Privy Council Appeal No. 50 of 1941

William Ralph Guevara – – – – – – *Appellant*

v.

Robert Woodburn – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH FEBRUARY, 1943

Present at the Hearing:

LORD ATKIN
LORD RUSSELL OF KILLOWEN
LORD PORTER
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by* LORD ATKIN]

This in an appeal by the plaintiff from a decision of the West Indian Court of Appeal who reversed a decision by the Chief Justice of Trinidad and Tobago giving judgment for the plaintiff for 1,773.38 dollars and costs. The action was brought for damages for personal injuries caused by the negligent driving of a motor vehicle by the servant of the defendant. The defendant called no evidence at the trial and the facts are, as stated by the Chief Justice, uncontroverted. In Port of Spain, Trinidad, two roads, Roberts Street and French Street, cross at right angles, Roberts Street running east and west, French Street north and south. Roberts Street on the west side of the junction is 28ft. 3in. wide, narrowing to 20ft. 2in. as it leaves the junction. French Street is 26ft. 10in. continuously. About 10.30 p.m. on October 12, 1938, the plaintiff, a man aged 61, was riding his bicycle from north to south down French Street, intending to cross the junction and continue down the street. A short distance before he left the northern end of French Street he observed the glare of the lights of a motor vehicle on the west side of Roberts Street, but did not look in that direction until he reached a line about level with the kerb of Roberts Street. He then observed the defendant's jitney, which at that time he noticed was being driven fast and on the wrong side of the road about 60 to 70 feet away from him. He proceeded across the road at his ordinary speed, 8 to 10 miles an hour, and had reached a spot four feet from the corner of the two streets on the S.E. side when the motor vehicle, which had not changed its course or speed, drove into him, hitting him 25 feet up Roberts Street, and causing injuries to his right knee, from which he has not now fully recovered. Of the amount of damages awarded by the trial Judge there is no complaint. The plaintiff was able to state the position of the defendant's vehicle when he first saw it and the point of impact. From the defendant's position to the point of impact is 70ft.; from the point where the plaintiff was when he first saw it to the point of impact is 20ft. The learned Chief Justice, after finding negligence on the part of the defendant's driver, which was obviously indisputable, proceeded:

> " I find also on the evidence that in taking the crossing in the circumstances indicated by the plaintiff, he (the plaintiff), although riding on his correct side at a reasonable speed, was negligent in the sense of being

careless of his own safety and in not appreciating the situation created by the rapid approach of the defendant's jitney. To that extent the plaintiff may be said to have contributed to the accident."

He then proceeds to say that he cannot however accept the submission that it was a case of contemporaneous negligence for which both parties were to blame, and after pointing out the different courses that were open to the driver, including crossing over to his correct side, he concludes:

"The evidence before me in my view points strongly to the conclusion that by the exercise of reasonable care and skill he could have avoided the accident. Moreover, I am of opinion that it was the negligence of the defendant's driver and not the plaintiff's negligence which was the decisive cause of the accident. Accordingly the defendant is liable to the plaintiff in damages."

The learned Judges in the Court of Appeal, accepting the trial Judge's view that both parties had been negligent, came to the conclusion that the negligences were simultaneous and continued up to the moment of impact, and that the plaintiff had therefore brought the loss upon himself. Their Lordships cannot agree with this decision. They think that the plaintiff might well have escaped any finding of negligence. The suggestion is that he might have seen the approaching vehicle as distinguished from the glare of its lights a few feet before he actually lifted his eyes to it: and it is to be supposed that it is thought that a prudent man would have decided to stop and let it pass. But the jitney would then have been 70 to 80 feet away, and a man might reasonably suppose that he could safely cross to a position of safety seeing that he was in full sight of the motor vehicle, and had only to cross 10 feet of the road to get out of the way of the vehicle's correct course. At the place where he did in fact look it would have been highly dangerous not to proceed, for he would then be stopping at a place where he would almost certainly have been hit if the driver had diverted his vehicle to his correct side. But both Courts have agreed that there was some negligence on the part of the plaintiff, and their Lordships do not propose to reverse that finding. But on the assumption that the plaintiff was negligent in starting to cross the road and that his negligence must be deemed to be continuous, the fact remains that he had at the time of impact arrived at what should to him have proved safe territory. He was only 4 feet from the opposite edge of the road he was crossing, and should have been as safe there as any pedestrian or cyclist travelling westwards in that portion of Roberts Street. It seems obvious that the defendant's driver could at any moment of time before the actual impact by the slightest correction of his course towards his correct side have avoided the collision, for he had 16 feet margin the other side. It would appear that the learned Judges of the Court of Appeal have ignored the considerations which led the learned Chief Justice to the conclusion that it was the defendant's driver's negligence which was the decisive cause of the injury. This clearly means that it was the only effective cause: and is a finding which in their Lordships' opinion is correct and the only possible finding on the proved facts. In other words, the plaintiff's negligence, though possibly continuing to the end, did not contribute to the collision, which was entirely due to the defendant's driver's wicked persistent rush on the wrong side of his road. In these circumstances their Lordships will humbly advise His Majesty that the appeal be allowed, the judgment of the Court of Appeal be set aside, and the judgment of the Chief Justice be restored. The appellant must have the costs of the appeal to the Court of Appeal and such costs of his appeal to the Privy Council as are appropriate to appeals *in forma pauperis*.

(24646) Wt. 8026—151 90 2/43 D.L. G. 338

In the Privy Council

WILLIAM RALPH GUEVARA

v.

ROBERT WOODBURN

DELIVERED BY LORD ATKIN

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