



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2010: No. 28

BETWEEN:

CESARE MARANZANA

Plaintiff

-and-

VICTOR PARRIS

Defendant

Date/s of Hearing: 22 July 2010, 22 November 2010

Date of Judgment: 8 December 2010

Mr. Jai Pachai of Wakefield Quin, for the Plaintiff

Defendant in Person

REASONS FOR DECISION

1. This action arises out of a collision that occurred on the 9th October 2008 at approximately 4:30 pm, on North Shore Road, Smiths Parish in the vicinity of Stowe Hill.
2. The Plaintiff sustained serious injuries which include an open right fibula fracture, a 12 cm wound overlaying the right fibula, whiplash injury of the neck and central vestibular signaling abnormality. He was hospitalized for 3 weeks and required intensive in-patient care for 7 days.

3. The Defendant sustained a laceration to his lower lip requiring sutures and bruising of his left knee and hand.
4. Both parties denied liability each alleging the other was negligent. In issue in this action of negligence on both the Plaintiffs claim and the Defendant's counterclaim are the respective liabilities (if any) of the parties.
5. On the 22nd of July 2010, the Court made an order 'inter alia'; that the issue of liability was to be tried in advance of issues of quantum. Therefore, I shall deal with the issues of liability only. The Plaintiff and the Defendant each blamed the other for the accident. The Plaintiff alleges that the Defendant is wholly to be blamed while the Defendant alleges that the Plaintiff is wholly to be blamed or is contributory negligent.
6. The Plaintiff Cesare Maranzana is a businessman/restaurateur by trade, who at the time of the accident was crossing North Shore Road in the vicinity of Stowe Hill. I accept his evidence that he made sure the road was clear before he crossed. He looked left and right before he crossed from the west lane to the east lane where he was struck. After he was struck he has no recollection of anything
7. In cross-examination he said that he had taken every precaution before crossing the road. He said that before crossing the road he did everything he did for months, "I am fanatically careful crossing the road." He did not hear a horn. He did not see the Defendant. He did not have his head down. He presumed the Defendant's speed was so fast that he looked right and left but did not know where the Defendant came from.
8. The Plaintiff called one witness, Leslie Eugene Stowe a musician/electrician by trade. He did not see the accident but heard the collision. He said, on 9th October 2008, he was working on a house at 23 North Shore Road Smiths Parish owned by Mr. Maranzana. At approximately 4:30 pm he was packing up to leave and he went to put some tools into his car which was parked on an adjacent lot of land facing north, just before No 23 as one travels east. He had a clear view. He was facing east and saw Mr. Maranzana crossing to the southerly side of the road. He saw

him go from the house across to his jeep and saw him return as he was crossing. He saw him crossing back to the northerly side of the street. He had something in his hand. He saw him clearly until he reached the middle of the road—the dividing line.

9. He was in the process of putting the tools into the van when he heard a collision—a commotion and someone screamed. He looked up and saw a body flying in the air, a motorcycle travelling west, but in the east bound lane, i.e. on the wrong side of the road. He saw the path of the bike after the collision. It was in the east bound lane. The bike continued until it struck a wall on the northern side of the road. The impact of the bike shifted the wall where the mason had cemented a block in place a few days before. The body was also in the east bound lane. He saw when and where the body came to rest. He did not have a tape measure but the bike carried about 20 to 25 feet. He did not hear a bike beep or blow its horn. If it had, he believes he would have heard it. This is in contradistinction to the Defendant's evidence that after the collision he went straight down and hit the ground. The bike did not slide on the road. He is sure that it was within 10 feet of the collision. The body went down and the bike went down.
10. I have given careful examination to this evidence, as I have done to all the evidence in the case, and although Mr. Stowe did not see the impact and he can only speak to what occurred after the collision, brief as it is this evidence does not raise any question as to its reliability.
11. After referring to the Police sketch of the scene of the accident Mr. Stowe continued by saying that the marks on the police plan are not an accurate representation of where the body ended up as it ended up further than depicted on the plan. In any event based on the material before the court the police officer visited the scene and took measurements
12. Mr. Stowe said that he helped Mr. Parris, the Defendant to sit up and he got him some bandages from his truck. Mr. Parris asked Mr. Stowe if he had seen what happened to which he replied you hit the gentleman.
13. In cross-examination, Mr. Stowe said that he did not see the bike when it approached. After he heard the collision he looked up and saw when Mr. Maranzana's body hit the ground and slid

along. The body being pushed that far would be determined by the impact. He heard an impact and heard someone shout. He did not know who it was. From the direction the bike was travelling and the gouge marks he was obviously in the east bound lane. This meant he was hit on the wrong side of the road.

14. When he last saw Mr. Maranzana he was in the area of the center lane crossing to northbound. It's an area where the traffic tends to go faster and one has to be cautious. He would say Mr. Maranzana was cautious.
15. The Defendant Victor Noel Tyrone Parris testified that he was travelling on North Shore Road towards town. He approached a corner when he saw a gentleman on the west bound lane. As he approached the gentleman started to head towards the east bound lane. His head was down and it would appear he first looked westerly.
16. He sounded his horn, the gentleman picked up speed and he started to go towards the east bound lane; he never looked up. He made contact. The Defendant said that he took his bike up and went and stood over Mr. Maranzana. Once people came around he went to sit on the wall. He said that he was not negligent and had sustained his injuries as a result of the initial impact. He said that, Mr. Maranzana's injuries were as a result of his own negligence, he was not paying attention.
17. In cross-examination Mr. Parris accepted that Mr. Maranzana's injuries were sustained as a result of the accident. He said that he asked Mr. Stowe if he saw what happened because he wanted a witness to what happened.
18. He accepts that the gouge marks are shown on the east bound lane. He does not accept what Mr. Stowe said about the body sliding some 20 feet and where the bike came to rest.
19. He bought the bike in 2008 from another man under whose name it was licensed and insured. He did not get the information transferred to his name; consequently, he was not covered under the insurance policy.

20. In his police statement he told the police that he saw a gentleman as he came around the corner. He was driving along North Shore Road, as he came around the corner and he saw a man on the left hand side starting to cross the road to the other side with his head down. He was about 20 feet away. He beeped his horn, slowed down; the man looked towards town and proceeded to walk faster across to the other side. He slowed down and swerved to avoid hitting him. They collided and they both ended up in the east bound lane. He said as a result of the accident, he injured his left knee, his lower lip and his left pinky finger. His bike front grill and side panel were damaged.
21. On the evidence before the Court and despite the valiant efforts by the Defendant that he was not at fault the Court remains un-persuaded that the Plaintiff was negligent or that he was contributorily negligent.
22. I accept the evidence of the Plaintiff and Mr. Stowe that the Plaintiff was on or close to the center line when the Defendant came around the corner. The evidence of Mr. Stowe supports the evidence of the Plaintiff that he had crossed the center line and was in the east bound carriageway when he was struck. There is no evidence that the Plaintiff created any danger for the motorist. The police accident report exhibiting a sketch plan shows gouge marks in the eastern carriage-way which were made by the cycle, clearly on the Defendant's "wrong" side of the road and supports the Plaintiff's version of events.
23. The police who visited the scene prepared an accident report which shows that at the time of the collision it was daylight, there was sunlight and the road surface was dry. The sketch plan shows gouge marks, blood and the position of the Plaintiffs' body in the eastern lane. It follows from this evidence that the Defendant's bike was in the east bound lane at the time of impact and confirms the Plaintiff's evidence that he was in the east bound carriage-way. His last recollection is that he was on the centerline. The Plaintiff had little else to contribute because he had no recollection of the accident.

24. Mr. Stowe did not see the impact; however once he heard the collision he said that he saw the Plaintiffs' body travel some 20 feet and the motorbike about 20-25 feet from the point of impact. I find Mr. Stowe to be a credible witness. He did not have a tape measure but his evidence confirmed that both the body and the bike travelled some distance after impact. On analysis of the evidence I am satisfied that the conclusion can safely be drawn that the Plaintiff was struck by the Defendant's motor cycle in the east bound carriage-way and the Defendant was travelling at some speed and did not take sufficient care for other road users.
25. The Defendant has pleaded that the Plaintiff contributed to the collision 'inter alia' by failing to cross the road in a safe manner. The physical facts of the case and the evidence indicated that the Defendant was at fault and that his negligent blunder caused the collision. The Defendant has not displaced this inference that he was at fault and the collision was not due to his negligence. In the circumstances I find that the Defendant has failed to establish either his defense, or his counter claim.
26. I hold therefore, that it was the Defendant's bike that negligently struck the Plaintiff in the eastbound carriage way; accordingly the negligence of the Defendant is established and I find him wholly responsible for the accident. His Counter Claim is dismissed. Judgment for the Plaintiff with costs to be taxed if not agreed.

Dated the 8th of December 2010

Justice Norma Wade-Miller
Puisne Judge