24, 1971

IN THE PRIVY COUNCIL No. 50 of 1970

ON APPEAL

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

BETWEEN:

ANDREW SKEETE Appellant

AND

LEONARD JOHN Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment and order of the Court of Appeal, Trinidad and Tobago (Phillips, Fraser and de la Bastide, JJ.A.) entered the 2nd July, 1970, allowing the appeal of the Respondent from a judgment of the High Court, Trinidad and Tobago (Corbin, J.), entered the 17th April, 1969 and varying the order made by the High Court. pp.25-34 pp.16-17

2. The action arose from a motor vehicle collision occurring during the afternoon of the 28th June 1965 between a motor cycle, driven by the Respondent, and a motor car, driven by the Appellant. There was a sharp conflict of evidence, but the learned trial Judge preferred the evidence of the Appellant and his witnesses to that of the Respondent and his witnesses. He found that a stream of quite heavy traffic moving West was held up by traffic lights ahead. The Appellant, who had come from the East (vehicles, in Trinidad, drive on the left), had backed into a gateway with the intention of crossing the westbound stream, when a break in the traffic permitted, and returning to the East. The driver of one of the cars held up

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by the lights left a gap open for the Appellant to cross, and signalled to him to move out. The Appellant did so, moving very slowly, and as he inched across and out of the stream his car was struck by the Respondent who, on his motor cycle, was travelling West and passing the stationary stream on the offside.

pp. 3-5 3. The Respondent, by his Statement of Claim, alleged negligence by the Appellant and claimed damages for personal injuries together with special damages for loss of earnings and other
pp. 5-6 expenses. The Appellant, by his Defence, admitted the collision but denied that he had been negligent. He alleged negligence by the
p.16 l.34 Respondent. The trial judge found the Appellant to have been negligent and assessed damages to the Respondent as follows: loss of
p.17 l.18 earnings $4,896.00; other special damages
p.17 l.29 $1,800; damages for pain and suffering $7,000. He also found contributory negligence by the
p.17 l.1 Respondent to the extent of 90 per cent. The
pp. 19-24 Respondent appealled, claiming, inter alia, that the award of damages for pain and suffering was inadequate, and that, if there had been contributory negligence on his part, his negligence had not been such as to merit the trial Judge depriving him of 90 per cent of the damages.

4. The relevant statutory provisions are as follows :

The Motor Vehicles and Road Traffic Act, 1935 Ch. 16 No. 3 as amended.

"Section 68 (2). Any person who by any act or omission contravenes or fails to comply with the provisions of any regulations made under this Act shall be liable to a fine of forty eight dollars or to imprisonment for twenty one days".

"Section 69. Nothing in this Act shall affect any liability of the driver or owner of a motor vehicle by virtue of any Act or at common law."

The Motor Vehicles and Road Traffic Regulations (made under Section 77 of the 1935 Act).

"Regulation 27. Every driver of a motor vehicle shall comply with the following rules:-

. . . . .

(2) He shall not, when on a motor vehicle, be in such a position that he cannot have full control over the same, or that he cannot obtain a full view of the road and traffic ahead of the motor vehicle.

. . . . .

(5) (g) He shall not cross a road or turn in a road, or proceed from one road into another road, or drive from a place which is not a road into a road, or from a road into a place which is not a road unless he can do so without obstructing any other traffic on the road, and for this purpose he shall be held to be obstructing other traffic if he causes risk of accident thereto."

Supreme Court of Judicature Act, 1962 c.12.

"Section 29 (1). Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claim and his share of the responsibility for the damage

. . . . ."

"Section 39 (1) On the hearing of an appeal from any order of the High Court in any civil cause or matter, the Court of Appeal shall have the power to :

(a) confirm, vary, amend, or set aside the order or make any such order as the court from whose order the appeal is brought might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;

(b) draw inferences of fact;

. . . . . .

(2). The powers of the Court of Appeal under this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court by any particular party to the proceedings in Court, or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice; and the Court of Appeal may make any order on such terms as the Court of Appeal thinks just, to ensure the determination on the merits of the real question in controversy between the parties."

5. Evidence was given by the Respondent, and for him, as follows :

p.7 l.16 a) The Respondent said he had been riding his motor cycle along Ariapita Avenue, from East
p.7 l.19 to West. Traffic was clear. A car came out of a gateway on the South side of the road and knocked him off his cycle. He also spoke of his occupation (a carpenter), his injuries and expenses. In cross-examination he said that Ariapita Avenue was
p.9 l.18 about 40 feet wide. The accident occurred
p.9 l.24 about 150 feet from a road intersection, where the lights were at green. A truck

was parked in the road, but apart from that there were no other vehicles save a bicycle. The accident occurred about eight feet beyond the parked truck, and he was driving about four feet out from the truck. He was travelling at 10 to 15 miles per hour and pulled out to the right. He did not skid. He was struck by the left front bumper of the Defendant's car. He was a learner driver. In re-examination he said the car came out of the gateway at a fast rate

p.9 l.26
p.10 l.6
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p.10 l.27

b) Gaston Blackman said he was an eye witness. He was riding a bicycle when he was passed by the Respondent. A truck was parked. A car swerving out of a gateway at a fast rate hit the Respondent. In cross-examination he said there were no vehicles on the road save a parked truck. The Respondent had been driving near the kerb but pulled out to pass the truck. The point of impact was about the centre of the road.

p.10 l.30
p.10 l.33
p.11 l.17
p.11 l.14

c) Medical evidence was given by Mr. Robertson (a surgeon) and Dr. Ahmad Kazim. Frank Francis, for the Respondent's employer, gave evidence of payments made and loss of position.

pp. 8-9
p. 9
pp. 11-12

6. Evidence was given by the Appellant, and for him, as follows :

a) The Appellant said he had dropped two passengers and reversed, with his back wheels on the pavement, in order to turn right (i.e. cross to the far lane and return in the direction from which he had come). A line of vehicles was parked along the South side of the road. Because of traffic moving from East to West he was not able to go forward. The traffic stopped for the traffic lights ahead and the car on his right stopped sufficiently far back to leave a gap. The driver of this car signalled him to come out. He drove out very slowly, looked to the left

p.12 l.11
p.12 l.17
p.12 l.20

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and saw the road was clear, glanced to the
p.12 l.23 right and saw nothing coming. He heard a crash to his left and pulled up. The point
p.12 l.34 of impact was about 26 feet from the southern verge, and the front of his car (which was facing north-east) projected about one foot beyond the car that had let him through. In cross-examination he said he did not see
p.13 l.13 the Respondent, who must have passed low in front of him before hitting the left of his vehicle. He was balancing on his
p.13 l.10 clutch. There were skid marks of the
p.13 l.14 Respondent's cycle across the road in front
p.13 l. 4 of his car. There was no truck parked near the gateway.

b) Robert Riley, a Special Reserve policeman, said he was an eye-witness. He was riding
p.13 l.25 West to East, and traffic especially that going East was heavy. When he was about 75 feet from the traffic lights the traffic halted because the lights changed. There was a line of parked cars. He saw a car
p.14 l.1 slowly crossing the line of traffic and headed north-east. It had barely moved out across the right-hand car. A motor cyclist,
p.14 l.6 travelling at about 30 miles per hour, and overtaking the three lanes of traffic swerved, appeared to skid, and hit the front of the car that was crossing. He saw skid marks. In cross-examination he said he did not see a truck parked on the left. When he first saw the cyclist the
p.14 l.22 latter was about 75 yards away from the witness and about 20 yards from the car.
p.14 l.26 When he first saw the Appellant's car it was inching its way out of the line of traffic.

c) Arthur Ramjattan said he was standing in his office (being the building where the Appellant had stopped) looking West. He
p.15 l.6 saw the traffic stop at the lights. A motor cyclist came out of the line going East (sic). In cross-examination he said that, when the motor cycle pulled out of the
p.15 l.18 line, he proceeded on the far aide of the road.

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7. The judgment of the Court of Appeal was given by Fraser, J.A., with whom Phillips and de la Bastide agreed. His Lordship noted that the learned trial Judge had accepted and acted upon the version of the facts presented by the Appellant and his witnesses. In this situation, and applying the Supreme Court of Judicature Act, 1962, Section 39 (1) (b), it was only necessary to consider whether the inferences and conclusions, drawn by Corbin J., from his findings of facts, were justified by these findings. His Lordship then recited what he said were the findings of fact made by Corbin J., and continued by saying that the conclusions of the learned trial Judge were that: "liability for the collision rests almost entirely with (the Respondent) who was overtaking at a time when it was unsafe for him to do so and without reasonable care." In the view of Fraser, J.A., there was no evidence that it was unsafe for the Respondent to overtake; indeed, evidence accepted by the learned trial Judge showed there was no traffic approaching the Respondent. The conclusion reached by Corbin, J., was thus not justified by the facts as he had found them, and therefore his Lordship was free to draw his own inferences from the facts as found. These inferences were subject to the statutory obligations of the Appellant, set out in the Motor Vehicles and Road Traffic Regulations, r. 28 (2) and (5) (g). In his Lordship's view the Appellant was substantially to blame for the collision. He agreed that there had been contributory negligence by the Respondent, but this lay in the fact that the Respondent ought to have seen the gap in the traffic, and approached it with caution. In these circumstances his Lordship would apportion liability as to 10 per cent to the Respondent and 90 per cent to the Appellant.

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p.25 1.21
pp.27,28
p.28 1.19
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p.28 1.36
p.29 1.17
p.29 1.30

8. Fraser, J.A., then turned to the damages awarded by the learned trial Judge. Loss of earnings had been put at $4,896 and special damages at $1,800 (there are $4.80 to £1 stg). These awards he would affirm. Corbin, J., had also awarded $7,000 general damages, but he had

p.30 l.17

said this sum was for pain and suffering, and it must therefore be presumed that he had not taken into account other relevant heads of damage, such as resulting physical disability and the extent to which the Respondent's pecuniary prospects had been materially affected. There was no evidence of loss of amenities, but the Respondent's injuries were serious: he suffered a permanent partial disability, and would continue to endure pain, although only moderately. Taking all the relevant facts into consideration, his Lordship would award $17,000 instead of $7,000 for general damages. He would allow the appeal with costs and vary the order of Corbin, J. , to 90 per cent of the new total damages of $23,696 and 90 per cent of the High Court costs, taxed.

p.32 l.26

p.32 l.34

9. It is respectfully submitted that their Lordships in the Court of Appeal erred in holding that the learned trial Judge drew the inferences which their Lordships held he had drawn, and, having so erred, erred further in concluding that they were entitled to draw their own inferences from what they said were the trial judge's findings of fact. It is submitted, respectfully, that the findings of the learned trial Judge (being findings which were partly express and partly by clear implication), went beyond the findings attributed to him by the Court of Appeal, and that on his findings the learned trial Judge ought to have found that no fault lay in the Appellant and that the negligence was wholly that of the Respondent. Further, if the Court of Appeal had correctly directed themselves as to the full findings of the learned trial Judge, and on the evidence, they would have so held; alternatively, that they would have affirmed the judgment and orders of the learned trial Judge.

10. It is further submitted, respectfully, that the Court of Appeal erred further when, in drawing their own inferences, they held these to be subject to the statutory obligations of the Appellant. It is submitted, respectfully, that the statutory provisions were not relevant to the situation under enquiry. Alternatively, if the

Appellant be wrong in this submission, then the Court of Appeal erred in considering the statutory obligations of the Appellant in isolation and without, at the same time, considering the statutory obligations of the Respondent and the driver of the vehicle who signalled to the Appellant. It is submitted, also, that in all the circumstances, the Court of Appeal erred in substituting their discretion for the discretion of the learned trial Judge in the matter of apportionment of liability.

11. On the matter of the increased award of general damages, it is respectfully submitted that their Lordships erred in concluding that the learned trial Judge, in making his award, failed to consider heads of damage which it was proper for him to consider. It is submitted that Corbin J., considered all matters relevant for consideration in assessing general damages at $7,000; that this award was, in all the circumstances, an appropriate award; and that if, contrary to the Appellant's submission, the award was low, nevertheless it was not an award which was wrong in principle and thereby one for which the Court of Appeal were entitled to substitute their own award.

12. It is respectfully submitted that the judgment of the Court of Appeal; their 1 0/90 apportionment order; and their increased award of damages, ought all to be set aside with costs, and that judgment be entered for the Appellant, alternatively that the judgment and the 90/10 apportionment ordered by the High Court be restored, for the following, among other

REASONS

1. BECAUSE the Court of Appeal erred:

   (a) in their conclusions as to what findings of fact had been made by the learned trial judge;

   (b) in the inferences and conclusions they

drew from what they thought the learned trial Judge had found;

(c) in assuming that, in the circumstances, they were entitled to draw the inferences and conclusion which they drew;

(d) in the use they made of the Motor Vehicles and Road Traffic Regulations;

(e) in substituting their discretion for the discretion exercised by the learned trial Judge when he apportioned liability;

(f) in substituting their own award for general damages for the award made by the learned trial Judge, and in awarding $17,000 for general damages.

2. BECAUSE, on the true findings of the learned trial Judge, and on the evidence, the Court of Appeal ought to have dismissed the appeal and found that the Appellant had not been negligent.

3. ALTERNATIVELY to 2, BECAUSE the judgment and orders of the learned trial Judge were right and ought to have been affirmed.

GERALD DAVIES.

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