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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.C.L. 1999/C-302

BETWEEN HENRY CAMPBELL CLAIMANT
AND CECIL WHITTLE DEFENDANT

Mr. Leslie Campbell, instructed by Campbell & Campbell for the Claimant.

Mr. Manley Nicholson, instructed by Nicholson Phillips for the Defendant.

Heard: January 31, February 1 and April 19, 2005

Mangatal J:

1. Mr. Campbell claims to have suffered personal injury, loss and damage as a result of an accident on the 20th of September 1998.
2. That day, at about 12:15 p.m., Mr. Campbell was going to church. He was standing at a bus stop in the vicinity of Mercury Gardens along the Kitson Town Main Road. The Kitson Town Main Road allows traffic to travel in two directions, one lane towards Kitson Town and one towards Spanish Town. The bus stop is on the left hand side of the road when going towards Kitson Town and is at the edge of the asphalted surface of the road next to the banking. Mr. Campbell says he was standing at the bus stop waiting on a

taxi. While waiting at the bus stop he saw a car parked on the opposite side of the road facing Spanish Town. Another car was coming from Kitson Town and was overtaking the parked one. Mr. Campbell states that he suddenly saw a car coming from the Spanish Town direction come up and hit him down at the bus stop. The next thing he remembered was being in the Spanish Town hospital with injuries to his hand, his head and his neck.

3. Mr Whittle's case was that on the day in question, which was a Sunday, at approximately 10:50 a.m. he was operating his motor car in a northerly direction along Kitson Town Main Road (which would be towards Kitson Town) at a speed of about 30 m.p.h. He was traveling in the left lane. Upon reaching in the vicinity of Mercury Garden, he noticed an individual running to catch a taxi which was on the other side of the road. Suddenly the man ran straight out into the path of Mr. Whittle's moving vehicle. As a result of his own actions the man sustained injuries and was taken to the Spanish Town Hospital where he was admitted.
4. As is usual in most cases, the parties gave evidence in cross-examination which was at times inconsistent with, or at variance from the evidence in examination-in-chief. In the case of Mr. Campbell the evidence-in-chief took the form of his witness statement and in the case of Mr. Whittle it took the form of a

witness summary in which was embodied the contents of a handwritten statement which Mr. Whittle had given to his insurers.

5. In cross-examination Mr. Campbell said that the church that he regularly attends is the Mount Faith Spiritual Baptist Church which is located on Saint Johns Road towards the Spanish Town Road direction. Mr. Campbell said that he lives opposite the Mercury Gardens Housing Scheme but he has to walk through the Mercury Garden Housing Scheme to come to the Kitson Town main road. Coming from the Mercury Gardens Housing Scheme, if going to his regular church he would have to cross the road. He denied that he was going to his usual church that Sunday morning and said that that Sunday morning he was visiting a church up by Kitson Town. The church at Kitson Town started at between 11:30 and 12:00 and Mr. Campbell's usual church also started the same time. From the intersection at the main road and Mercury Gardens Housing Scheme it would take 15-20 minutes to reach either his regular church or the church he was visiting that morning. He denied that he was running late for church that morning. He said that his wife had already left for church ahead of him. Even though she left ahead of him he knows that his wife went to their regular church because the third Sunday was her Sunday at their regular church and this was a third Sunday. He

had decided that morning when he woke up to go to the church in Kitson Town.

6. The bus stop was a real bus stop with a shelter. Mr. Campbell said that he had stopped to clean off his shoes. His right foot was on a stone on the banking and his left foot was on the soft shoulder. He said that the soft shoulder was not asphalted. He straightened up from cleaning his shoes and that was when he was hit. He did not move from where he was cleaning his shoes before Mr. Whittle's car hit him. Mr. Campbell could not say where he ended up falling after the impact. He could not say whether the car driven by Mr. Whittle was on the soft shoulder or on the main road at the time when he Mr. Campbell was hit. What was the most difficult thing to understand about Mr. Campbell's case was that, having been asked several times in cross-examination, Mr. Campbell consistently responded that he was hit whilst he was on the asphalted section of the roadway. He also admitted that most of his injuries were to his upper body and not to his legs. He said that at the point where the accident happened three cars could pass if one includes the soft shoulder.
7. In cross-examination Mr. Whittle said that when he saw the person the person was walking fast, as if he was about to cross the road. This is as opposed to "running," which was the term used in the witness summary. When he saw the person the person was right

beside the car and he had already come in contact with the left side of Mr. Whittle's right-hand drive car and damaged the windshield. Mr. Whittle also said that there was a straight stretch of road in the vicinity where the accident happened for approximately 100 yards. He didn't see any motor cars parked along that 100 yard stretch. He said that he could see clearly and nothing was blocking his vision. He at first during cross-examination said that he did not see any taxi and then he subsequently said that he did not recall seeing any taxi.

8. The burden is on the Claimant Mr. Campbell to prove that on a balance of probabilities, the Defendant is liable to him in negligence for the injury loss and damage suffered. He does so by proving certain facts from which the court will determine whether negligence may reasonably be inferred and whether, assuming negligence may be reasonably inferred, it is in fact inferred.
9. I am not satisfied of any negligence on the part of the Defendant Mr. Whittle. I have had a difficult time grappling with the Claimant's insistence that he was hit while he was on the asphalted section of the roadway. This is more consistent with the Defendant's case. I also found the explanation about going to the church in Kitson Town that particular morning just a little too coincidental and convenient. The implication of the assertion that he was going to church in Kitson Town that morning was that he

would not have had to cross the road that morning. On Mr. Whittle's case the Claimant Mr. Campbell is crossing, or attempting to cross the road. Whilst the areas of injury suffered are not conclusive, Mr. Campbell's evidence that he was hit on his right hand and that he sustained the most serious injuries to his upper body are more consistent with him being a pedestrian in locomotion in the manner that Mr. Whittle says he was as opposed to Mr. Campbell being in a stationary position at the edge of the road. On the other hand, although the Defendant said that the man was walking fast as opposed to running, I have to look at Mr. Whittle's level of intelligence in assessing what if any significance to attach to this variation, which in any event, I consider slight. As to the question of whether or not there was a taxi, the accident did happen a long time ago, and the reason that a summary was given on behalf of the Defendant was that he had not been located at the time when witness statements were due. To that extent, the first time that Mr. Whittle was giving evidence directly was in cross-examination. However, it is interesting to note that Mr. Campbell admits that, and it was a part of his case, that there was a car parked on the other side of the road.

10. On a balance of probabilities, I found for the Defendant and accept that the Claimant was attempting to cross the road at a time when it was unsafe to do so. I accept that Mr. Campbell walked right into

the side of Mr. Whittle's motor vehicle, and that Mr. Whittle was unable to avoid an impact with Mr. Campbell despite pressing his brakes and swerving. Mr. Campbell has not satisfied me that Mr. Whittle collided with him on the soft shoulder, failed to keep a proper look out or was driving at a speed that was excessive in the circumstances. I accept that it was Mr. Campbell's own negligence that caused the accident.

11. There will therefore be judgment for the Defendant with costs to be taxed if not agreed or otherwise ascertained.