

2014

No. 183 W/S

BERBICE

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

BETWEEN:

MATTHEW MC BEAN

Plaintiff

-and-

1. LAKERAM PERSAUD

2. NAKISH PERSAUD

3. HAND-IN-HAND INSURANCE COMPANY (a
company duly incorporated in the Republic of
Guyana under the Companies Act)

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Ryan Crawford for the Plaintiff

Mr. Rodwell Jugmohan for the First and Second Named Defendants

No appearance by or for the Third Named Defendant

Delivered December 15th 2017

DECISION

BACKGROUND

The Plaintiff's case is that on June 11th 2014 the Second Named Defendant (hereinafter SND) drove the First Named Defendant's (hereinafter FND) motor car which was insured by the Third Named Defendant (hereinafter TND) negligently along the No. 35 Village (Corentyne) Public Road thereby colliding with the Plaintiff resulting in injuries and loss to the Plaintiff.

The TND did not enter an appearance in the matter and neither the FND nor the SND testified or led a defence at the trial.

In their Statement of Defence the FND and SND denied that the SND drove negligently and contended that the accident occurred through no fault of theirs.

ISSUE I

Was the collision between the motor car driven by the SND caused by the SND's negligent driving?

LAW

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. [**Blyth v Birmingham Waterworks Company** [1856] 11 Ex Ch 781]

To give a cause of action there must be negligence which amounts to a breach of duty towards the person claiming. [**Farr v Butters Bros. & Co.** [1932] 2 K.B. 606 @ 618]

The law takes no cognisance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence ... the party complained of should owe to the party complaining a duty to take care and the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty. [**Donoghue v Stevenson** [1932] A.C. 562 @ 618]

Negligence is the failure to use the requisite amount of care required by the law in the case where a duty to use care exists. [**Riddell v Reid** [1943] A.C. 1 @ 31]

The standard of care required from a motorist is to drive with reasonable care.

FACTS

The Plaintiff testified that on June 11th 2014 sometime between 17:30 - 18:00 hrs he was sitting on his bicycle on the right hand side of the Public Road facing Skeldon when he heard the acceleration of a vehicle coming from the direction of New Amsterdam.

He pushed his bicycle more on to the parapet and so at that time he was facing the direction of the parapet. The vehicle then made a sudden turn into him and hit him and he fell unconscious.

When he regained consciousness he was in the New Amsterdam Hospital.

He testified that he suffered a broken nose, a tooth went into his nostril and he had fractures to his right hand between his second and third fingers.

PC Colvin Leacock testified that Skeldon is to the South and New Amsterdam is to the North.

He testified that on June 11th 2014 he received a report at the No. 51 Police Station of a series of hit and run and so a road block was set up by the No. 51 PS to intercept motor vehicle PPP 5482, however it was reported that the vehicle was involved in another accident before getting to the road block. This was the accident with the Plaintiff.

The SND was then brought to the No. 51 PS by citizens. He administered a breathalyser test on the SND and he recorded a reading above the legal limit. He visited the scene of the accident and there he saw motor vehicle on the road facing a south western direction.

He visited the scene again with the Plaintiff and the SND and the Plaintiff pointed out a point in the western parapet where he was struck down and the SND identified himself as the driver of the motor car but stated that he could not recall where the impact occurred.

Martha McBean testified that she is the Plaintiff's mother. She testified that the Plaintiff had injuries to his face, teeth came out and one went up his nostril.

She testified that he spent a few days at the New Amsterdam Hospital, then he was taken to the Woodlands Hospital because he was getting seizures.

At the Woodlands Hospital he received surgery to his face and his face was in bandages for six weeks.

ANALYSIS

Firstly from the evidence of PC Leacock, if a person was driving from New Amsterdam to Skeldon that person would drive on the eastern side of the Public Road.

The evidence is unchallenged that the Plaintiff was on the western parapet of the Public Road.

The unchallenged evidence of PC Leacock establishes that the SND was the driver of the motor car that struck down the Plaintiff.

It is clear that the motor car driven by the SND crossed into the “wrong” lane of traffic and went across the road and collided with the Plaintiff who was a pedestrian stationary in the western parapet of the road.

Without any explanation for such driving that alone demonstrates that the SND failed to drive with reasonable care and in the circumstances drove negligently thereby colliding with the Plaintiff.

CONCLUSION

The Court finds that the SND was negligent in his driving and as a result of his negligent driving he collided with the Plaintiff.

ISSUE II

Is the FND liable to the Plaintiff for the foregoing damages?

LAW

A Defendant may be vicariously liable when he lends his chattel, such as his car, to another and that other, by his negligence in the use of the chattel, causes injury to the Claimant (Plaintiff).

To be liable, the Defendant must retain both a right to control the use of the chattel **and** must have an interest in the purpose for which it is being used.

Lord Wilberforce stated in **Morgans v Launchbury** [1973] A.C. 127 @ 135, “*It must be shown that the driver was using it for the owner’s purposes, under delegation of a task or duty.*”

If the owner of a vehicle is to be liable for the negligence of a borrower of that vehicle, it is necessary that he should have some interest in the purposes for which the vehicle is being used. That interest must be specific and identifiable.

FACTS/ ANALYSIS

A proper reading and analysis of paragraph 2 of the Statement of Claim and paragraph 3 of the Statement of Defence leads to the inescapable conclusion that the FND does not refute or deny the allegation that he is the owner of the vehicle that was driven by the SND.

With respect to the FND being vicariously liable, no evidence was led with respect to the purpose for which the vehicle was being used.

CONCLUSION

There is no evidence upon which the FND can be found to be vicariously liable for the loss and damage suffered by the Plaintiff.

No evidence was led to establish a cause of action against the TND.

In the circumstances the case against the FND and the TND is dismissed.

The Court awards the Plaintiff the sum of \$900,000.00 as general damages for the injuries he sustained under the heading of pain and suffering against the SND together with interest at the rate of 6% per annum from September 17th 2014 to December 15th 2017 and 4% per annum thereafter until fully paid.

Costs to the Plaintiff against the SND in the sum of \$100,000.00

Justice N. A. Singh