

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-01128

BETWEEN

JASON BALBOSA

Claimant

AND

**TELECOMMUNICATIONS SERVICES OF
TRINIDAD AND TOBAGO**

Respondent

Before The Honourable Mr. Justice Seepersad

Appearances:

1. Mr. Martin George for the Claimant
2. Mr. Shiva Boodoo for the Respondent

Date of the Order: 17th October, 2016

REASONS

1. This matter came up for trial on the 17th October, 2016. Three days prior to the trial, Attorney-at-Law for the Defendant, via email, indicated that he had been served with the Claimant's Evidential Objections which were filed out of time and requested an opportunity to file submissions in opposition to same and further asked that the trial be adjourned. This request was supported by the Claimant but the Court was disinclined to adjourn the trial and the Court's decision was communicated to the parties via email.
2. On the morning of the trial, the parties appeared and the Claimant's Attorney indicated that one of his witnesses had a family emergency as his son had to be taken to the hospital but that efforts could be made for the witness to attend court. Having heard the parties, the Court indicated that it would adjourn the trial but asked the Defendant to make oral submissions in relation to the Claimant's Evidential Objections.
3. The objections primarily focused upon the removal of an inspection report from the evidence. This report was on a TSTT letter head but purported to contain information relevant to brakes inspection of the motor vehicle TBP 1736. A hearsay notice was filed in relation to the said report by the Defendant but no counter notice had been served by the Claimant disputing the report that was allegedly done by Premium Motors Service Limited after the accident. The Court noted that the Defendant's case as pleaded outlined that the brakes of the vehicle were not defective at the time of the accident and the report was disclosed in the Defendant's List of Documents and no objection to same was taken at the discovery stage.
4. Attorney for the Defendant argued that the Claimant's objection that the report was not a Premium Motors Report since it was on a TSTT letter head raised an issue of weight and not admissibility and pointed out that the Claimant should have filed and served a counter notice.

5. The Court noted that while the hearsay notice stated that the Defendant wished to adduce into evidence a Premium Motors service report and a document was annexed to the hearsay notice, same bore a TSTT logo. The Defendant's position was that there was an established procedure in relation to vehicles and that whenever a vehicle was defective or a complaint of a defect was made, documents would be generated by TSTT and the document and vehicle would be taken to a particular garage to be inspected and repaired and thereafter the document would be signed. The Claimant disputed any such circumstance and maintained that the document that purported to be a Premium Motors report was an internal TSTT document.
6. One of the central issues that has to be determined in this case is whether or not the brakes of TBP1736 was defective at the time of the accident. The Court considered the arguments advanced by both sides and decided that pursuant to **Part 40.6 of the Civil Proceeding Rules**, it wanted to hear from Premium Motors Service Limited as to whether any inspection was done on the brakes of the vehicle after the accident, between the 14-15th of August 2013. Accordingly, the said company was summoned to attend court and produce any documents or records with respect to any such inspection.
7. Ultimately, the Court formed the view that it ought not to deprive itself of the potential assistance that such information could provide in its determination of the factual issue as to whether or not the brakes were defective at the material time.
8. In balancing the scales of justice the Court fixed a hearing date for the 3rd November, 2016 to receive the information from Premium Motors and indicated to the Claimant that an opportunity would then be given to him to determine if he wished to file any additional witness statement to deal with any issue that may be viewed as being necessary based on the receipt of any information from Premium Motors Service Limited. A new trial date of the 13th November, 2016 was set and the Court further indicated that any application by the Claimant to rely on any further evidence ought to be filed in advance of the new trial date.

9. Upon receipt of the Notice of Appeal, the Court decided to vacate the trial date of November 13, 2016 but still kept the date to receive the information from Premium Motors and thereafter to wait on the Court of Appeal's decision to determine how the matter should be proceeded with.

FRANK SEEPERSAD

JUDGE