The Educator

A Monthly Newsletter prepared by Cecil R. Jaipaul and published by *Rekalinc* for the Association of Insurance Institutes of the Caribbean (AIIC).

FOR EDUCATIONAL PURPOSES ONLY. **Vol. 19/10 October 2019**

The onus applicable to rear-end motor vehicle collisions

The AIIC's 20th Education Conference was held in Saint Vincent and The Grenadines in November 2019. - Picture this, in broad daylight, you were driving along Halifax Street in Saint Vincent, just below the maximum speed limit, taking in the scenes, when you were hit from behind by another vehicle.

The fact is, throughout the Caribbean, many 'rear-ender' accidents occur daily due to the inattention – texting and other use of cell phones, excess speed and following too closely. Now, let us look at the onus applicable to rear-end motor vehicle collisions.

Generally speaking, when one car runs into another from behind, the fault is in the driving of the rear car, and the driver of the rear car must satisfy the court that the collision did not occur as a result of his negligence.

However, the common law principle does not automatically lead to liability for the driver who is following behind. Instead, it simply states that generally speaking this will be the case and shifts the onus to the following driver to show otherwise.

There is a clear and well-defined standard of care imposed upon the driver of a vehicle which follows another. He must keep a reasonable distance behind the vehicle ahead. The Supreme Court of Canada, for example, has observed that when it comes to rear end collisions, the moving driver will have a difficult time pinning the fault on anyone else.

There can be no doubt that, generally speaking, when a car, in broad daylight, runs into the rear of another which is stationary on the roadway and which has not come to a sudden stop, the fault is in the driving of the moving car.

I hasten to add that it is not a hard and fast rule that the following driver is always at fault in a rear end collision. However, the basic burden on the driver following is to leave enough room to stop in safety given the speed and circumstances.

For example, when a vehicle takes sudden, abrupt, unlawful and unsafe action and swerves in front of another vehicle, it would be unreasonable and an affront to common sense to expect the vehicle that has been cut off to anticipate this action.

As noted, in a rear-end motor vehicle collision, the onus is on the driver following to prove that he or she could not have avoided the accident through the exercise of reasonable care. The onus of proof for rear-end motor vehicle collisions, trial judges often use a variation of the standard liability instruction, which provides that a reasonable and prudent motorist should drive at such rate of speed with his vehicle under such control that he is able to pull up within the

range of his vision. If there is any difficulty in seeing because of weather conditions, then common sense dictates that he should travel more slowly. In other words, if you can't see where you're going don't go. If the road is wet or slippery, then even more care should be taken. In a case where a vehicle is struck without the driver of the rear vehicle having seen it until it was too late to avoid a collision, then you should ask yourselves;

1) Was he keeping a proper lookout?
2) If he was keeping the best lookout possible, was he going too fast for the lookout that could be kept in the circumstances?"

So, generally speaking, when one car runs into another from behind, in the absence of any excuse for such a collision, the driver of the rear car must satisfy you that the collision did not occur as a result of his negligence.

This places the onus on the driver following to prove that he could not have avoided the accident by the exercise of reasonable care. As such, a driver must stay a safe distance behind the vehicle ahead, keep a lookout and maintain a reasonable speed, so that he or she has sufficient time to stop if the vehicle ahead suddenly stops. These requirements reflect long-established basic principles.

A defendant may be called upon to establish that he could not have avoided the accident by the exercise of reasonable care in certain situations, for example, where he collides with the plaintiff's car on the plaintiff's side of the highway or where he runs into the rear of the plaintiff's car.

In wet road conditions the defendant is obliged to show that he did not expect water at that point, and that he had no reason to expect it, for if he ought to have foreseen it, he was bound to drive slowly enough to avoid skidding or hydroplaning in it.

To put it differently, once the plaintiff has proven that a rear-end collision occurred, the evidentiary burden shifts from the plaintiff to the defendant, who must then show that he or she was not negligent. This analysis would apply even where an emergency situation is alleged,

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Strange but true

He gave it to me, but I cannot get it

In the recent Supreme Court of Belize case of ***Concepcion Mis v. Glenn Jay Mis and Omarcito Modesto Mis*** [2019], the Honourable Madam Justice Sonya Young commented briefly on the submissions made by Counsel for the Claimant relating to the Belize Supreme Court case of ***Rudolfo Juan v Trinidad Santiago Juan teal*** [2009] where the Court considered the enforceability a written arrangement between the father (now deceased) and his son which stated "upon my death the farm will pass over to my son Rodolfo." The Court found that "(t)he disposition was to take effect on the death of the father. Such disposition can be made only in a will…A document which is short of a will cannot make the disposition."

16 hollowed-out logs

The Barbados Court of Appeal case of *Rohan Shastri Rambarran, Gavin Wayne Green, Lemme Michael Campbell, Somwattie Persaud vs The Queen* [2019], involves six persons, all Guyanese nationals, who were arrested, tried and convicted of serious drug offences.

Almost 14 years ago, on 29 November 2005, a container of wood was off-loaded by three of the accused, at a construction site in Rowans St. George, Barbados. Some of the wood remained in the container but, at the direction of a co-accused, some was loaded onto a truck and subsequently transported to the home occupied by that co-accused and his wife.

As part of their investigation, the police executed a search warrant at the co-accused's residence and found that the wood, comprising 16 hollowed-out logs, contained a powdery substance suspected to be cocaine, and vegetable matter suspected to be cannabis. In total, 134 packages were found in the hollow logs: 65 of them contained vegetable matter later shown to be cannabis, and 69 contained the powder which was later shown to be cocaine. The search also revealed two suitcases. One suitcase contained 18 packages of vegetable matter shown to be cannabis while the second one contained 44 packages of the white powder shown to be cocaine. The weight of the drugs was 91.3 kilos of cannabis and 119.4 kilos of cocaine for a total of 210.7 kilos or 464.5 lbs.

The court, in its decision released on August 28, 2019 noted that this case deserves the description "legendary" for several reasons. The first is that it was the longest trial in recent memory, and perhaps in the entire history of trials in Barbados, to occupy the High Court of Barbados. The trial took some 14 weeks, resulting in 10 Volumes of Trial Transcript of some 4,656 pages; a Summation Volume of 545 pages; and a Mitigation and Sentencing Volume of 136 pages, for a total of 5,337 pages of trial transcript.

Takeaway:

While the underwriting of the shipment of the wood may have been a simple task, the claim could have been opened for more than 14 years pending the final appeal.

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