

BARBADOS

THE SUPREME COURT OF BARBADOS

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

NO. 250 OF 2012

BETWEEN

TARRA JOHNSON

CLAIMANT

AND

CHRISTOPHER PILGRIM

**FIRST DEFENDANT/
ANCILLARY DEFENDANT**

**RIDGEVIEW CONSTRUCTION
LIMITED**

**SECOND DEFENDANT/
FIRST ANCILLARY**

CLAIMANT

BARRY BRATHWAITE

**THIRD DEFENDANT/
SECOND ANCILLARY
CLAIMANT**

**Before the Honourable Mr Justice Alrick Scott, Judge of the High Court
(Acting).**

Date of Reasons for Decision: 6th May 2019.

Ms Deborah P Gooding and Ms Julienne St. Hill for the Claimant.

Mr Clement E Lashley, QC and Ms Honor Chase for the First Defendant.

**Ms Tamara M Simmons and Ms Destinie Simmons-Beckles for the
Second and Third Defendants.**

REASONS FOR DECISION

INTRODUCTION

- [1] On 20th day of December 2018, I gave an oral decision in this action. I held that the accident was caused solely by the negligence of the First Defendant. I now reduce to writing the reasons for my decision.
- [2] This is an action for personal injuries, loss and damage resulting from an accident which occurred on 14th February 2009, involving motor vehicles XA-1250 and T-5039. Christopher Pilgrim (Pilgrim) was the owner and driver of XA-1250, while Barry Brathwaite (Brathwaite) was the driver of T-5039, which was owned by the Second Defendant at the time. The Claimant was a passenger in XA-1250 when the collision occurred. The accident occurred around 17:30 hours, at the junction of Chapel Road, Ebenezer Road and Halton Road, St. Philip.
- [3] The parties had agreed that I should determine the issue of liability only and that they will discuss and settle quantum. Therefore, the main issue for me in the case was liability for the accident, namely, which one of the two drivers is responsible for the accident which occurred on 14th February 2009, whether Pilgrim or Brathwaite. Following my finding that Pilgrim's negligence caused the accident, the parties provided me with the figure agreed for quantum. I thereupon assessed the costs payable by Pilgrim to the Claimant and the Second Defendant. The orders at para [18] below, are a repeat of the orders I made orally.

THE EVIDENCE

- [4] There are two divergent stories as to how the collision occurred. The evidence of Pilgrim, given by witness statement and oral evidence, is that he was driving XA-1250 along Chapel Road going in the direction of Ebenezer. He was approaching the area where Chapel Road and Ebenezer Road meet at the junction of Halton Road. Pilgrim said that as he was approaching the junction, a vehicle exited Halton Road, and turned left towards Chapel. Chapel to Ebenezer is the main road, and there is a stop sign at Halton Road as it meets Chapel/Ebenezer Road. Pilgrim's evidence is that as the vehicle exited to turn left to go towards Chapel, Brathwaite swerved to the right to avoid colliding with the vehicle exiting Halton Road, and in so doing, collided with Pilgrim's vehicle.
- [5] Pilgrim pointed out in a photograph, the place where the front of the vehicle exiting Halton Road was, which was near half-way onto Chapel/Ebenezer Road, turning left and impeding the path of T-5039. Pilgrim stated that the vehicle exiting Halton Road, was not involved in the collision and the driver continued on his or her way. Pilgrim was not able to identify the vehicle, or its driver, which drove from Halton Road onto Chapel/Ebenezer Road.
- [6] The evidence of Brathwaite is that he was driving from Ebenezer to Chapel in the opposite direction to Pilgrim. He stated that when he got to the junction, Pilgrim sought to turn right onto Halton Road. He pulled to the left onto the "mouth" of Halton Road to avoid Pilgrim's vehicle.

However, that Pilgrim, who was turning right, drove into collision with the side of his vehicle, T-5039. His evidence is that he brought T-5039 to a stop on the curb of the road on his left-hand side. He pointed to the place where his vehicle came to a halt. His story impressed me as simple, straightforward and easy to follow. He told his story with impressive clarity.

- [7] There is also the evidence of Shirlan Gibbons, a representative of the insurer for the Second Defendant. He visited the scene of the accident. He took several photographs of the vehicles at the scene of the accident which were admitted into evidence.

THE LEGAL PRINCIPLES

- [8] The parties are agreed that a driver on the road owes a duty of care to others on the road. The duty is to take reasonable care to avoid causing damage to other road users. Each driver is to exercise the care and skill of the ordinary driver. No allowance is given for the inexperienced or learner driver. It is part of the driver's duty to anticipate that other road users may not show the required standard of skill and care.

DISCUSSION

- [9] This is not a case to be determined on the demeanour of the drivers. Each driver appeared sure of his evidence. Neither driver was, as often said, shaken by cross-examination, in that each repeated his case. This case is to be decided on the totality of the evidence and the probability of the accident occurring either as narrated by Pilgrim or by Brathwaite in light of the evidence before me. The evidence of both drivers is that

the photographs admitted into evidence accurately capture the scene of the accident. Also, that the photographs depicting the vehicles after the accident, accurately show the positions where the vehicles were following the impact.

[10] My findings of fact are as follows, that:

- (a) Brathwaite was driving his vehicle along Ebenezer Road going towards Chapel;
- (b) Pilgrim was driving his vehicle along Chapel Road going towards Ebenezer in the opposite direction, when the two vehicles came close to meeting at the junction of Halton Road, Ebenezer Road and Chapel Road, St Philip;
- (c) at the junction, Pilgrim sought to turn right off the major road onto the minor road, that is, onto Halton Road. Brathwaite sought to pull left onto the “mouth” of Halton Road to avoid the collision. Pilgrim, seeking to turn right, drove into collision with the right side of T-5039;
- (d) Brathwaite was not driving at an excessive speed when the collision occurred; and
- (e) there was no third vehicle at the junction exiting Halton Road onto Chapel/Ebenezer Road at the time of or before the collision occurred.

[11] The reasons for my findings of fact are as follows:

- (a) Pilgrim states that T-5039 swerved to avoid colliding with an unknown vehicle and the accident happened away from the junction. However, the photographs showing the vehicles after the accident are more consistent with the accident having occurred at or near the junction, consistent with the evidence of Brathwaite.
- (b) The placement of the vehicles at or near the junction after the collision in the photographs, requires Pilgrim to explain how the vehicles got in their positions, in light of his evidence that the accident occurred away from the junction. I did not think that it was satisfactorily explained.
- (c) I find it difficult to follow the path which T-5039 would have taken, in swerving to the right, away from the unidentified vehicle, avoided a head-on collision with Pilgrim's vehicle, and then collided with the right side of XA-1250, which, based on the evidence of Pilgrim, had not yet reached the junction. Yet, T-5039 ended up on the left side on the curb near the junction.
- (d) Brathwaite's story is simple, straightforward and consistent with the photographic evidence and the placement of the vehicles in the photographs after the collision. I am satisfied that the accident more likely occurred in the way narrated by Brathwaite. Brathwaite's story is more believable and reliable than that of Pilgrim as to how the accident occurred.

[12] Even though Pilgrim's story is consistent with his story given to the Court and to the Police Officer who visited the scene of the accident, Pilgrim is, in my judgment, mistaken as to how the accident occurred.

- [13] Counsel for Pilgrim urged me to take account of the Royal Barbados Police Force Traffic Accident Report (“Police Accident Report”), which attributes liability to Brathwaite and records the accident as having occurred in the way Pilgrim states it did. Neither the police officer who recorded the statements of the drivers, nor the officer who signed the Police Accident Report witnessed the accident. The Police Accident Report contains what the officers saw at the scene of the accident and what drivers and others reported to them as to how the accident occurred. The statements of the drivers involved in the accident, or other witnesses to the accident, recorded in the Police Accident Report or a Police Statement of Witness are out-of-court statements, that is, hearsay: see *Mia Amor Mottley v The Nation Publishing Co. Limited et al*, No 217 of 2011 (decision of 8th October 2018).
- [14] Hearsay statements are inadmissible unless they fall within one of the exceptions under the Evidence Act, Cap 121, or are admitted by consent: see *Mia Amor Mottley v The Nation Publishing Co. Limited et al*, No 217 of 2011 (decision of 8th October 2018). The Police Accident Report was admitted into evidence by the consent of the parties. None of the officers who visited the scene of the accident or prepared the report attended the hearing to give evidence and be cross-examined.
- [15] Importantly, the statement in the Police Accident Report, which Pilgrim’s counsel relies on, does not explain away the difficulties that I have with Pilgrim’s story as to how the accident occurred, as outlined

at para [11] above. I accept that the Police Accident Report shows consistency in Pilgrim's story. But I am faced with two divergent stories. One is a simple easy to follow story by Brathwaite as to how the accident occurred, which is consistent with the photographic evidence. The other, a more difficult to understand story, by Pilgrim, which has not been satisfactorily explained, either by Pilgrim or the statements in the Police Accident Report. The Police Accident Report does not displace what impressed me as a straightforward, easy to follow, believable story by Brathwaite as to how the accident occurred.

[16] I had asked counsel for Pilgrim and Brathwaite to address me on the law relating to a driver taking evasive action to avoid a collision, but causing another, because of the evasive action which Brathwaite is alleged to have taken. I had made the request because of Pilgrim's evidence, that Brathwaite was swerving right to avoid colliding with the unidentified vehicle. Counsel for Brathwaite did not address it, presumably because that was not her case. But counsel for Pilgrim did not address it either. I do not address it here, except to say, as already emerged above, I do not accept that the accident occurred because Brathwaite swerved to the right to take evasive action.

[17] I accept the submissions of counsel for the Second and Third Defendants regarding the duty of the driver turning right off a major road onto a minor road. That is, that a person turning right from a major road onto a minor road owes a duty of care to oncoming vehicles to turn only when it is safe to do so. I find that Pilgrim sought to turn right off the major road onto Halton Road, when it was unsafe to do so, and

collided with T-5039. Accordingly, I hold that the driver of XA-1250, Pilgrim, is wholly responsible for the accident.

DISPOSAL

[18] The parties agreed on the judgment sum. And having heard the submissions of the parties on costs, the judgment of the Court is as follows:

1. judgment is entered for the Second Defendant against the First Defendant in the sum of \$21,782.50 and prescribed costs of \$6,500.00 to be paid by 31st day of January 2019; and
2. judgment is entered for the Claimant against the First Defendant for damages for personal injuries, loss and damage to be agreed or assessed and costs in the sum of \$4,500.00, being the costs of this action. The sum for costs is to be paid by 31st day of January 2019.

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ALRICK SCOTT
Judge of the High Court (Acting)