

In the Republic of Trinidad and Tobago

In the High Court of Justice

CV2008 - 04742

Between

Shane Williams Dyer

Plaintiff

And

Jermain Roachford,

Marlon Dorwich

Defendants

Before The Honourable Mr. Justice Devindra Rampersad

Appearances:

Mr. Ravindra Nanga instructed by Vanessa Mohammed for the Claimants

Mr. Anthony Manwah for the First Defendant

Date Delivered: 13th April, 2010

JUDGMENT

1. On the, paragraph 3 of the defence filed in these proceedings on the 31st of July 2009 was struck out in an extempore judgment delivered that day. Written reasons are now delivered in relation thereto.

2. According to his statement of case filed on 3 December 2008, the Claimant says that he was lawfully driving his motor vehicle along the Priority Bus Route, St. Augustine in an easterly direction in the vicinity of the intersection with the Eastern Main Road on the 22nd of February 2006 when the 2nd named Defendant so negligently drove, manage and or controlled the First Defendant's motor vehicle whilst traveling in a southerly direction along Rhapsody Street at the said intersection that he caused and/or permitted to First Defendant's motor vehicle to collide with the front of the Claimant's motor vehicle.

3. At paragraphs 3 and 4 of his statement of case, the Claimant set out his case as follows:

“3. By letters dated 14th day of September, 2007, the Claimant notified the First and Second Defendants of his claim, respectively. True copies of the said letters are hereto annexed and marked "A" and "B" respectively. A response was received from the First Defendant by way of letter 12th October, 2007. A true copy of the said letter is hereto annexed and marked "C".

4. On or about the 22nd day of February, 2006 the Claimant's motor vehicle was being lawfully and properly driven in a (sic) Easterly direction along the Priority Bus Route, St. Augustine in the vicinity of its intersection with the Eastern Main Road when the Second Defendant, so negligently drove, managed and/ or controlled the said motor vehicle whilst traveling in an (sic) Southerly direction along Rapsey Street at the said intersection that he caused and/or permitted the said motor vehicle to collide with the front of the Claimant's motor vehicle and propelling (sic) same into a traffic light post on the southern side of the Priority Bus Route.

PARTICULARS OF NEGLIGENCE

- (a) *Driving too fast or at an improper rate of speed in all the circumstances;*
- (b) *Failing to keep any or any proper lookout or to have any or any sufficient regard for the traffic that was or might reasonably be expected to be on the said intersection;*

- (c) Failing to see the Claimant's motor vehicle in time to avoid the said collision or at all;*
- (d) Failing to exercise or to maintain any or adequate control over the said motor vehicle;*
- (e) Emerging onto the said intersection without 1st ascertaining whether it was safe so to do and when it was unsafe and dangerous so to do;*
- (f) Failing to conform with the red light signal which was showing to the said motor vehicle;*
- (g) Failing to stop, slow down, to swerve or in any other way so as to manage or control the said motor vehicle as to avoid the said collision;*
- (h) Failing to accord precedence to the Claimant's motor vehicle which was at all material times traveling in conformity with a green light signal;*
- (i) Driving without due care and attention.”*

4. The First Defendant was served with the claim form and statement of case on the 7th of March 2009 and an application was made on his behalf on the 15th of April 2009 to extend the time for the filing of the defence as a result of the fact that the First Defendant's attorney was still in the process of getting information in respect of the defence. That application was granted on 16 June 2009 extending the time for filing of the First Defendant's defence to 31 July 2009.

5. Judgment in default of appearance was entered against the 2nd named Defendant – the driver of the vehicle on the day in question - on 24 November 2009 leaving the issue of liability against the First Defendant at large.

6. In his defence filed on 31 July 2009, the First Defendant responded to paragraphs 3 and 4 of the statement of case as follows:

“2. Paragraph (sic) 3 and 4 of the statement of case are admitted.

3. Save that the First Defendant admits that the collision occurred on the 22nd day of February , 2006 and that his car was being driven by the 2nd Defendant and that he neither admits nor denies that the Claimant’s vehicle was

being lawfully and properly driven on the priority bus route because he does not know whether it is true, but which he wishes the Claimant to prove, paragraph 4 of the Statement of Case is denies (sic) on the ground that it is not true.”

7. The claim came on for Case Management Conference (CMC) on the 3rd of November 2009. The court indicated to attorney for the First Defendant that there seemed to be an inconsistency between paragraphs 2 and paragraph 3 of the defence which needed to be resolved. The Defendant then proceeded to seek leave to amend paragraph 3 to replace the words "*denies on the ground that it is not true*" with the words "*neither admits nor denies on the ground that the First Defendant does not know if it is true.*" Leave was granted without objection by the Claimant's attorney at law.

8. As a result, the amended paragraph 3 of the defence reads as follows:

*“3. Save that the First Defendant admits that the collision occurred on the 22nd day of February , 2006 and that his car was being driven by the 2nd Defendant and that he neither admits nor denies that the Claimant’s vehicle was being lawfully and properly driven on the priority bus route because he does not know whether it is true, but which he wishes the Claimant to prove, paragraph 4 of the Statement of Case is ~~denies (sic) on the ground that it is not true~~ **neither admits nor denies on the ground that the First Defendant does not know if it is true.**”*

9. This, however, did not deal with the conflict between paragraphs 2 and 3. Paragraph 2 specifically admitted paragraph 4 of the statement of case which amounted to an admission of the following in relation to the Second Defendant:

9.1. He negligently drove, managed and/ or controlled the said motor vehicle whilst traveling in an (sic) Southerly direction along Rapsey Street at the said intersection that he caused and/or permitted the said motor vehicle to collide with the front of the Claimant's motor vehicle and propelling (sic)

same into a traffic light post on the southern side of the Priority Bus Route.

- 9.2. He drove too fast or at an improper rate of speed in all the circumstances;
- 9.3. He failed to keep any or any proper lookout or to have any or any sufficient regard for the traffic that was or might reasonably be expected to be on the said intersection;
- 9.4. He failed to see the Claimant's motor vehicle in time to avoid the said collision or at all;
- 9.5. He failed to exercise or to maintain any or adequate control over the said motor vehicle;
- 9.6. He emerged onto the said intersection without 1st ascertaining whether it was safe so to do and when it was unsafe and dangerous so to do;
- 9.7. He failed to conform with the red light signal which was showing to the said motor vehicle;
- 9.8. He failed to stop, slow down, to swerve or in any other way so as to manage or control the said motor vehicle as to avoid the said collision;
- 9.9. He failed to accord precedence to the Claimant's motor vehicle which was at all material times traveling in conformity with a green light signal;
- 9.10. He drove without due care and attention.

10. In those circumstances, it was hard for the court to understand how, in one breath, the First Defendant admits the negligence of the 2nd Defendant and, in the other, he goes on to say he does not know if these allegations are true.

11. The matter came up again for CMC on 27 January 2010 and the directions were given for submissions on the issue as to whether the defence disclosed a valid defence to the claim. This was in light of the admission made at paragraph 2 of the defence. The court was as well cognizant of the fact that judgment had already been entered against the 2nd named Defendant who was the driver of the First Defendant's vehicle and who would have been the person with firsthand knowledge of the facts and circumstances surrounding the accident. To my mind, the 2nd named Defendant's failure to defend the

claim, bearing in mind his position of knowledge, was of relevance to the whole issue before the court.

12. In the First Defendant's submissions filed on 8 March 2010, the First Defendant's attorney admitted that both contentions were inconsistent, incompatible and were mutually exclusive but submitted that the court should construe the paragraphs to mean that:

12.1. Paragraph 3 of the defence admitted specific parts of paragraph 4 of the statement of case alone, that is, the date of the collision and the fact that the First Defendant's car was being driven by the Second Defendant.

12.2. Paragraph 4 of the defence puts the Claimant to proof of the rest of paragraph 4 of the statement of case.

13. The court was unable to accept this proposed construction. It was plainly obvious since the 3rd of November 2009 that this conflict existed. An opportunity was given to the First Defendant's attorney to clarify his position. He failed to do this despite the fact that he had extra time granted to him to enter his defence as per the order of 16 June 2009 and the fact that he had an opportunity to amend his defence at the first case management conference which he failed to do.

14. Pleadings are meant to define the parameters within which a particular claim is to be decided. The First Defendant cannot approbate and reprobate at the same time. A court ought not to be burdened with the responsibility of having to engage in any extended interpretation or construction exercise in respect of pleadings. Part 10.5 of the CPR is quite clear as to the requirements and responsibilities of the First Defendant in pleading his case. The statement of facts set out in the defence ought to be clear and unequivocal as to its meaning and purport to avoid placing the opposing party in an embarrassing position in relation to the case to be met at trial. A reading of the pleading ought, at first glance, to disclose the party's case without need for quasi voire dire proceedings for interpretation purposes.

15. As a result, the court struck out paragraph 3 of the defence as being an abuse of the process of the court [under part 26.2 (1)(b)] and that it disclosed no ground for defending the claim in light of the admission at paragraph 2 of the defence [under part 26.2 (1)(c)] – all the time bearing in mind the fact that judgment had already been taken up against the driver who caused the accident and the fact that the defence never disputed the lawfulness of the Second Defendant’s possession of the First Defendant’s vehicle or other extricating circumstance.

16. Following the striking out, the costs of the application was assessed in the sum of \$4,000.00 to be paid by the First Defendant to the Claimant and judgment was entered for the Claimant against the First Defendant on liability in light of the admission at paragraph 2 of the defence.

Devindra Rampersad
Judge (ag.)