

O N A P P E A L  
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

<p><u>B E T W E E N:</u></p> <p>ANDREW SKEETE (Defendant) <u>Appellant</u></p> <p style="text-align: center;">- and -</p> <p>LEONARD JOHN (Plaintiff) <u>Respondent</u></p>	<p style="text-align: center; font-size: small;">UNIVERSITY OF LONDON</p> <p style="text-align: center; font-weight: bold;">INSTITUTE OF ADVANCED LEGAL STUDIES</p> <p style="text-align: center;">7 APR 1972</p> <p style="text-align: center;">25 RUSSELL SQUARE LONDON, W.C.1.</p>
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C A S E FOR THE RESPONDENT

- 10 1. This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago dated 2nd July, 1970, allowing the Respondent's appeal against a judgment dated 17th April, 1969 of Mr. Justice Maurice Corbin in the High Court of Justice of Trinidad and Tobago whereby the Respondent was awarded damages of \$1,369.60, varied on appeal to \$21,326.40, for personal injuries and loss arising out of a traffic accident caused by the negligent driving of the Appellant on 28th June, 1965. p.25-32
- 20 2. By a Writ of Summons dated 8th June, 1967 the Respondent instituted the present suit claiming against the Appellant damages for personal injuries and loss arising out of an accident caused by the negligent driving of the Appellant his servant and/or agent of a motor car PH-9607 along Ariapita Avenue on 28th June, 1965. p.16-17
- 30 3. By his Statement of Claim filed with the Writ of Summons on 8th June, 1967 the Respondent pleaded that :- p.1 - 2
- (i) The Respondent was a carpenter and the owner of a motor cycle PC-57. p.3 - 5
- (ii) The Appellant was the owner of a motor car PH-9607.

(iii) On or about 28th June, 1965 the Respondent was lawfully riding his motor cycle in a westerly direction along Ariapita Avenue, Port of Spain, when the Appellant his servant and/or agent so negligently drove, managed and controlled the Appellant's motor car north onto Ariapita Avenue from the premises of the Electric Ice Company Limited that the motor car came into violent collision with the Respondent's motor cycle. 10

(iv) The accident was caused by the following acts of negligence of the Appellant:-

- (a) Failure to keep any or any proper or sufficient lookout;
- (b) Failure to maintain efficient control of the motor car;
- (c) Driving the motor car into the path of moving traffic at a time when it was unsafe and/or dangerous to do so; 20
- (d) Failure to stop, slow down, swerve or in any other way so to manage and control the motor car as to avoid the collision.

(v) In consequence of the collision the Respondent suffered the following personal injuries :-

Fracture of the left forearm; fracture of the left thumb; compound fracture of the left leg; stiffness of the left elbow and left ankle; resulting in 30% permanent partial disability. 30

The Respondent experienced and continued to experience great pain and suffering; he was in hospital for some five months and had to undergo five operations; and his left leg had become deformed and considerably shortened. 40

(vi) In further consequence of the collision the Respondent suffered special damage

damage totalling \$3,651.95.

4. By his Defence delivered on the 9th April, 1968 the Appellant :-

p.5 - 6

- (i) Did not admit that the Respondent was a carpenter and the owner of the motor cycle.
- (ii) Admitted that he was the owner of the motor car PH-9607.
- (iii) Admitted the fact of the collision.
- 10 (iv) Denied that he was negligent as pleaded in the Statement of Claim or at all.
- (v) Denied that the collision was caused as alleged in the Statement of Claim.
- (vi) Averred that the collision was caused by the negligence of the Respondent his servant or agent in the driving of the motor cycle in the following respects :-
  - 20 (a) Driving too fast;
  - (b) Failing to keep any or any proper lookout or to heed the presence on the road of the Appellant's motor car;
  - (c) Failing to see the Appellant's motor car in time to avoid colliding with it or at all;
  - (d) Driving without due care and  
30 attention;
  - (e) Breaking the line of traffic along the road without regard to the presence of other vehicles thereon;
  - (f) Failing to apply brakes in time or at all or so to steer or control the motor cycle as to avoid the collision.

5. The action was tried by Mr. Justice

Maurice Corbin on the 19th and 20th February, 1969.

- p.7 6. The Respondent gave evidence that at about 4.30 p.m. on 28th June, 1965 he was riding his motor cycle from East to West along Ariapita Avenue, Port of Spain. His speed was 10 - 15 m.p.h. Ariapita Avenue was about 40 feet wide.
- p.9 He went to overtake a stationary truck parked at the nearside of the road. He was riding about 4 feet from the side of the truck. As he passed the truck a car came out of a gateway on the Southern side of the road and knocked him off his motor cycle. 10
- p.8 7. Doctor Edward Robertson and Doctor Ahmad Kazim gave evidence about the nature and
- p.9 consequences of the Respondent's personal injuries
- p.10-11 8. Mr.Gaston Blackman gave evidence that at the material time he was cycling along Ariapita Avenue from East to West. The Respondent passed him on his motor cycle. There was a truck parked on the Southern side of the road. A car swerving out of a gateway on the Southern side of the road at a fast rate hit the Respondent and knocked him over to the other side of the road. The point of impact was about the centre of the road. The car was facing North East at the moment of impact. 20
- p.11-12 9. Mr. Frank Francis gave evidence about the Respondent's employment and earnings 30
10. The Appellant gave evidence that at the material time he positioned his motor car facing North with its rear wheels on the South pavement of Ariapita Avenue. At first he could not move forward to turn East as he intended, because of traffic moving from East to West in front of him.
- p.12 11. A car stopped on his right leaving a gap for him to emerge and the driver of that car signalled him to come out. 40
- L.18-21
- p.12 12. The Appellant said: "I drove out into the gap intending to turn right. I looked to my left and saw road clear, I glanced right and saw nothing coming, My car was moving very slowly.
- L.22-31

At that stage I could not determine if traffic was coming from further along Ariapita Avenue. I heard the sound of a crash on my left. Immediately I pulled up the handbrake and got out of my car. I saw that a motor cyclist had hit left front of my car and gone across the road".

10 13. The point of impact was 26 feet from the South side of the road. The front of his car projected about 1 foot beyond the car which had let him through. His car was facing North East. Traffic was heavy. There was a line of traffic parked on the South side of the road and two lines moving from East to West.

14. When he reached the centre of the road he looked left. There was no traffic coming. He did not see the cyclist before he heard the crash.

p.13  
L.7-8

20 15. Mr.Robert Riley gave evidence that at the material time he was riding in Ariapita Avenue from West to East. Traffic was heavy going East. He saw a car coming slowly across the line of West-bound traffic in a North-Easterly direction. He saw a motor cyclist travelling West overtaking the three lines of traffic. The car barely moved out beyond the right hand car. The cyclist swerved and appeared to skid and crashed into the front of the car. The cyclist was going about 30 m.p.h.  
30 When the witness first saw the cyclist, the cyclist was about 20 yards from the car.

p.13-14

16. Mr.Arthur Ramjattan gave evidence that he was in an office on Ariapita Avenue facing West. He saw the motor cyclist travelling East. He looked away. He looked back and saw the motor cyclist about to fall. He did not see the Appellant's car until after the accident.

p.15

40 17. On 17th April 1969 the learned Judge delivered his judgment in writing.

p.16-17

18. He stated his findings of fact as follows:

"The (Respondent) was riding his motor cycle from East to West when he came up behind a line of traffic which was stopped

(in some places two deep) because of the traffic lights at the corner of Ariapita Avenue and Colville Street. The (Appellant) had been driving his car from East to West and had turned in a gateway near to this line of traffic with the intention of returning whence he had come. The line of traffic was blocking his path but the driver of one of those cars made room for him to pass through so that he could proceed West (sic) on his proper side of the road. He came out through this opening very slowly at a time when the (Respondent) was overtaking the line of traffic and a collision occurred".

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19. The learned Judge stated his conclusions as follows :

p.16  
L.30-38

"In my view the 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 exercising any care. Some liability rests on the (Appellant) in that he should have proceeded with a little more caution, although he could not have been expected to anticipate the arrival of the cyclist in those circumstances. I apportion liability as to 90% on the (Respondent) and 10% on the (Appellant)".

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p.17  
L.1-2  
p.17  
L.36-37

20. The learned Judge went on to consider the Respondent's personal injuries and other losses, which he quantified at \$13,696 on full liability, and gave judgment for the Respondent for 10% of that sum and 10% of his taxed costs.

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p.25-33

21. On 2nd July 1970 the Respondent appealed to the Court of Appeal of Trinidad and Tobago. The Court of Appeal held that:

p.28  
L.32-36

(i) The conclusions of the trial judge were not justified by the facts found by him;

(ii) In such a case the Court of Appeal was entitled by virtue of Section 39(1)(b) of the Supreme Court of Judicature Act 1962 to draw its own inferences;

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p.28,  
L.25-26

(iii) There was no evidence that it was unsafe

for the Respondent to overtake when he did;

(iv) The substantial blame for the collision rested on the Appellant;

(v) There was some liability on the Respondent in that he ought to have observed the gap across the two lanes of traffic;

p.29,  
L.22

(vi) The proportions of responsibility for the collision were as to 90% on the Appellant and 10% on the Respondent;

p.29,  
L.30-33

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(vii) The total damages on full liability ought to be assessed at \$23,696.

22. The Court of Appeal accordingly allowed the appeal, varied the order of the trial judge by substituting judgment for the Respondent for \$21,326.40 and 90% of the Respondent's costs of the action, and ordered that the Appellant pay the Respondent's costs of the appeal.

p.32,  
L.38

23. The Respondent humbly submits that this appeal should be dismissed with costs and the judgment and order of the Court of Appeal of Trinidad and Tobago should be affirmed for the following, among other

p.33-34

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#### REASONS

(i) BECAUSE on the view of the evidence most favourable to the Appellant he was substantially to blame for the collision.

(ii) BECAUSE the judgment in the Court of Appeal is correct for the reasons therein stated and should be upheld.

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RICHARD YORKE

No. 50 of 1970

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE COURT OF APPEAL OF  
TRINIDAD AND TOBAGO

B E T W E E N :

ANDREW SKEETE (Defendant)  
Appellant

-- and --

LEONARD JOHN (Plaintiff)  
Respondent

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CASE FOR THE RESPONDENT

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CHARLES RUSSELL & CO.,  
Hale Court,  
21 Old Buildings,  
Lincoln's Inn,  
W.C.2.