3.2.2004

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 536 OF 1999

BETWEEN: **JULES EVAN FOSTER** **PLAINTIFF**

AND: **DAFFODIL MONIQUE BODDEN** **DEFENDANT**

Appearances:

Mr. Hector Robinson for the Plaintiff - Quin & Hampson

Mr. Robert Jones for the Defendant - Ritch & Conolly

Mr. Christopher Russell for the Defendant instructed by Mr. Robert Jones of Ritch & Conolly

Heard:

January 27- 30, 2004

JUDGEMENT

Henderson, J.

Around 12:30 a.m. on May 24, 1997 the plaintiff, Jules Foster, was involved in a serious motor vehicle accident which left him with very severe injuries of a permanent nature. This trial has been concerned only with the question of liability for the accident.

Mr. Foster was driving northbound on West Bay Road on Grand Cayman Island at the time. He was driving a Hyundai Accent. He was alone. The collision occurred in the vicinity of the Queens Court Shopping Centre, an area containing at least one nightclub.

The defendant was driving southbound on West Bay Road at the time. She was in a Ford Probe with two of her friends. They had spotted a friend of theirs in the Queens Court area, so the defendant was in the process of turning right into Snooze Lane from the middle lane of West Bay Road. As she did so, she struck the curb and came to a stop with the car only partly turned.

After she made her partial turn, Mr. Foster swerved dramatically to his right in the vicinity of the defendant's car and then collided with a white van which was traveling south bound in the middle lane.

The defendant had had nothing to drink and had consumed no drugs that evening. She struck the curb due to simple inattention to her driving.

There are two issues with respect to the defendant's vehicle:

1) How far, if at all, was her car protruding out from the curb into the northbound lane of West Bay Road?
2) How close was the plaintiff's car to her at the moment she began her turn?

Police Constable Williams, an experienced officer who attended at the scene shortly after the accident, saw no obstruction of the northbound lane. Traffic could move through it despite the accident.

The only evidence of obstruction of the northbound lane comes from an admission against interest by the defendant herself. She gave a statement shortly after the accident in which she said that the rear of her vehicle was slightly sticking out into the north bound carriageway. I consider this admission reliable. I also infer, from the fact that the plaintiff swerved to his right just before the impact, that there was some degree of obstruction in his lane.

The defendant's car was moved at some point after the accident because Constable Williams, a reliable witness, drew it in a parked position in Snooze Lane against the south curb. The position in which he drew it shows that, at the time, it was not protruding into the northbound lane at all.

I am satisfied, however, that the defendant's ford was protruding into the northbound lane to some degree but not enough to prevent a prudent, sober driver from manoeuvering around it in safety.

On the balance of probabilities, I am not satisfied that the defendant turned immediately in front of the plaintiff, as he argued at trial. The plaintiff had enough time to slow down and react to what he saw in front of him. I draw that inference from the evidence of the defendant and her passengers. They spoke to each other briefly after the car stopped. Their evidence, which I accept on this point, suggests that a few seconds went by before the plaintiff passed them.

I do not consider the evidence to the contrary from Mr. Charles Ebanks to be reliable. He was too far away to see much. Despite the fact that he is an Auxiliary Constable in the R.C.I.P., his evidence was confused and vague. He took no notes at any time.

I turn to the question of alcohol.

The plaintiff smelled of alcohol after the accident when he was being treated at the hospital. The defendant's case is that the plaintiff had a blood alcohol level of 103.9 milligrams per decalitre of blood. The legal limit is 100 milligrams per decalitre. There was no evidence as to the chain of custody of the blood sample, as one would expect to hear in a criminal trial. There was also no evidence to contradict the proposition that this was the plaintiff's blood. Mr. Robinson argued that the evidence was simply insufficient for me to draw the inference that this was his blood. The police report asserts that it was, and indicates that the blood sample was identified by the number "170" to preserve the anonymity of the subject.

I infer that the blood was taken by a nurse or doctor at the hospital and analysed at the hospital. Hospital procedures with respect to the handling of blood samples are generally reliable, all though not foolproof. This is so because confusing the blood sample of one patient with another could have catastrophic consequences for the patients concerned. In addition, hospitals are much concerned with their civil liability.

On a consideration of all the evidence, I am satisfied on a balance of probabilities that the blood sample belonged to the plaintiff. I am also satisfied that the blood alcohol concentration is indicative of his blood alcohol level at the time he was driving.

No evidence has been led as to the effect of a blood alcohol level of 103.9 milligrams per decalitre of blood on a subject's reaction time, ability to perceive objects at night, or judgement as it pertains to driving. I can, of course, conclude that the plaintiff's reading was over the legal limit. I can also infer that the Legislative Assembly had good policy reasons for setting the legal limit where it did. The only reason that makes sense in this context is that a blood alcohol concentration over 100 milligrams per decalitre has some negative effect on a driver's judgement, perception of objects and hazards, and reaction time. I infer that all of these would be impaired to some degree although I can say nothing more, in the absence of expert evidence, about the severity of the level of impairment. I conclude that the plaintiff's ability to drive was, at the time of the collision, impaired by alcohol.

I turn to the question of speed.

Much expert evidence was led on this subject. The plaintiff's expert asserts that the plaintiff was driving about forty miles per hour before the collision. The defendant's expert says he was driving at least fort-nine to fifty-four miles per hour, and quite likely sixty miles per hour. The posted speed limit in the area of the collision is forty miles per hour.

At the outset, it is necessary to emphasize (because of some of the arguments of counsel) that a posted limit is a maximum speed. It does not by itself define the obligation of a driver. Ever driver is obligated to proceed at whatever speed is prudent in all of the circumstances, including the amount and nature of traffic that he might reasonably expect to find on the roadway in front of him. At night, in a potentially busy area, that speed might well be below the posted speed. When that driver's abilities are also impaired to some degree by alcohol, it is clear that the prudent speed would be slower than the posted speed of forty miles per hour.

Both experts drew inferences from what they concluded to be the point of impact. They did calculations involving crush damage and drew conclusions from the distance the vehicles were thought to have traveled from the point of impact and the positions in which they ended up.

The difficulty with this evidence is that there was no reliable evidence of the point of impact itself. Constable Williams identified it as being at a certain point, but I infer from his evidence that he was simple repeating something that Constable Walters told him. Constable Walters is an accident investigation expert who attended at the scene, while Williams is not. In addition, the point of impact appears to have been determined from debris deposited on the road, which both experts agree is the least reliable method.

The defendant's expert accepted the police opinion as to the point of impact. The plaintiff's expert placed the point of impact farther north, which happened to result in an estimate of a lower speed for the plaintiff. The plaintiff's expert provided some attractive arguments for his conclusion that the point of impact was farther north.

On balance, I do not accept the evidence of either expert unreservedly because of the unresolved dispute about the location of the point of impact. I do infer from all of the evidence that the plaintiff was driving at least forty miles per hour at the time of impact (as the experts agreed) and quite possible faster. It must be remembered that the relevant speed is not that which pertains to the moment of impact, but the speed at which he was traveling a few seconds earlier when he still had the possibility of avoiding the defendant's protruding car.

I am satisfied that the plaintiff, being impaired by alcohol and entering a relatively busy area at night, should have being driving slower than he was. He was traveling at an unsafe speed. A prudent driver would have known that. In addition, as the defendant did not turn directly in front of the plaintiff's vehicle, the plaintiff would have had time to react appropriately to her protruding vehicle if he was driving more slowly. I find that he saw the defendant's car at the last second while he was traveling two fast, overcorrected (due to an error in judgement, likely because of his impaired state) by swerving dramatically to his right, and then collided with a white van which was south bound in the centre lane of West Bay Road.

These findings are sufficient to dispose of the case. It follows from what I have said that the defendant was driving in a negligent manner. His excessive speed, his impaired state, his failure to keep a proper lookout, and his failure to take action that a reasonable driver would have taken to avoid a hazard all satisfy me that he was negligent. He must bear the majority of the responsibility for his loss.

The defendant also committed an act of negligence by turning and stopping with the rear end of her car protruding out into the roadway. She failed to keep a proper lookout and failed to execute the turn correctly, both acts of negligence.

Ms. Bodden's act of negligence contributed to the motor vehicle accident as it caused the plaintiff to swerve inappropriately at the last minute. She must bear some portion of the liability because of her contribution to the damage.

In all of the circumstances, I am satisfied that eighty-five percent of the liability should be apportioned to the plaintiff and fifteen percent to the defendant.

I accept the joint position of counsel that costs should be apportioned in the same manner as liability has been apportioned. I award to the plaintiff fifteen percent of the total costs of both parties and I award to the defendant eighty-five percent of the total costs of both parties.

Dated this 3rd day of February, 2004

Henderson, J.

Henderson, J.
Judge of the Grand Court