

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando**

**H.C.A. No. S. 616 of 1999**

**BETWEEN**

**BASDAYE MAHABIR**

**Plaintiff**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO  
ROGER DE MATAS AND CANNINGS LIMITED**

**Defendants**

**Before the Honourable Madame Justice Rajnauth-Lee**

**Appearances:**

Mr. L. Sanguinette for the Plaintiff, instructed by Mr. Shawn Roopnarine  
Mr. R.B. Bahadoorsingh for the second and Third Defendants instructed by  
Mrs. Lydia Mendonca

**REASONS**

In this action the plaintiff claims damages for personal injuries and consequential loss caused by the negligent driving of motor vehicle registration number PAX 4097 and/or motor vehicle registration number TAU 5530 by the defendants their servants and/or agents and/or all defendants on the 15<sup>th</sup> September, 1995 along the intersection of the Priority Bus Route and the Southern Main Road, Pasea Village, Tunapuna, resulting in a collision between the said motor vehicles.

It is not in dispute that on the 15<sup>th</sup> September, 1995 the plaintiff was a passenger in motor vehicle PAX 4097 which was a Fire Service Ambulance.

It is also not in dispute that on the 15<sup>th</sup> September, 1995, at the intersection of the Priority Bus Route and the Pasea Main Road, there was a collision between motor vehicle PAX 4097 which was being driven by Fire Officer Keith Issac (deceased) along the Priority Bus Route and motor vehicle TAU 5530 which was being driven by the second defendant as the servant and/or agent of the third defendant along the Pasea Main Road.

At paragraph 5 of the Defence of the second and third defendants, these defendants alleged that the collision was caused wholly or in part by the negligent driving, management and control of motor vehicle PAX 4097 driven by Fire Officer Keith Issac (deceased) as the servant and/or agent of the first defendant.

Attorneys have agreed that this Court should determine liability only, and the assessment of damages, will be dealt with by a Master in Chambers, if it becomes necessary.

The first defendant, the Attorney General of Trinidad and Tobago, was struck out as a party pursuant to the Order of Stollmeyer J. dated the 20<sup>th</sup> July, 2000. Attorneys have agreed that the Court cannot apportion blame for the accident as between the Attorney General and the second and third defendants, since the Attorney General is no longer a party before the Court (**Maxfield v Llewellyn (1961) 3 All ER 95**).

The parties have tendered into evidence by consent the Notes of Evidence of the Coroner's Inquest into the cause and circumstances surrounding the deaths of (1) Michelle Ramsaroop (2) Keith Issac and (3) Mooney Goordean, all of whom were involved in the accident. Attorneys have agreed that the Notes of Evidence have been tendered for the truth of

the statements contained therein. The Court has been asked to consider the Notes of Evidence and draw the necessary inferences therefrom.

At the trial, it was conceded by the plaintiff's Advocate Attorney that the ambulance driver who was travelling in a westerly direction along the Priority Bus Route, proceeded through the red lights. The question before the Court was, therefore, on the facts and in the circumstances of the case, whether the second defendant in any way contributed to the collision. The second defendant was proceeding in a southerly direction along the Pasea Main Road.

The Court accepts as a sound principle that an emergency vehicle owes the same duty of care to the public as any other vehicle. The mere fact that such a vehicle sounds its siren does not put it in a position where it can proceed through a red light. The Court also agrees with Advocate Attorney for the second and third defendants that in the normal case, there is no duty on a driver proceeding on a green light to slow down or stop to ascertain whether it is safe to proceed across. Of course, if there are vehicles or pedestrians in his pathway, he must exercise caution and not deliberately drive through the green light and collide with them.

The evidence of the plaintiff was that she was sitting in the back of the ambulance on the left hand side facing north. She was accompanying a patient to the Port of Spain General Hospital. According to the plaintiff, the siren came on and off, and it came on when the ambulance was approaching the red lights. Her evidence at the trial was that she did not see the traffic light at the corner of Pasea Road and the Priority Bus Route at any time.

The evidence of the witness, Larry Joefield, who testified at the inquest (**see p. 21 of the Notes of Evidence**) was that the siren was on as the ambulance was proceeding along the Priority Bus Route, before reaching the

intersection with Pasea Main Road. According to Joefield, when he heard the sound of the siren and looked up the ambulance was about 10 – 12 feet from the red lights.

According to the evidence of the second defendant, as he turned onto the Pasea Main Road from the Eastern Main Road, he was travelling at 15 – 20 mph, and slowed down to 10 mph as he was about to cross the Priority Bus Route before he got to the intersection. He gave several reasons why he slowed down before he got to the intersection of the Priority Bus Route and the Pasea Main Road:

- (i) his view of the Priority Bus Route was obstructed by a big samaan tree on the left and a wall on the right;
- (ii) company policy is that company vehicles should slow down on approaching traffic lights, especially on the Priority Bus Route, and he normally slowed down when approaching a green light; and
- (iii) for a split second or a couple of seconds before the accident he heard the siren (although in chief the second defendant had said that he only heard the siren on impact).

According to the second defendant, when he slowed down to 10 mph, he was right about by the white line – about 4 feet from the junction with Pasea Main Road and the Priority Bus Route. Once he came onto the Priority Bus Route he could see left and right of the Bus Route

The Court considered the evidence of the second defendant in cross-examination that because the vehicle was equipped with air brakes, if he had applied his brakes travelling as he was at 10 mph, he would have stopped one time. There would have been no collision. The Court also considered

his evidence that the reason he did not further slow down or stop so that he would have a complete view of the intersection was that he had the green light.

The point of impact is not in dispute. The accident occurred on the southern side of the Priority Bus Route, on the ambulance lane so to speak. This means that the second defendant's vehicle proceeded at 10 mph, according to him, across the northern side of the Priority Bus Route (some 10 feet) and onto the southern side of the Priority Bus Route where the collision occurred. The second defendant admitted in cross-examination that if his truck had not crossed over the white line onto the ambulance lane, there would have been no accident.

Having regard to the evidence of the plaintiff, of the witness Larry Joefield, and of the second defendant, the Court finds as a fact that the siren of the ambulance was sounding when the ambulance was approaching the Pasea intersection.

The Court agrees with and applies the principles enunciated by Lucky J.A. in the case of Dushanty Dindial and another v Nadia Khan and others. Civil App. 77 of 2001 at pp. 4-5.

“Such negligence generally arises when a party fails to take care for his own safety in circumstances that call for a measure of caution on his part. A driver of a motor vehicle on a public road is not entitled to continue on his way where it is obvious that the driver of another vehicle is operating his vehicle in a dangerous or careless manner. He must look out for his own safety and take reasonable steps, if possible, to avoid a collision.

It is certainly not being suggested for a moment that a driver who sees the traffic light ahead of him showing green, must do anything out of the ordinary while proceeding through the green light. He is entitled to so

proceed, and is generally under no obligation to assume that a driver might be entering the crossroads with the lights against him. **(See Joseph Eva, Ltd v Reeves (1938) 2 All ER p. 115).** That can be regarded as a rule of thumb but I am of the view that where circumstances exist that call for some caution on his part the general rule is displaced. In such a case he must be on the look out, exercising reasonable caution, depending on the prevailing conditions at that time. In other words, he must look out for his own safety.”

The Court also agrees with and applies the principles enunciated by the Guyanese Court of Appeal in the case of **Bernard Singh v Alice Nixon and Rupert Castello 21 W.I.R 203** where it was held inter alia that the onus of proving that the driver with the “green” in his favour saw him or **ought to have seen** him and avoided the collision is on him who is unlawfully within the intersection at the time of the collision. (emphasis mine).

Having regard to the principles enunciated in these cases and to the facts and evidence set out above, in my judgment there were prevailing circumstances which called for reasonable caution to be exercised by the second defendant. He should have been on the look out. Further, I find in all the circumstances that at the very least the second defendant ought to have heard the siren and that he ought to have seen the ambulance in time to avoid the collision. On the evidence, nothing prevented his hearing the siren or seeing the ambulance in time to stop.

Moreover, having regard to the admission of the second defendant that one of the reasons he slowed down on approaching the intersection was that for a couple of seconds before the accident he heard the siren, the Court finds as a fact on a balance of probabilities, that the second defendant heard the siren on approaching the intersection. The court is also mindful of the

fact that the second defendant admits that at that point, that is, on approaching the intersection, he could see neither left nor right on the Priority Bus Route. In my judgment, the second defendant ought to have exercised reasonable caution at that stage and applied his brakes, which being air brakes, would have caused his vehicle to stop immediately.

The second defendant could have then entered carefully onto the Priority Bus Route and would have then had a complete view of the intersection. Even if he did not come to a complete stop before entering the intersection but had exercised the required caution, the accident would not have taken place, because he had at least 10 feet on the northern side of the Priority Bus Route in which to come to a complete stop.

In my judgment, the circumstances called for the exercise of reasonable caution and the second defendant failed to exercise such reasonable caution in all the prevailing circumstances.

### **Order**

Judgment for the plaintiff with costs certified fit for Advocate Attorney. Damages to be assessed by a Master in Chambers. Assessment of damages is stayed for 42 days.

Dated the 8th day of April, 2003.

**Maureen Rajnauth-Lee  
Judge**