



[2022] JMSC CIV.78

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2020CV02804**

|                |                         |                  |
|----------------|-------------------------|------------------|
| <b>BETWEEN</b> | <b>AALIYAH HAMILTON</b> | <b>CLAIMANT</b>  |
| <b>AND</b>     | <b>WILTON HAYMAN</b>    | <b>DEFENDANT</b> |

**IN CHAMBERS**

Mr. Vaughn Bignall instructed by Bignall Law for the Claimant

Mrs. Suzette Campbell instructed by Burton Campbell for the Defendant

Heard: April 21, 2022 & May 12, 2022

**Summary Judgment – Rear end collision-admission of negligence- no admission of causation-denial that the claimant was involved in the collision- denial that the minor collision caused any injury or loss- whether court should enter summary judgment.**

**Stephany Orr, J (Ag)**

**BACKGROUND TO THE APPLICATION**

[1] This is an application for summary judgment by the Claimant Aaliyah Hamilton. In her statement of case, she claims damages for negligence arising out of a motor vehicle collision, which occurred on January 25, 2020 along the Sandy Bay main road in the parish of Clarendon.

[2] Miss Hamilton further details her claim by alleging that she was a passenger in a coaster motor bus travelling along the said road when the Defendant's coaster bus collided into the rear of this bus causing her to sustain injuries.

[3] In the affidavit in support of the application for summary judgment, the Claimant states that:

*"The defendant has presented a bare defence which fails to set out his case or any facts on which the defendant intends to rely on to dispute the claim, they simply admit the collision took place on the date in question, at the time in question, involving the parties in question and admits nothing else."*

[4] In his defence Mr. Hayman admits that his coaster bus was indeed involved in a collision with another coaster bus on the day and at the place alleged by the Claimant.

[5] He says however that he has no personal knowledge about the accident save and except what was reported to him by the driver of his motorbus. His defence is his only document before the court for consideration. I have therefore outlined the significant aspects of his defence below. He states that:

4. *The Defendant will however say that based on information received on the 25th day of January 2020, he was driving along Sandy Bay Main Road when motor vehicle licensed 4831 GZ which was travelling in front made a sudden stop. The Defendant's driver braked but the front of his vehicle brushed the bumper of motor vehicle licensed 4831 GZ.*

5. *The impact between the two vehicles was minor and not sufficient to cause injury to anyone.*

6. *No admission is made as to the Claimant's involvement in the accident, injuries, loss and damage as the Defendant is not aware that anyone was injured and does not know of the truthfulness of these allegations. The claimant is therefore put to strict proof of the injuries.*

7. *Further the defendant makes no admission to the contents of the medical report of Dr. Walter Anazodo dated May 29, 2020 and reserves the right to put written questions and/or to call the said doctor at the trial of the claim for cross-examination."*

## ANALYSIS

[6] The authority for the court to enter summary judgment against a party is found in Part 15 of the CPR.

[7] In **Sagicor Bank v Marvalyn Taylor Wright** [2018] UKPC 12 the court explained the summary judgment procedure;

*“16. Part 15 of the CPR provides in Jamaica as in England and Wales, a valuable opportunity (if invoked by one or other of the parties) for the court to decide whether the determination of the question whether the claimant is entitled to the relief sought requires a trial. Those parts of the overriding objective (set out in Part 1) which encourage the saving of expense, the dealing with a case in a proportionate manner, expeditiously and fairly, and allotting to it an appropriate share of the court’s resources, all militate in favour of summary determination if a trial is unnecessary.*

*17. There will in almost all cases be disputes about the underlying facts, some of which may only be capable of resolution at trial, by the forensic processes of the examination and cross-examination of witnesses, and oral argument thereon. But a trial of those issues is only necessary if their outcome affects the claimant’s entitlement to the relief sought. If it does not, then a trial of those issues will generally be nothing more than an unnecessary waste of time and expense.”*

[8] CPR 15.2 on which the Claimant relies to ground this application provides that:

*“The court may give summary judgment on the claim or on a particular issue if it considers that –*

*(b) the defendant has no real prospect of successfully defending the claim or the issue.”*

[9] The issue for this court is therefore whether as the Claimant says, the Defendant has merely admitted the collision without more such that what is before the court is a bare denial, which would entitle the Claimant to succeed on her application; or whether the Defendant has a defence which raises triable issues and therefore has a reasonable prospect of success.

[10] In considering the Defendant’s statement of case, he has indeed admitted that his vehicle collided into another vehicle. This is an admission of negligence but is this

admission enough to ground liability? Mrs Campbell for the Defendant says no. She submitted that causation is still a live issue despite this admission.

- [11] She grounded her submissions on the findings of Anderson, Kirk J in **Clifton Beckford v Winston Blackwood** 2013 HCV02067 where he said that:

*“In a claim for negligence, unlike a claim for trespass to the person, loss is not presumed. Thus, whenever one claims damages for negligence, it must always be proven, in order for liability of the defendant to be properly established, that the negligent actions of the defendant in relation to the claimant, caused the claimant’s loss and indeed also, it must be proven by the claimant that he suffered loss, arising from the defendant’s negligent actions in relation to him, in order for liability for the tort of negligence, to have properly been established,”*

- [12] In response Mr. Bignall has submitted that in that case the court was considering an application for judgment on admissions.

## **ANALYSIS**

- [13] It is to be remembered that there are three elements to the tort of negligence. Thus, unlike those torts which are actionable per se, a Claimant can only succeed in a claim for negligence where he is able to establish a causal link between the Defendant’s negligent or careless acts or omissions and the damage or injury he suffers. This is so even where there is an admission of negligence.

- [14] In a claim for damages for negligence, the success of the Claimant’s application for summary judgment is therefore dependent on her ability to establish causation, i.e., that her injury, loss or damage was caused by the Defendant’s actions as outlined on the Defendant’s pleadings.

- [15] In **Rankine v Gorton and Sons & Co. Ltd.** [1979] 2 All ER 1185 the Defendant company admitted that they were negligent but did not admit that the plaintiff’s injuries resulted from their negligence. The case supports the view that an admission of negligence without an admission that the Claimant suffered injury is not an admission of liability.

- [16] The court held that in an action founded in negligence, a plaintiff was not entitled to judgment unless he could prove two necessary components of his cause of action, i.e., that the Defendant had been negligent and that the plaintiff had suffered damage as a result of that negligence. An admission of negligence was not necessarily an admission of liability, and on the true construction of the pleadings and correspondence, the Defendants had not admitted that the plaintiff's injuries were caused by their negligence. It followed that, since the plaintiff could not show that both components of his cause of action had been admitted, he was not entitled to judgment.
- [17] In the instant case, not only has the Defendant denied the Claimant's injuries were caused by his driver's negligence, he has also put the Claimant to proof that she was present as a passenger in the other vehicle and therefore involved in the collision. He has also put her to proof of any resultant injury. Mr. Hayman has also said that the impact to both vehicles was slight such that no one was likely to be injured if at all as a result of the collision.
- [18] This is a clear case where the Defendant has admitted negligence but has denied that the Claimant suffered any injury, and has therefore put the Claimant to proof of a nexus between the admitted negligence and her injuries. She must first however overcome the hurdle of establishing that she was a passenger in the vehicle in which the Defendant's vehicle collided.
- [19] I would adopt the reasoning of the court in **Rankine v Garton & Sons** and also this court's reasoning in **Clifton Beckford v Winston Blackwood**. While Mr. Hayman has admitted that the vehicles collided, for the foregoing reasons, this admission is insufficient to accrue liability to the Defendant, and deny him an opportunity to defend the claim.
- [20] Mr. Hayman has through his defence raised serious triable issues on the Claimant's statement of case. These are not issues that can be resolved at an assessment of damages as causation remains a live issue. They must be

determined at trial where the court is able to hear and assess the parties' evidence under cross examination.

**[21]** In the result, the Claimant's application for summary judgment is refused with costs to the Defendant to be agreed or taxed.