IN THE HIGH COURT OF JUSTICE

COLONY OF MONTSERRAT

CIVIL

A.D. 1996

NO 56A OF 1991

LAZARUS RYAN PLAINTIFF

AND

CHRISTOPHER IRISH DEFENDANT

Before: The Honourable Mr Justice Adrian Saunders

Appearances: Mr David Brandt for the Plaintiff

Mr Kenneth Allen Q.C. for the Defendant

1996, September 26 & 27

JUDGMENT

IN COURT

This is my judgment in this matter

On the 30th July, 1990, the Plaintiff, Lazarus Ryan, proceeding along the Dagenham Public Road in a southerly direction, when, at the junction of the Eastern Main Road, a collision occurred with the Defendant Christopher Irish who was driving Buick Century in an easterly direction along the Eastern Main Road.

The Plaintiff claims that as he approached the junction, he stopped. He was moving off and saw another vehicle along the Eastern Main Road coming towards him at a speed, in his estimation, of about sixty miles per hour. He stopped again and the other vehicle ran into him.

The Defendant claims that he had just left Plymouth He proceeding along the Eastern Main Road at about 30 miles per hour He saw, from a distance of several feet, the Plaintiff coming towards the junction There is some discrepancy with Defendant's evidence and the evidence of his witness at this point.

There is a suggestion that the Plaintiff did not stop at all at the junction and that instead he came right out making a right turn looking in the opposite direction from which the Defendant coming. There is also a suggestion that he stopped and then moved off again

The Plaintiff claims that immediately after the accident the Defendant said to him that he was sorry; that he was hustling to go to the airport to pick up a corpse; and that the following morning he approached the Defendant and asked him whether he would accept liability and the Defendant said no, he was not wrong

The Defendant says that he got out of his vehicle after the accident and that he told the Plaintiff that they should call the police. The Plaintiff did call the police. The Defendant further stated that the following morning the Plaintiff came to where he was and suggested to him that he the Defendant should accept liability because the vehicles were insured for third party damage and the Plaintiff got the worst of it

Having seen and heard the witnesses I find as a fact that the Defendant was travelling along the Eastern Main Road in excess of the speed limit which was given evidence as 30 miles an hour.

It was suggested to him that he was travelling at sixty miles per hour and no attempt was made to controvert that evidence I also find however that whether he stopped, or he didn't stop at

, the Plaintiff's responsibility was to ensure that on-coming traffic was clear and that it was safe for him to proceed before he in fact proceeded I find that the Plaintiff was negligent in not ensuring that the traffic was clear before he came out

In the circumstances I would award Judgment for the Defendant and I will dismiss the Plaintiff's claim. I believe that the Plaintiff was speeding given the length of the brake mark some 20 30 feet and the evidence tendered that he was travelling about 60 miles per hour I don't believe he was travelling at 60 miles per hour I believe he was travelling at some speed between 30 miles and 60 miles per hour and that he may have been able to avoid the accident if he had been travelling at a slower rate

Having regard to this latter finding, I would reduce the damages awarded to the Defendant by 15 per cent. As regards the damages claimed by the Defendant, he has claimed that he purchased parts in St Martin for $1468.00 and I will allow that claim of $1468 U.S dollars which I make to be $3,963.60 E.C The evidence was that his labour cost was $2500.00 He only pleaded $1600.00 I agreed with Mr Brandt that the Defendant can only get what he pleaded so that he gets $1600.00 for his labour costs. His loss of use is difficult for me to compute because of the unhelpfulness of the evidence in this respect. I do believe that he did suffer some loss of use I do not think that all the loss of use that he suffered in waiting for spare parts to arrive can be laid at the Plaintiff's feet

In my Judgment, it is too remote to burden the Plaintiff with all the loss of use which occurred while the Defendant waited for parts to arrive The Defendant should only get loss of use for the period of time for which the vehicle would, all things being equal, have been reasonably repaired In those circumstances I would

award loss of use at $800.00 This make a total of $6,363.60 but I will reduce this by 15 per cent and therefore there is a net amount payable by the Plaintiff to the Defendant of $5,408.55 plus costs to be taxed if not agreed.

Counsel have agreed on $2500.00 costs. The costs would therefore be $2500.00

I so order

Adrian Saunders
Puisne Judge