

22,1974

IN THE PRIVY COUNCIL

No. 34 of 1972

ON APPEAL

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

BETWEEN :

JACQUELINE AWON

Appellant

- and -

ELSIE ALLARD (Widow) Administratrix
of the Estate of Thomas Allard
deceased)

Respondent

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment and order of the Court of Appeal, Trinidad and Tobago (Fraser and de la Bastide, J.J.A., and Georges, J.A. (Temp)) entered the 12th April, 1972, allowing the appeal of the Respondent from a judgment of the High Court Trinidad and Tobago (McMillan J.) entered the 11th January, 1971.

pp.21-27

pp.18/19

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2. The Respondent, by her Statement of Claim served the 30th January, 1969, pleaded that her husband died on the 18th April, 1965, as a result of injuries sustained when, on the 15th April, 1965, while riding his bicycle, he was struck from behind by the Appellant's negligently driven motor car. Particulars of the Appellant's negligence were pleaded. The Respondent claimed, so it would appear, damages under the Supreme Court of Judicature Act, 1962, and the Compensation for Injuries Ordinance. The Appellant, by her amended Defence, re-served the 13th January, 1970 admitted the collision, denied negligence and denied that the accident

pp.3/4

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p.7

CASE FOR THE RESPONDENT

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caused death. She alleged, in the alternative, that the accident and death were due or contributed to by negligence by the deceased. Particulars of the deceased's negligence were pleaded.

3. The relevant statutory provisions are as follows :

Supreme Court of Judicature Act No. 12 of 1962 S.28

S.28 (1) Subject to the provisions of this section, on the death of any person after the 24th of December, 1936, all cases of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate; 10

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(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person - 20

.....

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included. 30

.....

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased

persons by the Compensation for Injuries Ordinance, and so much of this section as relation to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Ordinance as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1)

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Compensation for Injuries Ordinance 1950 Edn.,
Cap.5 No. 5 S.3 and S.8

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S. 3 Whenever the death of any person shall be caused by some wrongful act, neglect, or default, and the act, neglect or default is such as would before the commencement of this Ordinance (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been under such circumstances as amount in law to felony.

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S. 8 (1) Every action in respect of injury resulting in death shall be for the benefit of the wife, husband, parent, and child, as the case may be, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

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Motor Vehicles and Road Traffic Regulations 1950
Edn. Vol.8 p.566 (made under the Motor Vehicles
and Road Traffic Ordinance, Cap.16 No.3 Section 77)

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Regulation 27

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RECORD

(2) He shall not, when on the 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)

(c) When overtaking other vehicles he shall keep to the right or offside of such other vehicles. 10

.....

(e) He shall not drive so as to overtake other traffic unless he has a clear and unobstructed view of the road ahead and he shall not overtake such other traffic unless he sees that the road ahead is clear for a sufficient distance to enable him to overtake and get back to his proper side before meeting any traffic coming from the opposite direction. 20

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(7) (a) He shall, when approaching turnings and cross roads or coming from any private road or place to any public road, slow down and make the appropriate traffic signal. 30

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4. Evidence for the Respondent was given as follows :

RECORD

- a) David Munro said he saw the accident. p.8
He was walking South on the eastern side of Frederick Street, which was some 20 to 22 feet wide, at about 8 p.m. - 8.15 p.m. on the 15th April, 1965. Many cars were parked on the eastern side of the road. A man cycled past him, travelling very close to the parked cars. When the cyclist was about 20 feet ahead of the witness, he (the cyclist) was struck from behind by the left front of a car which was travelling very fast. The car ran over the cyclist, whose machine fell almost in the centre of the road, and went on for about 100 yards before stopping. The cyclist was riding normally and did not swerve across the front of the car. p.8 1.16
p.8 1.24
p.8 1.31
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- In cross-examination the witness said the cyclist was riding some two to three feet from the parked cars. When struck, both man and machine fell outwards, i.e. to the West. The car, which he thought was travelling at 50 to 60 m.p.h., dragged the cyclist some 10 feet from the point of impact and towards the centre of the road. Further cross-examination was directed to the credibility of the witness. p.9 1.43
p.12 1.3
p.12 1.8
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- b) Clarence Gasking gave substantially the same account of events as that given by David Munro. The witness was cycling South, about two to three feet out from the parked cars, and the deceased passed him on the inside. When the deceased was 25 to 30 feet ahead of the witness the cycle was struck from behind by a car which had just passed the witness. The deceased was riding straight down Frederick Street and was not moving shakily. The car had headlights on, but he did not hear any horn. p.14 1.1
p.14 1.5
p.14 1.10
- 40

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p.15 1.26		In cross-examination the witness said that the deceased did not swerve, but swung out a little to give clearance of about three feet to the parked cars. The car, which was travelling fast, did not swerve, but swung in so as also to be about three feet out from the parked cars.	
p.15 1.13			
pp.10/11	c)	Louis Hansel Halsley McShine, F.R.C.S. testified to the injuries and the cause of death. He estimated the age of the deceased at 35 years.	10
p.11 1.3			
pp.16/17	d)	The Respondent, Elsie Allard, gave evidence of dependancy.	
	5.	The Appellant did not give evidence, and no witnesses were called for her.	
pp.18/19	6.	The learned trial judge said that Munro's inability to be precise about the vehicle which took the deceased to hospital, what he said as to the speed of the car, and his explanation as to how he came to give evidence left him (the Judge) without the conviction that the witness was one of truth. He rejected Munro as an 'ad hoc' witness. Gaskin, although he was sympathetic to the Respondent and changed his story on the matter of the deceased swinging out, impressed as the more reliable witness. His Lordship then engaged in mathematical calculations as to the distance of the deceased from the parked car when he was struck, and concluded that the sole cause of the accident was the swerving by the deceased, to the right, into the path of a car which had its headlights on. Accordingly, he dismissed the Respondent's claim with costs.	20
p.18 1.12			
p.18 1.24			
p.19 1.4			30
pp.21/25	7.	A single judgment was given by the Court of Appeal. Their Lordships were critical of the manner in which the learned trial Judge approached the evidence of Munro and of the conclusion that he was an 'ad hoc' witness, pointing out that it is usually best to assess the value of the evidence of a witness by viewing	40

it in the context of the whole of the evidence. Notwithstanding this criticism the learned trial Judge had seen and heard Munro, and for this reason their Lordships were not prepared to disagree with his opinion of the witness. As to Gaskin, although it was not clear whether or not the learned trial Judge had accepted the entirety of his evidence he had accepted that the deceased had passed Gaskin on the inside. Thereafter, the learned Judge had embarked upon mathematical calculations which led him to conclude that the deceased had swung out to a line about six feet from the line of parked cars just as a vehicle travelling at 20 m.p.h. was about to overtake. Further, that in these circumstances the deceased alone was to blame. Their Lordships were of the view that, in cases such as the present, mathematical speculation ought to be avoided. In any event, even on his own approach, the learned trial Judge ought not to have held that the car driver had not contributed to the accident. The learned Judge had failed properly to direct himself in evaluating the evidence.

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8. In their Lordships' view there was a prima facie case of negligence by the Appellant. She might have been able to rebut this, but she did not give evidence. Accordingly their Lordships were of opinion that there was negligence by both parties. They would apportion liability as to 75% to the Appellant and 25% to the deceased. Next, as all the evidence of dependancy was on the record, their Lordships would themselves assess. They put dependancy at \$1,560 per annum and used a 20 years multiplier, but so it would appear, reached an overall figure of \$24,000, from which \$500 for loss of expectation of life fell to be deducted. Special damages were added at \$349.50 (although, on their Lordships figures, they totalled \$350.80 and, on the evidence \$351). Thus 75% of \$24,349 yielded \$18,262.10 and of this \$17.625 fell to be divided between the widow and six dependant children in sums stated by their Lordships, and \$637.10 was payable under the Supreme Court of Judicature Act. Finally, their Lordships

p.22 1.32

p.22 1.44

p.23 1.1

p.23 1.35

p.23 1.38

p.24 1.1

p.24 1.36

p.24 1.46

p.25 1.6

p.25 1.7

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ordered the Appellant to pay the costs of the appeal and three quarters of the costs at first instance.

9. The Respondent respectfully submits that the learned trial Judge wrongly rejected the evidence of Munro; erred as to the evidence of Gaskin; wrongly entered into mathematical calculations; wrongly assessed the evidence of the speed and direction of movement of the Appellant's motor car; and, generally, and for the reasons given by the Court of Appeal, wrongly evaluated the evidence. 10

10. The Respondent respectfully submits that the Court of Appeal were right in reversing the judgment and order of the learned trial Judge; were right for the reasons given and for other reasons in holding the Appellant to have been negligent; and were right in their overall approach to the assessment of general damages by the Appellant. The Respondent therefore respectfully submits that the find of negligence ought to be upheld, and the appeal dismissed with costs on the forma pauperis scale. 20

11. The Respondent has not cross-appealed, but respectfully submits that

a) The Court of Appeal wrongly assessed the evidence of Gaskin in that they failed to appreciate the distinction drawn by the witness between 'swinging' and 'swerving' and failed fully to appreciate what had been said of the Appellant's speed. Had they correctly appreciated this evidence they must have found that the degree of contributory negligence which they attributed to the deceased was less than 25 per centum. 30

b) The Court of Appeal wrongly calculated the figures for both general and special damages. 40

In the premises the Respondent respectfully submits that, in addition to rejecting the Appellant's appeal, such other order or orders as may be just and appropriate may be made.

RECORD

The Respondent respectfully submits that the appeal of the Appellant should be rejected for the following, among other

R E A S O N S

- 10 (1) BECAUSE the Court of Appeal were right in reversing the decision of the learned trial Judge
- (2) BECAUSE the Court of Appeal were right in holding the Appellant to have been negligent.

GERALD DAVIES

No. 34 or 1972

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL TRINIDAD
AND TOBAGO

B E T W E E N :

JACQUELINE AWON Appellant

- and -

ELSIE ALLARD (Widow)
(Administratrix of
the Estate of Thomas
Allard deceased) Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London W.C.2.

Solicitors for the Respondent
