

REPUBLIC OF TRINIDAD AND TOBAGO

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

H.C.A. NO. Cv. S-1253/90

B E T W E E N:

GARRY HANSRAJ

PLAINTIFF

AND

FREDERICK BOBB

DEFENDANT

BEREAUX, J.

APPEARANCES:

Mr. G. Mungalsingh for the Plaintiff

Mr. H. Seunath for the Defendant

REASONS

By writ dated and filed on 26th September 1990, the Plaintiff, Garry Hansraj claimed damages and consequential loss arising out of a collision between Motor Vehicles PAS 1774 and PAE 4175 which occurred along Royal Road, San Fernando, on 14th June, 1988. The Plaintiff alleged that the collision was caused by the negligence of the Defendant in the driving and or management of the Motor Vehicle PAE 4175. The Plaintiff claimed the sum of \$7,536.09 as the cost of repairs, \$200.00 loss of use, \$10.00 for the procurement of a certified copy of ownership of Motor

vehicle PAE 4175 and the value of depreciation of his vehicle in the sum of at \$1,500.00 making a total of \$9,246.09.

It was not in dispute that the Plaintiff was the owner of PAS 1774 and that the Defendant was the owner of PAE 4175. By his statement of claim the Plaintiff contends that on the 14th June 1988 he was lawfully driving PAS 1774 in a easterly direction along the Royal Road when the Defendant who was proceeding from Kelshall Street onto Royal Road so negligently drove PAE 4175 that it collided with PAS 1774. The particulars of negligence pleaded by the Plaintiff were as follows:

- a. Driving in a dangerous manner and/or without due care and attention and/or without consideration for other users of the said roads;
- b. Driving at an excessive and/or improper speed in the circumstances;
- c. Failing to keep any or any proper look out;
- d. Emerging from a minor road unto a major road at a time and in a manner when it was unsafe and/or dangerous so to do;
- e. Failing to stop, slow down, press his brakes sufficiently or at all or to swerve or in any other way so to manage or control the said Motor Vehicle so as to avoid the said collision;
- f. Failing to keep to his left or proper side of the road;
- g. Failing to heed and/or observe the Plaintiff's Motor Vehicle on the said road;
- h. Colliding with or running into the entire front of the Plaintiff's Motor Vehicle;

- i. Driving and/or suddenly swerving into the path of the Plaintiff's Motor Vehicle without regard for the presence of the Plaintiff's said Motor Vehicle on the said road.

The Defendant in his Defence and Counterclaim admitted the collision but denied that it was caused by his negligence. He contended that any damage caused to the Plaintiff was as a result of the Plaintiff's negligence in the driving and management of the PAS 1774 on Royal Road. Full particulars of negligence were pleaded by the Defendant as follows:

- a. Suddenly and without warning, driving the said PAS 1774 from a parked position on the said Royal Road and into the path of the Defendant's vehicle;
- b. Failing to keep any or any proper lookout;
- c. Failing to heed the approach of the Defendant's vehicle along the said Royal Road;
- d. Failing to ensure that it was safe before driving off and/or attempting to drive off from a parked position at the side of the said Royal Road.
- e. Failing to ensure that he did not and/or to take any care not to discommode other drivers and/or other vehicles.
- f. Driving without due care and attention and/or without reasonable consideration for other users of the said road.

In his counterclaim the Defendant claimed \$2800.00 special damages which represented repairs to the vehicle as well as loss of use for 10 days. At the start of the trial, Special Damages were agreed on behalf of the Plaintiff at \$8,836.09 and on behalf of the Defendant at \$1,900.00.

The issue for me was one of fact.

Evidence of Plaintiff

The Plaintiff testified that on 14th June at approximately 7.15 p.m. he was proceeding west in PAS 1774 along Royal Road when at about 15 feet from the intersection of Royal Road and Kelshall Street he saw the Defendant's vehicle, PAE 4175, coming from Kelshall Street at a fast rate. The Plaintiff stopped. The vehicle ran into the front of the Plaintiff's vehicle. After the collision the Defendant's vehicle pulled to the left of the Plaintiff's vehicle and continued along the same street. The Defendant's vehicle then hit another vehicle. He reported the collision to the Mon Repos Police Station. Then, he got a wrecker to tow his vehicle home he not being otherwise able to move it. The vehicle was later repaired. The Plaintiff said that he never drove off from a parked position on Royal Road. Under cross-examination by Mr. Seunath for the Defendant, the Plaintiff stated that he was driving along Royal Road at about 25 m.p.h. and that he first saw the Defendant's vehicle about 20 feet from the intersection. He added that the accident took place about 15 feet from the intersection. He insisted that he was not parked on the right side of the road immediately before the accident. He also insisted that he was able to see the Defendant's vehicle at about 15 feet inside Kelshall Street. He again denied that immediately before the accident he had driven his vehicle from a parked position on the right side of Royal Road and that at that time the Defendant's car was then coming out of Kelshall Street. He agreed with counsel for the Defendant that the left front of the Defendant's vehicle struck the left front of his vehicle. I found the Plaintiff to be straightforward, candid and unevasive in his answers to questions particularly under cross-examination.. I found him to be an impressive witness. As to the Plaintiff's forthright admission that the left front of the Defendant's vehicle hit the left front of his, I did not understand him to mean that it was solely the left front of his vehicle

which was hit but that this side of his car bore the brunt of the impact as the Defendant's vehicle veered to the left and continued driving along the street.

Evidence of the Defendant

The Defendant's story was diametrically opposed to that of the Plaintiff. Frederick Bobb testified that on 14th June 1988 he was the owner of the vehicle registration number PAE 4175. He stated that immediately before the accident he was coming out of Kelshall Street intending to turn left onto Royal Road. He stopped at the intersection of Kelshall Street and Royal Road. Seeing no on-coming traffic, he proceeded to turn left onto Royal Road. As he turned left onto Royal Road he saw PAS 1774 at the Poultry Depot. It drove off. He brought his vehicle to a halt. He added that the Plaintiff *"hit me on the left side of my vehicle."* Under cross-examination by Mr. Mungalsingh for the Plaintiff, the Defendant denied hitting any other vehicle after hitting the Plaintiff's. He insisted that he had to stop at the junction because he was emerging from a minor road. After some indecision, he agreed that the accident took place about 15 feet from Kelshall Street. He denied that his vehicle struck any other vehicle. In answer to the court the Defendant stated that immediately before the accident, the Plaintiff's car was parked in the yard of the Poultry Depot on the Defendant's side of the road. The Plaintiff's vehicle was facing west i.e. towards the City of San Fernando.

Findings

I have already stated that I found the Plaintiff to be an impressive witness. As to the Defendant, I found him at best to have been diffident in his testimony. While I accept that he suffered from some form of speech impediment as Mr. Seunath stated from the bar, I did not, from his answers, accept that the impediment affected in any significant way his ability to relate to the Court his side

of the story. It appeared to me that the Defendant was embellishing his story as he went along and as he was questioned. It took several questions from both Counsel and from me to get any clear idea of the Defendant's story. I thus rejected his version of events, accepted the Plaintiff's and gave judgment in favour of the Plaintiff in the agreed sum of \$8836.09 with interest at a rate of 3% from the date of the accident to the date of decision which was orally given on 6th November 1997.

I also dismissed the Defendant's Counter-claim and Ordered the Defendant to pay the Plaintiff's costs of this action, certified fit for Advocate Attorney.

I also granted a stay of execution for six weeks from the date of decision.

DATED this 21st day of May 1998

N. BEREAX
JUDGE