

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2020/CLE/gen/00509**

BETWEEN

KEMUEL STUART

First Plaintiff

AND

TANJANECKA BELL

Second Plaintiff

AND

RODNEY DARVILLE

First Defendant

AND

JULIAN BROWN

Second Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Donovan Gibson for the Plaintiffs

Roger Minnis for the Defendants

22 November 2021, Submissions: 29 November 2021 and 25 April 2022

RULING

WINDER, J

This is a dispute arising from a traffic accident which took place on 6th June 2019 on Market Street in the vicinity of John Road in New Providence.

- [1.] The short facts which I accept were that the Second Plaintiff (Bell) was travelling in a 2009 Mitsubishi Galant south on Market Street in the western lane when she was struck by a 1985 Ford Dump Truck driven by the Second Defendant (Brown).
- [2.] Market Street is a one-way street with dual lanes. Brown was originally in the eastern lane along Market Street when he entered the western lane hitting Bell. Bell had been established in that lane when she was struck by Brown. Brown left the scene after the incident and before the police arrived. Brown had to be located to be made to account for the accident.
- [3.] The incident was captured on the surveillance video of a neighbouring building. The video was entered into evidence.
- [4.] Brown was charged with driving without due care and attention and failing to remain stationary to which he pleaded guilty and was convicted on 24 September 2019.
- [5.] The 2009 Galant is owned by the First Plaintiff (Stuart). The 1985 Ford Dump Truck is owned by the First Defendant (Darville).
- [6.] This action was commenced by specially indorsed Writ of Summons. The Statement of Claim indorsed thereon provides:
 3. On the 7th June 2019 the Second Defendant was driving the First Defendant's vehicle along Market Street heading South in the East lane in an attempt to make a right turn from the East lane, cut across the First Plaintiff's vehicle which was driving in the west lane and collided with the First Plaintiff's vehicle which resulted in loss and damage to the First Plaintiff's vehicle.

4. The said accident was caused by the negligence of the Second Defendant and by a Royal Bahamas Police Force Road Accident Report dated the 19th September 2019 was charged with driving without due care and attention contrary to Section 46 of the Road Traffic Act and failing to remain stationary after a traffic accident contrary to Section 56(1) & (3) of the Road Traffic Act.

5. By a Certificate of Conviction, the Second Defendant appeared before Acting Magistrate Darron D. Ellis of the Traffic Court, Magistrate's Court #12 Nassau Street Complex on the 24th September 2019 and entered a guilty plea to both counts. He was fined a total of \$225.00.

Particulars of Negligence

- i. Driving too fast.
- ii. Failing to keep any or any proper look out and/or to observe or heed the presence of the Second Plaintiff
- iii. Failing to see the Second Plaintiff in sufficient time to avoid colliding with him (sic) or at all
- iv. Failing to stop, to slow down, to swerve, or in any other way so to manage or control the said vehicle as to avoid the collision.
- v. Failing to stay in his lane

Particulars of Special Damage

| | |
|------------------------|-------------|
| Cost to repair vehicle | \$ 7,755.78 |
| Rental Expense | \$ 4,800.00 |
| Estimate | \$ 20.00 |
| Total | \$12,575.78 |

6. The Plaintiff further claims interest on any sum found due at such a rate and for such periods as the Court deems just pursuant to Section 2 and 3 of the Civil Procedure (Award of Interest) Act.

AND the Plaintiff claims:-

1. The sum of \$12,575.78
2. Damages
3. Interest pursuant to the Civil Procedure (Award of Interest) Act
4. Costs.
5. Further or other relief as the Court deems fit

[7.] The Defence filed on behalf of the Defendants provides:

4. The 1st and 2nd Defendants admit paragraph 4 of the Plaintiff's Statement of Claim save for the fact that the accident was caused by the negligence of the 2nd Defendant.

5. The 2nd Defendant admits paragraph 5 of the Plaintiffs (sic) Statement of Claim and states that he remembers pleading guilty to leaving

the scene of the accident because young men in that area that appeared to know the Plaintiff were gearing up to fight.

6. The 1st and 2nd Defendant (sic) denies paragraph 5(i) and states that on the contrary it was the 2nd Plaintiff that drove too fast under the circumstances.

7. The 1st and 2nd Defendants deny paragraph 5(ii) of the Statement of Claim and states that it was the 2nd Plaintiff that approached his vehicle from behind and tried to overtake when he was signaling to them through John Road, off Market Street. The 2nd Defendant was driving and caused the collision.

8. The 2nd Defendant denies paragraph 5(iii) of the Statement of Claim and puts the Plaintiffs to strict proof thereof.

9. The 2nd Defendant denies paragraph 5(iv) of the Statement of Claim and states that it was the 2nd Plaintiff who failed to stop, slow down or swerve in any way so as to manage or control the said vehicle so as to avoid the collision.

10. The 1st and 2nd Defendants denies paragraph 5(v) of the Plaintiff's Statement of Claim and state that in fact it was the 2nd Plaintiff that failed to stay in her lane.

[8.] All of the parties gave evidence at the trial. Having seen and heard them as they gave their evidence I have no hesitation in indicating that I preferred the evidence of Bell as to how the accident took place. As road users, Brown undoubtedly had a duty of care towards Bell. I am satisfied that Brown improperly left his eastern lane and entered into the western lane in which Bell had already been established. Brown breached his duty of care thereby causing damage to the 2009 Mitsubishi Galant owned by Stuart. Brown was acting in the course of his employment or service thereby imposing vicarious liability on Darville as the owner of the Ford Dump Truck.

[9.] In the circumstances therefore I find, on balance, that the Defendants are liable for the damage sustained to Stuart's vehicle.

[10.] The Plaintiffs' claim damages for repairs to the vehicle and for loss of its use in the amount of \$12,575.78.

[11.] The Plaintiffs rely upon an estimate from J Carey Auto which says that they will repair the vehicle for the sum of \$7,755.78. The Defendants object to the estimate on the basis they say that:

“there is no evidence exhibited before the court to establish that part of the Plaintiff's claim. The only items put into exhibit were the witness statements from the parties notwithstanding the fact that certain documents were referred to during the trial. In essence, there being no Agreed bundle of documents between the parties save for the video of the accident, it became incumbent upon the Plaintiffs to tender into evidence the necessary documents to prove their claim.”

[12.] The Defendants and the Plaintiffs were ordered to agree a bundle of documents however each party produced their separate bundle. Until receipt of the closing submissions the court proceeded on the basis that all of the documents had been agreed, from the perspective of admissibility. Otherwise, no explanation was provided for non-compliance with the directions order.

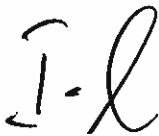
[13.] Respectfully, I did not accept this submission of the Defendants. Stuart's witness statement stood as his examination in chief and was admitted as “P2”. That witness statement (paragraph 10) referred to and incorporated quotes from J Carey Auto Center and from Craftsman Auto Care in his bundle of documents. No objection was taken to this admission. When examined by his counsel, Mr Gibson, Stuart was specifically taken to the documents in his bundle. Further, not only was it admitted, the Defendants' counsel cross examined on it, particularly why it took so long for Stuart to secure them.

[14.] The Defendants produced lower estimates based upon photographs taken of the vehicle. I did not accept these estimates and preferred the estimate of J Carey Auto in the amount of \$7,755.78.

[15.] In respect of the claim for loss of use, Stuart's evidence was that he paid \$4,800 to secure rental vehicles until he was no longer able to afford to do so. These were likewise incorporated in Stuart's examination in chief. The evidence was that Stuart could not afford to repair the vehicle. I accepted therefore that he was unable to mitigate his damages and paid this sum.

[16.] In all the circumstances therefore I give judgment for the Plaintiffs in the amount of \$12,575.78 as prayed in their Writ of Summons. The said sum shall bear interest in the amount of 3% per annum from the date of the filing of the Writ of Summons to the date of judgment and accrue thereafter at the statutory rate. The Plaintiffs shall have their reasonable costs to be taxed if not agreed.

Dated the 29th day of April 2022

A handwritten signature in black ink, appearing to read 'I.R. Winder', with a stylized flourish at the end.

Ian R. Winder

Justice