



The Educator



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Who got there first?

Traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less upon the assumption that the drivers of all other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets.

Consider the following - Evan Saint was a passenger in a pickup truck driven by his brother Joel Saint that entered an intersection on a red light and was hit by a lorry driven by Mr. Sekhorn going through the intersection on the green light. Mr. Saint and Mr. Sekhorn gave conflicting accounts of the condition of the traffic light at the intersection and each blamed the other for causing the collision and the injuries arising from it.

In a negligence claim brought by Evan Saint for the injuries he sustained, the parties were unable to resolve their dispute and decided to proceed to arbitration.

The Facts

Just prior to 7 p.m. on the day of the accident, Mr. Sekhorn was driving a lorry eastbound along Mayfield Road. As he approached the traffic signal controlled intersection at Kennedy Road, he saw that the traffic light was green in the direction of his travel. He was not speeding through the intersection. While travelling through the intersection on a green traffic light, at the last moment, just prior to the collision, he saw a vehicle southbound on Kennedy Road, driving through the intersection on a red traffic light. The Sekhorn pickup struck the southbound vehicle which was being driven by Mr. Joel Saint. Very serious injuries resulted to Mr. Joel Saint's younger brother, Evan Saint, who was the passenger in the Saint vehicle.

There is evidence which, if accepted suggests that:

- a) the Saint vehicle was observable at a distance from the Mayfield/Kennedy intersection. The intersection is a wide open intersection with no obstructions;
- b) at some point in time and distance from the intersection, it was apparent to some witnesses that the Saint vehicle would proceed through the Mayfield/Kennedy intersection without stopping at the red light. Two witnesses (one driver of a vehicle following the Sekhorn truck and one driver of a vehicle stopped at the red light heading northbound) became concerned, prior to the Saint vehicle entering the intersection, that the Saint vehicle did not appear likely to stop at the red light and in fact, it did not stop at the intersection but proceeded through the red light until the collision occurred. The driver behind the Sekhorn's lorry started to slow down or brake because of this concern;

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- c) There is conflicting evidence as to whether the Saint vehicle proceeded through the intersection without stopping at the intersection or whether it initially stopped at the intersection and then proceeded through it despite the red light. There is another witness who was stopped at the intersection who testified she saw the Saint vehicle initially stop at the intersection and then proceed through the red light;
- d) Mr. Sekhorn's evidence was that he saw the Saint vehicle stopped at the intersection and Mr. Sekhorn only became aware that the Saint vehicle was proceeding through the intersection when the Saint vehicle was just feet away from the Sekhorn's lorry;

Depending on which facts may be acceptable, it is possible that Mr. Sekhorn should have become aware at some point prior to the Saint vehicle entering the intersection (rather than "just feet away from the Sekhorn's lorry"), that the Saint vehicle would proceed through the intersection contrary to the red light.

Analysis

Let me start by stating that there is no issue:

- a) the driver with the green light is entitled to assume that other drivers will obey the red light and bring their vehicles to a stop. The driver with the green light has no duty to keep a look out for traffic for the "possibility" a driver would fail to stop on the red light;
- b) A driver entering an intersection on a red light is negligent, perhaps even grossly negligent; and
- c) the law recognizes that a driver, if faced with sudden, emergency situation not of his or her own making, cannot be held to a driving standard of perfection. In such dire circumstances, decisions about potential evasive action must be made instantly, without time for calm and considered reflection, and with the threat of serious personal injury hanging overhead. Driving conduct in such emergent and stressful conditions cannot be judged against the standard of driving perfection that 20:20 hindsight will often provide. Rather, the driver should only be held to the standard of care expected of an ordinary, reasonable and prudent driver faced with those same sudden and emergent conditions.

The "Duty"

As every responsible, licensed driver in the Caribbean will know, traffic lights safely control the flow of traffic through busy intersections. Drivers with a green traffic signal may proceed through the intersection. Drivers with a red traffic signal must stop, and not proceed until the light turns green.

As such, it is common ground that a duty arises when the driver proceeding through an intersection with a green traffic light actually becomes aware of a possible collision arising from a vehicle disobeying the red traffic light. That duty is for the driver proceeding through the intersection with the green traffic light to take all reasonable steps a reasonably careful and skilful driver would have availed himself to attempt to avoid a collision.

The parties disagree as to whether the Duty applies when the driver proceeding through the intersection with a green traffic light should have become aware of a possible collision arising from a vehicle disobeying the red traffic light.

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Drivers are entitled to proceed upon the assumption that others will follow the rules of the road. Accordingly, a driver approaching an intersection that is controlled by a traffic light, where that light is showing them a green signal, is entitled to proceed through that intersection on the assumption that drivers approaching the intersection from other directions, and who are necessarily being shown a red light, will stop. While it is always wise for drivers, even with green lights in their favour, to cautiously survey upcoming intersections, they are free to proceed through those intersections without slowing or stopping their vehicles.

The *Road Traffic Act* statutory rules of the road do not abolish the common law duty that rests upon all person using the roads to exercise due care during the operation of a motor vehicle.

The Position of the Parties

The Saints submit that the Duty arises on the driver proceeding through an intersection with a green traffic light when, when the driver actually becomes aware OR when the driver by the exercise of reasonable care should have become aware of the other vehicle proceeding through the intersection disobeying a red traffic light.

The Defendant Sekhorn submits that the Duty only arises on the driver proceeding through an intersection with a green traffic light when the driver actually becomes aware of the other vehicle proceeding through the intersection disobeying a red traffic light.

During the arbitration the attorney for Mr. Sekhorn submits that nothing in the circumstances alerted or should have alerted Mr. Sekhorn to the fact that the driver of the pickup, Joel Saint was going to go through the red light. As arbitrator, I would disagree. There was evidence, such as the evidence of the independent witness who said that both drivers were speeding and from the Joel Saint's expert Mr. Patrick, from which one could infer that a reasonably prudent driver should have been aware of the hazard posed by the pickup. Similarly, it was open to me to accept Mr. Patrick's evidence with respect to causation.

With respect to the question dealing with standard of care, it is not necessary for me, the arbitrator to find that the driver with the green light could have or should have become aware the driver of the other vehicle was going to go through the red light any earlier than he actually became aware of it.

The jurisprudence

The jurisprudence on the standard of care of a driver with a green light is not in dispute. A driver with a green light is free to go through the intersection assuming that drivers approaching the intersection from other directions and who necessarily are being shown a red light will stop. The dominant driver cannot be found liable unless it can be established that the dominant driver was aware or reasonably should have been aware of the impending accident and had an opportunity to avoid the collision.

I accept the argument that traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less upon the assumption that the drivers of all the other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets. However, a statutory right of way does not absolve a driver from exercising proper care. A driver should not exercise his or her right of way:

1. if the driver becomes aware or should become aware that the driver without the right of way is going to go through the intersection and

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2. if the circumstances are such that the driver with the right of way had the opportunity to avoid the collision.

Having the right-of-way through an intersection does not, however, absolve a driver from exercising proper care. Even such drivers must act so as to avoid a collision if reasonable care on their part will prevent it. In other words, even if a driver has a right-of-way through an intersection, he or she should not exercise it if the circumstances are such that proceeding through the intersection will result in a collision which can reasonably be foreseen and reasonably avoided.

The important question in such circumstances is whether or not the driver with the right-of way had the opportunity to avoid the collision, that a reasonable driver would have taken, having regard to when the driver became aware, or should have become aware, of the reality that the subservient driver, without the right-of-way, was going to proceed through the intersection in disregard of his or her statutory duty to yield.

In answering this question, the law recognizes that a driver faced with sudden, emergency situation not of his or her own making, cannot be held to a driving standard of perfection. In such dire circumstances, decisions about potential evasive action must be made instantly, without time for calm and considered reflection, and with the threat of serious personal injury hanging overhead. Driving conduct in such emergent and stressful conditions cannot be judged against the standard of driving perfection that 20:20 hindsight will often provide. Rather, the driver should only be held to the standard of care expected of an ordinary, reasonable and prudent driver faced with those same sudden and emergent conditions.

In my view, the position urged by Sekhorn would alter the common law duty of all users of the highways to exercise reasonable care in the operation of their vehicle whether they have a right of way or not. I am not persuaded that the Duty on all drivers, whether at an intersection with and without traffic lights is or should be different. There is no reason the driver's common law duty in one circumstance would or should be any different than the other circumstance.

Applying *Sekhorn's* arguments to traffic signal controlled intersections would permit drivers to blindly proceed through a green light with impunity even where the drivers' own failure to maintain reasonable care of his vehicle caused or contributed the driver's failure to see that another driver had disobeyed a red signal light. This in my view is not the law in the Caribbean.

In the result, as arbitrator, I would determine Joel Saint 95% liable for the accident and Mr. Sekhorn 5% liable.

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