

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 094 OF 2003

**BETWEEN ADMINISTRATOR GENERAL OF JAMAICA CLAIMANT
(Administrator of Estate of Clifton Scarlett)**

AND VINTON AND PONCITA SMITH FIRST DEFENDANT

AND PATRICK WILLIAMS SECOND DEFENDANT

CONSOLIDATED WITH HCV 0941 OF 2003

**BETWEEN CECELIA WILLIAMSON CLAIMANT
(Administratrix of Estate of
Otis Dawson and Curtis Dawson)**

AND VINTON AND PONCITA SMITH FIRST DEFENDANT

AND PATRICK WILLIAMS SECOND DEFENDANT

**Manley Nicholson instructed by Nicholson Phillips for
claimant in both claims**

Lawton Heywood for defendants in both claims

October 3, 4 and December 6, 2007

**FATAL ACCIDENTS ACT, RULE 29.6 OF THE CIVIL
PROCEDURE RULES, SECTION 31E (1) OF THE EVIDENCE
ACT**

SYKES J.

1. This claim was brought under the Fatal Accident Act. The three deceased persons are Messieurs Clifton Scarlett, Otis Dawson and Curtis Dawson. The claim was precipitated by a

motor vehicle collision involving a truck driven by Mr. Patrick Williams and owned by Mr. and Mrs. Vinton Smith. The collision occurred on April 10, 1999, along the Runaway Bay to St. Ann's Bay main road in the parish of St. Ann.

2. The claim was dismissed because the claimant failed to adduce any evidence indicating that the deaths were caused by the wrongful act of Mr. Patrick Williams for which Mr. and Mrs. Smith would be vicariously liable. I dismissed the claim on October 4 and delivered an oral judgment. These are the written reasons.

3. The sole witness called by the claimant was Mr. Haughton Newell, Inspector of Police, who was the sub-officer in charge of traffic at the St. Ann's Bay Police Station. He testified that on April 10, 1999, he was called to the scene of the collision. When he arrived he saw a Leyland Freighter motor truck bearing registration plates 2052 CC resting on top of a Toyota Corolla motor car bearing registration plates PP 953 W. Both vehicles were on the left side of the road as one faces Runaway Bay. The Inspector formed the view that there was a head on collision.

4. The Inspector made other observations. He saw three bodies in the motor car and at the time he saw them, they appeared to be dead. He also saw broken glass and metal strips in the left lane of the main road as one heads towards St. Ann's Bay from the Runaway Bay direction. He also saw a groove in the road beginning at the site of the broken glass and ending where the vehicles were resting. The truck was facing Runaway Bay and the car was facing St. Ann's Bay. He added that as one comes from St. Ann's Bay one would come upon the glass in the road before reaching the vehicles. He also took measurements.

5. Mr. Nicholson kindled with uninhibited, unbridled enthusiasm formed the exceptionally optimistic view and submitted with unrestrained passion that from this evidence the court could infer that the driver of the truck must have been negligent thereby causing the collision with the consequence that the three persons mentioned above died. The argument is unsustainable and is not accepted. There are too many yawning gaps between the opening premise and ultimate conclusion. The evidence is circumstantial and it points in too many directions including negligence on the part of the driver of the car.

6. The bundles filed by the claimant contained a witness summary from the Inspector filed on September 18, 2007. A witness summary may be filed instead of a witness statement. The person filing the summary must certify on the witness summary the reason for not filing a witness statement (see rule 29.6 (1) and (2) of the Civil Procedure Rules). The witness summary in this case stated that the reason for its filing was that the witness was off the island and was therefore not available to sign the witness statement (see paragraph 1 of the witness summary). It was on this basis that I allowed Mr. Nicholson to elicit oral testimony from the witness. When the witness was cross examined it turned out that he was off the island for ten days in February 2006, and was in the island since March 2006 right up to the time he testified. This meant that the reason for filing the witness summary in September 2007 was not quite accurate.

7. Mr. Nicholson sought to adduce evidence of an alleged admission made by Mr. Patrick Williams to the Inspector. I disallowed this evidence. There was no indication in any document filed by the claimants alleging that any admission was made by Mr. Williams. Mr. Nicholson admitted that the

admission did not exist in any document contemporaneous with the collision, that is to say, not in the accident booklet usually prepared in these matters, not in any statement or report prepared by the police concerning the accident. The new litigation regime is designed to give advance warning of the nature of the evidence proposed to be elicited at a trial. An admission is so significant that it ought properly to have disclosed, or at the very least, the admission should be supported by contemporaneous documentation.

8. Finally, Mr. Nicholson sought to rely on a report from the Superintendent of the St. Ann's Bay Police Division. The report, in the essential parts, says that the truck left its correct side and went over to the other side of the road and collided with the car. Mr. Nicholson suggested that this was admissible under section 31E of the Evidence Act. This argument ignores the terms of the Act.

9. Section 31E (1) of the Evidence Act states

Subject to section 31G, in any civil proceedings, a statement made, whether orally or in a document or otherwise, by any person (whether called as a witness in those proceedings or not) shall subject to this section, be admissible as evidence of any facts stated therein of which direct oral evidence by him would be admissible.

10. Section 31 G deals with computer generated documents. The report that was sought to be tendered is not a computer generated document.

11. The text of section 31E (1) is facilitating the admission of evidence which could have been given had the witness turned up at court. The test of admissibility under this provision where the person tendering the statement is seeking to say that the court should accept the truth of what is contained in the statement as distinct from the fact that the statement was made is this: had the witness appeared in court could his evidence contained in the statement been given by him to prove any fact alleged in statement? If the answer to that is no, then the statement or those parts of it as offending the section are not admissible. It is too plain that the Superintendent had he attended court could not give the evidence in the report in order to prove how the accident occurred since it would be hearsay. It was not suggested that it was a document produced in the course of a trade, business or profession.

12. I have said enough to indicate why the claims were dismissed and judgment entered for the defendants in both claims with costs to the defendants to be agreed or taxed.