Privy Council Appeal No. 50 of 1970

Andrew Skeete – – – – – – – – *Appellant*

v.

Leonard John – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JULY 1971

Present at the Hearing:

LORD DIPLOCK

LORD PARKER OF WADDINGTON

LORD CROSS OF CHELSEA

[*Delivered by* LORD DIPLOCK]

This is an appeal from the unanimous judgment of the Court of Appeal of Trinidad and Tobago varying the judgment of the High Court in an ordinary running-down action. Both Courts concurred in finding that the defendant was guilty of negligence and the plaintiff guilty of contributory negligence. The High Court apportioned responsibility for the damage as to 90 per cent on the plaintiff and 10 per cent on the defendant. The Court of Appeal, upon a careful review of the findings of fact by the High Court Judge and of the evidence, varied this apportionment to 10 per cent on the plaintiff and 90 per cent on the defendant. The Court of Appeal also varied the general damages awarded by the High Court by raising them from 7,000 dollars to 17,000 dollars.

The defendant appeals to their Lordships' Board either to reverse the concurrent findings of fact of the Court of Appeal and of the High Court that he was guilty of negligence, or, alternatively, to restore the apportionment of responsibility and the assessment of general damages made by the High Court Judge. It is not the practice of their Lordships' Board to interfere with concurrent findings of fact. They see no reason for departing from their usual practice in the present case. They will accordingly proceed to consider the alternative relief sought by the defendant.

The apportionment of responsibility raises no question of law, nor does the measure of damages. Neither issue is one in which their Lordships' Board would lightly set aside the decision of the Court of Appeal of the country in which the accident took place. The Judges of the Court of Appeal have a much more intimate knowledge of local conditions than is available to their Lordships.

The facts found by the learned Judge were stated very briefly as follows:

> "The plaintiff 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 Airapita Avenue and Colville Street. The defendant 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 on his proper side of the road. He came out through this opening very slowly at a time when the plaintiff was overtaking the line of traffic and a collision occurred."

It was apparent from these findings that the Judge had accepted, at any rate in part, the evidence as to the state of the traffic given by the defendant and his witnesses in preference to that given by the plaintiff who was seriously injured in the accident. The Court of Appeal accordingly filled in the details of the Judge's findings by examining this evidence. They came to the conclusion that the Judge's finding on apportionment of responsibility was not justified on the primary facts as found by him. In their Lordships' view, the Court of Appeal were entitled to come to that conclusion, with the consequence that they were also entitled to form their own conclusions as to the apportionment of responsibility upon those facts.

Apportionment of responsibility is a matter upon which different judges may well hold differing views. It is not their Lordships' function in this appeal to consider whether collectively or individually they might themselves have arrived at different percentages of comparative fault. Their Lordships would have to be satisfied that the apportionment by the Court of Appeal was so unreasonable as to show that they had erred in principle or misunderstood the facts. Their Lordships are not so satisfied and accordingly the appeal on this issue must fail.

The issue on the measure of general damages can be dealt with briefly. At the time of the accident, the plaintiff's annual earnings were about 2,500 dollars. As a consequence of the permanent disability which he suffered from the accident, he was unable to continue in his employment and was unfitted for anything but light work. At the time of the trial, three years after the accident, he had been unable to obtain even this. His earning power for the remainder of his working life was seriously diminished. Despite this, the High Court Judge awarded nothing for future loss of earnings, giving as his reason that two lump sum payments, totalling 1,600 dollars, which the plaintiff had received on leaving his employment, was sufficient to compensate him for any further loss of earnings.

The Judge's award of 7,000 dollars general damages thus included nothing for loss of future earnings.

The Court of Appeal, in their Lordships' view rightly, held that in these circumstances the Judge had made a wholly erroneous estimate of the general damage suffered by the plaintiff and accordingly substituted their own assessment of 17,000 dollars. Their Lordships see no reason for supposing this to be wrong.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent his costs of the appeal.

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In the Privy Council

ANDREW SKEETE

v.

LEONARD JOHN

DELIVERED BY

LORD DIPLOCK

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