

REPUBLIC OF TRINIDAD AND TOBAGO

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

H.C.A. NO. Cv. S 948 OF 1989

B E T W E E N

BARRY EMRITH

PLAINTIFF

AND

PAMELA SURUJDEO

DEFENDANT

**BEREAUX, J.**

**APPEARANCES:**

Mr. R. Singh for the Plaintiff

Mr. J. Jagessar for the Defendant

**R E A S O N S**

This action was brought by the Plaintiff against the Defendant in negligence. The action arose out of a vehicular accident at Cross Crossing, San Fernando, at the intersection of the Rienzi Kirton Highway and Ciperio Street Extension. The accident occurred on 11th September 1987. The Plaintiff's claim was for damages to his motor vehicle registration No. PAL 3759 and for consequential loss allegedly suffered as a result of the Defendant's negligence in her driving of motor vehicle registration No. PAN 3079, along the intersection of the Rienzi Kirton Highway and Ciperio Street, San Fernando. The particulars of negligence pleaded by the Plaintiff were as follows;

- a) Failing to stop at a traffic light.
- b) Failing to keep any or any proper lookout.
- c) Failing to heed and/or to observe the Plaintiff's vehicle on the said road.
- d) Driving without due care and attention and/or without reasonable consideration for users of the said road.

The Defendant by her Defence and Counterclaim denied any negligence and contended that the collision was caused wholly or in part by the negligence of the Plaintiff, his servant and/or agent in the driving of Motor Vehicle PAL-3759. The particulars of negligence pleaded by the Defendant were as follows:

- a) Driving too fast in the circumstances.
- b) Failing to keep any or any proper look-out or to have any or any sufficient regard for traffic that was or might reasonably be expected at the said junction of roads.

- c) Emerging onto the said junction of roads without first ascertaining or ensuring that it was safe so to do and when it was unsafe and dangerous so to do.
- d) Failing to conform to the red light signal which was then showing to the Plaintiff.
- e) Proceeding beyond the stop line in the said road although the red light signal was showing to him.
- f) Failing to stop, to slow down, to swerve or in any other so as to manage or control the said motor vehicle as to avoid the said collision.

The Defendant by her amended counterclaim sought the sum of \$25,675.00 as damage and consequential loss.

### **Evidence on Behalf of the Plaintiff**

The Plaintiff Mr. Barry Emrith and Miss Vidya Pariag who was the driver of the Plaintiff's car when the collision occurred, testified in support of the Plaintiff's case. The Plaintiff testified that on 11th September 1987, he was the owner of Motor Vehicle PAL 3759 and he was being driven by Miss Pariag along the Rienzi Kirton Highway. He said that the accident occurred at the intersection of the Rienzi Kirton Highway and Ciperio Street. It was an intersection controlled by traffic lights. There were five people in his vehicle. He sat in the rear left-side passenger seat next to the rear left door.

Motor Vehicle PAL 3759 was proceeding west along the Rienzi Kirton Highway. There were two vehicles about fifty to one hundred feet ahead of it also proceeding west. The traffic light signalled green in his vehicle's favour. The two vehicles immediately ahead of him went through the intersection with the signal on green. His vehicle was following these two cars west through the intersection when the accident occurred. He stated that the "*right front*" of the Defendant's vehicle hit the "*left front*" of his vehicle. His car was damaged. All five passengers in his car suffered injuries. He was subsequently paid the sum of \$10,200.00 by his insurance company in settlement of his claim for damage to his vehicle.

Under cross-examination by Mr. Jagessar for the Defendant, the Plaintiff stated that the accident took place at about 7:30 to 8:00 p.m. It was a clear night. They were all coming from his home. They were going to the Gulf City Shopping Complex. He admitted that there was someone sitting in the front passenger seat immediately in front of him. He insisted that he was able to see clearly in front of him and that his view of the traffic lights was not obstructed. He added however "*that I was not looking ahead of the vehicle the whole length of the drive*". There were two other persons sitting in the rear of his vehicle and although he denied having a conversation with them at the time of the collision, he did finally admit that they spoke with him during the journey. He insisted that his vehicle was travelling no faster than 20 to 30 m.p.h. He denied that the light had changed from green to red and that his vehicle attempted to beat the red signal. The Plaintiff added that after the accident he saw the Defendant's vehicle lying on its hood, upside down in the middle of the intersection. While he could recall the

vehicle lying upside down on its hood, he said that he didn't observe where the main area of damage was.

Miss Vidya Pariag also gave evidence on behalf of the Plaintiff. She was the driver of the Plaintiff's vehicle PAL 3759 on the day of the accident. She said she was proceeding west on the Rienzi Kirton Highway. There was a total of five persons in the vehicle, she included. The intersection of Ciperio Street Extension and Rienzi Kirton Highway was controlled by traffic lights. On approaching the intersection the lights signalled green to her. Midway through the intersection she saw a vehicle coming straight at her vehicle. She pulled to the right. The vehicle still came on towards the vehicle she was driving. It then collided with PAL 3759. She said that PAL 3759 was hit on the "*left front*". After the impact PAL 3759 rested on its wheels on a little island on the right side of the Highway facing north to south.

Under cross-examination from Mr. Jagessar, Miss Pariag said that the group of them were going to the movies at the Empire Cinema on Penitence Street, San Fernando. She was driving at 30 to 40 k.p.h. She denied driving as fast as 60 k.p.h. When it was put to her that the traffic lights indicated red and that she drove through the intersection she responded, "*It was on green and I was not the only one that had passed. I was following a car that had already gone through.*" She also denied that the earlier vehicle had just beaten the red light or that she had the red light but still went through.

She said she saw the other vehicle after the accident and that *“I think I could remember that it was on its tyres.”* She added that she looked at PAL 3759 some 2 days later. The left front of that vehicle was smashed and damaged. She denied that it was the entire front of PAL 3759 was damaged. She insisted it was the *“left front”*.

When it was put to her that PAL 3759 collided with the right broadside of the Defendant’s vehicle she responded *“I have no idea where my vehicle collided. I saw a vehicle coming I pulled to the right and it still came on. I pulled to the right and she was still turning to the right. I tried my best by pulling away and still I was seeing the vehicle oncoming.”*

### **Agreed Documents**

Certain documents were admitted into evidence by consent. The report of Mr. Carlen Cooper an Adjuster was put into evidence on behalf of the Plaintiff and on behalf of the Defendant, the report of Ramsaroop Roopchand Garage Proprietor was admitted into evidence.

### **Evidence on Behalf of the Defendant**

The Defendant and one other witness gave evidence in her defence and in support of her counterclaim.

The Defendant’s evidence was short and direct. She was driving north on Ciper Street Extension. It was about 7.00 p.m. to 7.30 p.m. On approaching the intersection of the Rienzi Kirton Highway she was on the right lane. The intersection was controlled by traffic lights. The

traffic light signalled green to her. She proceeded through the intersection turning right. Thereafter all she could remember was hearing and feeling an impact. She awoke in the San Fernando General Hospital about a day or two later.

She saw her vehicle after she was discharged. It was severely damaged. The driver's door was smashed in. The hood was also sunken in and the left side was dented and scratched. She never saw the other vehicle or what it looked like after the accident..

With respect to the repair of the vehicle she caused an estimate to be made by Mr. Ramsaroop Roopchand, who operated a Car Repair Garage. He provided an estimate of repairs of \$27,000.00. She decided that it was too expensive to repair and sold the wreck of the vehicle to Mr. Roopchand for \$3,000.00.

Under cross-examination by Mr. Singh for the Plaintiff she insisted that she did not see any vehicles go west through the traffic light along the Rienzi Kirton Highway. She said that her intention was to drive east towards the Licensing Office and she thus had to turn right to get onto the Rienzi Kirton Highway. She could not say what she observed about the Defendant's vehicle because she only heard and felt an impact. She could not say what was the position of her vehicle or that of the Plaintiff's after the accident.

She denied that the traffic light signalled red to her when she turned right. She could not recall seeing two vehicles proceed west through the traffic lights immediately prior to her turning right. The Defendant was candid and straightforward.

Mr. Ramsaroop Roopchand testified primarily as to the value of the vehicle but he also provided me with valuable evidence with respect to the point of impact. He is a garage owner/operator and has been so for the last twenty-five years. He repairs damaged vehicles. He said that he viewed PAN 3079 around October/November 1987 at the request of the Defendant. After viewing he prepared an estimate of repairs at \$27,500.00. He advised the Defendant that based on the estimate the vehicle was too costly to repair. He was involved in the buying and selling of vehicles for about 15 years. He also purchased old and new cars as well as damaged cars.

He said he purchased the Defendant's vehicle for \$3,000.00.

Under cross-examination by Mr. Singh he insisted that there was no need for the Defendant to have obtained an adjuster's report. He stated that the Defendant's vehicle even though two years old at the time of the accident, had depreciated by \$8,000.00 because he had seen the vehicle some six months before and it needed "*a little touch up*". The real value of the vehicle was between \$26,000.00 to \$27,000.00. In answer to the Court, Mr. Roopchand stated that from his examination of the vehicle, the point of impact was the right side front door of the Defendant's car. This is consistent with what the Defendant said in her evidence in chief. I

must add that with respect to Mr. Roopchand's competence to testify on behalf of the Defendant as to the value of her car, I was satisfied that based on his years of experience, which I accepted as true, he was qualified to do so.

He displayed a keen knowledge of the motor industry and the value of motor vehicles in Trinidad and Tobago and I unreservedly accepted his competence to give evidence as to the value of the Defendant's vehicle and estimated cost of repair. I also accepted as sound, his advice to the Defendant that the vehicle should be scrapped. Mr. Singh made a dogged attempt in cross-examination to impugn the bona fides of Mr. Roopchand's decision to put the salvage value of PAN 3079 as \$3,000.00 given that he purchased the wreck himself. However having heard Mr. Roopchand and assessed his demeanour I was satisfied that his estimate as to the scrap value of the vehicle was sound. In any event, no evidence as to a contrary value was put forward by the Plaintiff. Further, it was clear from all the evidence that the Defendant's vehicle was very severely damaged.

### **Findings**

At the close of submissions, I found the Plaintiff to be wholly responsible for the accident, gave judgment for the Defendant on her counter-claim and dismissed the Plaintiffs claim, indicating that I could give full reasons in the event of an appeal. I do so now. The decision for me was a simple question of fact., which party on the evidence before me broke the traffic light. I found that on a balance of probability it was the Plaintiff's driver who did.

In the first place, adjusters report which was put in on behalf of the Plaintiff did not bear out either the Plaintiff's or his witness' evidence. The Plaintiff testified that the front of the Defendant's vehicle struck the left front of the Plaintiff's car. Miss Pariag on behalf of the Plaintiff also stated that the Plaintiff's vehicle was struck on the left front side. However, Mr. Carlen Cooper in his report which was put into evidence by consent states that:

*“On inspection I noticed damage to the entire front of the vehicle extending to the hood and bonnet”*

The report of Mr. Cooper indicated that the entire front of the vehicle bore the impact and not the left front as stated by the Plaintiff and his witness.

This evidence was in clear contradiction to that of the Plaintiff and his witness who were both insistent that their vehicle was struck on the front left side. The inference was that the Plaintiff's car collided frontally with the Defendant's and not side-on as suggested by the Plaintiff and his witness.

Secondly, the evidence of Mr. Roopchand was that the point of impact was on the driver's front right door. When taken together with that of Mr. Cooper's report, the inference was that the Plaintiff's vehicle collided frontally with the broadside of the Defendant's, the point of impact on the Defendant's car being the right side front door next to the driver. If that were correct then it was not to me surprising that the Defendant's was knocked unconscious on

impact. It would also be consistent with the Defendant's car being overturned on its hood after the accident as stated by the Plaintiff. This part of the Plaintiff's evidence was one of the few aspects of his evidence which I considered to be truthful.

The Defendant had testified that when she viewed her car after she left the hospital, the hood was dented inwards, the driver's door was smashed in and there was damage to the left side. This damage was also consistent with her car being hit on its right side, then overturning and ending on its hood. In my judgment, the Plaintiff and his witness' evidence as to how the accident occurred were untrue.

I did not believe the Plaintiff's or Miss Pariag's evidence that the traffic light signalled green to them. Further, the Plaintiff was sitting in the rear of the vehicle immediately behind the passenger who sat in the left front seat. I did not accept that he had a clear view of the traffic light. In the case of Miss Pariag, I found her to be hesitant and unsure.

In addition, both witnesses testified that there was one or two vehicles ahead of them which had proceeded west through the traffic lights immediately prior to the collision. The Plaintiff stated that his vehicle was trailing anywhere from 50 to 100 feet behind the previous car. It appeared to me to be highly improbable that the Defendant or indeed any rational or reasonable human being would run a red light signal, driving across the intersecting highway between vehicles which have the corresponding green light, one or two of which has already passed through the intersection and the last of which is approaching a mere 50 to 100 feet behind.

What to me seemed more probable was that the previous vehicles on the Rienzi Kirton Highway had in fact just beaten the change of signal to red and the Plaintiff's driver, following them vehicles, had continued through the intersection even though she did not. By this time the Defendant having got the green light signal was proceeding through the intersection when the collision occurred. In those circumstances, the Defendant's attention being focussed on the traffic lights, she could not be held to be negligent or in any way at fault in proceeding through the intersection having had the green light in her favour. See *Davis v. Hassan* cited by Mr. Jagessar at *page 125 of Bingham's Motor Claims Cases, 4th Edition*.

For all these reasons I dismissed the Plaintiff's claim against the Defendant, gave judgment for the Defendant on her counter-claim and ordered that the Plaintiff do pay damages to the Defendant in the sum of \$24,675.00 calculated as follows:

Pre-accident value of Defendant's vehicle	\$27,000.00
Less salvage:	3,000.00
Add: Loss of Use agreed at \$675.00	<u>675.00</u>
	<b><u>\$24,675.00</u></b>

I also ordered that the said sum should bear interest at the rate of 3% from the date of the accident to the date of judgment and that the Plaintiff do pay the Defendant's costs certified fit for Advocate Attorney.

DATED this 24th day of June 1998

N. BERAUX  
JUDGE