



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS**

**ACTION NO. CL-43/17**

**BETWEEN:**

**(1) ATEKAH DEFREITAS**

**(2) TITO SEYMOUR**

**PLAINTIFFS**

**-and-**

**(1) ALVIN DEANE**

**(2) CBMS LTD**

**DEFENDANTS**

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**JUDGMENT**

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**Before:** **The Hon. Mr Justice Anthony S. Gruchot**

**Appearances:** **Ms Devon McLean and Mr Yuri Saunders on the 21<sup>st</sup> November 2022 and Ms Devon McLean and Ms Andwena Lockhart on the 13<sup>th</sup> January 2023 of Stanbrook Prudhoe for the Plaintiffs**

**Mr Mark Fulford and Ms Chloe McMillan of F Chambers for the 1<sup>st</sup> Defendant.**

**Hearing Date:** **21<sup>st</sup> November 2022 and 13<sup>th</sup> January 2023**

**Venue:** **Court 5, Graceway Plaza, Providenciales.**

**Delivered:** **23<sup>rd</sup> November 2023**



**Introduction**

1. This is the judgment following a liability-only trial.

2. This matter arises from a road traffic accident that occurred on 21<sup>st</sup> December 2015 on Leeward Highway, Providenciales, Turks and Caicos Islands in the vicinity of the Cherokee Road/Scotiabank junction.
3. Ms Defreitas was at the time of the accident, a passenger in Mr Seymour's motorcar ('the Plaintiffs' Vehicle). Mr Seymour is her husband and at all material times the driver of the Plaintiffs' Vehicle.

### **The Procedural History**

4. The proceedings have had somewhat of a prolonged history. Proceedings were commenced by Ms Defreitas alone, by way of Writ of Summons filed on 29<sup>th</sup> March 2017 by Misick and Stanbrook, attorneys, seeking damages for negligence, although in truth, the claim is for damages for personal injury and associated losses arising from the accident allegedly caused by the 1<sup>st</sup> Defendant's negligence.
5. On 9<sup>th</sup> June 2017 F Chambers, attorneys, acting on behalf of the Defendants issued a third-party notice against Mr Seymour, seeking an indemnity (albeit that is not actually pleaded), alleging the cause of the accident was the negligence of Mr Seymour, and also claiming damages against Mr Seymour with respect to the damage to the 2<sup>nd</sup> Defendant's vehicle, which was being driven by the 1<sup>st</sup> Defendant.
6. Although F Chambers acknowledged service on behalf of both Defendants, CBMS Ltd. has not filed any evidence and made no appearance at the liability trial. CBMS Ltd. presumably has been joined as being vicariously liable for the alleged negligence of Mr Deane although such claim has not been pleaded nor is any claim for relief against CBMS Ltd. set out in the prayer to the Amended Statement of Claim.
7. On 19<sup>th</sup> June 2017 a Defence was filed repeating the allegations in the third-party notice.
8. On 4<sup>th</sup> December 2017 notice of change of attorneys was filed placing G. C. Clarke and Associates on record as acting for Ms Defreitas and Mr Seymour.
9. On 18<sup>th</sup> December 2018 an application to strike out the action for want of prosecution was heard. The application was refused and the Court gave directions

including listing a trial on liability on 11<sup>th</sup> February 2019. That trial did not go ahead.

10. The matter came before the Court on 17<sup>th</sup> April 2019 on the Defendants' application for an adjournment of the trial<sup>1</sup> on the basis that the parties were exploring settlement. The matter was listed for mention on 24<sup>th</sup> April 2019 at which time further directions were given and a liability-only trial was listed for 19<sup>th</sup> June 2019.
11. On 30<sup>th</sup> May 2019 G. C. Clarke and Associates filed a 'Notice of Withdrawal' as attorneys for Mr Seymour. On 18<sup>th</sup> June 2019 G. C. Clarke and Associates applied to withdraw as attorney for Mr Seymour, presumably having realised that a Notice of Withdrawal is not permitted by the rules.
12. On 19<sup>th</sup> June 2019, the trial did not progress. The Court observed that Mr Seymour should properly be joined as a plaintiff and went on to grant leave to Ms Defreitas to amend the Writ and Statement of Claim to join Mr Seymour as a plaintiff. The third-party notice was set aside and leave was granted to the Defendants to file an amended defence and counterclaim. The Amended Writ and Statement of Claim were filed on 6<sup>th</sup> August 2019 and the Amended Defence and Counterclaim were filed on 2<sup>nd</sup> September 2019.
13. The matter was listed for a pre-trial review on 13 August 2020. Issues were taken in respect of the Amended Writ and Statement of Claim on the basis they went beyond the scope of the leave granted on 19 June 2020. Directions were given for the Plaintiffs to apply for leave to amend the Statement of Claim and the matter was listed for a three-day trial on the 24<sup>th</sup>, 25<sup>th</sup> and 27<sup>th</sup> August 2020, presumably overlooking the Order splitting the trial. That trial date was not met.
14. On 20<sup>th</sup> October 2020 Stanbrook Prudhoe<sup>2</sup> filed a notice of change of attorney on behalf of the Plaintiffs. Nothing then occurred until Stanbrook Prudhoe filed a notice of intention to proceed on 6<sup>th</sup> September 2021. On 19<sup>th</sup> May 2022, the matter came before Aziz J on an application by the Plaintiffs in relation to adducing further witness evidence.

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<sup>1</sup> It would appear that when the trial date of 11<sup>th</sup> February 2019 was missed, a new trial date was fixed.

<sup>2</sup> The notice was actually filed by Prudhoe Caribbean, which firm subsequently merged with Stanbrook Law to become Stanbrook Prudhoe.

15. The application was adjourned but he ordered that a liability-only trial be set for 21<sup>st</sup> November 2022.
16. The matter came back before Hylton J on 19<sup>th</sup> July 2022 where he dealt with the application for further evidence, giving his decision on 5<sup>th</sup> August 2022 allowing the application.

### **The Accident**

17. Leeward Highway is a dual carriageway road, that is to say, in each direction, there are 2 lanes. There is often confusion in the jurisdiction describing in which of the 2 lanes a person was driving. The convention that is used in the UK is that the lane nearest the curb (or sidewalk) is known as the 'inside or nearside lane' and the lane nearest the central reservation or median is the 'outside lane'. This is often transposed by witnesses giving evidence in the Turks and Caicos Islands who adopt the US convention. For the purposes of this judgment, I shall adopt the UK convention.
18. On 21<sup>st</sup> December 2015 at approximately 1:00 p.m. Mr Deane was driving a fully laden 'Mack' construction truck ('the Truck') along Leeward Highway in an easterly direction in the vicinity of the junction of Cherokee Road, known locally as the Scotiabank junction, in the outside lane. Mr Deane was an employee of CBMS Ltd. and at all relevant times was acting in the course of his employment.
19. It was or had been raining and the road was wet.
20. There is a break in the central reservation opposite Cherokee Road ('the Break'). This is to allow vehicles exiting Cherokee Road to turn right to travel in a westerly direction on Leeward Highway. A vehicle executing such a manoeuvre then has the benefit of a slip lane on the westerly carriageway to gain speed and merge safely into the westerly traffic flow. Likewise, a vehicle travelling in a westerly direction turning right into Cherokee Road has the benefit of a slip lane to pull out of the westerly traffic flow and slow down or stop to safely execute the right-hand turn.
21. U-turns through the Break are not permitted. Likewise, it is not permitted for a

vehicle travelling in an easterly direction along Leeward Highway to execute a right-hand turn through the Break (for example to enter business premises (Kishco) on the south side of Leeward Highway). This is evident by the fact that there is no slip lane on the eastbound carriageway to allow any right-turning vehicle to safely pull out of the easterly traffic flow and wait for a safe gap in the westerly traffic flow. It is not possible to enter the business premises situated immediately to the south of the Break<sup>3</sup>. The entrance is some distance to the west of the Break. Any vehicle attempting this manoeuvre would have to perform an illegal U-turn and also cross both lanes of traffic.

22. It is the Plaintiffs' pleaded case that they were travelling in an easterly direction when the vehicle in front of them indicated that it was to make an illegal right turn through the Break and began to slow. Mr Seymour then began to brake in order not to collide with the vehicle in front when he was struck from behind by the Truck.
23. Mr Deane's case is that as he approached the Break in the central reservation, the Plaintiffs' Vehicle performed an illegal U-turn and pulled out into the easterly traffic flow directly in front of him, it initially having been travelling in a westerly direction. Mr Deane says it did so, not giving sufficient time for Mr Deane to take any evasive action and hence he collided with the Plaintiffs' Vehicle.

## **Discussion**

24. I heard evidence from the parties, Ms Defreitas, Mr Seymour and Mr Deane. I also heard evidence from police officer Felicia Robinson, who attended the scene of the accident.
25. The Court was not afforded any expert evidence, such as a crash reconstruction expert or report, nor any independent witness who saw the accident.
26. A report dated 6<sup>th</sup> December 2016 prepared by West Indies Chartered Loss Adjusters ('the Loss Adjuster's Report') for Guardian General Insurance Ltd (the Defendants' insurer) was included in the trial bundle but not referred to by either party. The

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<sup>3</sup> This can be seen from the photographs contained in the West Indies Chartered Loss Adjusters' report referred to at paragraph 26 hereof.

writer of the report does not appear to have been apprised of the Plaintiffs' version of events and other than describing numerous included photographs of the *locus in quo* and the damaged vehicles that were involved, the writer provides no opinion as to how this accident may have occurred. The report also provides no detail as to the extent or value of any property loss incurred by either party.

27. With respect to the above report, Ms McLean submits that notwithstanding that Officer Robinson was taken to some of the photographs in that report by the Court<sup>4</sup>, the Court should give no weight or consideration to it as it "*was included by the Plaintiffs' in the Trial Bundle in the event that the Defendants intended to put the report into evidence*". I do not accept Ms Mclean's submission. The Loss Adjuster's Report had been disclosed during the discovery exercise, included in the trial bundle and was before the Court. In the event, the narrative of the report is to a great extent unhelpful. The photographs contained in the report help identify the position of various road/building features and assist in interpreting issues to be decided by the Court. Accordingly I make reference to the same in this judgment.
28. The Court is left to decide the question of liability on the evidence of the parties and that of Officer Robinson. I am greatly assisted by the photographs annexed to Mr Seymour's supplementary witness statement, this being the additional evidence allowed by Hylton J (referred to in paragraph 16 above).
29. Ms McLean submits that Officer Robinson was the only independent witness but I observe that she was not present when the accident occurred, having been dispatched to the scene after the collision had taken place. She did not observe the accident and her evidence was that the Plaintiffs' Vehicle had been moved off the highway to the left-hand verge before she arrived at the scene. Crucially, she did not see the position of the Plaintiffs' Vehicle immediately after it had come to a standstill.
30. Ms Mclean fortifies Officer Robinson's evidence by submitting that she:
  - a. spoke with both the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant and had an opportunity to assess the scene and damage to the respective vehicles.

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<sup>4</sup> No objection was taken to the reference to the Loss Adjuster's Report.

- b. was able to inspect the damage to the 2<sup>nd</sup> Plaintiff's vehicle and must have concluded that the damage was inconsistent with the U-turn version of events presented by the Defendants.
  - c. determined at the time that the most likely version of events was that the Defendants' vehicle rear-ended the Plaintiffs' vehicle after the Plaintiffs' vehicle slowed down to allow a third-party vehicle in front of the Plaintiffs' vehicle to execute a [illegal] turn.
31. In my view that puts Officer Robinson's evidence at far too high a standard and reaches conclusions that are unsupported by the evidence.

**Officer Robinson's Evidence**

32. Officer Robinson prepared what is titled an 'Insurance Accident Report Form' ('the Report'). The Report is undated. Officer Robinson suggested in her oral evidence that the reason for that could be that the Report was emailed to her superior for checking and 'endorsing or signing off' and so it would be printed out elsewhere. In response to the question from Ms McLean "*What does signing off mean?*" Officer Robinson replied "*He verifies the report. Makes sure the report is prepared correctly.*" She went on to state that it was not the usual procedure of the supervising officer to request any note that might have been taken at an incident, but they did so on occasion. She could not recall if that happened on this occasion. She stated that she could not find her pocketbook and suggested that it may have been damaged in a fire at the police station.
33. Much was made of the Report. Officer Robinson stated that she normally prepares reports within a week or so of the accident but could not say when the Report was prepared. The Divisional Commander dated his signature the 14<sup>th</sup> January 2016 but the Report itself is not dated. The recorded details of the accident/incident are:

**"On Monday 21<sup>st</sup> December, 2015, about 1:09hrs; Mr Seymour was driving his Red Nissan Sentra registration number **23815 East along Leeward Highway, whilst travelling west on Leeward Highway in the vicinity of Scotia Bank he applied his brakes to avoid colliding into a vehicle in****

*front of him that indicated to turn right towards Kishco and felt an impact from behind from a CBMS Heavy Equipment Truck driven by Mr Deane causing damages to both vehicles. As a result a report was made and Officers were dispatch to the scene. Upon arrival Mrs Seymour complaint about body pains. She was transfer to seek medical treatment.*” (Copied verbatim, errors and emphasis in the original).

34. Mr Fulford suggests that this report is consistent with Mr Deane’s case. He focuses on the words “... was driving ... **east** along Leeward Highway, whilst travelling **west** ...”. (My emphasis) This he says is indicative of Mr Seymour executing a U-turn.
35. Officer Robinson in her evidence in chief, when taken to the Report, without any prompting stated that she recognised an error in the report concerning the direction Mr Seymour was travelling, saying that the word ‘west’ was wrong. She said “*I recall the position of both vehicles when I attended. I remember that both vehicles were travelling in the same direction.*”
36. This testimony troubles me for the following reasons:
  - a. Officer Robinson did not see the accident so she could not **know** that they were travelling in the same direction.
  - b. The Plaintiffs’ vehicle had been moved onto the verge by the time she arrived at the scene so all Officer Robinson could report is that the vehicles were facing in the same easterly direction when she arrived at the scene.
  - c. The report was submitted to her superior Officer for checking, in her words “*to make sure the report is prepared correctly*” but I observe that the Divisional Commander could not have given the Report much consideration given the number of typographical and grammatical errors it contains.
  - d. The purported error was drawn to the Court’s attention without any prompting or question being asked in circumstances where:
    - i. The Report had been prepared over 7 years earlier.
    - ii. Officer Robinson had not made any witness statement concerning the matter.



- iii. Officer Robinson denies having spoken to the Plaintiffs' attorney (save for attending at the office of Stanbrook Prudhoe to enquire about the date of the hearing), a question put to her in re-examination.
  - iv. Officer Robinson could not recall which other officers attended the accident with her, why she made a decision not to prosecute Mr Deane<sup>5</sup>, whether Mr Seymour had a driving licence or had motor insurance, none being recorded on the Report and whether the Divisional Commander requested her notes.
37. What is beyond peradventure is that only perfunctory attention was afforded to the drafting of the Report.
38. Officer Robinson could not recall how long she had been assigned to the traffic division as of the date of the accident although, she said she had attended more than 70 road traffic accidents. She stated that she had not had any formal training in assessing road traffic accidents and she had "*learned on the job*" but did not expand on this or indicate who she had learnt from.
39. Officer Robinson also stated that she would only be sent to minor accidents which she described as non-fatal accidents. That definition appears to me to be rather simplistic and somewhat naïve. She went on to describe 'investigating the accident' as:
- a. examining the scene;
  - b. talking to both drivers and recording what they said; and
  - c. checking for witnesses or any surveillance cameras.
40. Officer Robinson advised that the examination of the scene was confined to a visual examination and that she did not have any training to use any instruments other than a pocketbook. She stated that when completing the Report, there is a pre-printed form in which she fills in the information of both drivers and gives a brief explanation of what occurred and who was at fault, but she did not explain how she reached her conclusion. In answer to the question as to whether she prepared the Report from

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<sup>5</sup> Officer Robinson stated that this was her decision to make.

memory or notes, she replied that she would use her notes. Under cross-examination, Officer Robinson stated that as she could not locate her pocketbook used at the incident there was nothing to back up what was written in the Report, other than her memory.

### **Mr Seymour's Evidence**

41. Mr Seymour stated in his witness statement that he and his wife were travelling towards IGA<sup>6</sup> for breakfast. This was challenged by Mr Fulford in cross-examination as not being plausible. The Report states that the accident happened at 1:05 p.m. and was reported at 1:09 p.m. In reply, Mr Seymour said that he was not sure of the time, but maintained he was on the way to breakfast.

42. In his witness statement signed on 18<sup>th</sup> April 2019 he makes no mention of a car travelling in front of him making an illegal right turn. He simply says:

*"I was in the right lane the entire journey from the marketplace roundabout until I was rear-ended by a massive heavy duty vehicle approximately 250 to 300 feet before the corner of Cherokee Rd."*

43. He goes on to say:

*"The force of the impact pushed my vehicle past the junction of Cherokee Rd. I came to a stop in the same lane I was initially driving on (the right lane, close to the medium (sic))."*

44. The above is the extent of his account of the accident given in his witness statement.
45. In his oral evidence in chief, Mr Seymour stated that his vehicle came to a stop immediately before the Shell petrol station ('the Petrol Station').
46. Mr Seymour denies that he was initially travelling west on Leeward Highway and that he performed a U-turn but that he was travelling east and was hit "head on from the back".
47. Mr Seymour made 2 rather startling statements in cross-examination. Mr Fulford put

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<sup>6</sup> This is a local supermarket which has a café.

it to Mr Seymour that he said he had braked to avoid another vehicle. He said *“he did not recall saying that”*. He was taken to the amended statement of claim where it is pleaded:

*“The 2nd Plaintiff’s Vehicle was passing Scotia Bank (sic) when the vehicle in front of the 2nd Plaintiff’s Vehicle slowed down. As the vehicle in front of the 2nd Plaintiff’s Vehicle slowed down the 2nd Plaintiff’s (sic) slowed down as well.”*

48. In response to clarification from that Court that what was being said was that there was a vehicle in front of the Plaintiff which indicated to turn right. Mr Seymour responded, *“I did not say that”*.
49. As noted above, Mr Seymour put before the Court various photographs. Some of these were taken in the immediate aftermath of the accident. Others he says, are stills taken from a video he took on 22<sup>nd</sup> December 2015, the day following the accident, although in his 2<sup>nd</sup> witness statement, which I bear in mind was before the Court on the application to adduce further evidence, he says the video was taken on Thursday 24<sup>th</sup> December 2015. In cross-examination, he said that this date was an error and maintained the video was taken on 22<sup>nd</sup> December 2015. I find it curious that in the 2<sup>nd</sup> witness statement in introducing the photographs, both the day and the date are specified, which he does not do in any other reference to a date but, in the event, nothing turns on that for the reasons set out below.

### **Ms Defreitas’s Evidence**

50. In her statement signed on 18<sup>th</sup> April 2019 Ms Defreitas says that she remembered the accident like it was yesterday and supports Mr Seymour’s evidence that they were driving to the IGA Café for breakfast. Her statement was submitted as her evidence in chief and she did not wish to add anything further.
51. When challenged in cross-examination regarding the suggested implausibility that they were going for breakfast at 1:00 p.m. she replied that the time was whatever she put in her statement. She did not state any time in her statement.
52. Like Mr Seymour, Ms Defreitas does not refer to the right-turning vehicle in her

witness statement. All that she says about the actual accident is that:

*"We were driving along Leeward Highway in the right lane of traffic. Approximately 250 – 300 ft from the corner of Cherokee Road, I felt an enormous impact hit us from behind ... The force of the impact pushed us past the corner of Cherokee Rd. where my husband brought the car to a complete stop."*

53. In cross-examination Ms Defreitas supported Mr Seymour's version of events and denied that Mr Seymour had executed a U-Turn. She stated that the accident occurred before the Break and before they reached the Scotiabank building. She states that they ended up coming to a stop past the Petrol Station.

#### **Mr Deane's Evidence**

54. Mr Deane, now retired, gave evidence via video link due to his health issues. Mr Fulford before the trial had started, had raised in chambers that there were concerns regarding Mr Deane's mental faculty and, although no medical report was provided, and no challenge was made to his competency to give evidence, I take this into account in assessing his oral evidence, particularly as this matter has taken some 7 years to come to trial and as Ms McLean submits and I accept:

*"There is no doubt that the passage of time from the date of the collision to the date of the trial impacted each of the witnesses' memories as to the specific details of the collision and the events at the scene following that collision."*

55. His witness statement was submitted as his evidence in chief. He enlarged on this briefly by maintaining that Mr Seymour performed a U-turn, pulling out in front of him which resulted in the right-hand side of the Truck catching Mr Seymour's bumper. He says the Truck hit the Plaintiff's Vehicle on the left side.
56. In cross-examination Mr Deane confirmed that he was driving from Downtown to Leeward with a full load. He states that he was travelling at no more than 30 mph and that he does not drive over that speed and takes his time as it is not possible to stop right away due to the weight of the Truck.
57. When asked how long it takes to bring the Truck to a stop, he replied "About 2

*minutes*", a reply much emphasised by Ms McLean in her closing submissions. That answer was not challenged in re-examination, but it cannot practically be accurate and I cannot accept it. In the same way, I cannot accept his answer that there were 35 seconds between him seeing the Plaintiffs' Vehicle start to turn and the impact, as in answer as to whether he sounded his horn, he replied that he didn't have time. I have formed the view that for whatever reason, Mr Deane's concept of time is somewhat skewed as these answers are in my view so far from reality and not supported by the extrinsic evidence.

58. Mr Deane stated that as he saw the Plaintiffs' Vehicle start to turn, he pressed the brakes but that he hit it at an angle, as there was insufficient time to stop.
59. Mr Deane states that the collision took place at the "*gas station*" where the Truck came to a stop. He also says that he did not move the Truck before the police arrived. For the reasons set out below I take him to mean that the collision occurred at or immediately after the Break.

### **Considerations**

60. I am urged by counsel on both sides to accept their respective witnesses' accounts and reject that of the other side. Ms McLean suggests that Mr Deane's medical complications are irrelevant to his evidence, a submission which I cannot accept. It was apparent from Mr Deane's demeanour and answers that he was struggling following the questioning and to remain focused, but he did not get upset or angry and I assessed that he was answering the questions to the best of his ability, given his situation.
61. I find that assessing the credibility of the witnesses by their demeanour does not assist me in determining liability in this matter. The Court is faced with 2 versions of events of which only one can be true. I must therefore decide which version of events is more likely to be true based on all the information that has been put before me. Mr Fulford directs me to **Reid -v- Dowling Charles and Percival Bain**<sup>7</sup> from which he refers to the quotation of Justice McMillian (at 1<sup>st</sup> instance) by Lord Ackner giving

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<sup>7</sup> (Trinidad and Tobago) [1989] UKPC 24.

the judgment of the Panel:

*“Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasised to their Lordships that **where there is an acute conflict of evidence** between neighbours, particularly in rights of way disputes, **the impression which their evidence makes upon the trial judge is of the greatest importance.** This is certainly true. However, in such a situation, **where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions,** in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”* (Emphasis added)

62. The above approach has been re-affirmed in **The Attorney General v Anino Garcia**<sup>8</sup>
63. The parties' version of events can be put simply.

#### **The Plaintiffs' Account**

64. The Plaintiffs say that the collision took place some **250 to 300 feet before** the corner of Cherokee Road i.e. before the Break. Mr Seymour was braking as a result of the vehicle in front of him slowing to make a right turn through the central reservation.
65. It was at that point that the Plaintiffs' Vehicle was hit **square on the rear** by the Truck being driven by Mr Deane. The collision then caused the Plaintiffs' Vehicle to *“catapult out of control ending up a distance from the impact”*<sup>9</sup>. It

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<sup>8</sup> Civil Appeal No.86 of 2011 (4 December 2014) (TT 2014 CA 51).. Also cited with approval in **John Phillips and ors v The Attorney General of Trinidad and Tobago** TT 2023 CA 29.

<sup>9</sup> Paragraph 7 of the Amended Statement of Claim.

came to a stop either **immediately before or past the Petrol Station.**

### **Mr Deane's Account**

66. Mr Deane says that he was driving with a full load at approximately 30 mph. when Mr Seymour, who was travelling in a westerly direction made an illegal U-turn and pulled out in front of him **through the Break.**
67. He was unable to brake in time and the right side of the Truck collided with the rear of the Plaintiffs' Vehicle **hitting it at an angle.** He came to a stop on the central reservation **past the break.**

### **The Police Report**

68. Whilst Ms McLean urges me to give great weight to the evidence of Officer Robinson, as being the only independent witness. As I have said above, I do not find the Report to be particularly helpful. Both parties suggest that there are errors in the Report, the Plaintiffs suggesting that the word 'west' in the 'DETAILS OF ACCIDENT/INCIDENT' should be read as 'east' in accordance with Officer Robinson's evidence, and Mr Deane saying that both 'west' and 'east' are incorrect and should be reversed.
69. Officer Robinson did not witness the accident. She is not trained in accident investigation and she gave evidence that the extent of her investigation was to examine the scene, talk to both drivers, record what was said, and check for witnesses or surveillance. In this instance, there were no witnesses other than the parties and no surveillance<sup>10</sup>.
70. I am of the view that what is contained in the Report is what she was told by Mr Seymour at the scene. I do not accept that she was able to assess or did assess whose version of events is to be preferred and I am mindful that Mr Seymour's vehicle had been moved onto the verge before the police arrived.
71. Whilst Officer Robinson says that she spoke to both drivers she stated that Mr Deane did not say much. There is no record in the Report of anything Mr Deane said and as

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<sup>10</sup> Officer Robinson says that she checked with Scotiabank to see if there was any footage on its security cameras.

noted above, her pocketbook cannot be found. Mr Deane gave evidence that he did not recall speaking to the police officer at all. If there had been a critical analysis of the incident by Officer Robinson then I would have expected a more detailed report.

### **The Photographs**

72. I am assisted by the bundle of photographs put into evidence by Mr Seymour.
73. Surprisingly, there are no photographs showing where exactly the Plaintiffs' Vehicle came to rest nor where it was moved to before the police arrived, but there are photographs of the vehicle after it was moved from the verge into a nearby car park.
74. Ms McLean submits in reply to Mr Fulford's submission that Mr Seymour, in answer to a question from the Court, *"was also unable to give an explanation as to why there were no photos of his vehicle in the road"* that any suggestion that the Plaintiffs *"... should be expected to have taken more, or better, or specific, photographs of the scene, as if they were professional investigators or insurance adjusters rather than lay people, that is respectfully, and unreasonable standard to hold any layperson to."* I do not need to make any such determination. The evidence is what it is and it is for the Plaintiffs to prove that their version of events is more likely to be right and the extent of the evidence they submit to do that is a matter for them.
75. Crucially, 2 photographs were produced looking from the rear of the Plaintiffs' Vehicle before it was moved onto the verge, looking westward down the eastern carriageway towards where the Truck came to rest. Unfortunately, the physical features and buildings to the north of the highway are not shown in the photographs, making fixing the location problematic.
76. In those 2 photographs the Truck can be seen to have its right front wheel on the central reservation, almost into the westerly slip road. It is past the Break. The Plaintiffs' Vehicle is seen to be some distance in front of the Truck. Notably, a short distance behind the Plaintiffs' Vehicle can be seen a lamppost in the central reservation and the Kishco building on the south side of the highway.
77. The Plaintiffs' Vehicle is shown as having passed the Kishco building. From the photographs in the Loss Adjuster's Report, it can be seen that the lamppost is



situated past the Petrol Station and as such it appears that the Plaintiffs' Vehicle came to a stop, almost opposite what is now the entrance to the KB Homes store car park, (formerly the entrance to Price Club as described in the evidence), into which car park Mr Seymour moved the Plaintiffs' Vehicle from the verge. This is significantly further in the easterly direction than described by either Ms Defreitas or Mr Seymour.

### **The Skid Mark**

78. Also included in the bundle of photographs, are photographs of a tyre skid mark on the highway before the Break, ending just before the Break. Mr Seymour says that these photographs were taken from a video he took the day following the accident. In his 2<sup>nd</sup> witness statement, he says that the skid mark starts where he was first hit. He then includes further photographs of where he says his vehicle came to a stop. He describes the photographs as:

*“ a. the beginning of the tire (sic) mark which I believe suggests my car has been hit well before I got to the junction at Cherokee Rd.;*

*b. The long tire (sic) mark was created when I slammed on my brakes in an attempt to stop my car which was catapulted forward by the impact of the force of the truck driven by the 1<sup>st</sup> Defendant;*

*c. The tail end of the tire (sic) mark; and the location where my vehicle came to rest after collision, and;*

*d. debris which resulted from the collision.”*

79. I note that there is only 1 skid mark rather than 2 parallel skid marks as you might expect. The skid mark ends just before the start of the Break, heading east.
80. It is difficult to see from these photographs where exactly Mr Seymour says the Plaintiffs' Vehicle came to a stop and it is not possible to see the location of the debris, but it is clear that this is after the Break and before the lamppost (referred to in paragraphs 76 & 77 above) as it can be seen further onwards, the photographs having been taken in an easterly facing direction. There are of course no vehicles in these photographs.

81. Mr Deane does not deal with these photographs in his witness statement but in his oral evidence he said that the skid mark was caused by the Truck as he tried to stop, however, in his witness statement, he says:

*“The U-turn occurred so unexpectedly and at a time and place where it was clearly unsafe for Mr Seymour to do so, that **I had no time to fully apply my brakes** in order to avoid the collision.”* (My emphasis).

### **Damage to the Vehicles**

82. There are several photographs which show the damage that was caused to both vehicles. The Truck sustained damage to the front right-hand side, substantially to the right front wing and light cluster. The photographs of the Truck in the Loss Adjuster’s Report show the front right wing being rebuilt.
83. The Plaintiffs’ Vehicle sustained substantial damage to the rear which included a shattered rear window. What in my view is significant is that there is not consistent damage across the entire rear of the vehicle. The rear right-hand wing and light cluster are undamaged. The rear bumper is missing, not an unusual occurrence as on modern cars they are mostly decorative rather than protective, but the exhaust pipe which protrudes from the rear of the vehicle at the right-hand side appears undamaged. Towards the left side of the vehicle is what appears to be the point of impact. There is a significant inward dent in between the rear left wing and the rear number plate, which has caused the boot lid to buckle upwards.

### **Analysis**

84. The inconsistencies in Mr Deane’s evidence, ably pointed out by Ms McLean, do not escape me, but I am not of the view that such inconsistencies have been calculated to support his version of events or to mislead the Court, but are possibly a result of the blurring of memory due to the passage of time, the natural human desire to provide an answer to assist the Court in a pressured situation as a court trial, or confusion as a result of his declining health. I do not find the inconsistencies in the Plaintiffs’ evidence likewise as they are not explained by the extrinsic evidence.

85. The task for the Court is to determine, on the balance of probabilities who is primarily liable for causing the accident and if the other party in any way contributed.
86. As far as how the accident occurred there is no common ground. As I have noted above, I am not comfortable attributing liability based on an assessment of the demeanour and credibility of the witnesses alone, which I would have to do but for the photographs that were produced, but the credibility of the witness evidence can be assessed in light of the photographic evidence.
87. As I have noted, the Report does not assist me. I find it unnecessary to resolve the issue of the apparent error in the narrative of the Report.
88. There is no dispute as to where the Truck came to a stop. The Plaintiffs differ as to where the Plaintiffs' Vehicle came to a stop.
89. It is apparent from the photographs in the Loss Adjuster's Report that if Mr Seymour had stopped immediately before the Petrol Station then he would have been blocking the Break and would be in front of the Cherokee Road junction when viewed from Cherokee Road. I cannot accept this was the case. I find that the Plaintiffs' Vehicle came to a stop past the Petrol Station and almost at the entrance of KB Homes/Price Club.
90. I have come to that finding for the following reasons:
- a. The 2 photographs taken from the rear of the Plaintiffs' Vehicle show the Truck past the Break. If Mr Seymour had stopped where he says he did, then the Plaintiffs' Vehicle would have been behind the Truck.
  - b. The photographs show a lamppost a short distance behind the car.
  - c. From the photographs in the Loss Adjuster's Report it can be seen that the lamppost is past or further eastward than the Petrol Station, and therefore the Plaintiffs' Vehicle was further east still.
91. I now turn to assessing where the collision most likely took place. The Plaintiffs both say that the Plaintiffs' Vehicle was struck 250 to 300 feet before the corner of

Cherokee Road. To take the phrasing from **Reid**, I find that contention inherently improbable for the following reasons:

- a. The Plaintiffs' Vehicle would have had to travel an improbable distance after the impact before coming to a stop.
  - b. The Truck would also have to had travelled some distance, passing Scotiabank and the Break before mounting the central reservation.
  - c. There is no suggestion that the Plaintiffs' Vehicle was pushed by the Truck, but as he puts it was "*catapulted forward by the impact of the force of the truck.*"
  - d. It is the Plaintiffs' case that Mr Seymour was slowing as a result of the vehicle in front of him also slowing. No explanation or consideration has been provided as to why, if the Plaintiffs' Vehicle was "*catapulted forward*", it did not collide with the vehicle in front of it which Mr Seymour was taking evasive action to avoid colliding with.
92. In considering Mr Deane's version of events, it is to my mind much more plausible that the collision happened at or very shortly after the Break. That in my view would be consistent with where I have found the vehicles came to a stop. (It would also answer the question raised in sub-paragraph 91.d above.)
93. In coming to the above findings, I have considered the evidence regarding the skid mark. I have discounted this evidence as I consider it improbable, and it cannot be made out on the balance of probability, that the skid mark was caused as a result of the accident or by either of the vehicles. I reached this conclusion as:
- a. It was raining or at least the road was wet at the time of the accident.
  - b. The photographs of the skid marks were stills taken from a video taken either the day after the accident or 3 days after. It cannot be said that they are contemporaneous. It could have been made by any number of vehicles.
  - c. Officer Robinson stated there were no brake/skid marks on the road.
  - d. The skid mark is inconsistent with the finding I have made as to where the accident occurred. I accept that it could be said that there is a possibility that it could have been made by the Truck attempting to stop but I discount that

suggestion as:

- i. Mr Deane did not refer to any skidding before giving oral evidence.
- ii. He stated that he did not “*slam*” on the brakes but “*pressed*” the brakes which is inconsistent with causing the Truck to skid.
- iii. The skid mark was some distance from where the Truck came to a stop on the central reservation.

94. Lastly, I consider the damage to the vehicles. Mr Seymour maintains that the Plaintiffs’ Vehicle was hit square on from behind. Mr Deane says the Plaintiffs’ Vehicle was hit at an angle. I find it improbable, having regard to the damage to both vehicles that the Truck hit the Plaintiffs’ Vehicle squarely. I have detailed the damage in paragraphs 82 & 83 above.
95. If the point of impact had been as described by Mr Seymour, then it would be more probable that there would be damage across the whole of the front of the Truck and the whole of the rear of the Plaintiff’s Vehicle. The damage, as illustrated in the photographs is more consistent with the vehicles impacting at an angle. Accordingly, on the balance of probabilities, I prefer Mr Deane’s evidence that the impact was at an angle.
96. This then raises the question of how the accident occurred. Did the Truck rear-end the Plaintiffs’ Vehicle as it was slowing or did Mr Seymour execute a U-turn?
97. Having come to the conclusions against the Plaintiffs of where the accident took place and where the Plaintiffs’ Vehicle came to a stop, I prefer the evidence of Mr Deane, that Mr Seymour executed a U-turn and pulled out in front of him, having regard to the damage caused to the vehicles. In coming to that conclusion, I have considered the likelihood of the 2 versions of events being true. I have asked myself the question whether it is plausible for the right side of the Truck to have impacted with the left rear side of the Plaintiffs’ Vehicle at such an acute angle such that the deep dent could have occurred, if both vehicles were travelling in a straight line. I find it more probable that the vehicles were an angle to each other when the impact happened. I observe that the Truck came to a stop on the central reservation with its

right wheel close to the westerly slip road i.e. it went to the right after the impact. I find it improbable that it would come to rest in such a position if its right side had somehow impacted the Plaintiffs' Vehicle at an angle with the Plaintiffs' Vehicle travelling parallel to the central reservation. That would suggest the Truck would have had to be veering to the left. I find it is more probable that the collision occurred whilst the Plaintiffs' Vehicle was turning into the carriageway after executing a U-turn as that presents a more plausible explanation of the damage.

98. Accordingly, I find, on the balance of probability, that the accident occurred because of Mr Seymour executing a U-Turn, a manoeuvre which is not allowed, and pulling out in front of the Truck driven by Mr Deane.
99. I must also consider if Mr Deane contributed to the accident in any way. The Plaintiffs, by the Order of 19<sup>th</sup> June 2019 were given leave to file a reply to defence and defence to counterclaim if they were so advised. They chose not to do so. I am also mindful that by the time they were preparing the Amended Statement of Claim, they knew what was being alleged against them. They did not plead any contributory negligence by Mr Deane in the event they were unsuccessful in making out liability on their case.
100. In the Counterclaim the Defendants plead negligence against the Plaintiffs as:
- i. Failing to drive with due care and attention;
  - ii. Executing a U-turn when it was unsafe to do so;
  - iii. Unexpected turning into the 1<sup>st</sup> Defendant's lane when it was unsafe to do so;
  - iv. Failing to keep a proper lookout;
  - v. Driving recklessly and without due regard for other road users like the 1<sup>st</sup> Defendant;
  - vi. Driving without such due care that when he executed his unexpected U-turn there was nothing the 1<sup>st</sup> Defendant could do to avoid the collision.
101. The absence of any defence to the counterclaim means that it proceeds undefended and, notwithstanding Ms McLean's closing submissions raising issues of suggested negligence by Mr Deane, there is no pleading of contributory negligence before the

Court. Her submissions arise in respect of a pleaded case entirely unaddressed by the Plaintiffs.

102. In the circumstances, I must hold 100% Mr Seymour liable for causing the accident.

**Disposition.**

103. The Plaintiffs' claim is dismissed.

104. Liability is entered for the Defendants on the counterclaim, the matter to be listed for an assessment of damages hearing.

105. The Plaintiffs shall pay the Defendants costs to be taxed on the standard basis if not agreed.

106. In closing may I thank counsel for their assistance and patience in this matter.

**23<sup>rd</sup> November 2023**

**The Hon. Justice Anthony S. Gruchot  
Judge of the Supreme Court**

