

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2021-00338**

**BETWEEN**

**LYNETTE DRAKES-BROWN**

Claimant

**AND**

**BRIAN SANCHEZ JR.**

First Defendant

**BRIAN SANCHEZ SR.**

Second Defendant

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Date of Delivery 19 April 2024**

**Appearances:**

**Mr Gerard Raphael instructed by Ms Lana Chunilal Attorneys at law for the Claimant**

**Mr Brent Marchan Attorney at law for the Defendants**

**JUDGMENT**

1. The Claimant has brought this action seeking damages for personal injuries and consequential loss, pain and suffering incurred as a result of the negligence of the Defendants in the management and/or control of motor vehicle bearing registration number PBT 3796 (“the vehicle”). The first hurdle the Claimant has to overcome is to prove on a balance of probabilities that the Defendants are liable for her loss.
2. There are two different versions of the accident which took place on 27 January 2017 (“the accident”). The Claimant’s pleaded version is that on the material day at around 2:30 pm she was firmly standing along the southern side of Independence Square,

Port of Spain in the vicinity of the Telecommunications Services of Trinidad and Tobago (“TSTT”) when the First Defendant, the servant and or agent of the Second Defendant so negligently reversed the vehicle into her, causing her to fall to the ground and suffer injuries to her hip, upper left thigh, back and left shoulder. The Claimant was assisted by a passerby to rise from the ground. The impact of the vehicle caused immediate pain to the Claimant and it took her a few minutes before she was able to move about.

3. The particulars of negligence which the Claimant pleaded against the First Defendant, the driver of the vehicle were that: he drove the vehicle recklessly or at a speed or in a manner which was dangerous to other road users, pedestrians and the Claimant; he failed to keep a proper look out for or have regard to pedestrians crossing the road; he failed to see the Claimant on the side of the road in sufficient time to avoid colliding with her; he failed to take adequate or effective steps to prevent the vehicle from colliding with the Claimant; he failed to stop, slow down, swerve or in any way manage or control the vehicle to avoid colliding with the Claimant; he failed to apply brakes in time or at all so as to steer and or control the vehicle to avoid collision with the Claimant; and he failed to drive with due care and attention.
4. The Claimant’s particulars of negligence against the Second Defendant, the owner of the vehicle was that: he authorised the First Defendant to drive the vehicle with the knowledge that there was no insurance coverage for him; and he failed to obtain adequate insurance to cover drivers permitted to operate the vehicle.
5. The Defendants did not deny that the Claimant was standing on the southern side of Independence Square, Port of Spain. Their case was that the vehicle was parked on the southern side of Independence Square. Prior to reversing the vehicle, the First Defendant made sure that no one was standing in the road behind it. The Claimant stepped down off the pavement behind the vehicle whilst he was reversing it and was attempting to cross the said road. The Second Defendant denied that he was

negligent in permitting the First Defendant to drive the vehicle on the material day as this was a matter which would have been resolved between the Insurance Company and himself.

6. A finding of negligence requires proof of: (1) a duty of care to the Claimant; (2) breach of that duty; and (3) damage to the Claimant attributable to the breach of the duty by the Defendant.<sup>1</sup> There must be a causal connection between the Defendants' conduct and the damage. Further, the kind of damage suffered by the Claimant must not be so unforeseeable as to be too remote: **Clerk & Lindsell on Torts**<sup>2</sup>. The burden of proof of proving damages in negligence lies with the Claimant.
7. The determination of liability in this matter would turn on the Court's finding on the following disputed facts: (a) where was the Claimant at the material time; (b) whether the First Defendant was speeding when he reversed the vehicle; (c) whether there was anything or anyone behind the vehicle at the material time; (d) whether the Second Defendant knew that the insurance for the vehicle did not cover the First Defendant prior to giving him permission to drive or navigate the vehicle.
8. In assessing the evidence to determine the aforesaid disputed facts, I took into account that any deviation by a party from his pleaded case immediately calls his credibility into question<sup>3</sup> and that credibility is wider than mere demeanour, which is mostly concerned with whether the witness appears to be telling the truth.<sup>4</sup> Further, I was guided by the learning in **Horace Reid v Dowling Charles and Percival Bain**<sup>5</sup> cited by Rajnauth-Lee J (as she then was) in **McLaren v Daniel Dickey**<sup>6</sup> where in determining the version of events which is more probable, she was obliged to check the impression of the evidence of the witnesses against the: (1) contemporaneous

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<sup>1</sup> Charlesworth & Percy on Negligence, 13<sup>th</sup> Edition, Chap 1 para 1-19

<sup>2</sup> 19<sup>th</sup> Edition, Chap 8 para 8-04

<sup>3</sup> The Attorney General of Trinidad and Tobago v Anino Garcia Civ. App. No. 86 of 2011 at paragraph 31

<sup>4</sup> Onassis and Calogeropoulos v Ver-gottis HL (1968) 2 Lloyd's Rep 403

<sup>5</sup> (1989) UK PC 24

<sup>6</sup> CV2006-01661

documents; (2) pleaded case; and (3) inherent probability or improbability of the rival contentions. The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal in the judgment **The Attorney General of Trinidad and Tobago v Anino Garcia**<sup>7</sup>, where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

9. There were four witnesses to the accident, namely the Claimant, the First Defendant, the passenger in the vehicle, Ms Jael Goddard (“Ms Goddard”) and the passerby who assisted the Claimant when she fell. The trial was conducted virtually and at the trial the only persons who gave evidence were the parties and only the Claimant and the First Defendant witnessed the accident. The Claimant had stated that the passerby was unknown to her. Therefore, I will not make any adverse inference by her failure to call the passerby as a witness. The Defendants had filed a witness statement on behalf of Ms Goddard. The day prior to the trial, Counsel for the Defendants sought permission for Ms Goddard to give evidence from an alternative location apart from his Chambers. Counsel did not provide any reason for this request. I indicated that Ms Goddard was required to give evidence from his Chambers. On the morning of the trial, Counsel for the Defendants informed the Court that Ms Goddard did not attend his Chambers to give her evidence as she had other matters to attend to. However, in his closing submissions Counsel for the Defendants indicated that Ms Goddard was unable to give evidence from his Chambers as she was in Tobago and could not obtain a flight to Trinidad at short notice. In my opinion, while there were conflicting reasons submitted by Counsel for the Defendants for Ms Goddard not attending as a witness to give evidence, those reasons are not a sufficient basis to draw any adverse inferences against the Defendants for her non-attendance.

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<sup>7</sup> Civ. App. No. 86 of 2011 at paragraph 31

10. The Claimant's evidence in her witness statement was that she was standing along the southern side of Independence Square, Port of Spain in the vicinity of TSTT, waiting to cross when the vehicle which was parked facing west, about 2 feet away from her reversed and struck her which caused her to fall. The vehicle struck her in the vicinity of her left thigh to hip and she fell to the ground upon impact and a passerby came to assist. She also stated that while she was waiting to cross the road she saw a wrecker approaching from her right side. She recalled that the First Defendant was hurrying back as the wrecker was approaching.
11. The Claimant's witness statement was consistent with her pleaded case. Although parts of the Claimant's witness statement were not in her pleading, namely: that the vehicle was 2 feet away from her, it was facing west, a wrecker was approaching from the right and the passerby hit the trunk of the vehicle to indicate that it had struck the Claimant, these were not material departures from the Claimant's case to undermine the credibility of her evidence.
12. In cross examination, the Claimant maintained that she was standing firmly on the road looking at vehicles proceeding from the right while she was waiting to cross; the vehicle was 2 feet away from her and the back of the vehicle struck her while she and other persons were standing behind the vehicle; and there was no other vehicle behind the vehicle.
13. The Claimant was cross examined on the Police Report dated 27 January 2017 ("the Police Report") which she attached to her Statement of Case and which was one of the documents in the Agreed Bundle of Documents. The Claimant admitted that she made the Police Report on the same day as the accident and it stated that she stepped off the pavement behind the vehicle when it was attempting to reverse causing it to come into contact with her. The Claimant testified that the contents of the Police Report was the officer's interpretation of her account of the accident.

14. In my opinion, the credibility of the Claimant's evidence in chief was not undermined by her evidence in cross examination as there was no material departure. The Claimant was forthright in accepting the contents of the Police Report and she provided an explanation for the contents which were different from her version of the accident.
15. The First Defendant's evidence in his witness statement was that on 27 January 2017 at around 2 pm, he was granted permission by the Second Defendant to drive the vehicle. The Second Defendant told him that he did not have to obtain the consent from the Insurance company with which the vehicle was insured in order to permit him to drive it at the material time.
16. According to the First Defendant, he had parked at around 2:30 pm on the southern side of Independence Square. His friend Ms Goddard was seated next to him at the time of the accident. He stated that before moving off, he had looked into the rear-view mirror of the vehicle to ensure that there was no one standing in the road behind it at that time or that there was no one crossing or attempting to cross same at that time. There was another vehicle parked in the road behind the vehicle so that he could not have reversed speedily. As he began to reverse the vehicle he kept looking in the rear-view mirror to ensure that there was no one behind it. The Claimant stepped down from the pavement at the rear of the vehicle and came into contact with it. He immediately stopped the vehicle and went to the rear of it where he saw the Claimant standing in the road behind it and he asked her if she had suffered any injury. He also asked her if she wanted to be taken to the hospital but she refused his offer. The First Defendant also stated that the lights at the back of the vehicle would come on when he put it into the reverse gear and that when he came out of the vehicle the lights were still on.
17. The First Defendant also stated in his witness statement, that shortly after the accident a female police officer was passing by in a vehicle, saw them standing in the

road behind the vehicle and stopped and enquired as to what had happened. The Claimant told the female officer she was struck by the vehicle the First Defendant was driving. The police officer asked the Claimant if she was going to make a report to the Police Station to which the Claimant informed her that she was fine. The police officer then told the Claimant that she was still required to make a report to the Central Police Station. The Claimant walked off and that was the last occasion he saw or heard from her.

18. In cross examination, the First Defendant testified that he received his drivers' licence in 2016 and when the accident occurred it was the first time his father had given him permission to drive the vehicle. At the material time he was waiting in the vehicle for Ms Goddard. There was a sign which stated that parking was not permitted from 3 to 6 pm and the accident took place at 2:30 pm. The First Defendant testified that before reversing the vehicle he looked to the rear using the rear-view mirror and the 2 side mirrors. He said that he saw a vehicle which was about 2 feet behind him and there were no persons behind the vehicle. He denied that Ms Goddard was helping him look in the side mirror before he reversed. He said that he saw the Claimant on the pavement and not on the road. He denied that he told his father, the Second Defendant that the Claimant was struck by the vehicle. He said he told his father that he was reversing the vehicle when the Claimant stepped off the pavement and came into contact with it. He said that he gave his report at the Police Station and he accepted that he did not attach a copy of the report which he gave to his witness statement. He testified that he did not hear anyone bang on the vehicle and he did not see anyone assisting the Claimant.
19. The First Defendant also testified that he was reversing slowly so he could not explain how the impact caused the Claimant to fall. He came out of the vehicle and saw the Claimant behind it and he asked her if she need assistance to go to the hospital. The police came right after the accident and he did not inform the police officer that the Claimant's version of the accident was incorrect and he did not attempt to correct it.

20. In my opinion, the First Defendant's evidence in cross examination undermined the credibility of his version of the accident in several material aspects. First, the First Defendant's admission that when he came out of the vehicle after the accident he saw the Claimant behind it, supported the Claimant's version and undermined his version that the Claimant was on the pavement and not along the road.
21. Second, the First Defendant's admission that he did not inform the police officer that the Claimant's version of the accident was incorrect and he did not attempt to correct it supported the Claimant's version of the accident.
22. Third, the First Defendant's admission that he enquired of the Claimant if she wanted to go to the hospital undermined his evidence that he was reversing slowly, as the impact caused the Claimant to fall.
23. The Second Defendant was the owner of the vehicle and the father of the First Defendant. His evidence did not assist the Defendants' case but rather corroborated the Claimant's version. His evidence in his witness statement was that his son, the First Defendant told him when he returned home after the accident that the Claimant had attempted to cross over the road-at the rear of the vehicle while he was reversing it on the southern side of the Independence Square and she was struck by it. The First Defendant also told him that before he attempted to reverse the vehicle he had looked into the rear-view mirror to ensure that there was no one standing in the road behind it or attempting to cross it while he was doing so, but after he had begun to do so he saw the Claimant step down off the pavement unto the road behind the vehicle in an attempt to cross it.
24. During cross examination, the Second Defendant attempted to change his evidence when he stated that his son told him that the Claimant came into contact with the vehicle. However, this aspect of the Second Defendant's evidence was lacking credibility as he accepted that when his son first told him that the Claimant was struck by the vehicle the accident was fresh in his son's mind. In my opinion, this clearly



demonstrated that the version of the accident that his son told him on the day of the accident was more accurate.

25. In my opinion, the weight of the credible evidence supports a finding that the Claimant was standing along the side of Independence Square and not on the pavement at the time of the accident.
26. Second, the First Defendant failed to take any proper steps to look out prior to reversing the vehicle. In my opinion, it is more probable that if the First Defendant was looking at the rear-view mirror and the two side mirrors when he was reversing, he would have seen the Claimant and other persons who were standing on the road behind the vehicle.
27. Third, the First Defendant was speeding when he reversed the vehicle. In my opinion, if the vehicle was not speeding then the impact of the vehicle with the Claimant would not have caused her to fall.
28. Fourth, the First Defendant did not give any indication that he was reversing the vehicle. The road where the accident occurred traffic only proceeded in one direction, namely from east to west. The First Defendant was reversing the vehicle in the opposite direction of the traffic. There was no evidence apart from reverse lights on the vehicle that the First Defendant made any sounds to indicate that he was reversing.
29. Fifth, the First Defendant's evidence that there was another vehicle behind the vehicle and there were no persons was not plausible, as if this was so when the Claimant was struck she would have fallen between the vehicle and the other vehicle. But there was no evidence from either the Claimant or the First Defendant that this occurred.

30. Sixth, it was also not plausible that there were no persons behind the vehicle as when the Claimant fell it was more probable that it was one of those persons who banged on the First Defendant's vehicle to alert him to the accident and it was the same person who assisted the Claimant.
31. Seventh, the version of the accident in the Police Report was not an accurate account of the accident. In my opinion, the Claimant's explanation for the account in the Police Report was reasonable as it was not a statement which she made and signed. Further, the account in the Police Report was inconsistent with the version which the Claimant gave to the police officer at the scene of the accident and which the First Defendant did not inform the police officer was incorrect.
32. In light of the aforesaid, I have concluded that the Claimant's version of the accident was more probable and that the First Defendant acted negligently when he caused the vehicle to strike her while he was reversing.
33. I now turn to the negligence of the Second Defendant. The First Defendant stated in his witness statement that the Second Defendant gave him permission to drive the vehicle on the material day and the latter told him that he did not have to obtain the consent from the Insurance Company in order to permit him to drive the vehicle. In cross examination, the First Claimant testified that the first time he became aware that he was not covered under the insurance policy for the vehicle was on the day of the accident when he returned home and checked the policy.
34. The Second Defendant's evidence in his witness statement was that the vehicle was insured with Capital Insurance and he had permitted the First Defendant to drive it on 27 January 2017. He also stated that he was never told by the said Insurance Company that he had to obtain its consent to allow any other person to drive the vehicle.

35. In my opinion, the Second Defendant's evidence that that he never knew that he had to obtain the Insurance Company's consent to allow any other person to drive the vehicle was not plausible, as he admitted in cross examination that he did not make any report to the Insurance Company at the time of the accident. In my opinion, the Second Defendant as the owner of the vehicle had a duty to ensure that his insurance certificate for the vehicle stated who were the authorised drivers and whether there were any restrictions.
36. In my view, it was more probable that if the Second Defendant knew that the insurance policy provided coverage for his son he would have made a report to it on the same day if not shortly after, as his evidence in chief was that when his son came home he told him that he had struck the Claimant. However, he did not make the report as he knew that he had permitted his son to drive the vehicle without first obtaining the consent of the Insurance Company which was restricted under the insurance policy. Indeed, it is more probable that he knew on the day of the accident as the First Defendant's testified in cross examination that he checked the policy upon returning home and discovered that he was not covered under it.
37. The Second Defendant also knew that when he gave the First Defendant permission to drive the vehicle in January 2017, the First Defendant had obtained his driver's license in 2016 and was a relatively new driver. In my opinion, the Second Defendant had a duty in those circumstances to check the insurance policy for the vehicle to ensure that it provided coverage for his son prior to giving him permission to use it. The Second Defendant's failure to do so in my opinion breached his duty of care as the owner of the vehicle to other users of the road such as the Claimant when he permitted his son to drive it without insurance coverage. For these reasons, I am of the view, that the Claimant has proven on a balance of probabilities that the Second Defendant was negligent.

38. Counsel for the Defendants argued that the Court should find that the Claimant contributed to her loss. I am not minded to apportion any liability on the Claimant as there was a duty of care on the First Defendant who was reversing in the opposite direction of the flow of traffic in the one-way street to alert other users of the street that he was reversing. A prudent driver in those circumstances would have taken such steps. There was no cogent evidence that the First Defendant took any adequate steps to do so. The only duty on the Claimant was to look in the direction of the oncoming traffic which from her evidence she did.

**ORDER**

39. Judgment for the Claimant on liability.

40. The Claimant's damages and costs which are to be paid by the Defendants are to be assessed by a Master on a date and time to be fixed by the Court Office.

**/s/ Margaret Y Mohammed**

**Judge**