

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 4057 of 1993

BETWEEN

ANN MARIE GRIFFITH

PLAINTIFF

AND

**FITZGERALD JOHNSON
JOSEPH PHILLIP
GARY PHILLIP**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT**

Before the Honourable Mr. Justice Gregory Smith

Appearances:

Mr. L. Sanguinette for the Plaintiff

Mr. E. Roopnarine for the First Defendant

Mr. T. Bharat for the Second and Third Defendants

JUDGMENT

On the 23rd December 1989 motor vehicle registration number HAF 9344, which was owned and driven by the First Defendant, was involved in a collision with motor vehicle registration number PZ 2900, which was owned by the Second Defendant and driven by the Third Defendant. The Plaintiff was a passenger in vehicle HAF 9344. The collision occurred in the vicinity of the junction of the Eastern Main Road and Mexico Road, Wallerfield.

It is not disputed that immediately before the collision the First Defendant was driving his vehicle, a Datsun 280C, in an Easterly direction on the Eastern Main Road, Wallerfield and was making a right turn, across the Eastern Main Road, to enter into Mexico Road. The Third Defendant was driving his vehicle, a Toyota Super Saloon, in a Westerly direction on the Eastern Main Road at the time and the collision occurred in the vicinity of the junction of the Eastern Main Road and Mexico Road.

On the Pleadings, the Plaintiff alleged that the collision occurred as a result of the negligence of the First and/or the Third Defendant and that as a result she suffered personal injury, loss and damage. The Defence of the First Defendant alleged basically that the collision was caused by the negligence of the Third Defendant since he drove too fast and overtook or attempted to overtake a vehicle which had slowed down to allow the First Defendant to turn across the Eastern Main Road and into Mexico Road, and, further, that the Third Defendant overtook this other vehicle just mentioned on its left hand side on the grass verge. The Amended Defence of the Second and Third Defendants alleged in essence that the collision was caused by the negligence of the First Defendant when the latter drove across his path to turn into Mexico Road.

At the Cause List hearing, it was ordered that the First Defendant was to begin his case, followed by the Second and Third Defendants and finally the Plaintiff would present her case. Counsel for the First Defendant made an opening address wherein he outlined his case as pleaded and, for reasons which will become apparent later in this judgment, stated inter alia, that the collision

occurred at a point where the front portion of the First Defendant's vehicle was in Mexico Road and the rear portion was in the junction.

THE EVIDENCE (Summarised):-

The first witness called to testify on behalf of the First Defendant was one Cecil Bacchus. Mr. Bacchus witnessed the collision, which, he said, took place at about 3.30 p.m. on the 23rd December, 1989. Prior to the accident Mr. Bacchus was driving a 25 seater maxi-taxi in an Easterly direction along the Eastern Main Road, Wallerfield. He stopped at the corner of Guanapo Road and the Eastern Main Road to let off some passengers and two vehicles passed him proceeding in an Easterly direction, namely, a taxi and a van. He noticed that the taxi put on its indicator to turn right (into Mexico road). At the crest of an incline was another vehicle which was proceeding in a Westerly direction on the Eastern Main Road; this latter vehicle flashed its lights twice and the taxi proceeded to swing into Mexico Road while the van which had also passed Mr. Bacchus continued on past the taxi. Just as the taxi had cleared the vehicle which had stopped to let it pass, Mr. Bacchus saw another vehicle (which he later described as a Royal Saloon) approach the scene from behind the vehicle which had stopped; this vehicle veered to its left partly on to a grass verge, and collided with the taxi, splitting the taxi in half. This Royal Saloon continued on in a Westerly direction, spun around and landed up in a drain facing an Easterly direction. Mr. Bacchus stated that the intersection of Mexico Road and the Eastern Main Road

was on an incline and the road dipped on either side of it; if one were on the Eastern side of the incline there was a dip where, for 65 to 75 yards before the crest of the hill one could not see what was on the other side of the incline if one were traveling in a Westerly direction. Mr. Bacchus stated that the Eastern Main Road was about 22 feet wide with a white line down the middle and that the vehicle which had stopped to allow the taxi to pass was about three feet away from the White line. He estimated the speed of the Royal Saloon at 75 to 80 miles per hour. After the collision Mr. Bacchus went to the scene and assisted in getting transportation for the injured persons who were in the taxi to take them to the hospital. He then proceeded to the Royal Saloon where he saw a gentleman with his head resting between the steering wheel and the door. He attempted to open the doors but they were locked and he observed fire creeping up the grass towards this vehicle. He smashed the right front window of the Royal Saloon with his feet and with the assistance of a passer-by, he pulled the gentleman out of the vehicle; soon after, that vehicle exploded. He stated that Mexico Road was about 35 to 40 feet wide at this intersection. In cross-examination Mr. Bacchus elaborated in detail upon the facts and even though there were some inconsistencies in his testimony, he was in my view, attempting to be as helpful as possible and he was presenting the facts honestly, as he perceived them, and he did not attempt to mislead or fabricate matters. The following statements were noted in his cross-examination. Guanapo Road (where he had stopped to let off passengers) was about 1/8 of a mile or between 700 to 900 feet before Mexico Road. The taxi, which he described alternately as the taxi or the

Datsun 280C, had come to a stop and then took off again when the driver of the vehicle which had stopped to let the taxi pass, flashed his lights. At the point of impact the taxi was about six feet inside of Mexico Road; Mr. Bacchus estimated the length of the taxi at nine to ten feet, yet he maintained that no part of the taxi was on the Eastern Main Road at the point of impact and, in fact, the rear bumper of the taxi was two to three feet away from the Main Road at that time. In answering the questions of Counsel for the Second and Third Defendants, Mr. Bacchus stated that the vehicle which had stopped to let the taxi turn right, had stopped just at the beginning of the Mexico Road junction, yet he maintained that the front bumper of that vehicle was at about the middle of Mexico Road (which he had earlier said it as 35-40 feet wide). He also stated that the taxi entered Mexico Road at about the middle of that road. Even though he had stated that the junction was on an incline and on either side of the incline there was a dip, he was certain that because of the height of his maxi taxi, he could see over the incline for some 150 to 200 yards, and he stated that when the taxi moved off from the Eastern Main Road, the Royal Saloon was about 75 feet away from it.

The second witness to testify on behalf of the First Defendant was Mr. Kenneth Murray, a motor insurance loss adjuster, registered under the Insurance Act. He received instructions from an Insurance Company to conduct an investigation into this accident and he visited the scene in June 1991. At the scene he took the following measurements:-

The width of the Eastern Main Road	–	22 feet
The width of Mexico Road at the Junction	–	44 feet

He noted that there was a solid white line down the center of the eastern Main Road except at the junction of Mexico Road, where there was a separated white line for some 50 to 60 feet. Looking East from the junction there was a dip or hollow some 60 yards away that one would drive down into when proceeding East on the Eastern Main Road. From the bottom of this dip one could not see the junction looking West, and likewise, from Mexico Road one could not see to the bottom of this dip looking East. Mr. Murray also visited the Third Defendant at his home at 12 Ameerali Avenue, Arima and the Third Defendant told Mr. Murray that he had been travelling at 60 miles per hour at the time of the accident. Mr. Murray's testimony was not shaken in any material particulars by cross-examination. In cross-examination by Counsel for the Second and Third Defendants, Mr. Murray stated that he had a diploma in Adjusting and Investigating and had been in the business since 1980. At its junction with the Eastern Main Road, there was room on Mexico Road to accommodate four lanes of traffic, one filter lane which was on the Eastern side of Mexico Road to accommodate traffic which proceeded south from the Eastern Main Road into Mexico Road, one filter lane to accommodate the traffic proceeding North on Mexico Road which was going to turn to head East on the Eastern Main Road, one filter lane to accommodate the traffic proceeding North on Mexico Road which was going to cross the Eastern Main Road to go to an asphalted road on the opposite side of the main road and another filter lane to accommodate the traffic proceeding North on Mexico Road which was going to turn to head West on the Eastern Main Road; however, he stated that there were no markings or

designation of lanes on Mexico Road. The lane to proceed South on to Mexico Road from the Eastern Main road was just before the crest of the hill if one were facing an Easterly direction. A vehicle proceeding East on the Eastern Main Road could not see over the Crest of the hill into the hollow. Similarly, a vehicle proceeding West on the Eastern Main Road and which was in the hollow, could not see the top of the junction; however, Mr. Murray parked his car in the hollow just referred to and walked up the hill in a Westerly direction toward the junction and when he was about 40 to 45 feet past the hollow, he could start to see over the crest of the hill. Mr. Murray also stated that there was a grass verge six feet wide on the Southern side of the Eastern Main Road which sloped slowly toward a canal. In cross-examination by Counsel for the Second and Third Defendants he pointed out the Third Defendant in court and stated that the Third Defendant stated his date of birth to him on his visit as the 24th October, 1966. In cross-examination by the Plaintiff, Mr. Murray stated that the driver of a car which was at a standstill two to three feet from the junction facing East on the Eastern Main Road would not be able to see over the crest.

The First Defendant was the next witness to give evidence. He is a Corporal in the Trinidad and Tobago Police service. He was the owner/driver of HAF 9344, a Datsun 280C. He stated that the accident occurred at about 3.45 p.m. on the 23rd December 1989. Immediately before the collision, the First Defendant was proceeding in an Easterly direction on the Eastern Main Road. On reaching the Mexico Road intersection he occupied the center of the road and put on his right turn indicator. He observed a white vehicle proceeding West

on the Eastern Main Road slow down and “blink” its lights, indicating that he could cross into Mexico Road. At that time he did not see any other vehicle proceeding West. The First Defendant proceeded to cross into Mexico Road. He looked to his left twice during this procedure namely once before he crossed and once after he crossed; apparently, on this second look to his left, the First Defendant saw a vehicle “rising the incline” travelling very fast. This vehicle veered to the left of the car that had stopped to allow the First Defendant to cross the Eastern Main Road, using a grass verge and it collided with the left rear and left front door of the First Defendant’s vehicle splitting it in two. The front portion of the First Defendant’s vehicle ended up ten feet into Mexico Road. Three persons in the First Defendant’s vehicle died as a result of the collision; one of whom was the First Defendant’s brother. Although this witness appeared to be genuinely attempting to be of assistance to the Court, his cross-examination revealed certain inconsistencies. He stated at first in answer to Counsel for the Second and Third Defendants that the white car which had stopped to allow him to cross into Mexico Road had stopped some ten feet before the corner; however, later in that same cross-examination he stated that the distance from the rear of that car to the Eastern corner Mexico Road was about seventeen to eighteen feet (which would place that car at about the middle of Mexico Road). He stated first, during that same cross-examination, that if one were travelling East, one could not see what was coming over the hill when one reached Mexico Road junction, but later in that same cross-examination he stated that on reaching the center of Mexico Road, one could see for over one hundred yards

over the hill; this latter statement also conflicted with the testimony of Mr. Murray and discounted the blind dip or hollow that was some sixty yards past the crest of the hill. Apart from these inconsistencies, certain other material factors emerged in his cross-examination. According to the First Defendant, the car which had stopped in front of him had blocked his entire vision Eastwards on the Eastern Main Road and he depended on the fact that the driver of the white car had stopped for him, to go ahead to make his turn. This Defendant was also aware that he had to exercise extreme caution when turning off the Eastern Main Road into Mexico Road because of the incline, yet he proceeded into the manoeuvre when his vision ahead was totally blocked and before the white car which was proceeding in the opposite direction had come to a standstill. The First Defendant's testimony was, however, bolstered by the following statements which were also elicited in cross-examination. He had come to a stop before making the right turn, and he accelerated upon seeing the Third Defendant's Super Saloon to try to get away from it. He also stated that when he was turning into Mexico Road, there was no vehicular traffic on that road. After the collision, the Super Saloon travelled a distance, which when pointed out to the Court during cross-examination by Counsel for the Plaintiff, proved to be about sixty to seventy-five feet. The force of the impact was such that the First Defendant's vehicle split in two, the rear part ending up on the Western side of Mexico Road. It was of note that this witness' testimony as to the occurrences after the collision were supportive of Mr. Bacchus's testimony on the point, he saw Mr. Bacchus assist the injured persons in his vehicle and then Mr. Bacchus proceeded over to

the Super Saloon where he took out the driver from that latter vehicle. The First Defendant was not present in Court while Mr. Bacchus and Mr. Murray gave evidence, however he stated that he knew Mr. Bacchus for over ten years and had had "several thousand" conversations with him after the accident. The First Defendant also stated that he knew one Michael Springer, who was called into Court and identified by the First Defendant, and that he did not see Michael Springer at the scene of the accident that day. The First Defendant also testified that the dimensions of the junction have not changed in terms of width. He also stated that at present, one could not drive from Mexico Road across the Eastern Main Road on to another road, but I noted that he was not asked if there used to be a road there in the past.

The case for the First Defendant was closed after this witness gave evidence.

The Third Defendant was next called to give evidence. He gave his address as 12 Ameerali Avenue, Lawrence Park, Arima. He stated that on the 23rd December, 1989 he was driving PZ 2900, a Super Saloon, in a Westerly direction on the Eastern Main Road, when upon almost reaching Mexico Road, he saw a cream Datsun 280C just swing in his path to enter Mexico Road and his car collided with the Datsun 280C. He measured Mexico Road at its intersection with the Eastern Main Road and the distance recorded was 83 feet. The hill on which the accident took place was known as Goat Hill. He stated that travelling West on the Eastern Main Road before Goat Hill, there is a big drop where you can't see over and proceeding further West is an incline. At the time of the

collision there were markings on Mexico road, namely a white line in the center and two stop markings on the Western side of Mexico Road at the junction with the Eastern Main Road. Mexico Road is at the top of Goat Hill and the accident occurred at a point after he had gone over the top of Goat Hill on the Western side of the Mexico Road intersection. The Datsun 280C was attempting to enter the exit lane of Mexico Road at the time of the collision. When the Third Defendant first saw the Datsun 280C he applied his brakes but he still collided with the back part of the Datsun 280C which was on the Eastern Main Road. The Third Defendant stated that before the collision he was travelling at about 40 to 45 miles per hour. According to the Third Defendant, if a car had driven to the top of Goat Hill, he would have been able to see it, but the Datsun 280C had not reached there. He was sure that from the intersection of the Eastern Main Road and Guanapo Road (where Mr. Bacchus had stopped to let off passengers) one could not see into Mexico Road at all, and he estimated that the distance between Guanapo Road and Mexico Road was about $\frac{1}{4}$ mile. He stated that it was Michael Springer who took him out of the Super Saloon after the accident and that he had known Michael Springer for all of his life. In cross-examination this witness was hesitant and unsure of himself and proved to be very un-co-operative; he would delay for long periods before answering questions, so much so, that I felt compelled to make a note of one occasion when he paused for a long time before rethinking an answer and changing his testimony. There were also some serious contradictions and inconsistencies in his testimony. He stated on two occasions that if a car had been exiting Mexico Road on that date and at

that time, he would not have collided with it; however, in re-examination he vacillated within a short space by repeating the statement, then contradicting it by stating twice after a full explanation by his Counsel and by the Court that he would have collided with a vehicle exiting Mexico Road given the speed he was traveling at; he then went back to his original position after Counsel probed a bit more; finally, after admitting that he was a bit puzzled by the questions, he again stated that he would have collided with the Datsun 280C if it had been exiting Mexico Road going in a Northerly direction on that day. Whereas in testimony in chief he stated that the Datsun 280C was turning into Mexico Road as he was coming over the hill, in answer to Counsel for the First Defendant he stated that he could not recall ever saying this. The Third Defendant also stated that he recalled seeing Mr. Murray but couldn't recall whether he saw Mr. Murray at his home. By way of co-incidence the date of birth of the Third Defendant was the 24th October, 1966, just as Mr. Murray had previously stated in evidence. Contrary to all the other witnesses, the Third Defendant stated that on coming over the hill he had a view as far as the eye could see, and saw no other vehicle but the Datsun 280C on the road that day. The Third Defendant stated that he and one Michael Springer went to the scene two to three weeks before the trial to take measurements, and that they measured the width of the Eastern Main Road, but he couldn't remember this measurement (however, in chief, he remembered the width of Mexico Road). He also insisted that Michael Springer was not really a friend of the family but a friend of his brother. Another strange aspect of his testimony was that while he saw the Datsun 280C in his path and

there was no other traffic in the road ahead, he still angled his car straight into the Datsun 280C. He stated at first that he couldn't pull to his right but after a long pause he stated that he had made a mistake since Mexico Road was to his left, and the reason why he couldn't pull to his right was because he was not expecting to see a car in front of him. In answer to Counsel for the Plaintiff, he stated that he mashed brakes before the collision but when pressed for an explanation as to how much force he had applied to the brakes, he stated that he mashed brakes slightly, this was so even though he felt an immediate danger when he saw the Datsun 280C. I noted that the Third Defendant was informed that the Datsun 280C split in two and the rear part went some distance away from the front (even though his witness gave contradictory evidence on this point).

Michael Springer next testified on behalf of the Second and Third Defendants. On the date and at the time in question he was driving his three ton Mazda vehicle TAE 7166 in an Easterly direction approaching Guanapo Road when he noticed a car leaving the left lane of the Eastern Main Road and just turning across the Eastern Main Road, while a car was coming in a Westerly direction on the Eastern Main Road on its left lane. The two vehicles collided. Mr. Springer stated that the car which had crossed the Eastern Main Road, was about 500 to 600 feet in front of him and had made no signal before turning; also, this car that turned across the Eastern Main Road entered the exit lane of Mexico Road. At the time of the collision, the tail of this vehicle was still on the Eastern Main Road. Mr. Springer proceeded to the scene where he saw the other vehicle

now starting to catch fire and he took the driver out of that vehicle to the hospital then he returned home. He only realized that the driver of the vehicle that caught fire was the Third Defendant when he was taking him out of the vehicle. He had known the Third Defendant since the latter was about five years old as he used to deliver milk for the parents of the Third Defendant. Mr. Springer insisted that there were no other vehicles on the road at the time of the collision, and while he knew Mr. Bacchus, he did not see him at the scene of the accident. According to Mr. Springer the Datsun 280C ended up ten feet into Mexico Road, the front and back of that vehicle was not totally separated, it was "opened out". He had taken measurements of the scene, and Mexico Road was eighty-three feet wide at its junction with the Eastern Main Road. The top of Goat Hill was in the center of Mexico Road and, at the time of the collision, the 280C was about 25 to 30 feet away from the top of the hill. He stated (contrary to the Third Defendant) that one might be able to see ten to twelve feet inside of Mexico Road from a point two feet inside Guanapo Road if the grass verge at the side of the road was clear. In cross-examination this witness seemed hesitant and unsure of his testimony and there were also inconsistencies revealed. He re-iterated that when he first saw the Datsun 280C it was 500 to 600 feet away from him and that he had not seen it before the accident occurred even though he was driving for about ten minutes before, along the Eastern Main Road; he then stated that he had not yet reached Guanapo Road at the time of the collision, and he was sure that he had not passed Guanapo Road before he first saw the Datsun 280C. In spite of all this, he stated that Guanapo Road was about eleven hundred feet

away from Mexico Road. How then could he have been 500 to 600 feet away from the Datsun 280C? Even though he stated in chief that the Third Defendant's vehicle was not separated but "opened out", the meaning of this statement was put in doubt in cross-examination by Counsel for the Plaintiff when Mr. Springer stated that this vehicle was "broken in two". Whereas in examination in chief Mr. Springer merely stated that he took the Third Defendant to hospital and returned home, at the end of cross-examination by Counsel for the First Defendant, Mr. Springer stated that after he took the Third Defendant to the hospital, he went and told the parents of the Third Defendant about the collision; Mr. Springer even had the temerity to insist that he had said this in examination in chief. Whereas the Third Defendant said that Mr. Springer was a friend of his brother, Mr. Springer denied this and stated that the brother of the Third Defendant and himself were only athletes. Further, I found it strange that Mr. Springer had absolutely no recollection of the time of day at which the accident occurred or what he was doing prior to the collision.

The Plaintiff was the last witness to testify. She admitted from the beginning that her concentration was poor, and that she had problems with her memory. For the last year and a half she had been employed at her Pentecostal Church as a cleaner at a wage of \$150 per month. On the date of the accident she was seated in the rear of the First Defendant's vehicle immediately behind him. They were proceeding along the Eastern Main Road in an Easterly direction when on reaching Mexico Road the vehicle just "swerve across" to get into Mexico Road; it did not come to a stop. Another vehicle which was proceeding

West on the Eastern Main road, stopped on the incline and signalled to the First Defendant to continue on. "In a flash" she saw a white car coming towards her and she bawled out to the driver "...look at this mad man". She recalled her "husband" saying "this look like a head on", and that was the last she remembered of the accident. Her common law husband of thirteen years, Isaac Orosco, died in the collision; their daughter Lakisha, aged 11 at the time, and who was also in the vehicle, survived the collision. She and her common law husband had started a farm in Mexico Road in 1986. They reared pigs, goats, chickens and cows and planted short crops. This farm used to realize an income of about \$700.00 to \$1,000.00 per month. She then stated that at hospital she first recalled speaking to her mother who informed her that her common law husband was going to be buried that evening; upon hearing this she began to cry and had to receive an injection which put her "out of it". She stayed eight days in hospital and spent about six months with various relatives before returning to her home at Mexico Road, where she discovered that there were no animals on the farm. She survived on Social Welfare of about \$350.00 per month and upon assistance given by her relatives and the church. The Social Welfare payments ceased when her daughter reached eighteen years. For the first two years of the accident she was in serious pain and was on medication; while she is still on medication, she doesn't take it now as regularly as before. She also visits a clinic every six weeks or two months whereas, before, especially during the first two years after the accident, she would visit a clinic every three weeks. The Plaintiff detailed her travel expenses to go to clinic and stated that on these visits

she had to be accompanied by her sister since she developed a fear of travelling and if, as had happened, she traveled by herself she got lost in Arima. At present her daughter works and she has an “adopted” young gentleman from her church, aged 19 who lives with herself and her daughter. At present she still suffers with lancing headaches and pain in her left hip. She gets the pains in her head if she goes into the sunlight bareheaded or if she worries. She also has a weakness in her eyes whereby she can’t focus. As a result she can’t do any farming. The Plaintiff then went on to detail the animals lost and give their approximate values. She also stated that she worked head to head with her husband on the farm and went on to detail the crops planted on 2½ acres of the farm. The medical reports and records of the Plaintiff were then put in evidence by consent of all the parties. The cross-examination of the Plaintiff by Counsel for the First Defendant was only on the issue of damages; the Plaintiff was helpful and her testimony was unshaken. She stated that the farm was fenced around and that they had never lost any animals. The farm was a fledgling business and they were working toward breeding enough cows to get a contract to supply Nestlé Ltd. with milk. They also sold animals and all the milk their animals produced. Admittedly the income from the milk sales was small, about \$30.00 per week, but they derived other income from the sale of crops. They would buy about two bags of animal feed per week at a cost of about \$22.00 - \$25.00 per bag. Cross- Examination of the Plaintiff by Counsel for the 2nd and 3rd Defendants was more extensive, but again the Plaintiff tried to be as helpful as possible and her testimony was unshaken. She repeated that the First

Defendant just drove across the Eastern Main Road, toward Mexico Road. The vehicle which stopped to let the First Defendant pass, was stopping at the top of the incline while the First Defendant was in the process of turning and the First Defendant's vehicle was already in the path of that other vehicle. At the point of impact, the First Defendant's vehicle was partly on Mexico Road and partly on the Eastern Main Road. There was a white line dividing Mexico Road and the First Defendant had turned to enter the exit lane of Mexico Road. She stated that when the First Defendant started to turn his vehicle she could not see beyond the hill. She stated that she had suffered with some loss of memory but that it is not as bad now as it was before; she also gets pains now but not very often but she experiences dizziness. She repeated that the income from the farm was between \$700.00 - \$1,000.00 per month and the expenses totalled about \$400.00. She never thought about renting out the farm since the farm is on state lands and can't be rented out. She did not know Mr. Bacchus before the accident. At present she is on medication, namely, motrin 800 for pain which she takes about twice a week and also, stemetil, for dizziness. At present she would only plant minor crops for home consumption.

FINDINGS:

A. Liability

There were two versions of how the collision took place; the one propounded by the Plaintiff, the First Defendant and Mr. Bacchus, the other put forward by the Third Defendant and Mr. Springer. The main difference between the two versions was the presence (or absence) of a vehicle proceeding in a Westerly direction on the Eastern Main Road which had flashed its lights and slowed down so as to allow the First Defendant to proceed across the Eastern Main Road and into Mexico Road. A major difficulty in deciding on the version to be preferred was the fact that the independent witnesses, namely Mr. Bacchus and Mr. Springer differed on the main dispute of fact.

Let me say at the outset that I rejected Mr. Springer's version of the events. As was set out at pages 14 and 15 above, there were serious inconsistencies in Mr. Springer's evidence and he seemed hesitant and unsure of his testimony; further, his memory of the events on the day was poor (e.g. he could not remember even the approximate time of day when the accident occurred). Even though there were inconsistencies in Mr. Bacchus' testimony I was impressed by his apparent candour and frankness while testifying, and his errors mainly related to perceptions of distance and motion which errors could be understood when it was remembered that he was viewing the accident from about ¼ mile away. Another factor I considered was that of all the witnesses who testified, Ann-Marie Griffith presented the most credible and unshaken testimony, and, as a passenger in a vehicle, she could almost be considered as

an independent witness. Indeed, I was impressed by her openness and candour and her desire to speak the truth, so, for instance, she was forthright enough to state that the First Defendant, who was one of her late husband's friends, did not stop before turning across the Eastern Main Road, a fact which could have implicated the First Defendant with some measure of culpability. I had no difficulty in accepting the Plaintiff's evidence, as representing the facts as they occurred on a balance of probabilities.

I also accepted the testimony of Mr. Murray as being accurate since he was an independent, expert witness and his testimony was not shaken in any material particulars by cross-examination.

In the circumstances, I found as a fact that at about 3.30 p.m. on the 23rd December 1989, the First Defendant was driving his vehicle in an Easterly Direction on the Eastern Main Road and simply swerved to the right across the Eastern Main Road in an effort to turn into Mexico Road. Simultaneously, a vehicle which was proceeding in a Westerly direction, flashed its lights and slowed down to allow the First Defendant to turn into Mexico Road. This vehicle however, did not come to a stop before the First Defendant started to turn his vehicle. Thereafter, the Third Defendant came over the brow of Goat Hill in his vehicle at a rate of speed which was at least 60 miles per hour and he swerved to his left, partially on to the grass verge of the road, and ran into the First Defendant's vehicle hitting it from the vicinity of the rear door to the back bumper, while the First Defendant's vehicle was partially on the Eastern Main Road and partially on Mexico Road. As a result of the collision, the First Defendant's

vehicle was split in two parts, one part staying on the roadway in Mexico Road and the other landing up on the Western side of Mexico Road. The Third Defendant's vehicle then proceeded on an errant path along the Eastern Main Road and the grass verge at the side of the road for some distance, spun around and ended up in a drain at the side of the road. I also find as a fact that some 60 yards before reaching the Mexico Road intersection, the Third Defendant had to drive into a dip or hollow on the Eastern Main Road; after proceeding in a Westerly direction for some 40 to 45 feet or slightly more, the Third Defendant would have started to see over the crest of Goat Hill, and that he did, in fact, see the vehicle that had slowed down to allow the First Defendant to drive across the Eastern Main Road, however, the Third Defendant still decided to proceed, full speed ahead, along the Eastern Main Road and when he did get closer to the vehicle which had stopped, he was confronted by a van proceeding East on the Eastern Main Road so that he then attempted to swerve around the vehicle which had come to a stop in front of him by pulling to his left, partially on to the grass verge of the road, and he ran into the First Defendant's vehicle.

Counsel for the Plaintiff cited the cases Crawford v Jennings (from Bingham's Negligence Cases 4th ed), Clarke v Winchurch (from Bingham's Motor Claims Cases 10th ed pg 68) and Worsford v Howe (from Bingham's Motor Claims Cases 10th ed. Pg 69) and submitted that the flashing of lights by the driver of the vehicle which had stopped to allow the First Defendant to cross the Eastern Main Road, did not absolve the first Defendant from liability and that the Court should still attribute some measure of responsibility for the collision to the

first Defendant. On the other hand, he submitted that the Third Defendant was clearly negligent as well. Counsel suggested an apportionment of liability of 50% to the First Defendant and 50% to the Third Defendant.

Counsel for the Second and Third Defendants cited Mazengarb on Negligence on the Highway (4th ed, 1962) at pages 333 to 335 and Grange Motors Ltd. v Spencer (see Bingham's Motor Claims Cases 10th ed pg 72) and submitted that in turning across the Eastern Main Road, the First Defendant was clearly negligent. Counsel went on to submit that if I accepted the evidence of the Third Defendant, then the First Defendant was fully liable; however, even if I rejected that evidence, on the facts of the case as he viewed them, the First Defendant was at least 80% to blame and the Third Defendant only 20% liable.

Counsel for the First Defendant submitted that the First Defendant did no wrong and could not have reasonably expected a vehicle to be overtaking the other one which had stopped, on its left side (see The Highways Act Ch 48:50 page 105 Regulation 38 (5) (3)). Counsel submitted further that even if the Court accepted the evidence of the Third Defendant and Mr. Springer that no vehicle had stopped to allow the First Defendant to turn across the Eastern Main Road, and there were no other vehicles proceeding East on the Eastern Main Road at the time, the Third Defendant's actions were extremely reckless since he intentionally drove his vehicle into the First Defendant's vehicle. In either event the first Defendant was not contributorily negligent.

Based on the facts as I have found, the Third Defendant acted negligently on even recklessly in the circumstances as they existed. He saw a vehicle slow down and stop and he proceeded at an extremely fast rate of speed towards it hoping to be able to overtake it. On being confronted by a van on his right hand side and being aware of the impending danger, he did not even seek to apply brakes forcefully (on his own admission) but attempted to swerve around the vehicle in his path, driving partly on the shoulder of the road. Most importantly, he admitted that based on the speed he was travelling, he would even have collided with any vehicle that was exiting Mexico Road at the time, so that he took a chance that day to drive so fast at that junction. Even if one were to accept his version of events, he would have the Court believe that he recklessly chose to drive into the First Defendant rather than pull to his right, where he alleged there was no traffic for as far as the eye could see.

With respect to the First Defendant, the action of swerving across the Eastern Main Road and attempting to enter the exit line of Mexico Road was a negligent act, especially since he could not see beyond the vehicle which was ahead of him. Added to this, he did not even wait for the other vehicle to come to a stop before turning. Being familiar with the area, he should have been alive to the possibilities that, for instance, if the vehicle which allowed him to pass drove forward toward the middle of the junction before stopping, a car proceeding West behind it may have lawfully attempted to turn into Mexico Road, in which event there could have been some problem with the First Defendant turning at that time. Also, even though he stated that he looked into Mexico Road before

turning, given the relatively short space of time over which these events occurred, it could not have been more than a fleeting glance, and he ought to have stopped to ensure that nothing was coming out of Mexico Road and that he could indeed turn safely into the exit lane of Mexico Road. Further, being aware that he could not see over the crest of Goat Hill, the First Defendant ought to have stopped his vehicle before turning and then proceed slowly past the other vehicle that had slowed down to allow him to turn across the Eastern Main Road to ensure that another vehicle lawfully coming over the hill toward him would not have been forced to take some form of evasive action.

Nevertheless, the negligence of the First Defendant was by far the lesser in so far as causing the accident was concerned, especially since the Third Defendant would have collided with any vehicle which was attempting to turn into or out of Mexico Road on the day. In the circumstances of this case I assessed the Third Defendant's share of contribution at 75% and the First Defendant's share of contribution at 25%.

B. Damages:

(i) Special Damages:-

There were certain claims for special damages which were not contested. The Plaintiff claimed \$50.00 per day for Transportation costs to attend the outpatient's clinic of the Port-of-Spain General Hospital by private taxi 19 times giving a total of \$950.00. She also claimed transportation costs by public transportation of \$24.00 per visit for herself and her sister for 22 occasions;

however, she never stated whether she had to pay for her sister to travel or not so I only allowed the costs for her own travel viz. $\$24 \times 22 = \528 .

The other item of special damages concerned the loss of animals by theft while the Plaintiff was away from the farm in the total sum of \$17,750.00. Counsel for the First Defendant opposed the grant of this sum on the ground that such a loss was too remote and not reasonably foreseeable as a consequence of the collision; he cited as an extreme example, what would have been the case if the Plaintiff had a "Picasso" painting in her house that was stolen, this, as admitted by all counsel, would not be recoverable. Counsel for the Plaintiff submitted that the loss was foreseeable and combined the argument with the "egg skull principle" and submitted that one had to take into consideration the personal circumstances of the victim to decide if such a loss was reasonably foreseeable; so that in the case of a large scale farmer with numerous workers and supervisors, one would expect the farm to continue to operate, in which case a loss of animals by theft was not reasonably foreseeable; but in the case of the Plaintiff with a very small or marginal farm, in a desolate area, one could expect the farm to go unattended if the Plaintiff and her deceased husband were unable to run it and hence a loss of animals by theft.

The law on foreseeability and remoteness in tort has evolved over time and at times is not a simple matter (see Clerk and Lindsell on Torts 16th ed. paragraphs 10-146 to 10-157). A concise statement of the principle is found at paragraph 10-152 of the Clerk and Lindsell on Torts (op. cit.) where it is stated that "as long as some damage, however slight, of a particular kind was

foreseeable to the person or property of the Plaintiff, he can recover for the full extent of it though neither the extent nor precise manner of its incidence was foreseeable.”

The egg skull principle is not applicable here since it really applies where damage, which is of a foreseeable nature, occurs but the extent of the damage is more extreme than predicted. (See Clerk and Lindsell op. cit. at paragraph 10 - 153); it assumes that the type of damage is foreseeable and the question then is the extent of the damage, therefore, it does not answer the question whether the type of damage in question was foreseeable.

Based on the examples cited and a general application of the relevant principles, I am of the view that a loss of the Plaintiff’s animals by theft was too remote to be recovered. If a loss by theft of a “Picasso” at the Plaintiff’s farm was admittedly not foreseeable it suggests that loss by theft of the Plaintiff’s animals on a farm some distance away was also not a foreseeable consequence of the collision.

(ii) General Damages:-

In assessing the quantum of general damages which a party who is injured should recover, the courts have been guided by the following factors:

- (1) The nature and extent of the injuries sustained.
- (2) The nature and gravity of the resulting physical disability.
- (3) The pain and suffering endured.
- (4) The loss of amenities suffered

(5) The extent to which pecuniary prospects have been affected.

(See Cornillac v St. Louis (1965) 7 W.I.R. 491)

The first four of the matters for consideration mentioned above produce an award for the non-pecuniary loss sustained, and the 5th consideration can in some cases produce a separate award.

In addition, even though there is no doctrine of precedent in fixing the quantum of general damages, a court usually looks to other similar cases for guidance as to the current range of damages when assessing damages, especially so in the case of the award for non-pecuniary loss (see Ortega v Belgrave – Civ. App. No. 95 of 1980).

Non pecuniary loss:-

(1) Nature and extent of injuries sustained:

An examination of the medical reports which were admitted without contest revealed that the Plaintiff sustained a fracture to the left side of her jaw and a depressed fracture of the left zygoma as well as a skull fracture in the region of the anterior cranial fossa. Upon admission to hospital she was shocked and disoriented and developed hemetemesis.

(2) Nature and Gravity of resulting physical disability:

The fractures of the jaw and zygoma healed and as at the 17th January 1990 were symptomless, however, the Plaintiff suffered headaches, dizziness, memory disfunction and poor concentration which was acute in

the first two years after the accident and has diminished somewhat over time. She takes medication for her complaints and her condition has been diagnosed as post concussion syndrome with a permanent partial disability of 15%. There is the possibility of developing seizures at a later date.

(3) Pain and Suffering:

The Plaintiff's testimony, which, as I have already indicated was unassailed, was that for the first two years after the accident, she suffered intensely with lancing headaches and pain in the left hip. The pain has subsided considerably but she still can't go into the sunlight bare headed or worry about anything for she would experience headaches. She experiences dizzy spells too. In the beginning, her loss of memory was very serious and she had to be accompanied wherever she went for she would get lost if she travelled by herself. At present she also has a weakness in her eyes whereby she can't focus.

(4) Loss of Amenities:

No evidence was led as to any loss of amenities.

All Counsel accepted that the closest cases on point were Andrews v Singh H.C.A. 255 of 1983, Scobie v Nelson H.C.A. 1442 of 1994 and Parahoo v S. M. Jaleel and Co. Ltd, H.C.A. (S.F.) 886 of 1991.

In Andrews v Singh the Plaintiff was unconscious for a short while after an accident. He was hospitalized for three days and suffered pain about the head, neck and shoulders. At the time of assessment he complained of severe headaches, aggravated by going in the sun, attacks of dizziness, and a difficulty in finding the words he wanted to use. He was analysed as suffering from post concussion syndrome and his permanent partial disability was said to be in excess of 15%. In July 1984 he was awarded general damages in the sum of \$18,000.00 for his non pecuniary losses.

In Scobie v Nelson, the Plaintiff sustained injuries to his head, left ankle and a cut over the right eye. He was rendered unconscious until the following day. The cuts were stutured and a cast was placed on his left ankle and he was released from hospital on the day he regained consciousness. The cast was removed after three weeks. The Plaintiff complained that after the accident he had a lot of headaches and his ankle was still stiff after five years. He was unable to tolerate the noise of the machines where he worked and he became angry quickly. He no longer played football or attended parties. After walking for some distance he would experience pain. He was diagnosed as continuing to suffer some post concussion syndrome which would continue indefinitely. In December 1995 he was awarded general damages in the sum of \$42,000.00 for his non pecuniary losses.

In Parahoo v S.M. Jaleel & Co. Ltd the Plaintiff suffered cerebral concussion, a fracture of the left middle and anterior cranial fossa, possible left peripheral 7th nerve paresis, cerebral contusion of the basal temporal lobes, (left

side), right hemiparesis and confusion. He underwent a personality change and alleged that he could not work again; however, he was described by the judge as “a malingerer”. He suffered post concussion syndrome. His permanent partial disability was assessed at 50%. In September 2001 the Plaintiff was awarded \$50,000.00 as general damages for his non pecuniary loss.

While Andrews v Singh bears the closest similarity to the present matter, the award was made more than seventeen years ago and needs to be upgraded. Scobie v Nelson is fairly similar to the present matter but it seems that the ankle injury in that case was an aggravating factor. In any event, the award there is more than six years old and would need to be upgraded to be representative of a current award. Parahoo v Jaleel seems to be a bit more serious than the present matter but the Plaintiff in that case was a malingerer whereas the present Plaintiff, Anne Marie Griffith was a genuine witness. Additionally, I have considered the medical evidence of shock suffered by this Plaintiff as well as the shock she suffered on being told of her common law husband’s death when she had to be sedated, and I would increase the award to take it into account. (See Schneider v Esovich (1968) 2 OB 430 and Blaize v Poyah H.C.A. 922 of 1970 and see Generally Bingham’s Motor Claims Cases 10th ed pg 405 to 408). Another relevant factor which I had to take into account here was the possibility that this Plaintiff may develop seizures in the future.

In all the circumstances, I considered an award of \$50,000.00 as appropriate for the non-pecuniary loss of this Plaintiff.

Loss of pecuniary prospects:-

There are two accepted methods of assessing this loss. Firstly, one may use the Plaintiff's annual earnings, less the amount, if any, which he can now earn (the multiplicand) and multiply it by a figure, which is based, notionally, upon the number of years the diminution in earning capacity is expected to continue but is discounted to reflect the fact that (i) a lump sum is being paid and (ii) the vicissitudes of life. It should be noted that in the present matter, after considering all relevant factors such as the age of the Plaintiff at the time of the accident (32 years), the fact that the Plaintiff was now working (for \$150.00 per month) and the vicissitudes of life, all Counsel in the matter agreed that the multiplier should be twelve. I also accepted that if I were to use a multiplier/multiplicand approach a suitable multiplier would be twelve, especially considering that the Plaintiff was a truthful witness and could no longer be a farmer after the accident because of the nature of her injuries; she was not a malingerer, in fact, when one considered that she had to live on \$350.00 per month and raise a daughter as a single parent in a semi-deserted area, one could not escape coming to the conclusion that her inability to work until recently was not a desired consequence.

The second method is used where there are too many serious "imponderables"; in such a case a judge is entitled to reject the multiplier/multiplicand approach and make a global award based upon an estimation of the loss (see Blamire v South Cumberia Health Authority cited in

Bingham's Motor Claims Cases 10th ed page 419, see also Suresh v Mangaroo H.C.A. 3474 of 1982 and Dixon v Nurse H.C.A. 1774 of 1980).

Counsel for the Plaintiff submitted that based on the Plaintiff's testimony, the total income of the farm varied between \$700.00 to \$1000.00 per month and the expenses, which were only for feed, (\$25 per bag x 2 per week x 4 per month) were in the sum of \$200.00 per month. The monthly earnings of the farm should be averaged at \$900.00 per month less \$200.00 per month, giving a figure of \$700.00 per month. Since the Plaintiff and her now deceased husband worked in equal measure on the farm, her monthly earnings should be half of the earnings of the farm in the sum of \$350.00 per month which would yield a multiplicand (being the annual loss of earnings) of $\$350 \times 12 = \$4,200$. When multiplied by 12 (the agreed multiplier) this would give a figure of \$50,400.00 for loss of pecuniary prospects.

Interestingly enough, Counsel for the First Defendant accepted Counsel for the Plaintiff's method of assessment of this loss and also the figure of \$50,400.00, as a correct assessment of this loss.

Counsel for the Second and Third Defendants submitted that cross-examination revealed that the total monthly expenses incurred by the Plaintiff was stated to be \$400.00 and he suggested that based on a maximum average monthly revenue of \$900.00, the monthly earnings of the farm was really $\$900.00 - \$400.00 = \$500.00$. This figure divided in half to reflect, at the highest, the earnings of this Plaintiff alone, would yield a multiplicand (annual loss of earnings) calculated as follows $\$250 \times 12 = \$3,000.00$; when multiplied by 12

(the agreed multiplier) \$3000.00 x 12 would yield a total of \$36,000.00 as a true estimate of the loss of pecuniary prospects.

While I accept that a multiplier/multiplicand approach can yield a more accurate estimation of this loss, I felt that there were serious imponderables in the present matter which entitled me to reject that approach. Firstly, this farming business was admittedly a fledgling business, and it is very possible that the profit margins may have increased significantly especially if the Plaintiff and her now deceased husband got a milk supply contract with Nestlé Ltd. In such a case, the figure suggested by Counsel for the Plaintiff and the First Defendant of \$50,400.00, would have been too small. On the other hand, the farm may have failed or may have decreased in profitability in which case, the figure of \$36,000.00, suggested by Counsel for the Second and Third Defendants would have been an overstatement of the estimated loss of pecuniary prospects. In addition, there was no evidence of what other farmers of a similar standing would earn as profits over time, nor evidence of what was the situation with respect to the demand for milk by Nestlé Ltd., to give an indication of the likely probability of an increase or decrease in the supply required. Secondly, even though all Counsel agreed with splitting the earnings of the farm between the Plaintiff and her now deceased husband, I did not accept that this method was appropriate here, especially since there was no reliable evidence as to what proportion of the total revenue of the farm was attributable to the growing and sale of crops (for which the Plaintiff was mainly responsible) as opposed to the rearing and sale of

animals and their produce (for which the Plaintiff's now deceased husband was mainly responsible).

In the circumstances, considering the figures for revenue and income of the farm, the stated expenses and giving allowances for the vicissitudes of business, I considered that making a global award of \$50,000.00 was appropriate as an assessment of the loss of pecuniary prospects.

Interest:

It was noted that all Counsel agreed on the rates of interest to be applied to each award of damages and I too accepted the figures proposed for interest.

The Order:

In the circumstances I made the following Orders.

1. Judgment for the Plaintiff against the Defendants. The contributory negligence of the First Defendant is 25%, the contributory negligence of the Second and Third Defendants is 75%.
2. Special Damages of the Plaintiff assessed in the sum of \$1,478.00 with interest thereon at the rate of 3% per annum from the 23rd December, 1989 to the 15th November, 2001.
3. General Damages assessed as follows:

- a) Non pecuniary loss \$50,000.00 with interest thereon at the rate of 6% per annum from the 6th December, 1993 (the date of issue of the Writ) to the 15th November, 2001.
- b) Loss of pecuniary prospects \$50,000.00 with interest thereon at the rate of 6% per annum from the 6th December, 1993 to the 15th November, 2001.
- c) The First Defendant is to pay 25% of the Plaintiff's costs, the Second and Third Defendants are to pay 75% of the Plaintiff's costs.
- d) By consent, a stay of execution was granted for twenty-one days.

Dated this 28th day of January, 2002

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Justice Gregory Smith
Judge