



[2022] JMSC Civ.83

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV02831

BETWEEN	MANLEY PRYCE	CLAIMANT
AND	OWEN WEBSTER	DEFENDANT

IN OPEN COURT

Mr. Sean Kinghorn instructed by Messrs. Kinghorn & Kinghorn Attorneys-at-Law for the Claimant

Ms. Racquel Dunbar instructed by Dunbar & Co. for the Defendant

May 3, 2022 and June 17, 2022

Negligence

Carr, J

Introduction

[1] On Boxing Day 2010, Mr. Manley Pryce was riding his bicycle along the left side of the roadway towards Ewarton in the parish of St. Catherine. He was hit from the bicycle by a motor vehicle being driven by Mr. Owen Webster, as a result he alleges that he suffered injuries. He seeks an award in damages arising out of his averment that Mr. Webster was negligent in his operation of his motor vehicle that day and thereby caused the collision.

[2] In his defence Mr. Webster denied these allegations and averred that there was no collision between his motor vehicle and Mr. Pryce.

Issues

- [3] a) Whether there was a collision?
b) If so whether Mr. Webster was negligent?

Decision

[4] After a careful analysis of the evidence on behalf of both Mr. Pryce and Mr. Webster I found that Mr. Pryce was discredited. He failed to prove his case on a balance of probabilities and judgment is entered in favour of the Defendant.

The Law

[5] The tort of negligence is proved when a Claimant can satisfy a court on a balance of probabilities as to the following:

- a. That they were owed a duty of care by the Defendant,
- b. That the Defendant breached that duty, and
- c. That as a result of that breach the Claimant suffered damage.

[6] It is trite law that all users of the road way have a duty of care to fellow road users.

“The duty of a person who drives or rides a vehicle on the highway, is to take reasonable care to avoid causing damage to persons, vehicles or property of any kind...In this connection reasonable care means the care,

which an ordinarily skilful driver or rider would have exercised, under all the circumstances...”.¹

- [7] It was accepted by both parties that Mr. Webster as a user of the road way owed a duty of care to Mr. Pryce. The main focus of the submissions on behalf of the parties was the second aspect of the law as set out. Did Mr. Webster breach his duty of care to Mr. Pryce.
- [8] In cases involving negligence a determination of liability often rests on the issue of the credibility of the witnesses. This case is no different. It is therefore useful to commence the discussion of the matter with an outline of the evidence of the witnesses on behalf of both parties.

The Evidence for the Claimant

- [9] Mr. Pryce gave a witness statement which stood as his evidence in chief. He was cross examined and I observed his demeanour. From the outset Mr. Pryce gave the impression that he was not able to hear very well. Efforts were made by Counsel to speak loudly so that he could respond to the questions. I observed and noted however, that when I asked or repeated questions he was able to hear me. He told the court that he is now 79 years old. In his witness statement which was sworn to in 2015 he declared that he was 70. His date of birth was given in his particulars of claim as the 10th of October 1943, which would make him 78 years old.
- [10] Mr. Pryce, in his witness statement, indicated that he was riding on the left hand side of the road when a motor car travelling in the same direction hit him from his bicycle. Immediately after the accident, persons came on the scene and assisted

¹ Charlesworth & Percy on Negligence 7th ed. P. 671

him by placing him inside the motor car that had hit him. At the time he felt pain to the entire left side of his body but in particular to his left knee. The driver took him to the Ewarton Police Station and he made a statement about the accident. He left the station and went to the Linstead Hospital. While there he was advised that he needed a paper from the police in order to be assisted. He returned to the police station and asked the officer to give him a paper to take to the doctor. The officer refused. He left the station and went home to rest due to the pain he was feeling. Three days later the pain was more severe and he decided to attend at a private doctor's office for treatment. He was examined and given pain medication.

[11] In cross-examination he was asked if the hit was unexpected since the car hit him from behind. He responded yes. He said that it was the back of his bicycle that was hit and that the car hit him in the right lane. He fell in the road on the left lane, his bicycle fell in the road as well. He indicated that he was feeling pain to his wrist, ankle and back and that the damage was on his right side.

[12] He was confronted with the following suggestion:

“You are lying when you say in your witness statement that you had pains in particular to your left knee.

A. Is the right knee yuh nuh not the left but mi body was in pain yuh nuh.”

[13] He denied suggestions that he used his hand to slap the back of the vehicle. He also denied pretending to be hit, he was adamant that he was not a trickster and that he would have no reason to tell a lie.

[14] He was asked:

Q. You saying when the car hit you from behind it was going fast.

A. It was driving not too fast and not too slow about 30mph or so.

Q. You saw the car from before it hit you from behind.

A. Mi couldn't see the car behind me, mi hear it ah come, ride mi riding till it lick pon mi. Mi nah look behind me.

- [15] The medical report of Doctor Hassan was agreed as Exhibit 1, questions were put to the Doctor and the answers in the form of an email was admitted as Exhibit 4. Mr. Pryce was seen by the doctor on the 30th of December 2010. He complained of severe pain to his lower back, right wrist and ankle. The pain got worse on bending and lifting heavy objects and weight bearing on the right foot. He was diagnosed with a lower back strain with soft tissue injury to the right ankle joint and an undisplaced fracture of the right scaphoid bone.
- [16] The Doctor referred him to treatment by way of analgesics/muscle relaxants/physiotherapy. He was also referred to orthopaedics for the scaphoid fracture. There is no evidence before the court that Mr. Pryce went to physiotherapy nor is there any evidence of further treatment for the fracture of his scaphoid bone. In response to a question posed by the attorneys for the Defendant, Doctor Hassan indicated that he did not have any records of any injury to Mr. Pryce's left knee joint as this was not stated by the patient during his medical examination.

Submissions

- [17] Ms. Dunbar in her submissions argued that Mr. Pryce could not be accepted as a witness of truth, since he could not be certain as to where it is that he received his injuries. She also highlighted the fact that he claimed he was hit from behind and yet he spoke of the speed of the vehicle and said that it was not travelling too fast or too slow. She also submitted that there was no evidence of any bruises or scrapes on Mr. Pryce upon examination of the Doctor. Ms. Dunbar contends that the evidence of the witness is that he was hit off of his bicycle and he pitched over more than one time. In those circumstances there must have been scrapes and

bruises to his body, that there was no such finding made by the Doctor is indicative of the fact that Mr. Pryce is not speaking the truth.

- [18] It was further submitted that based on his evidence Mr. Pryce went back to his farming within three weeks of his injuries. The Doctor indicated that the lower back strain observed would require approximately 6-8 weeks to be resolved with an appropriate course of physiotherapy, the soft tissue injury to the right ankle joint should resolve within 2-3 weeks with analgesics and therapy and the scaphoid bone fracture would take 8-12 weeks to heal. Without any evidence of treatment apart from a receipt for medication, how then did Mr. Pryce heal so quickly in order to resume his farming. It was suggested that the medical evidence did not support Mr. Pryce's evidence and that it only augmented the version of Mr. Webster that the motor car did not collide with him.

The Evidence for the Defendant

- [19] Mr. Webster says he was driving towards Ewarton in his left lane heading in the direction of Kingston on the day in issue. There were 3 or 4 cars behind him and people on the sidewalk. In the vicinity of the Texaco gas station he felt a light touch to the left rear of his car as if someone had hit it with their hand. He stopped and looked through his rear view mirror and saw a rastaman and a bicycle sprawled out exactly behind his car. The man had his hands down as if in a push up position. He said that he called one of the men on the road to call the rastaman to ask him why he had hit his car. The rastaman remained where he was. His wife told him to continue on his way because she was familiar with the rastaman as he was well known in the community in which she grew up. The rastaman was famous for hitting cars and pretending that the vehicles had collided with him, he would then lie on the ground in order to get money from the drivers.

- [20]** Having not had a response from the rastaman, Mr. Webster left and drove to the Ewarton police station. He made a report of what transpired because he was concerned about the intentions of the rastaman. He observed the rastaman walking into the police station as he was walking out and he saw him pushing his bicycle inside.
- [21]** Donna Henry, Mr. Webster's wife, also gave evidence on his behalf. In her witness statement she said that she observed a man on a bicycle on the left sidewalk. He was a rastaman. After they drove past she heard a bang from the left side at the back of the car, her husband stopped the car. She observed that the rastaman was standing up over the bicycle and the bicycle was on the ground. It was partially on the road and partially on the sidewalk behind the car. The man was standing with one foot on the sidewalk and one foot on the road over the bicycle.
- [22]** The man was making a lot of noise and her husband said that he was going to the station. Ten minutes after their arrival at the station the man entered and she recognized him as someone she knew from McGrass Road. She recalls seeing him previously riding around on his bicycle and drinking at rum bars. The man was known for hitting cars as they pass by and lying down in the road as if he had gotten hit down in order to get money for drinks.
- [23]** The man was making noise at the police station and the police told him to bring his bicycle which he did. There was no damage to the bicycle that she could see. They all exited the police station and looked at the car. There was a scrape on the car but she insisted that the scrape was always there. There was no other damage to the car. The man asked the policeman for a letter to take to the doctor and the officer refused to give him one.

Submissions

[24] Mr. Kinghorn submitted that the Defendant and his wife could not have been in the same place as their evidence does not correlate at all. He further submitted that they were not credible witnesses and the version which ought to be accepted is that of the Claimant.

Analysis and Discussion

Whether there was a collision

[25] The medical evidence does not support the evidence of Mr. Pryce and this goes directly to the issue of his credibility. The particulars of injuries set out in the particulars of claim filed on the 21st of May 2012 speak to lower back strain with soft tissue injury to the right ankle joint and an undisplaced fracture of the right scaphoid bone. The evidence of Mr. Pryce in his witness statement filed on the 6th of June 2015 indicates that he was feeling pains to the entire left side of his body but in particular to his left knee. In cross examination he was asked about the damage to the car and he volunteered “damage on the right side mi wrist, ankle.” His answer to counsel is important, he wanted to make it abundantly clear to the court that it was his right side that he received his injuries. In fact, he repeated this several times during cross-examination he was at pains to tell us that it was his right knee, not the left, and that his whole body was in pain. Mr. Kinghorn acknowledged that there were inconsistencies on the case for the Claimant, he asked the court to accept that from the outset Mr. Pryce indicated that he was in pain all over his body.

[26] The fact is that he never complained to the doctor that he was feeling pain to the left side of his body or that he was particularly suffering from pain to his left knee. What is mentioned in the medical report does not correlate with the evidence he has given in his witness statement and certainly does not even accord with his

evidence under cross examination. It appeared to this court that his evidence under cross-examination as it relates to his injuries was contrived to fix the inconsistency between his witness statement and the medical report. I did not find that he was truthful in this regard.

[27] Further, he told the court that he was in the left lane and the vehicle was behind him. How then could he tell what speed the vehicle was travelling at? When asked how he could confirm the speed if the vehicle was behind him he said that he heard the car. Mr. Pryce also indicated that he was riding in the left lane, when asked if he was hit in the left or right lane he said the right but his evidence was that he fell in the left lane. He was asked if he observed any damage to the car, he said yes the bumper did lick off, then he said in answer to another question that the front bumper of the car was shaking. His explanation for failing to mention this in his witness statement is that he was never asked about it. There are major inconsistencies in his evidence not just in relation to his injuries but also in respect of how he said this collision took place.

[28] There is no evidence before this court that Mr. Webster was travelling at a fast speed, neither is there any evidence that he was driving recklessly or carelessly nor that he did anything to cause any collision. It cannot be said that it is sufficient to say that the vehicle hit him from behind and therefore Mr. Webster is liable.

[29] There were too many inconsistencies on the evidence of Mr. Pryce. I did not find him to be a credible witness and I did not accept that he was hit by the motor car being driven by Mr. Webster. His failure to accurately recall where he received his injuries, in addition to the fact that he presented no evidence of follow up treatment or care for these alleged injuries, suggests that there was no injury at all as a result of any collision.

[30] Although there were discrepancies between the evidence of Mr. Webster and Ms. Henry I found that apart from exaggerating her prior knowledge of Mr. Pryce, Ms. Henry's account of the events on that day are credible. I accept that she saw Mr. Pryce on the sidewalk and that she heard a knock on the back of the car. I find and accept that Mr. Pryce was making a lot of noise and as a result of that Mr. Webster went to the police station and told Mr. Pryce to meet him there. I accept that there were no visible injuries on Mr. Pryce and that is the reason the officer refused to give him a letter to take to the doctor.

[31] In the circumstances I reject the evidence of Mr. Pryce. I do not find that there was any collision or any injury suffered by him. He has failed to prove his case on a balance of probabilities and judgment is entered in favour of the Defendant.

Order:

1. Judgment for the Defendant.
2. Costs to the Defendant to be agreed or taxed.