IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

REGULAR JURISDICTION

2018-HC-DEM-CIV-SOC-411

BETWEEN:-

1. **CR INTERNATIONAL INC.**, a company incorporated under the Companies Act of Guyana
2. **ANN LYKEN**
3. **DOUGLAS BROMFIELD**

Claimants

-and-

1. **SURWANGA OUDITNARINE**
2. **FERROZ ULLA**

Defendants

BEFORE: S. Morris-Ramlall, J.

6th September & 11th October, 2019

Mr. B. De Santos for the Claimants

Mr. D. Da Silva, for the Defendants

JUDGMENT

1. This claim arises from a motor vehicular collision which occurred between motor lorry GVV 2782, driven and owned by the First and Second Named Defendants respectively, and motor vehicle PLL 7991, driven and owned by the Third and First Named Claimants, respectively. The collision occurred on the 6th May 2018 in the vicinity of Diamond Village, East Bank Demerara.

2. After a trial during which the Second Named Defendant gave no evidence, the Court found in favour of the Claimants but found that the Third Named Claimant was contributorily negligent and awarded damages accordingly.

3. It has not been disputed that the First Named Defendant was at the material time, the servant and or agent of the Second Named Defendant and that he would be vicariously liable for the negligence of the First Named Defendant. Therefore, the issues to be decided are whether the collision was as a result of the negligence of the First Named Defendant; what, if any, injuries loss and damage the Claimants sustained and what is an adequate sum to compensate the Claimants for any such injuries, loss and damage.

FINDINGS

4. The Claimants pleaded that the First Named Defendant negligently drove, managed and/or controlled motor lorry GVV 2782 while attempting to overtake PLL 7991, driven by the Third Named Claimant, and in so doing collided with the right rear side of PLL 7991, propelled it forward and caused it to collide with a parked vehicle (PVV 807). The Claimants' case is that the collisions caused resulting loss and damage.

5. The First Named Defendant contend that it was the Third named Claimant who made a dangerous lane change while driving PLL 7991 and that this is what caused the collision between PLL 7991 and GVV 2782, driven by him, and the subsequent collision with PVV 807. The latter collision, he argues, caused PVV 807 to end up in his path in the western lane.

6. The First Named Defendant's defence is inconsistent with his evidence regarding the respective lanes that the parties were proceeding in and how the lane change was done. In his defence, he contended that he was proceeding in the western lane of the eastern carriageway and that the Third named Claimant was also proceeding in front of him in that very lane. He pleaded that the Third Named Claimant then made a dangerous lane change from the western lane into the eastern lane and then back into the western lane.

   However, in his evidence, he stated that he was proceeding in the eastern lane of the eastern carriageway and that PLL 7991 was proceeding in front of him in the western lane of that carriageway. He testified that PLL 7991 then made a lane change from that western lane into the eastern lane.

7. The Third Named Claimant in his witness statement stated that he was proceeding in the western lane of the eastern carriage way of the road when he turned on his indicator signalling his intention to switch lanes to the eastern lane. He stated that he checked his rear-view mirror before doing this and that the road was clear. Under cross examination the Third Named Defendant claimed that he had in fact checked all three mirrors on the vehicle and that he

mistakenly stated in his witness statement that he checked one mirror. I do not accept this evidence particularly since he specifically referred only to the rear-view mirror in his witness statement.

8. Nonetheless, his evidence is that he felt a tremendous impact to the rare right side of PLL 7991. He initially stated that this impact was felt while he was in the process of overtaking but he subsequently said that it was after he had completed changing lanes. No explanation for the inconsistency was given.
9. However, his evidence is that the impact was as a result of motor lorry GVV 2782 colliding with PLL 7991. He stated that the impact was so great that it pushed PLL 7991 towards the eastern lane causing it to collide with PVV 807 which was stationary at the time. PVV 807 was then pushed from the eastern side of the carriage way onto the roadway itself with its front just over the line on the road separating the two lanes. It was at this stage that motor lorry GV 2782 hit PVV 807.
10. This evidence is startlingly inconsistent with and unsupportive of the case pleaded by the Claimants. In fact, it is pleaded that it is the First Named Defendant who made a lane charge in an attempt at overtaking PLL 7991.
11. Additionally, and in any event, I do not find the Third named Claimant's version of how accident occurred to be credible. I do not accept that he looked into his rear-view mirror and ascertained that it was safe to change lanes prior to doing so. His evidence that the road was clear is incredulous because had he indeed checked his rear-view mirror he should have seen GVV 2782. Otherwise, it begs

the question as to where it appeared from to hit PLL 7991, whether while it was in the process of changing lanes or after it had completed the lane change.

12. The points of impact on GVV 2782 and PLL 7991 are also inconsistent with the parties' versions of how the accident occurred. It is highly unlikely that the point of impact on PLL 7991 would have been to the right rear side had the collision occurred as described by either parties.

The point of impact is, to my mind, consistent with the Third Named Claimant making a lane change from the western to the eastern lane and attempting to change lanes again back to the western lane.

13. I also reject the First Named Defendant's evidence that he was proceeding at a slow rate of speed. Further, I find that the First Named Defendant had to have been driving at such a fast rate of speed that he was unable to avoid the collision with PLL 7991. He accepted that the truck was laden with about 16 (sixteen) tons of rice and would have taken longer than an unloaded truck to come to a halt. Speeding can also be inferred from the force of the impact of the collision with PLL 7991. It was so great that it caused PLL 7991 to propel forward and collide with another vehicle. Another indication of the speed at which the First Named Defendant was driving is the extent of the resulting damage to the three vehicles involved in the collisions.

14. As with the First Named Defendant, the evidence is that the Third Named Claimant was, at the material time, the servant and or agent of the First Named Claimant. In these circumstances, I find that the parties must share the blame

for the accident. Pursuant to section 9 of the Law Reform (Miscellaneous Provisions) Act, Cap. 6:02 I find that, given the state of the evidence, an apportionment of 60%:40% liability to the Claimants and the Defendants respectively is just and equitable. Costs awarded to the Claimants would also be adjusted to reflect this finding.

DAMAGES

General Damages

15. The Second and Third Named Claimants' evidence is that they both suffered immediate, severe pain as a result of the collision but that it was not long lasting. I award them each the sum of $35,000 (thirty five thousand dollars) in respect of their pain and suffering.

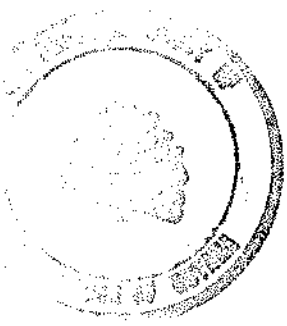
Special Damages

16. I accept that the Second Named Claimant's phone screen was damaged as a result of the accident. I do not find that it was unreasonable for her to replace the phone as opposed to repairing it. I therefore award the sum of $56,140 (fifty six thousand one hundred and forty thousand dollars) in respect of replacement of the phone.

17. As regards the claim for taxi fares, an examination of the authorities on the assessment of special damages reveals that the degree of particularity and certainty of pleading and proof of special damages must be determined in the context of the particular circumstances of each case. In arriving at a determination the court must ask itself what is reasonable to ask of the Plaintiff

in the particular circumstances and what is reasonable as an award as determined by the experience of the Court.

McGregor on Damages, 14th edn. p. 1028 states that in proof, as with pleading, the courts are realistic and accept that the particularity must be tailored to the facts and cited the dictum of Bowen, L.J. in Ratcliffe v Evans [1892]2 Q.B. 524 at p. 532 where he said:



"As much certainty and particularity must be insisted on both in pleading and proof of damages as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist on less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry."

18. The Plaintiffs have failed to plead or prove the amount claimed in respect of taxi fares with sufficient particularity or certainty. A blanket sum is claimed with no breakdown or explanation as to how the figure was arrived at. The sum claimed was also not specially proven. It is reasonable to expect that receipts would be produced in support of this claim.

19. In relation to the claim for damage to the motor vehicle PLL 7991 the Claimants rely on a correspondence from Massey Industries which states that repairs to the vehicle is not recommended and that its pre-accident value is

$8,500,000. However, any sum awarded in relation to this item must take into account the wreckage value. No value for the wreckage was provided and in the absence of such evidence the Court awards nominal damages in the sum of $400,000,000.

20. I have assessed costs on a discretionary basis taking into consideration the relevant factors set out in Part 64.02 of CPR, 2016. I find that an appropriate sum is $200, 000 (two hundred thousand dollars).

The Counterclaim

21. The First Named Defendant counterclaimed for damages suffered as a result of the negligent driving of the Third Named Claimant. He contends that motor vehicle GVV 2782 was damaged and that he suffered loss of income.

22. The counterclaim failed to set out the particulars of damage claimed to have been occasioned to the vehicle and additionally, loss of income, being a head of special damage, was not specifically pleaded or proven.

23. The claim that the First Named Defendant suffered an average loss of income is unsustainable and therefore dismissed.

In all the circumstances, I make the following Orders:

a) Judgment for the Claimants.

b) The contributory negligence of the Claimants is 60%.

c) The Defendants shall pay to the Second Named Claimant special damages in the sum of 40% of $56,140 (fifty six thousand one hundred and forty dollars) that is to say the sum of $22,456 (twenty two thousand four hundred and fifty six dollars).

d) General Damages assessed as follows:

(i) The Defendants shall pay the sum of 40% of $35,000 (thirty five thousand dollars), that is to say, the sum of $14,000 (fourteen thousand dollars) each to the Second and Third Named Claimants;

(ii) The Defendants shall pay the sum of 40% of $4,000,000 (four million dollars), that is to say, the sum of $1,600,000 (one million six hundred thousand dollars) to the First Named Claimant.

e) Interest is awarded at the rate of 6% per annum from the 11th October, 2018 to the 1st day of April, 2020 and 4% per annum from 1st day of April, 2020 until the judgment sums are fully paid.

f) The Defendants shall pay costs to the Claimants in the sum of 40% of $200,000 (two hundred thousand dollars), that is to say, the sum of $80,000 (eighty thousand dollars).

SMRamlall

Simone Morris-Ramlall

Puisne Judge

Dated this 1st day of April, 2020