

22, 1974

IN THE PRIVY COUNCIL

34 1972

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

JACQUELINE AWON

Appellant
(Defendant)

- and -

ELSIE ALLARD

Respondent
(Plaintiff)

CASE FOR THE APPELLANT

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1. This is an Appeal from a judgment dated the 12th April, 1972 of the Court of Appeal for Trinidad and Tobago (Frazer, de la Bastide and Georges J.J.A.) allowing an appeal from a judgment dated the 11th January, 1971 of the High Court of Trinidad and Tobago (Kester McMillan J.) whereby he ordered judgment to be entered for the Defendant with costs.

RECORD

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2. The issue raised in this appeal is whether the Court of Appeal was justified in rejecting the Learned Judges findings of primary facts and substituting therefor their own findings. A second issue is whether if the Court of Appeal was correct in finding that there had been negligence on the part of the Appellant which had contributed to the death of the deceased the Court was correct in proceeding to assess the damage recoverable by the Respondent without hearing arguments from either party with regard thereto.

RECORD

- p. 361 3. The action arose out of a road accident which occurred on the 15th April, 1965 in Frederick Street, Port of Spain in the Island of Trinidad as a result of which the Respondents husband died on the 18th April 1965. The Respondent sued as Administratrix of the Estate of the deceased under Jurisdiction Ordinance No.12 of 1962 for the benefit of the Estate of the deceased and under Injuries Ordinance Chapter 5 No. 5 for the benefit of his dependants alleging by her Statement of Claim filed on the 30th January, 1969, that the collision between a motor car driven by the Appellant and a bicycle ridden by the deceased had been caused by the negligence of the Appellant. By her Defence filed on the 7th March 1969, the Appellant denied negligence and causation and pleaded that any pain injury loss or damage suffered by the deceased had been caused or contributed to by his own fault. Other issues were raised which are not germane to this appeal and the Defendants plea thereon was answered by a Reply filed on the 22nd May, 1969. 10
- p. 3 1.13
- p. 3 1.19
4. The action was tried by Kester McMillan J. on the 8th and 11th January, 1971. The Learned Judge heard the evidence of two eye witnesses called on behalf of the Plaintiff, a doctor who gave evidence of the cause of death and evidence of dependency from the Respondent herself. The Appellant neither gave nor called any evidence. 20
- p. 8 1.1
p.10 1.24
p.16 1.1
p.17 1.40
5. In his judgment given on the 11th January 1971, the Learned Judge wholly rejected the evidence of one of the eye witnesses David Munro and on the basis of the evidence given by the other eye witness, Clarence Gaskin, found that the deceased on his bicycle had swung out some four feet approximately from the line along which he had been riding just as the motor car driven by the Appellant was about to overtake him at about 20 m.p.h. and that his swerving to his right in those circumstances was the sole cause of the accident. He acquitted the Appellant of any blame for the accident and accordingly dismissed the Respondents claim. 30
- p.18 1.15
- p.18 1.39
- p.18 1.42
- p.18 1.45
- p.19 1.4

	6. By a Notice of Appeal dated the 20th February 1971, the Respondent appealed to the Court of Appeal of Trinidad and Tobago. The Appeal came before Frazer, De la Bastide and Georges J.J.A. on the 12th April, 1972.	<u>RECORD</u> p.19 1.22
	7. The judgment of the Court of Appeal was delivered by Frazer J.A. on the 12th April, 1972. After reviewing the evidence the Court held that the Learned Judge had failed properly to direct himself in evaluating the evidence and that on the evidence held a prima facie case of negligence on the part of the Appellant had been made out. The Court further held that even if the facts had been as the Learned Judge had found his conclusion that the Appellant was in no way to blame was not justified. She should have foreseen the deceased's swerve and her failure to keep a proper look out had been a contributory factor in the collision. The Court apportioned the liability 75% to the Appellant and 25% to the deceased.	p.21 1.1 p.23 1.35 p.23 1.38 p.23 1.1 p.23 1.13 p.24 1.5
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	8. After stating that all the evidence as regards dependency was on the record it would be more convenient to assess the damages than to remit the matter for assessment, damages under the Compensation for Injuries Ordinance were then assessed by applying a multiplier of 20 to a dependency at the rate of \$30 per week and after discounting the amount so reached for the fact that it would be paid as a lump sum to \$24,000 and further reducing it by the amount of the Courts award under the Supreme Court of Judicature Ordinance of \$500 added the special damage proved in the Court below to reach a final figure of \$18,262 - 10 which was then apportioned among the dependents of the deceased.	p.24 1.27-30 p.24 1.46 p.24 1.36 p.25 1.1 p.25 1.6 p.25 1.18 p.25 1.21
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	9. It is respectfully submitted for the Appellant that the Court of Appeal erred in substituting their own finding that the deceased's swerve occurred at such a time and in such a manner that if the Appellant had been keeping a proper lookout she would have been able to avoid the said collision for the Judges finding that she had no opportunity of avoiding it.	p.23 1.32 p.23 1.40
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RECORD

The Learned Judge had seen and heard eye witnesses and his conclusion should not have been disturbed unless it were possible to say that there was no evidence to support it. It is further submitted that even if the Court of Appeal was entitled to interfere its conclusion that the proportion of blame attributable to the Appellants was 75% was wrong and is not supported by the evidence.

p.24 1.5

10. If contrary to the Appellants aforesaid contentions the Court of Appeal was correct in finding the Appellant 75% liable it is respectfully submitted that the Court should either have invited Counsel for each party to address it on quantum before proceeding to make its own assessment or remitted the question for assessment in the Court below. The Court erred in its assessment of the quantum of damage in that it applied too high a multiplier to the dependency and in that in assessing the rate of dependency at \$30 per week it was assumed, contrary to the evidence, that his employment at an average net weekly rate of \$45 was secure and free from the risk of periods of unemployment in the future.

p.24 1.28

p.24 1.46
p.24 1.36

p.24 1.32

11. On the 9th May, 1972, the Court of Appeal (Frazer P, de la Bastide and Georges J.J.A.) granted conditional leave to the Appellant to appeal to Her Majesty in Council. On the 7th November, 1972 the Court of Appeal (Hyatahi C.J., Phillips and Rees J.J.) granted Final Leave to Appeal.

p.29 1.1

12. The Appellant respectfully submits that the judgment of the Court of Appeal of Trinidad and Tobago was wrong and ought to be reversed and this Appeal ought to be allowed with costs for the following amongst other

R E A S O N S

1. BECAUSE the Court erred in the circumstances in substituting its own findings of fact for those of the trial judge. 40
2. BECAUSE the Court was wrong in concluding that the evidence justified a finding that

the Appellant had driven negligently.

RECORD

3. BECAUSE the Court erred in apportioning liability 75% to the Appellant and 25% to the deceased.
4. BECAUSE the Court was wrong to proceed to the assessment of damages without first hearing argument thereon.
5. BECAUSE the amount assessed was excessive.

M.R. HICKMAN

