

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
SUB REGISTRY, SAN FERNANDO

H.C.A. NO. S-437 OF 1997

B E T W E E N:

ERNEST BOWRIN

PLAINTIFF

AND

VASHTI PERSAD

DEFENDANT

**BEFORE THE HON. MR. JUSTICE STOLLMAYER**

Appearances:

Mr. S. G. Maharaj, S.C. and Mr. E. Roopnarine for the Plaintiff

Mr. H. R. M. Seunath for the Defendant

**REASONS**

In this action the Plaintiff claims damages for personal injuries suffered as a result of a motor vehicular accident on 20<sup>th</sup> January 1997, allegedly caused by the Defendant's negligence. The Defendant pleads inevitable accident as her defence. It was agreed by the parties that only the issue of liability would be tried before me.

The material facts are that on 20<sup>th</sup> January 1997 the Plaintiff was driving his vehicle HAG 4201 in the right hand lane of the northbound carriageway of the Sir Solomon Hochoy Highway in the vicinity of the Claxton Bay junction. At a point north of this junction on a straight stretch of roadway motor vehicle PAN 1590 owned and driven by the Defendant in the right hand lane of the southbound carriageway suddenly veered across the shoulder of the highway and the dividing median on to the northbound carriageway and struck the Plaintiff's car. As a result of this the Plaintiff's vehicle was damaged and the Plaintiff suffered certain injuries.

Some time shortly prior to the accident the Defendant was travelling at about 50 m.p.h. in the right hand lane of the south bound carriageway in preference to the left hand lane which had a number of potholes and depressions. Immediately prior to the accident she moved to the left hand lane to allow vehicles to overtake her and then returned to the right hand lane, at which time she was travelling at about 40 m.p.h., perhaps slightly faster. The steering started to vibrate, to "*shimmy*" to use a colloquialism, and the Defendant was then unable to control the steering and, consequently, the direction in which her car was travelling. She tried turning the steering wheel but got no response and her car went off the roadway to the right and across the dividing median.

The Plaintiff had at this time been driving for about nine years, since the age of 19. She lived at Chaguanas and worked at the San Fernando General Hospital, using the car to go to work and back home. She had bought the car in July 1996, some six months before the accident, when it was about 14 years old. In December 1996 the Plaintiff the Plaintiff found that the front tyres of the car were “*cutting*” i.e. wearing unevenly, and sent the vehicle to be checked by a mechanic, Siusaran Maharaj. Maharaj took the vehicle “. . . to an alignment machine . . .” to have the front wheel alignment and camber checked. Presumably this was done. The ball joints, a part of the steering mechanism allowing the wheels to turn to the left or right, were checked and found to require changing. They were presumably changed. I say “*presumably*” in each of these instances because there was no evidence of any remedial work actually being done although these were not matters in contention. Maharaj also checked certain other components of the steering mechanism, such as the steering ends, the cradle bushings and the inner rack ends, all of which were found to be, in his words “*o.k.*”

After the accident the vehicle was inspected by Maharaj and by Kenneth Gobin, Motor Vehicle Inspector I attached to the Licensing Authority.

Maharaj did so at the home of the Defendant’s father “*a long time after the accident*” but did not say exactly when. He was asked to check the vehicle to see if he could determine a cause of the accident. He checked the tyres but gave no evidence as to their condition. He then jacked up the vehicle and inspected the steering ends, ball joints, cradle and shock absorbers. He found all of them to be “*intact*” which I took to mean in

place and undamaged although as to the latter I had some doubt given the extensive damage to the vehicle as set out in Gobin's report.

Maharaj then tried turning the steering wheel to the left and the right and in cross examination said he found "*a hard turning on the steering wheel*". In examination-in-chief he had said "*it was not possible for me to turn the steering wheel.*" He then removed and dismantled the steering rack itself and found that two or three splines were broken. In his opinion as a mechanic of some twenty-five years standing "*the splines would break if you hit a pot hole or a bad edge or if the spline itself had been decaying before and it popped on you*" but not as a result of the accident. He then said in re-examination that he came to no conclusion from his inspection as to what may have caused the splines to break: "*it could be because of decay in the spline, rough roads or in the accident.*" He also expressed the view in cross-examination that with only two or three splines broken you would not get the "*full response*" to a movement of the steering wheel but that it was possible to lose control of the vehicle because of these broken splines. He also said, however, that he could not say why the vehicle veered off the road.

Gobin inspected the Defendant's vehicle at the Couva Police Station one week after the accident, on 27<sup>th</sup> January 1997. The body of the vehicle was severely twisted and damaged. The braking system was tested and found to be efficient and the tyres were treaded. The steering system, including all the linkages, were intact with no obvious defects. No excessive play was found in the steering wheel when it was shaken. He did

not, however, inspect the steering rack. In his opinion, based on his eighteen years as a motor vehicle inspector, two or three broken splines would not cause the steering to go out of control. In his view, if you continue to turn the steering wheel, contact will eventually be made between the remaining splines on the rack and the corresponding grooves in the coupling.

A defence of inevitable accident imposes a burden on the party so pleading to show either what was the cause of the accident, and that the result of the accident was inevitable; or, all of the possible causes of the accident, one of which produced the result, and that every one of those possible causes could not have been avoided. See *Bain v. Mohammed* 7 W.I.R. 213 at page 214 I per Wooding C.J., referring to *The Merchant Prince* [1892] p.179 at page 189. If a defendant sets out a latent defect as the cause of the accident, then it must also be shown that the accident would have occurred despite all reasonable care on the part of the defendant. See *Charlesworth on Negligence*, 6<sup>th</sup> Ed. at paragraph 278 referring to the decisions in *Davie v. New Merton Board Mills* [1959] A.C. 604 and *Pearce v. Round Oak Steel Works* [1969] 1 W.L.R.595 as well as *Henderson v. Henry E. Jenkins & Sons* [1970] A.C. 282.

The essence of the Defendant's case is that the three splines on the steering rack of her car broke as a consequence of a latent defect. "Nothing else could have caused them to break" submitted Mr. Seunath on her behalf.

This was a motor car which was fifteen years old at the time of the accident. The steering system, but not the steering rack, had been inspected and repaired perhaps one month before the accident but there was no evidence of any other inspection, servicing, maintenance or repair work having been carried out by the Defendant during the seven months she owned the car. Nor was there any evidence of such inspection and the like prior to her having purchased the car, nor any evidence of an inspection at the time she bought it. There was no evidence of the mileage which had been travelled by the car during its lifetime, either while owned by the Defendant or previously, or of any accident in which it had been involved during its lifetime. The car was being driven from the Defendant's home in Chaguanas to San Fernando where she worked on an almost daily basis and the roads on which it travelled were, at least partly, subject to depressions and pot holes which she sought to avoid, for example, that section of the Sir Solomon Hochoy Highway just before the area in which this accident took place.

The question to be answered therefore is whether the Defendant can be said to have exercised the reasonable care required of her in all the circumstances. The answer in my view was that she had not. Had the evidence been that despite the age of the car it had only travelled a comparatively low mileage on good roads, with no accidents and with regular inspections, servicing, maintenance and any required repairs, then the Defendant would have satisfied in some, perhaps considerable, measure the burden of her showing that she had in all the circumstances taken all reasonable precautions by way of efficient and competent maintenance and the like to ensure that no component of the car,

particularly the steering and the steering rack, would fail or give way suddenly and unexpectedly.

The steering rack is a vital part of the steering mechanism. The car was being used at relatively high speeds on the highways of the country and the paved surfaces of at least some of the roadways on which it was used were subject to depressions and pot holes. The car was fifteen years old. There is no evidence that the car, much less this vital component, was ever inspected during its lifetime, save in respect of the cutting of the tyres in December 1996.

I therefore came to the conclusion that the Defendant had failed to satisfy the burden placed upon her of showing that the accident would have occurred despite her having exercised all reasonable care due of her. She had not, in my view, exercised the required degree of ordinary care and skill and consequently that her defence must fail.

I also considered the question of whether, assuming the Defendant had satisfied this burden, she had satisfied the burden of showing what was the cause of the accident and that the accident was the inevitable result of that cause. I accepted that Siusaran Maharaj found that two or three splines of the rack were broken. His evidence that these missing splines would have produced the result of there being no response at all to movements turning the steering wheel to the left or right was, however, contradicted by that of Gobin, who said that if a driver continued turning the steering wheel there would be a response. Additionally, neither Gobin, who inspected the car one week after the

accident, nor Maharaj, who inspected it “*a long time after*” said that they found any excess play or movement without response when they turned the steering wheel. Gobin said that he found no excessive play or clearance when he shook the steering wheel. Maharaj said, when cross-examined, that it was not possible for him to turn the steering wheel, having said in examination-in-chief that he found “*a hard turning on the steering wheel.*” Further, Maharaj gave varying opinions as to what would cause the splines to break, other than as a consequence of the accident which had taken place, but ultimately could give no conclusions as to the reason as to what caused the splines to break. In cross-examination he also said that with two or three splines of the steering rack broken, there would not be “*full response*” to movements of the steering wheel and that with two or three splines so broken, it is possible to keep control of the car. The Defendant in her evidence said that when the “*shimmy*” began the road ahead of her was straight, that she may have turned the steering wheel to her left and did not recall if she had turned it to the right, and that she could not say with certainty if she made any effort to stop the vehicle. Indeed, it would appear from her evidence that she recalls very little of the accident and the events leading up to it taking place.

On the basis of the evidence before me, I came to the conclusion that the Defendant had not satisfied the burden placed upon her to show the cause of the accident and that the accident was the inevitable result of this cause.

In the circumstances I came to the conclusion that the Defence must fail and gave judgment for the Plaintiff, with costs certified fit for senior advocate, and ordered that damages be assessed by a Master in Chambers.

DATED this                      day of August 1999

C.V.H. STOLLMEYER  
JUDGE