the claimant while in the ambulance to the investigating officer that he had picked up a skid and collided with TBN 3661.

I do not accept that this statement was made. It is implausible in the extreme that the claimant whose leg was crushed and who would have been in extreme pain as he testified in his witness statement, would have been in a position to respond to any question by PC Bernard far less to respond that he picked up a skid. The claimant says he does not recall speaking with PC Bernard while he was in the ambulance awaiting transport to the hospital. His wife corroborates that she did not observe PC Bernard speaking to him. I accept their evidence in this regard in preference to that of PC Bernard. I find his evidence in this regard smacks of reconstruction. His diary entry refers to the Claimant having skidded but not that the Claimant so admitted to him. I find it more likely that the question of skidding emanated from the 1st defendant's driver, and if the claimant had made the admission the diary would have made that clear. In fact he testified that when he visited the scene with the claimant and his wife subsequently the

claimant said that [1st defendant's] vehicle was in his path and came into contact with his vehicle. – No mention of skidding.

I am mindful of the fact that the investigating officer is the only independent witness in this matter and has no interest to serve. However there are many possibilities between a witness telling the whole truth and a witness knowingly giving false testimony. I find that the claimant did not make any mention of a skid to PC Bernard on the date of the accident when he was lying in extreme pain and about to be rushed to the hospital by ambulance. I find that the court is bound to critically examine his evidence, like that of all other witnesses, to guard against being misled by faulty notes or recollection from a genuinely mistaken witness.

Accordingly to his testimony:

- (i) TBN 3661 was on the southern side of the roadway in some bushes facing in a south westerly direction
- (ii) He also observed TBG 9812 [a white panel van] on the southern side of the roadway facing in a southerly direction
- (iii) He observed debris in the vicinity of the said panel van located on the southern side of the road
- (iv) He observed the point of impact to be 1 foot from the southern side of the roadway
- (v) Claimant and his wife pointed out point of impact as 6 feet from the northern side of the road. “It was inconsistent from where debris was found.”
- (vi) He said he saw no debris at all on the northern side of the road. It was then put to him that debris was on both sides of the road. He answered – “yes but closer to the southern side of the road”. “I didn’t see none on the northern side”. “There was debris along the roadway more to the southern side of the road”. He concluded “I didn’t observe any debris on the northern side. It was on the southern side to the middle” [of the roadway].

I conclude therefore that PC Bernard's evidence does not definitely exclude debris on the northern side of the roadway as his evidence fluctuated on this issue. I note that his diary had nothing about the debris.

Further if the debris was on "the southern side to the middle" then this is not inconsistent with the claimant's version of the accident but it is inconsistent with the defendant's pleaded version. There would not be debris near the middle of the roadway if the claimant's vehicle picked up a skid and collided with the 1st defendant's vehicle which had come to a standstill off the roadway. PC Bernard did testify that the driver of the 1st defendant's vehicle did not tell him when he interviewed him that he was at a standstill at time of impact.

The position of the vehicles after impact

I note PC Bernard's evidence as to the position of the vehicles after impact when he arrived on the scene. If I were to accept this at first sight his observations suggest that the impact occurred on the southern side of the roadway. The 1st Defendant has pleaded however that the impact occurred while the 1st Defendant's vehicle was at a standstill off the roadway. PC Bernard's observation was that TBG 9812 was facing in a southerly direction. Before the accident the claimant's vehicle was being driven in an easterly direction. This is undisputed. If so, and if the defendant's vehicle were in fact at a standstill off the roadway, and the damage to the claimant's vehicle was to its front, how could it end up facing south? This is not explained on the 1st defendant's version of the accident. It is explained on the claimant's version, which describes both vehicles as being in motion before impact and the 1st defendant's heavier vehicle pushing the claimant's vehicle away from the original point of impact. This would explain the change in the claimant's vehicle's position before impact – (heading in an easterly direction) – to facing south after the collision.

The Claimant

At Paragraph [5-10] of his Witness Statement he describes the collision:

5. *On the 24th April, 2006 at about 6:00 a.m. I was driving my Motor Vehicle registration number TBG-9812 along Arima Old Road, D'Abadie proceeding in an easterly direction and travelling at a speed of 36/40 km/ph. My wife was in the vehicle with me at the time. I frequently use the Arima Old Road.*
6. *Aroma Old Road runs from east to west, accommodates 2-way traffic and is approximately 15 feet wide and levelled.*
7. *I was proceeding in an easterly direction on my side of the road. The first Defendant's Motor Vehicle was proceeding in the opposite direction and as he was approaching a bend he came onto my side of the road. He was driving at a fast rate of speed and as a result in negotiating the bend he open too wide. The road has no shoulder. As the Defendant's motor vehicle entered the sharp end of the bend, his vehicle veered onto my side of the road pushing my vehicle backwards.*
8. *Upon seeing the Defendant's vehicle approaching I pulled to my left and put my foot on the brakes but the Defendant's Motor Vehicle still collided with mine.*
9. *The fire services came about 20 minutes after the accident and assisted me out of the vehicle. As I came out I noticed broken glass and other debris scattered on the roadway. It was concentrated on my side of the road.*
10. *The following parts of my vehicle were damaged:*
"Front panel, Dashboard, Windscreen, Front bumper, Headlamps, Park lamps, Front seats, right front door, left front door, Door, Right side door post, Hood and windscreen post".

Under cross-examination he testified that his vehicle ended up in the centre of the road. The truck – [1st Defendant's vehicle] was negotiating a bend. The truck pulled too wide and hit him. It pushed his vehicle back and continued until it stopped. His vehicle stopped in the middle of the road. The truck was facing south. It was like a "T". He admitted this [like a "T"] was not in his witness statement or supplemental witness statement.

He testified that his vehicle was pushed to the edge the northern side of the road, although he pointed out a point of impact to the middle of the road. His vehicle ended up facing the southern side of the road. He testified that when the Police came the vehicles were in contact even though PC Bernard and the Claimant's wife said the 1st defendant's vehicle was in an empty piece of land. On this aspect I prefer the evidence of PC Bernard. The claimant would have been in considerable pain after the accident and it would be understandable if his recollection of events after the impact became distorted. The presence of 1st defendant's vehicle in the empty lot is consistent with its being in motion and carried forward by its own momentum.

The claimant's wife

According to her witness statement at paragraphs 4 and 7

"The first Defendant's vehicle was proceeding in the opposite direction at a very fast rate of speed and as a result in negotiating the bend he opened too wide and came unto our side of the road. The road has no shoulder. As he approached the tray of his truck came into contact with my vehicle pushing it backwards and further into the roadway. After the impact TBG – 9812 ended up approximately 1 foot away from the southern side of the road and the first named Defendant's Motor Vehicle ended up completely off the road unto an empty lot of land.

On the 13th of June, 2006 I returned to the scene of the accident with Police Officer Bernard. I was asked to show him the point of impact. I showed him a point. He measured this point which was 6 feet from the northern side of the road".

She testified under cross-examination that the van ended up across the road blocking the whole road when the tray of the truck hooked the van. The truck ended up in an empty lot.

The adjuster

Ezekiel Joseph

He testified that contrary to his witness statement. The claimant never paid him for his report - \$450 or any amount. He was paid by one Paul Kerr who ran the office of “Personal Injury Claims Consultants” who had instructed him. He took photographs of the damage to the Claimant’s vehicle which were tendered into evidence. They showed damage to the front of that vehicle, in particular to the right front.

His report listed damaged parts as follows:

“Some major parts are as follows: front panel, dashboard, windscreen, front bumper, headlamps, park lamps, front seats, right front door, left front door, door, right side door post, and hood and windscreen post.

The First Defendant’s Driver

The 1st defendant's driver did not attend during the trial and no weight can therefore be placed on his witness statement.

Credibility of the witnesses

This is to be assessed in relation to the manner in which they delivered their responses in cross examination, the internal consistency of their evidence – (whether any inherent contradictions exist), consistency with previous statements given by them, and the consistency of the evidence of each witness for the claimant with the claimant's case - bearing in mind also that excessive consistency could itself be a product of collaboration.

Matters affecting the claimant's credibility

Exaggeration of the medical expenses

The Claimant claims for reimbursement for the police report, the adjuster's report, medical report and travelling he admitted:

- (a) That though he claimed monthly expenditure of \$880 on pain killing tablets he in fact spent \$330 per month
- (b) He had no receipt for the repair of his vehicle
- (c) He had no receipt for the police report
- (d) His trips to the Health Centre cost \$20 not \$40 – every other day – and he would have made 30 trips costing \$600, not \$2,200 as claimed.
- (e) His prosthetic leg was supplied to him free of charge though he claimed a proper prosthetic leg would cost US \$7000.

He left his job in early June last year because he chose to.

The claimant's admitted that he has expended no monies in payment of any expense and that his fee arrangement is open ended - with no final fee having been agreed.

Accordingly claims for some of the items of special damage are to be rejected and others discounted. I find that the claimant was careless in verifying matters of quantum in his witness statement but was fundamentally an honest witness in his oral testimony. It is suspected that this is likely to have occurred because those aspects of his witness statement were prepared for him and uncritically accepted and signed off by him. I am satisfied that under cross-examination he volunteered the true state of affairs.

Other matters

During the course of an objection Mr. Ragbag was asked to step outside. On his return he admitted that he was speaking to his wife while outside court and he told her “they are asking me how the vehicle ended up in the middle of the road.”

Matters affecting the credibility of the claimant's wife

In answer to a question from the court as to whether she spoke with the Claimant while he was outside the court, she stated that she had no conversation with him apart from one concerning his tablets. However the claimant had previously admitted speaking with her and telling her that “they” were asking him how his vehicle ended up in the middle of the road.

I do not place any great emphasis on this. It is quite possible that the significance of the claimant's remarks to her – which would not have had sufficient time to develop into any meaningful conversation – was not recognised, or even remembered.

I also place no weight on her answer concerning whether “opening wide” would have meant moving away from the east bound lane. Insufficient evidence was led to establish that proposition in relation to the scene of this accident. She maintained under cross-examination that the accident occurred toward the middle of the road – 6 feet from the northern edge of the road.

In analysing the evidence of the witness I extract therefrom the real evidence in particular.

- (a) The position of the debris
- (b) The damage to the vehicles
- (c) The position of the claimant's and 1st defendant's vehicle after the accident
- (d) The condition of the roadway prior to accident

Findings on the Evidence

Accordingly I find that:

- (a) No admission was made by the Claimant that he skidded
- (b) He did not skid
- (c) There was:

- (i) Debris on the road.
 - (ii) Debris on the southern side of the road to the middle
 - (iii) Possibly some debris on the northern side of the road – though my findings at (i) and (ii) are the ones that impact my assessment of how the collision occurred.
- (d) The position of the debris makes it unlikely that the claimant's vehicle collided with the 1st defendant's vehicle while the latter was off the roadway.
- (e) The claimant's vehicle was facing in a southerly direction after the impact. This also makes it unlikely that the claimant's vehicle collided with the 1st defendant's vehicle while the latter was off the roadway as it would have had to have skidded into it at almost a right angle.
- (f) The 1st defendant's vehicle therefore did not collide with the claimant's vehicle in the manner claimed by the 1st defendant – that is – while the 1st defendant's vehicle was at a stand still off the roadway.
- (g) The 1st defendant's vehicle collided with the claimant's vehicle in the manner claimed by the claimant, that is, it came over onto the claimant's side of the roadway.
- (h) The damage to each vehicle is consistent with the claimant's case

Manner of Impact

On testing my findings above in relation to the damage to each vehicle to see whether it is consistent with the scenario described by the claimant I find that it is in fact consistent with

- (i) severe frontal impact to the claimant's vehicle,
- (ii) the concentration of that damage to the right front thereof.
- (iii) The damage to the side of the 1st defendant's vehicle,

- (iv) the movement of the claimant's vehicle after collision from the point of impact and the eventual position of each vehicle, including their angles.

I do not agree that the fact that the front of the 1st defendant's vehicle was not hit means that the accident could not have occurred as the claimant contends. I am satisfied that from the evidence it is entirely possible for the claimant's vehicle to have come into contact with the side of the 1st defendant's vehicle. It does not follow that the claimant's vehicle must have impacted the front of the 1st defendant's vehicle if they were in motion approaching each other and I do not accept this proposition. I find the collision occurred as contended by the Claimant.

Disposition

Accordingly the defendants are liable to the claimant in respect of his damage and there shall be judgment for the Claimant for damages and interest thereon to be assessed by this court in default by agreement.

The Defendants are to pay the Claimant's costs to be assessed by this court in default of agreement.

Dated this 6th day of May 2009

Peter A. Rajkumar

Judge.