

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 6421 of 1988

Between

MILTON SERRANO

Plaintiff

And

**SIGVERD ALBINO
AND
DENIS COLLINS**

Defendants

Before the Honourable Madam Justice Rajnauth-Lee

Appearances

Mrs J. Koorn for the Plaintiff instructed by Mr. C. Serrano.

Mr. K. Sagar for the Defendants instructed by Mrs. N. Baiju-Patrick

REASONS

INTRODUCTION:

In this action, the plaintiff claimed against the defendants damages for personal injuries caused by the negligence of the second defendant, in the driving, management and control of the first defendant's motor vehicle registration number HAM 2558 (hereinafter referred to as "the said vehicle") on the 14th December, 1984 along Independence Square, South, Port of Spain.

By his Statement of Claim, the plaintiff alleged that he was crossing Independence Square, South, when the said vehicle collided with him. By the particulars of negligence pleaded at paragraph 3 of the Statement of Claim, the plaintiff averred inter

alia as to the negligence of the second defendant, the servant and/or agent of the first defendant:

“(h) Illegally overtaking on the inner lane of Independence Square, South, Port of Spain.”

In their Defence, the defendants admit the collision but deny any negligence on the part of the second defendant, the driver of the said vehicle. They plead negligence on the part of the plaintiff at paragraph 5 of the Defence as follows:

- “a. Running across the path of the defendants’ motor vehicle; and/or
- b. Attempting to cross the Independence Square at a time and in a manner when it was unsafe and/or dangerous so to do; and/or
- c. Attempting to get from the right side of Independence Square South to the left side at a time and in a manner when it was unsafe and/or dangerous so to do; and/or
- d. Failed to heed and/or observe the presence of the defendants’ motor vehicle on the said road; and/or
- e. Running into the right front door of the defendants’ motor vehicle.”

By consent, the Court determined the issue of liability only.

By consent, the Medical Report of Dr. Azad Ezack, Consultant Neurologist, dated January 31, 2002 was tendered into evidence and marked “A”. According to the report, Dr. Ezack examined the plaintiff, then 81 years of age, on the 22nd January, 2002. He suspected that the plaintiff had a dementing illness, either Alzheimers Disease or Lewi Body Disease with a reduction of cognitive function. It was the Doctor’s belief that the plaintiff would probably not have been able to provide accurate evidence in a court of law.

Further, by consent, the statement of the plaintiff made on the 21st December, 1984 was tendered into evidence and marked "B". The statement is set out in full hereunder:

"On Friday 14 Dec at about 3.30 p.m. I was on the northern side of Independence Square South about 25 yards east of Abercromby Street and just opposite Fuller Drug Store.

I was about to cross Independence Square South heading for its southern sidewalk when a motorist who was driving in a westerly direction stopped for me to cross.

He occupied a position left of centre and gave a right-hand signal indicating that it was dangerous to overtake.

Full of caution, I looked to see if he would change his mind or if any vehicle would overtake him, and hesitated.

Seeing this, he gave me a sign indicating that it was safe for me to cross.

I proceeded to cross and as soon as I got to the point where I could see any vehicle overtaking on his left I became suddenly aware of a motor car coming at what appeared to me at so terrific a speed that it seemed to come from nowhere.

I made a sudden turn to my right in an effort to get out of its part but could not possibly escape.

The car hit me with great force and tossed me up in the air and forward and I dragged for some distance.

Because I had turned to my right I was struck on my back at the coccyx area at the base of my spine. I was lifted and put in the very car HAM 2558 and the driver first took me to the compound of the Traffic Branch Police Station on South Quay.

A policeman there instructed the driver to take me to the Casualty Department, General Hospital and he immediately did so.

There I was attended to and discharged."

Kenny Superville gave evidence on behalf of the plaintiff. He was not of much assistance to the Court, since he did not witness the actual accident. According to him, however, he was seated in his maxi taxi, when he observed the plaintiff standing, waiting (apparently to cross) for some 5 – 10 minutes; about 10 minutes, according to him. While he was moving his maxi taxi, he testified that he heard a vehicle like a car moving and he heard a thump and said to himself:

“God, this man must be get hit.”

The Court considered the cross-examination of this witness. He contradicted the Statement given by the plaintiff on an important issue, that is to say, where was the plaintiff standing prior to the accident. According to Superville, the plaintiff was standing on the southern side of Independence Square waiting to cross to the northern side

The second defendant also gave evidence. According to him, he was driving his vehicle on the left lane of Independence Square South, travelling west, when he observed a vehicle on his right slow down and a gentleman, the plaintiff, run from the right side of the road to the left side and run into the front right door of his vehicle. According to the second defendant, the front rear view mirror broke and fell onto the road. The plaintiff went on his knees by the front door of the vehicle with his brief case in his hand.

The Court noted with interest that the second defendant’s evidence was that he was driving on the left lane of Independence Square and that the impact took place approximately 15 feet from the pavement, which pavement was to the left of his vehicle. He further testified that the distance between his vehicle and a vehicle which was parked on the left was a car length. Attorney for the plaintiff accepted this evidence and never put to the second defendant the plaintiff’s allegation that the second defendant was illegally overtaking on the extreme left or inner lane of Independence Square, South.

Attorney for the defendants submitted that the plaintiff’s Attorney abandoned the plea at paragraph (h) of the Particulars of Negligence, that is, that the second defendant

illegally overtook on the inner lane of Independence Square South, Port of Spain. The Court considered this crucial. It is one thing to be struck by a motor vehicle which is lawfully travelling on the road; but another matter altogether to be struck by a vehicle which is illegally overtaking on the left hand of the lawful traffic proceeding along the road. The duty of care on the driver and on the pedestrian is completely different in the two situations. The Court found that the plaintiff's case was conducted in a manner inconsistent with his pleading.

In addition, the Court examined the plaintiff's evidence that on being hit by the second defendant's vehicle with great force, he was tossed up into the air and forward and was dragged for some distance. The Court also examined the plaintiff's actions subsequent to the accident. He was taken to the Traffic Branch and then to the General Hospital where he was discharged. The Court did not accept the plaintiff's version. One would expect that if the events related by the plaintiff were true, that is, that he was tossed into the air and dragged for some distance, then the plaintiff would have been rushed to hospital by ambulance and kept there for several days, if not weeks. This evidence accorded more with the version of the second defendant as to the plaintiff's running into the door of the said vehicle.

In the circumstances, on a balance of probabilities, the Court did not accept the plaintiff's version of how the accident took place. I did not accept that he was proceeding with caution. In fact, the Court found that the plaintiff did not exercise care for his own safety as a pedestrian. The plaintiff was not entitled, in an unexpected manoeuvre, to dart across the road without exercising the required caution.

The Court followed the approach of Lucky J. in the unreported case of **Roderick Bernard v Samuel Sirkissoon** H.C.A. 951 of 1984. Lucky J. said at page 5:

“The plaintiff pleaded that he was crossing the road, indeed he was, he had passed between two parked vehicles, but he had to cross a part of the road where there were moving vehicles. He owed the other users a duty to proceed with care,

I think, to stay out of the path of vehicles. Apparently, his left foot was in the way, this is based upon the evidence of the independent witness, Hills, who said, "he put his left foot forward and the car coming down bounce him."

Accordingly, on a balance of probabilities the Court found that the second defendant was not to be blamed for the accident. He was exercising proper care. It was the plaintiff who was not looking out for his own safety. For the above reasons, I found in favour of the defendants and dismissed the claim of the plaintiff with costs.

Dated the 23rd July, 2004

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MAUREEN RAJNAUTH-LEE
JUDGE