

TRINIDAD & TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO**

HCA. No. S-1599 of 1989

BETWEEN

DEOLAL HARRIPERSAD

Plaintiff

AND

CARLVEN BAPTISTE

Defendant

Before: The Hon. Justice Nolan Bareaux

Appearances: S Gosine for the Plaintiff
P Deonarine for the Defendant

JUDGMENT

On 28th April, 1986, the plaintiff was involved in a collision. He was riding his motorcycle, registration number, PAN 483 ("PAN 483") easterly along the Southern Main Road, La Romaine. He was in the left lane. As he passed St Benedicts College, into the intersection of Bobb Street and the Southern Main Road, he collided with the defendant's car, registration number HAH 1436 ("HAH 1436"). By writ of summons dated 13th October, 1989, the plaintiff sued in negligence, claiming damages for personal injury and damage to property. In his statement of claim, he contends that the defendant broke the major road and collided with him and with his motorcycle.

His particulars of the defendant's negligence are as follows:

- (1) Driving from a minor road on to a major road when it was unsafe to do so and/or without regard for traffic on the major road.
- (2) Failing to give any or any proper warning of his approach or of his intention to drive on the said major road.
- (3) Driving at an excessive speed.
- (4) Failing to have or keep any or any proper control of the said motor vehicle.
- (5) Failing to stop, slow down, to swerve or in any other way so to manage or control the said motor vehicle as to avoid the collision.
- (6) Failing to apply his brakes in time or at all and so to steer the said vehicle so as to avoid the collision.
- (7) By reason of the matters aforesaid, the plaintiff sustained severe personal injuries in that the impact threw him into a yard and his motorcycle was damaged and he suffered loss and damage.

His particulars of injuries are:

- (1) A communitated compound fracture of the mid shaft of the left tibia and fibula of the left lower leg.
- (2) Continuous pain and suffering.
- (3) Loss of fourth toe of left leg.
- (4) Loss of feeling underneath fifth toe of left foot.
- (5) Stiffening of second and third toe of left foot.
- (6) Loss of movement in left ankle.

He claims the following special damages:

- (1) Loss of earnings from the 29th April, 1986 - \$56,000.00
to December, 1988 at \$400.00 per week.
- (2) Cost of medication - \$ 300.00

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|-----|---------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| (3) | Cost of three (3) pints of blood at
\$300.00 each | - \$ 900.00 |
| (4) | Cost of doctor bills three (3) visits | - \$ 175.00 |
| (5) | Cost of travelling from La Romaine to
San Fernando General Hospital and return,
attending clinic and attending for medical
report. | - \$ 600.00 |
| (6) | Cost of repairs of the motorcycle including
labour cost at \$596.00 | - \$ 2,443.80 |
| (7) | Loss of clothing worn at the time of the
accident: | - \$ 155.00 |

By his amended defence, the defendant admitted the collision and his ownership of HAH 1436, but stated that by agreement in writing dated 2nd day of December, 1987, the plaintiff accepted consideration from the defendant in full and final satisfaction of all liability with respect to the collision and that he and his insurers were wholly and completely released and discharged from any or all actions, claims and demands for damage or injury to person and property sustained in consequence of the collision. The defendant contends that the plaintiff well knew the nature and content of the document and fully understood it when he signed the agreement.

He contends in the alternative that he, the defendant, exercised all reasonable skill and care in his management of HAH 1436 and that from Bobb Street, his vision of vehicles travelling easterly along the Southern Main Road was obstructed by a wall at the intersection of Bobb Street and the Southern Main Road.

In the further alternative, the defendant contends that the collision was caused wholly or in part by the negligence of the plaintiff.

In his reply, the plaintiff contends that the defence was not maintainable in law against the plaintiff. In addition, he raises the plea of non est factum. He says that he is semi-

literate. When he signed the documents, he signed on the basis that the payments were interim payments pursuant to the representations of one Yacoob Ali on behalf of Capital Insurance Limited. He signed receipts for cheques without having read them and without the same having been read to him.

He never intended to sign any document in a full and final satisfaction as alleged or at all or as a discharge or release of the defendant.

Issues

Two issues fall to be determined here. The first is whether the collision which resulted in injury to the plaintiff and damage to his motorcycle was caused by the negligence of the defendant as the plaintiff alleges. If the answer to that first question is in the affirmative, the second will be whether the plaintiff by agreement dated 2nd December, 1987, discharged the defendant of all liabilities arising out of the collision by agreeing to accept out of court, a total of \$29,500.00 from Capital Insurance Limited in full and final settlement. This second issue will turn on whether the plaintiff understood the true purport of the documents he signed and in particular, the agreement dated 2nd December, 1987; that is to say, whether he intended to discharge the defendant from all liability arising out of the accident when he signed the December 2nd agreement. Both issues require an examination of the evidence adduced before me.

Evidence on behalf of the Plaintiff

The plaintiff testified that he is a market vendor. On 29th April, 1986, he owned PAN 483. He was riding easterly along the Southern Main Road in the left lane. He passed by St Benedicts College on his left. Bobb Street abutts the college campus. He was travelling about 20 mph. HAH 1436, being driven by the defendant, came out of Bobb Street onto the Southern Main Road and collided with him. The defendant, he said, drove straight into the main road and knocked him off the motorcycle. He fell over onto the other side of the road.

He received a blow to his left leg. It was broken in 2 places. He spent 3 1/2 weeks in hospital and was unable to work for 2 years. The motorcycle was damaged. He had bought it second hand for \$4,500.00. The cost of repair was \$2,443.80. He sold it “*as is*” for \$1,500.00.

The defendant spoke to him at the hospital 3 days later. The defendant told him that he had already paid the excess and that the plaintiff should visit the defendant’s insurance company, Capital Insurance Limited (“Capital Insurance”). The plaintiff visited Capital Insurance on a date he could not recollect. He spoke with one Yacoob Ali. Mr Ali told him he was aware of the accident. The plaintiff said he asked Mr Ali whether he could get “*any assistance, any money or so because I was not working.*” He said Mr Ali told him that in order to get any money from Capital Insurance, he, the plaintiff, must get an interim report from the doctor.

He obtained the report and took it to Capital Insurance. This report was admitted into evidence as “DH 1”. It is dated 5th December, 1986. He presented the report to Capital Insurance, and received an interim payment of \$13,000.00 by cheque dated 10th December, 1986. He understood the payment to be an interim payment. The cheque was admitted into evidence by consent as “DH 5”. He received a second payment dated 9th January, 1987 for the sum of \$6,000.00 (“DH 6”). On 4th May, 1987, he received a third payment by cheque of even date in the sum of \$5,000.00, (“DH 7”). He received a fourth payment of \$5,500.00 by cheque of 2nd December, 1987 (“DH 8”). DH 6, 7 and 8 were all admitted into evidence by consent.

All these payments he said were interim payments. Mr Khan told him that they were part payment until he got the final medical report. He said when he received the fourth payment of \$5,500.00, he expected to get a final report because he was still under medical care by one Dr. Maharaj. He got a final medical report from Dr Maharaj sometime in 1989. He attended the offices of Capital Insurance. He spoke to one Mr Khan who told him he was already paid in full. He was not allowed to speak to Mr Ali.

Said the plaintiff:

“I expected to receive final payment because when I spoke to Mr Ali, he told me when I get the final report from the hospital, I’ll have a final payment.” I told him, “I didn’t want no court matter, I wanted a settlement outside. Because I didn’t get my final payment, I gave instructions to file these proceed.”

He added that he went to primary school, but only up to fourth standard. When he signed documents at Capital Insurance;

“There was a small cage with a glass panel with a small curved opening at the counter. Each time they gave me the document, they tell me to sign to receive the money. Yes, I signed documents, more then once. I did not know what was in them.”

When asked by Mr Gosine to tell the court what the document said he added:

“I didn’t read the document, they just tell me to sign. I did not read the document because I cannot read and they told me to sign.”

I shall return in more detail to whether the plaintiff was in fact unable to read as he claimed, but for the moment, I must state that I found his initial answer that he **did not read the document** to be curious at best. His subsequent explanation (when prodded by Mr Gosine) that he did not read it because he could not read it was unconvincing. The plaintiff added that he received no copies of the documents which he signed, nor did he seek legal advice before signing.

Mr Harripersad was cross-examined by Mr Deonarine. He said he lived at La Romaine for the last 10 years, and that Bobb Street was a minor road which runs north to south. He stated that he never had any difficulty seeing traffic emerging from the east

on the Southern Main Road at the Bobb Street junction. He denied having to drive onto the Southern Main Road to see traffic on-coming from the east because of the wall. He said if the road is clear his normal speed is 15-20 mph. If the road is not clear, *"I would take my time, 12 - 15 mph."*

He said he had his motorcycle riding permit about 5 months before the accident. He was also the owner of a driver's permit to drive motor vehicles. He admitted that he had to do a test before he could get a permit. He also had a passport. He admitted having to fill out an application form to obtain the passport. I shall return to these admissions later.

In one of the few positive aspects of his testimony, the plaintiff, under cross-examination, displayed an acute familiarity with the St Benedicts College and Bobb Street area where the accident occurred. He stated that he didn't see HAH 1436 before it struck him. He was struck to the middle of the eastbound lane *"to the centre of the white line and the road."* He was thrown across the road. He didn't know what part of HAH 1436 had hit him because he didn't see the vehicle. *"It happened in an instant."* He added that, *"I only knew myself on the other side of the road."* The motorcycle was left in the centre of the road. He denied that he fell with the motorcycle in the middle of the road.

He insisted that Mr Yacoob Ali told him that before payment, he needed a medical report. He then went to the hospital and requested one. He was also told to bring an estimate with respect to the damage to his motorcycle. He went to the insurance company *"deciding that they will settle me out of court."* He didn't want to go to court and that he told this to officials at Capital Insurance. When he carried the medical report and the estimate, it was the third occasion on which he visited Capital Insurance.

At Capital Insurance, he dealt with Mr Faareez Khan and Mr Yacoob Ali. He admitted to signing several documents. One Azim Khan was present at all times when

those documents were signed. The plaintiff was shown “DH 12” which he had signed. He admitted that, “*this is my handwriting.*” “DH 12” reads as follows:

I, Deolal Harripersad of 20 Pearl Street, La Romaine hereby acknowledge that I voluntarily accepted the sum of (\$24,000.00) twenty four thousand dollars in full and final settlement of my claim against the Capital Insurance Limited of #38, Ciper Street, San Fernando, insurers of vehicle No. HAH 1436 which was involved in an accident with my motorcycle No. PAN 483 and which cause me personal injuries and damage to my motorcycle.

The amount I previously received was in full settlement for both my personal injury and other personal losses and for my motorcycle.

I presented to the Capital Insurance Limited at the time the medical report dated 5th December, 1986 and on that I had agreed to accept the amount above in full and final settlement and on presentation of my certified copy of ownership on the motorcycle for my loss on the cycle.

However, I received another medical report on the 9th November, 1987 and I have appealed to the Insurance Company, Capital to consider giving me some consideration for a further payment. On this basis and after discussions with the insurance company they stated that their previous payment was in full and final settlement which I fully understand but they however, agreed without prejudice to their previous payments and on my further requests to pay me an additional amount of (\$5,500.00) five thousand five

hundred dollars to assist me because of my present financial distress.

I agree to accept this sum and to have no further demands or requests to make from the Insurance Company or from the owner of the vehicle No. HAH 1436, Mr CarIVEN Baptiste of 199 Southern Main Road, La Romaine.

Dated this 2nd day of December, 1987.

The document is signed “Deolal Harripersad” and is witnessed by two persons, “Azim Khan” and “V Frederick”. The original of “DH 12” was later tendered into evidence as “DH 13”. I shall hereafter refer to the document as the December 2nd Agreement.

He said that on his third visit to Capital Insurance, he was taken to a small room. He gave Mr Khan the medical report. He was given a cheque and he signed the document, the December 2nd Agreement. He added that he didn’t know how much the cheque was drawn up for. Nothing was explained to him. He didn’t know what document he was signing. He understood the documents as documents for receiving money.

Four other documents were tendered into evidence through this witness in cross-examination. D H 14, 15, 16 and 17 dated 10th December, 1986, 9th January, 1987 4th May, 1987 and 2nd December, 1987 respectively, all of which the plaintiff admitted signing. All of these documents were headed “Release” and provide that the plaintiff voluntarily accepted and acknowledged the sums of \$13,000.00, \$6,000.00, \$5,000.00 and \$5,500.00 respectively, and that he released and discharged Capital Insurance from all claims demands, damages, actions of whatsoever kind, resulting from an accident which occurred on or about 29th April, 1986, involving HAH 1436. The plaintiff continued to deny that when he accepted the cheques for the respective sums, that he knew how much the cheques were for.

In respect of “DH 15”, he said the first time he looked at the cheque in the sum of \$6,000.00 (“DH 6”) was when he got home. It was more than a bit odd that he would look at the cheque at all, if he could not read. He added that he merely signed “DH 15” without looking at the cheque and the release form to see if they matched. He denied that Azim Khan worked for him on commission. He admitted that Azim Khan did accompany him on 9th January, 1987 to collect the cheque. However, he did not give Azim Khan any commission. Mr Khan had come to his home earlier and told him he had more money to collect. He went with him to Capital Insurance. According to the plaintiff, Azim Khan collected the cheque, cashed it and took \$1,000.00.

He added that when he signed the December 2nd Agreement, Azim Khan was not present. He also insisted that he did not know that Khan’s job was settling claims for litigants with insurance companies.

The plaintiff added that on 4th May, 1987, when he received a further \$5,000.00, he signed the document “DH 16”. He explained that:

“I went to the insurance company and I told Mr Khan about my situation and I was still going to doctor. Mr Khan said he had to speak to Mr Yacoob Ali.”

When he signed “DH 16”, he never read the document. He said this:

“When I received this \$5,000.00, I looked at it. Yes, this is at Capital Insurance. I looked at it because they told me it was \$5,000.00. I wanted to verify that it was \$5,000.00.”

It again struck me as strange that the plaintiff would look at the cheque for \$5,000.00 to verify the amount, if he were unable to read. He added that as far as he was concerned, the \$5,000.00 was part payment for his injuries. Mr Faareez Khan told him when he got the final report he would be paid finally.

The plaintiff stated that on 9th November, 1987, he got a medical report which he took to Capital Insurance on 2nd December, 1987, and received a cheque for \$5,500.00. He then signed the December 2nd Agreement and “DH 17”. In his words:

“It didn’t come across my mind to ask why I was signing both papers, instead of one as in the past.”

He insisted that neither was read out to him.

I pause here to note that the medical report dated 9th November, 1987, is the second medical report presented to Capital Insurance by the plaintiff. It is marked “DH 2”. The first medical report is dated 5th December, 1986. In its final paragraph, “DH 1” signed by Mr P Gentle states as follows:

“A final medical report and assessment on this patient will be issued when he is fully recovered, by Mr R P Maharaj who is looking after him, but is on holiday at present.”

“DH 2” which is signed by Mr R P Maharaj is expressed as being *“Further to the interim report.”* It speaks in final terms about *“a permanent partial disability award of 18%.”*

The plaintiff, in examination in chief, sought to neutralise the apparent finality of “DH 2” by stating while he presented Dr Maharaj’s report to Capital Insurance on 2nd December, 1987, he still expected a final report. He said, when he received the sum of \$5,500.00, he informed *“someone from the insurance company”* that there was a final report to be made. He was unconvincing.

Evidence on behalf of the Defendant

In addition to the defendant, two witnesses, Mr Vernie Frederick and Mr Faareez Khan testified on his behalf.

The defendant testified that on 29th April, 1986, he was the owner and driver of HAH 1436 when it was involved in a collision with PAN 483. He was approaching the Southern Main Road, La Romaine from Bobb Street. At the junction of Bobb Street and the Southern Main Road, there is a wall. It encloses St Benedicts College. He said that the wall “*sort of blocks your vision of seeing vehicles approaching from the Southern Main Road.*”

He was turning right, onto the Southern Main Road. He proceeded slowly as he eased out onto the Southern Main Road. The plaintiff came up on his motorcycle from his right side. His car was already over the white line at an angle. He didn't “*really see*” the motorcycle. The plaintiff swerved, hitting the left front of his vehicle, as well as the headlight and bumper. At the time of the impact, the defendant's car was at a standstill. The plaintiff fell to one side. He was not thrown. The defendant got out and went to the plaintiff's assistance.

When cross-examined by Mr Gosine, he was adamant that he didn't break the major road, and that he was driving with due care and attention. He said there were school children about. Despite this insistence, he conceded that he admitted liability to his insurance company, Capital Insurance.

Vernie Frederick testified that he was a retired Sergeant of Police. He was, in 1987, employed at Capital Insurance in the Claims Department. On 2nd December, 1987, the plaintiff was brought into the office by Mr Azim Khan. There was a conversation between them and sometime later he was called to witness a document. He described it as a release document. The document was read to the plaintiff by Mr Azim Khan. Present were Mr Azim Khan, the plaintiff and he.

Azim Khan, (who was not called as a witness by either party) in his (Frederick's) presence explained the purport of the document to the plaintiff, telling him that this sum of \$5,500.00 which he was receiving, was his final payment for compensation for his

injuries and damage to property. He identified the document as “DH 13”, i.e. the December 2nd Agreement. He said Azim Khan never worked for Capital Insurance.

Under cross-examination by Mr Gosine, he said the document was a type of agreement and he understood it to relate to damage to the plaintiff’s “*vehicle*” and to his personal injuries. He explained that the document was first read to the plaintiff and then handed to him. He held it in his hands and read it. The plaintiff then signed the document, Azim Khan signed and he (Frederick) signed. He said he did not know whether Azim Khan transacted business on behalf of Capital Insurance, but on several occasions he saw Azim Khan at the office with clients who received money from Capital Insurance. I found Mr Frederick to be an impressive witness, who gave blunt and forthright answers.

Faareez Khan stated that he has worked at Capital Insurance for the last 25 years. He is the Claims Manager. He knew Azim Khan for over 20 years. He knew him to be a freelance negotiator who represents clients in insurance claims. Khan would locate clients, take them to various insurance companies and negotiate settlements on their behalf. He did not indicate where Khan got his information on clients from. He said Khan had been doing that type of work for around 18 years. He said Azim Khan was never employed by Capital Insurance.

He said Azim Khan negotiated with Capital Insurance on behalf of the plaintiff. The first time the plaintiff came to the offices of Capital Insurance, he (Faareez Khan), spoke with the plaintiff who enquired about the accident. He told the plaintiff that he must submit an estimate of repairs in respect of his motorcycle, together with a medical report and proof of his loss of earnings. He also told the plaintiff that Capital Insurance would be investigating the circumstances of the accident. The plaintiff returned on a second occasion with an estimate of cost of repairs of the motorcycle. The witness said he told the plaintiff that based on his company’s investigations, he had contributed to the cause of the accident. The plaintiff became annoyed and left the premises, stating that he was going to his attorneys.

The plaintiff returned a third time with a medical report. He said that he wanted an out of court settlement. Khan said he discussed the claim with the manager. They decided to pay the plaintiff \$13,000.00 which the plaintiff agreed to accept. Mr Khan said he then read the release document to the plaintiff in the presence of one Mr Sookdeo. The plaintiff read the document, then signed it. Mr Sookdeo also signed. Mr Khan stated that the plaintiff signed release documents on four occasions. On all four occasions the procedure was the same. The documents which were signed by the plaintiff, he identified as exhibits "DH 14" to "DH 17". At no time during the signing did the plaintiff tell him that he could not read.

He added that sometime in 1989, the plaintiff returned to Capital Insurance with a medical report asking for \$15,000.00. He was informed that the matter had been fully settled.

Under cross-examination by Mr Gosine, Faareez Khan stated that the company gave no advice to the plaintiff, nor did it advise him to seek independent legal advice. The plaintiff stated that he would get legal advice and return. He added that each payment made to the plaintiff was intended to be final payment. The first payment was made on the basis of contributory negligence, the extent of the contribution being determined by Capital Insurance. The second payment was made on the basis of a recommendation by Azim Khan on behalf of the plaintiff. The third payment was made to the plaintiff out of sympathy because he came into the offices of the company complaining the he was in financial difficulty and that he was still having a lot of pain. The fourth and final payment was made on the basis of a medical report submitted by the plaintiff. He was then told that no other payment would be made.

Issue 1 - Whether Defendant was negligent:

As I stated earlier, the only positive and convincing aspect of the plaintiff's evidence was the knowledge he displayed about the area where the accident occurred, and his

description of how the accident occurred. I accept his evidence that the wall does not block vision of drivers at the Bobb Street junction of the Southern Main Road. The defendant's version that it "sort of blocks" your vision of vehicles coming east towards Bobb Street was unconvincing. In my judgment, he drove onto the major road when it was unsafe to do so and without proper regard for traffic on the major road, and was the sole cause of the collision. I find as a fact, that he did break the major road at Bobb Street and collided with the plaintiff and with his motorcycle on the Southern Main Road.

Issue 2 - Whether the plaintiff compromised his cause of action:

The plaintiff contends that he did not read the releases he signed, as well as the December 2nd agreement, because he could not read. If, as he contends, the plaintiff was misled into signing documents which were completely different in purport from what he thought they were, the documents are void. Chitty on Contracts (General Principles) 25th Edition states at page 193 para 341:

"The general rule is that a man is estopped by his deed:..... a party of full age and understanding is normally bound by his signature to a document, whether he reads it or understands it or not. If, however, a party has been misled into executing a deed or signing a document essentially different from that which he intended to execute or sign, he can plead non est factum in an action against him. The deed or writing is completely void in whosoever's hands it may come."

At para. 345, pg 195 (1)

"A person who signs a document may not be permitted to raise the defence of non est factum where he has been guilty of negligence in appending his signature."

The burden of establishing a plea of non est factum is on the plaintiff. It is a heavy one “*Carelessness on the part of the person signing the document would preclude him from later pleading non est factum on the principle that no man may take advantage of his own wrong.*” See Saunders v Anglia Building Society [1970] 3 All E R 961 at pg 966 letter (c) per Lord Hudson. In that case Lord Pearson, who delivered the leading judgment of the House of Lords said at pg 979 letter (c).

“In my opinion, the plea of non-est-factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document. By ‘sufficiently understanding’, I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be. There would not be a proper case if; (a) the signature of the document was brought about by negligence of the signer in failing to take precautions which he ought to have taken; or (b) the actual document is not fundamentally different from the document as the signer believed it to be.”

He added:

“the word ‘negligence’ in this connection had no special technical meaning. It meant carelessness”

The onus was thus on the plaintiff to show that he acted with reasonable care when he signed the documents. In this case, the plaintiff contends that when he signed the documents, he could not read.

Literacy of the plaintiff:

The plaintiff's evidence was not that he could read a little, but that he could not read at all. There was much about his evidence which led me to conclude that he can. Firstly, he said that his formal education concluded at fourth standard in primary school. That of itself excited my suspicions of the truthfulness of the plaintiff's contention. Absent any mental sub-normality, children who attain a fourth standard education in Trinidad and Tobago are by that stage, at least able to read and write, although they may not yet be accomplished readers. From my observations of the plaintiff, there was nothing in his demeanour or attitude to lead me to the view that he was of sub-normal intelligence. On the contrary, he was a market vendor who bought and sold fruits and vegetables in Tunapuna, and who showed great mental agility when cross-examined by Mr Deonarine, although this did not always redound to his credit.

Secondly, when he identified his signatures on the various exhibits, he continuously referred to them as *'my handwriting'*. Further, under cross-examination, he stated that when he collected the cheque in the sum of \$5,000.00 ("DH 7"), he looked at it because he wanted to verify that it was \$5,000.00. It is strange that he would look at the cheque to verify the sum if he was unable to read at all. Similarly, when he collected the cheque "DH 6" in the sum of \$6,000.00, he looked at it when he got home.

Finally, he admitted under cross-examination by Mr Deonarine, that he was the holder of a driver's permit and that in order to obtain that permit, he had to take a test. As the holder of a passport, he also had to fill out an application form. All of these admissions, together with his overall deportment in the witness box, led me inescapably to the conclusion that the plaintiff was a quite capable reader, but was pretending not to be.

Findings:

It does not follow, however, that because he could read that he necessarily understood the purport of the various documents that he signed, or that he intended to sign the documents which he did. As Lord Reid puts it **Saunders** (supra) at pg 963 letter (b):

“The plea of non-est-factum obviously applies when the person sought to be held liable, did not in fact sign the document. But, at least, since the sixteenth century, it has also been held to apply in certain cases so as to enable a person who in fact signed a document to say that it is not his deed. Obviously, any such extension must be kept within narrow limits if it is not to shake the confidence of those who habitually and rightly rely on signatures when there is no obvious reason to doubt their validity. Originally, this extension appears to have been made in favour of those who were unable to read owing to blindness or illiteracy, and who therefore had to trust someone to tell them what they were signing. I think it must also apply in favour of those who are permanently or temporarily unable, through no fault of their own to have without explanation any real understanding of the purport of a particular document, whether that be from defective education, illness or innate incapacity.”

The material document to the issue of discharge of the defendant was the December 2nd agreement. The onus was on the plaintiff to show that he had no real understanding of its purport. He has failed to do so. On the contrary, from his evidence and from my observations of him in the witness box, I find that the plaintiff well understood the nature of the documents he was signing, and knew exactly what he was doing when he signed. He went to Capital Insurance intending to settle out of court. He wanted no high court action.

I accept the evidence of Mr Faareez Khan of the circumstances under which the various payments were made to the plaintiff. It seems to me that the plaintiff went to Capital Insurance from the outset, not only with the intention of settling out of court, but also with the intention of “milking” Capital Insurance for as much money as he thought he could get.

Moreover, he had the advice of Azim Khan who acted for him in negotiations with Capital Insurance. In this regard, I accept the evidence of Faareez Khan that Azim Khan was acting for the plaintiff. The plaintiff himself admitted that Mr Khan took \$1,000.00 from him on receipt of his cheque of \$5,500.00 on 2nd December, 1987.

The December 2nd agreement sets out compendiously and in plain and unambiguous terms, the circumstances under which the plaintiff accepted consideration from Capital Insurance in full and settlement of all liabilities of the defendant and Capital Insurance arising out of the collision. The plaintiff is a person of full age and understanding who was fully cognisant of the purport of the document. He was not misled into signing it.

Additional Submissions:

Mr Gosine submitted that the defendant could not rely on the December 2nd agreement. It was an agreement between the plaintiff and Capital Insurance. The defendant, said Mr Gosine, was not a party to that agreement, even though the agreement does refer to the defendant and to the collision.

Mr Deonarine had objected to Mr Gosine's submission on the ground that it was not pleaded. In my judgment, Mr Gosine can rely on his general plea in the reply that the defence was not maintainable in law. However, that plea does not assist the plaintiff here.

It is clear from the evidence that Capital Insurance was acting as agent for the defendant, with respect to his liability arising out of the collision, pursuant to its obligations under The Motor Vehicles Insurance Third Party Risks Act, Chap. 48:51. Indeed, the plaintiff in his evidence, testified that the defendant visited him at the hospital and told the plaintiff to go to the defendant's insurance company because he had already paid the "excess". As a direct consequence of that representation, the plaintiff went to Capital Insurance.

Thus, when the plaintiff visited Capital Insurance, he well knew and understood that Capital Insurance was acting as agent for the defendant, and it is for this reason that the plaintiff stated that he wanted to settle out of court. He accepted moneys from Capital Insurance on that basis. I find that Capital Insurance was acting as agent on behalf of

the defendant in respect of the plaintiff's claims arising out of the collision. The December 2nd Agreement is as clear as clear can be in that regard.

Order:

In the result, I hold as follows:

- (1) That the defendant was negligent in his driving and conduct of motor vehicle HAH 1436 on the Southern Main Road on 29th April, 1986, and was the sole cause of the collision.
- (2) By agreement dated 2nd December, 1987, the plaintiff agreed to accept a total of \$29,500.00 for his injuries in full and final satisfaction of the defendant's liability arising out of the collision, and the defendant is wholly and completely discharged and released from all causes of action and claims arising out of the collision, and the plaintiff is not entitled to maintain any claims against the defendant.

The plaintiff's writ of summons, and statement of claim both dated 13th October, 1989 are dismissed. The plaintiff will pay the defendant's costs.

Dated this 30th day of October, 1998.

NolanBereaux
Judge