

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2020/CLE/gen/01019

BETWEEN

STERLING SEYMOUR

Claimant

AND

EVELYN CHARLES

Defendant

Before: Her Ladyship The Honourable Madam Senior Justice Deborah Fraser

**Appearances: Mr. Kelsie Munroe for the Claimant
Ms. Bridget Ward for the Defendant**

Hearing Date: 19 October 2023

Civil Procedure – Negligence – Personal Injury –Duty of Care- Breach of Duty- Damages

JUDGMENT

FRASER, SNR. J:

[1.] This is a trial of an action brought on behalf of the Claimant, Mr. Sterling Seymour (“**Mr. Seymour**”) alleging negligence, personal and damages against the Defendant, Evelyn Charles (“**Ms. Charles**”).

BACKGROUND

[2.] Mr. Seymour is a Police Corporal employed with the Royal Bahamas Police Force.

[3.] Ms. Charles is a citizen of The Commonwealth of the Bahamas.

[4.] On 13 October 2020, Mr. Seymour filed a Writ of Summons, and on 16 April 2021, he filed an Amended Writ seeking the following relief: (i) damages for personal injury and loss; (ii) interest; (iii) further or other relief and, (iv) costs.

[5.] On 12 January 2022, Mr. Seymour filed a Statement of Claim, alleging that on Sunday 21 October 2018, he was on duty as a Police Officer in the area of Woodes Rodgers Wharf and Frederick Street, where he had reason to stop a 2009 Nissan March registration # AE2032 owned and driven by Ms. Charles. Mr. Seymour approached the vehicle with another officer, following police protocol, and asked Ms. Charles to turn off her vehicle. Ms. Charles allegedly became uncooperative and refused to comply. While Mr. Seymour attempted to turn off the vehicle himself, Ms. Charles accelerated, dragging him a short distance. As a result, Mr. Seymour suffered damages and losses, which he attributes Ms. Charles's negligence.

[6.] For completeness, the particulars of negligence in paragraph [6] of the Statement of Claim state as follows:

“6. The Plaintiff suffered damages and loss due to the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

- a) Failed to keep a proper lookout for pedestrians.**
- b) Failed to drive in a safe manner.**
- c) Failed to avoid striking the Plaintiff.**
- d) Failed to safely control their vehicle.**
- e) Failed to apply the brakes on the motor vehicle in time to avoid striking the Plaintiff or at all.”**

[7.] Ms. Charles filed a Notice of Appearance on 7 December 2020, a Memorandum of Appearance on 10 December 2020 and a Defence on 26 January 2022.

[8.] On 9 January 2023, Mr. Seymour filed a Statement of Facts and Issues and on 19 January 2023 filed a Witness Statement.

[9.] On 12 September 2023 the Witness Statement of Evelyn Charles was filed.

ISSUES

[10.] The central issues are:

- a) **Whether the Defendant acted negligently and is liable to the Claimant for damages.**
- b) **If so, whether the Court finds the Claimant was contributory negligent.**

EVIDENCE

The Evidence of Sterling Seymour

[11.] On 19 March 2023, Mr. Seymour filed his Witness Statement (“**Seymour WS**”) which stood as his evidence in chief at trial. It provides that:(i) on 21 October 2018 he was on duty with other Officers near Prince George Wharf; (ii) while conducting a road check, he saw Woman Police Officer Johnson attempting to stop a 2009 Nissan March (registration number AE2032) for excessive honking; (iii) he observed Officer Johnson speaking with Ms. Charles and instructing her to exit the vehicle; (iv) Mr. Seymour then drove off hitting Officer Johnson in the process; (v) Mr. Seymour ran to the vehicle and ordered Ms. Charles to put it in park, turn it off, and step out; and (vi) Ms. Charles refused to comply.

[12.] Seymour WS further alleged that: (i) he attempted to turn off the vehicle himself, Ms. Charles accelerated dragging him a short distance; (ii) she suddenly braked, throwing him into a parked vehicle; and (iii) he immediately felt pain in his neck, lower back and knee; (iv) an ambulance transported him from the scene to Doctor’s Hospital and (v) he was diagnosed with lumbosacral strain, cervical radiculopathy with a prolapsed disc and a lateral collateral ligament strain in the right knee.

The Evidence of Evelyn Charles

[13.] On 12 September 2023, Evelyn Charles filed her Witness Statement (“**Charles WS**”), which served as her evidence in chief. In the Charles WS, she claimed that: (i) on 21 October 2018 she was driving along Bay Street near Prince Charles George Wharf; (ii) she noticed someone in army fatigues attempting to flag her down; (iii) she slowed down slightly and checked her rearview mirror to see if she recognized the person; (iv) as the individual approached, she saw that it was a tall, big, dark-skinned man whom she did not know; (v) the man was not dressed as traffic police.

[14.] Charles WS further provides: (i) as she attempted to drive away, the man caught up to her vehicle; (ii) he reached her through the driver’s window and grabbed her, preventing her from controlling the car; (iii) he then slammed her onto the pavement causing her vehicle to move

forward and graze two parked vehicles; (iv) she was traumatized by the incident and unable to speak; (v) she was handed a police report, which she placed in her jacket; (v) she was taken to Princess Margaret Hospital, where she was treated for locked jaw, a bruised chin and bruises on her shoulder and knee.

Findings of Fact

[15.] I have considered the testimony of the witnesses. I shall provide my summary of their oral evidence and findings of fact based on such evidence, along with written evidence before me. The only witnesses called were the Claimant and the Defendant. The witnesses had differing accounts of what transpired during the incident on 21 October 2018.

Mr. Seymour

[16.] Mr. Seymour's testimony included inconsistencies regarding his proximity to Ms. Charles's vehicle, his identification as a police officer, and his actions during the incident. He initially stated that he was 10 feet away when WPC Johnson approached Ms. Charles but later claimed he was only two steps away. He testified that after Ms. Charles allegedly injured WPC Johnson and drove off, he approached her vehicle and asked her multiple times to put the vehicle in park. He admitted that he did not verbally identify himself as a police officer, instead relying on his uniform and police vest. He further testified that when Ms. Charles did not comply to his command, he reached into her vehicle to put it in park. He later acknowledged that this action was not part of standard police training and could be dangerous.

[17.] Mr. Seymour testified that while he was hanging from the vehicle, Ms. Charles deliberately swerved to hit parked cars. However, under cross-examination, he conceded that she may have applied the brakes. He was unable to recall where he landed after the crash and relied on a medical report issued a year later to describe his injuries instead of providing immediate medical documentation.

[18.] Additionally, he confirmed that while Ms. Charles had been charged, he did not know the outcome of the case and was not called to give evidence. He also admitted that he did not call WPC Johnson as a witness, explaining the he had no means of contacting her after she was transferred to a Family Island.

[19.] His testimony contained conflicting statements regarding key details, including the events leading up to the incident, the identification process, and the sequence of actions taken. These inconsistencies raise questions about the reliability of his account.

Ms. Charles

[20.] Ms. Charles's testimony indicated that she did not knowingly ignore lawful police commands but instead acted out of fear for her safety. She stated that she saw *a man in army fatigues* and did not realize he was a police officer. She confirmed she had *no interaction with a female officer* and was unaware of any law enforcement presence. Her initial reaction was

confusion, followed by fear when the man *approached her at speed*, leading her to attempt to drive away. She further testified that she did not recognize the person as an officer, and there was *no verbal exchange before she was forcibly removed from her vehicle*. Her testimony suggests that she perceived the situation as a potential threat, prompting her to act out of self-preservation rather than defiance.

[21.] Ms. Charles also described the sequence of events after she was pulled from her car, explaining that her vehicle *rolled forward and struck two parked cars* because it was not in park. She could not estimate the vehicle's speed at the time, as she had already been forcefully taken to the ground. When questioned by officers, she did not respond immediately due to shock. She later reiterated that she did not stop because she was *unaware the individual was a police officer and feared for her life*. Additionally, she maintained that *no female officer was present*. Her testimony remained consistent throughout, and based on its coherence and credibility, I find her to be a reliable witness.

SUBMISSIONS

[22.] The Claimant's Counsel Mr. Kelsie Munroe ("Mr. Munroe) submits inter alia that when Ms. Charles accelerated her vehicle while turning into Mr. Seymour it caused Mr. Seymour to be dragged a short distance as Ms. Charles's vehicle crashed into other vehicles and caused injuries which is evident by the Police Accident Report for which Ms. Charles caused the accident. Counsel referred to exhibit "SS2" which confirms Mr. Seymour was injured.

[23.] Mr. Munroe contends that the evidence of Ms. Charles is not consistent and should not be accepted on the basis that Ms. Charles stated her vehicle had grazed two vehicles however the police report showed that Ms. Charles's vehicle had extensive front end damage and the two parked cars had damages to the rear end and front end. Mr. Munroe argues that the evidential burden for Mr. Seymour is on a balance of probabilities when considering the evidence the scale should be tipped in the Claimant's favor.

[24.] In conclusion, Mr. Munroe posits that Mr. Seymour has proven his case and that the Court should find Ms. Charles liable for the injuries Mr. Seymour sustained and any damage flowing from the incident.

Defendant's Submission

[25.] Counsel for the Defendant, Ms. Bridget Ward (Ms. Ward"), submits that the Court must determine four key issues: (i) whether the Defendant was negligent, (ii) whether the alleged injuries were caused by the Defendant, (iii) whether the Plaintiff was contributory negligent, and (iv) whether the Plaintiff is entitled to damages.

[26.] Ms. Ward argues that Ms. Charles was not negligent. In support of this, she relied on **The Attorney General v Craig Hartwell [2004] UKPC 12**, which outlines the principles of negligence, including duty of care, the obligation to take reasonable precautions. She asserts that

Ms. Charles had a reasonable basis for her actions, as she was uncertain of the Claimant's identity when he attempted to flag her down. Given that it was late at night, the Claimant did not verbally identify himself, and he relied solely on his fatigued clothing as a means for recognition, Ms. Charles's decision to drive away was reasonable under the circumstances.

[27.] Ms. Ward further contends that while Ms. Charles owed a duty of care to Mr. Seymour as a road user, it was the Claimant's own actions of reaching into the Defendant's vehicle, that caused the chain of events. On this basis, she submits that Ms. Charles neither acted negligently nor breached her duty of care towards Mr. Seymour.

[28.] Additionally, Ms. Ward argues that Mr. Seymour's sworn testimony is inconsistent with the pleadings. The Writ states that the Claimant, as a pedestrian, was struck and dragged by the Defendant. However, the Statement of Claim alleges that he approached the Defendant's vehicle with another officer, issued commands for the Defendant to turn off her vehicle, and was subsequently dragged while attempting to do so himself. These inconsistencies raise credibility concerns.

[29.] Given that the incident occurred in 2018, Ms. Ward submits that the passage of time may have affected both parties' recollections. Nevertheless, the burden remains on the Claimant to prove his case. While it is undisputed that an incident occurred, counsel argues that there is no conclusive medical evidence linking the Claimant's alleged injuries to the Defendant's actions. The only medical documentation presented is a letter dated 20 August, 2019, from Dr. Winston Phillips addressed to the National Insurance Board, referencing an injured neck and lower back. However, Dr. Philips was not called to testify, and the Claimant provided no further details about his injuries beyond stating that his medical report was before the Court. Furthermore, the Claimant failed to call WPC Johnson, who was allegedly present during the incident, to corroborate his version of events. His explanation for not calling her—that he could not contact her—remains unsubstantiated.

[30.] On the issue of contributory negligence, Ms. Ward submits that if Ms. Charles were found to be negligent, the Claimant's action contributed to the incident. She relies on **Section 3(1) Contributory Negligence Act Chapter 75** and the case of **Angelina Turnquest v Stephen Rahming 2013/CLE/gen/01409** where Charles J (as she then was) applied the test set out in **Davies v Swann Motor Co. (Swansea Ltd. Jams, Third Party [1949] 2 KB 291**. In **Turnquest**, the court found the accident was partly caused by the Defendant's negligence but apportioned liability at 75% to the Claimant and 25% to the Defendant. Similarly, Ms. Ward argues that the dominant cause of the incident was the Claimant's conduct.

[31.] Ms. Ward contends that while there are conflicting versions of the events, it is undisputed that the incident resulted in damage to parked vehicles. However, there is no conclusive evidence linking the Claimant's injuries to the Defendant. Applying the principles in **Davies (supra)**, she argues that the Claimant acted recklessly by reaching into the Defendant's vehicle to put it in park. Given that the Claimant was wearing army fatigues and the Defendant was a lone female in the

vehicle, her instinctive reaction to press the accelerator was reasonable. Therefore, liability should primarily rest with the Claimant. If the Claimant sustained any injuries on October 21, 2018, Counsel asserts that such injuries were a direct result of his failure to exercise reasonable care for his personal safety.

[32.] Additionally, Ms. Ward argues that the Claimant provided no substantive evidence to support his claim for damages beyond his own testimony. The burden remains on the Claimant to prove the extent of his injuries, and without medical evidence, the Court cannot make a finding on damages. She further submits that the Claimant himself acknowledged that his actions were not part of his training and that he failed to exercise due regard for his own safety. Accordingly, the Court should find him liable for his own injuries.

LAW

[33.] In civil cases, the person making a claim is responsible for proving it. This principle is known as the burden of proof, which means that if someone claims another person was negligent, they must provide evidence to support their claim. This was emphasized in **Angelina Turnquest v Stephen Rahming BS 2002 SC 023**, where the court reaffirmed that the party bringing the case must prove their case.

[34.] In my consideration of this issue, I found the authorities cited by Counsel for the Defendant instructive. I also took note of other decisions and authorities which I found useful on the issue of negligence. A classic definition is found in the case of **Blyth v Birmingham Waterworks [1856] 156 ER 104.7** where Alderson B opined that negligence happens when someone fails to act as a careful and reasonable person would in the same situation. This could mean not doing something they should have done or doing something reckless that a responsible person would have avoided.

[34.] It is well established that for a claim in Negligence to succeed, the Claimant must prove on the balance of probabilities the following elements, as outlined by Gilbert Kodilinye in the text, **Commonwealth Caribbean Tort Law, Second Ed. (2000) at page 77:**

“There are three elements to the tort: a duty of care owed by the defendant to the plaintiff; breach of that duty by the defendant; and damage to the plaintiff resulting from that breach.”

[35.] In **Tyson Strachan v Albany Resort Operator Ltd [2022] 2 BHS J No. 93** the Court of Appeal in affirming the judgment of the Court below, held:

“The Court below took the view that the appellant had failed to establish the required elements of negligence. The appellant is required to prove breach of duty and that the breach caused reasonably foreseeable injuries. The judge ruled they did not prove the essential ingredients of negligence on the evidence at trial and the court did not see where she was plainly wrong or that her conclusion were not based on the evidence before her.

The statement of claim failed to set out the injuries and the appellant led no evidence to prove the injury. There was no medical evidence to prove that there was an injury or that the injury was because of negligence by the respondent.”

[36.] In **Angelina Turnquest v Stephen Rahming (supra)**, Charles J, in paragraph 9, reaffirmed these essential components of negligence, stating that liability arises from the defendant's conduct and comprises three key elements:

“9 ...in the tort of negligence, liability is based on the conduct of the defendant and has three elements namely:

- 1. The existence of a duty of care situation (i.e. one in which the law attaches liability to carelessness). ...**
- 2. Breach of the duty of care by the defendant, i.e. he failed to measure up to the standard set by law; and**
- 3. A causal connection between the defendant’s careless conduct and the damage.”**

[37.] In the **Attorney General v Craig Hartwell [2004] UKPC 12**, Lord Nicholls of Birkenhead, at paragraph 20 provides a summation of the principles of negligence as a basis for liability. His Lordship emphasized that negligence is assessed by an objective standard, that is, how a reasonable person should have acted under the circumstances. However, not every deviation from this standard results in legal liability. To determine when such a shortfall leads to liability, courts have developed key legal concepts, including the “duty of care.” This duty requires individuals to take reasonable care to prevent foreseeable harm to others. In the context of road use, drivers owe a duty of care to others to avoid causing personal injury through negligent actions.

Discussion and Analysis

Whether Ms. Charles acted negligently and is liable to Mr. Seymour for damages?

[38.] After reviewing the submissions of both counsels, the relevant law, and the evidence presented, the Court must determine whether the Defendant was negligent, whether the Claimant’s injuries were caused by the Defendant, and whether the Claimant was contributorily negligent.

[39.] The Court, in deciding the question of negligence, has considered the evidence and testimony of both parties. It is undisputed that an incident occurred on 18 October 2018 between both parties. However, no independent witness evidence was presented in this matter. Therefore, the case turns on the credibility of the parties. In this regard, the Court must carefully assess both versions of events, given the significant differences between them. In evaluating credibility, I considered the demeanor of both parties, as well as any inconsistencies or discrepancies in their evidence particularly where they were material to the issue of negligence.

Duty of Care

[40.] The first element of negligence is the duty of care, which means that an individual must act in a way that does not put others at risk of harm. Drivers must operate their vehicles safely, and police officers must follow proper procedures to prevent unnecessary danger. Both Ms. Charles and Mr. Seymour had a duty to act responsibly in this situation. As established in **Attorney General v Craig Hartwell [2004] UKPC 12**, negligence is assessed by an objective standard—how a reasonable person should have acted under the circumstances.

[41.] In short, both parties had a duty of care in this situation.

(i.) Ms. Charles, as a driver, was required to operate her vehicle responsibly and adhere to lawful instructions given by police officers.

(ii) Mr. Seymour, as a police officer, was responsible for following proper procedures while engaging with members of the public to prevent harm or escalation.

[42.] Since both had legal obligations in their respective roles, I find that the first element of negligence, duty of care is satisfied for both parties.

Breach of duty

[43.] A breach of duty occurs when a party fails to act as a reasonable person would in the same situation (**Blyth v Birmingham Waterworks [1856]**). The Court of Appeal in **Tyson Strachan v Albany Resort Operator Ltd [2022]** reaffirmed that a claimant must prove both a breach of duty and that the breach caused reasonably foreseeable injuries.

[44.] Ms. Charles said she did not know that Mr. Seymour was a police officer and thought she was being approached by a stranger in army fatigues. She reacted by trying to drive away because she felt threatened, not because she was trying to ignore the police instructions. I find that her actions, in the circumstances, were reasonable and do not amount to breach of duty. Conversely, Mr. Seymour's conduct contributed to the escalation of the incident, and his failure to follow proper police procedure constitutes a breach on his part. Accordingly, I find that Mr. Seymour breached his duty of care towards Ms. Charles.

Causation

[45.] To prove negligence, there must be a direct link between the breach of duty and the harm suffered. The key issue is whether Ms. Charles's action directly caused Mr. Seymour's injuries and property damage.

[46.] Mr. Seymour's statements about how the accident happened were inconsistent and unclear. On the other hand, Ms. Charles's version of events is more credible—she said she was forcefully pulled from her car, which caused it to roll forward and hit two parked cars. Since Mr. Seymour later admitted that she may have applied the brakes, his claim that she intentionally hit the cars is not convincing. I accept Ms. Charles's version of the incident and find that Mr. Seymour's action significantly contributed to the incident. However, even if Ms. Charles' action played a role, her reaction to a perceived threat was reasonable under the circumstances and does not constitute negligence.

Damage

[47.] A successful negligence claim requires proof of actual harm (**Tyson Strachan v Albany Resort Operator Ltd**). Mr. Seymour failed to provide timely medical evidence, relying on a doctor's letter issued nearly a year after the accident, which raises concerns about its reliability.

Given the lack of direct and immediate medical documentation, I find the evidence does not support Mr. Seymour's claim for damage. As a result, his claim is dismissed.

Contributory Negligence

[48.] The doctrine of contributory negligence applies in cases where a Claimant's own actions contribute to the harm they have suffered, potentially reducing or eliminating their entitlement to damages. In this case, Mr. Seymour's actions played a significant role in the events leading to his alleged injuries. By reaching into a civilian's vehicle in an attempt to turn it off, an action he admitted was not in accordance with proper police protocol. Mr. Seymour failed to exercise reasonable care for his own safety.

[49.] However, since Ms. Charles was not found liable for negligence, the issue of contributory negligence does not arise. Even though Mr. Seymour's action may have been reckless they do not affect the outcome, as Ms. Charles reacted out of fear and not negligence. Since liability has not been established against Ms. Charles, there is no basis for apportioning fault to Mr. Seymour. Accordingly, Mr. Seymour's claim fails, and no damages can be awarded.

Conclusion

[50.] In civil proceedings, the Court's overriding objective is to ensure justice and fairness. The inconsistencies in Mr. Seymour's testimony, the lack of medical evidence, and his failure to follow proper police procedures do not support his claim.

[51.] Ms. Charles is not liable for negligence or damages.

[52.] Accordingly, I dismiss the Claimant's action.

[53.] The Claimant shall pay the Defendants' costs, to be assessed by this Court, if not agreed.

Senior Justice Deborah Fraser

Dated this 7th day of February 2025