

IN THE PRIVY COUNCIL

No: 46 of 1975

---

---

O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE OF TRINIDAD AND TOBAGO:

---

---

B E T W E E N:

WILFRED BHOLA

(Plaintiff) Appellant

- and -

SEETAHAL LIMITED

(Defendant) Respondent

---

---

10

CASE FOR THE APPELLANT

---

---

Record

20

1. This is an Appeal by leave dated 23rd October 1975 of the Court of Appeal of the Supreme Court of Judicature, Trinidad and Tobago, from a judgment and Order dated 5th June 1975 of that Court (Sir Isaac Hyatali, Chief Justice, Corbin and Rees JJA) on appeal from a judgment entered the 13th day of July 1972 of the High Court of the Supreme Court of Judicature (Braithwaite J.) by which the Appeal by the Respondent against an order awarding damages in the sum of \$20,924.70 and costs was allowed with costs and a new trial ordered, no determination having been made by the Court of Appeal on a cross-appeal seeking an increase in the damages awarded by the High Court. P.30 P.20
2. The action in the High Court was commenced on the 14th July, 1971 by Writ of Summons. P.1

Record

The Appellant claimed damages for personal injuries and loss suffered as a result of a collision at night between a motor cycle ridden by him and a motor lorry owned by the Respondent and driven by its servant or agent on the 6th day of August 1970 on the highway known as the San Fernando Bye-Pass in the Island of Trinidad. The issue in this appeal is whether the Learned trial Judge in finding that the Appellants collided with the said lorry at a time when its headlamps were unlit, fell into error which led to substantial injustice.

P.16  
line 44

10

P.3-5

3. In his statement of claim the Appellant alleged that he was riding Motor Cycle PM918 from North to South along the highway when the servant or agent of the Respondent negligently parked Motor Lorry TK218 on the western side of the highway without lights or other means of illumination in consequence of which the Plaintiff collided with the lorry and sustained severe personal injuries. The Particulars of negligence he gave were (inter alia) as follows :-

20

4. Leaving the said motor lorry on the said Highway or Bye-Pass Stationary in the dark without any front lights.
6. Failing to give any or any adequate warning of the presence of the said motor lorry on the said Highway or Bye-Pass.

30

In the alternative the Appellant alleged that the lorry being parked unlit constituted a nuisance to persons using the highway. In the further alternative he alleged that the happening of the accident was itself evidence of negligence. This latter allegation was not pursued at the trial.

P.6-7

4. In its Defence the Respondent alleged that the lorry was not parked but was in motion from South to North along the highway when the Appellant travelling in the opposite direction overtook another vehicle and in so doing collided with the lorry. The Respondent gave the following particulars of negligence of the Appellant:-

40

- (a) Rode too fast;
- (b) Rode without due care and attention;

(c) Rode on the wrong side of the said road and into the path of the Company's vehicle.

(d) Overtook when it was unsafe so to do;

(e) Failed to keep any or any proper lookout for other users of the said road and/or failed to notice the presence of the Defendant Company's vehicle.

10 (f) Failed to apply his brakes in time or at all and/or so to manage, swerve or control the said PM918 as to avoid the said collision.

5. In reply to the Defence the Appellant denied negligence and specifically denied that the Lorry was in motion at the time of the collision. P.8

20 6. The action came on for hearing before the High Court when the Appellant and three witnesses, one a medical witness, testified on his behalf. The Appellant testified that at 7.00 p.m. on the 6th August 1970 while it was dark he was riding a Motor Cycle on the highway from Marabella to Mon Repos when he overtook a car and struck a truck parked without lights on the Western Side of the road. The road was busy, and there were no street lights. He said he did not know the truck was there and that if he had known he would not have attempted to overtake. A person named Patricia Bayo was riding with him, but she did not give evidence. The Appellant said in cross-examination:- P.9-11

30 "..... I was riding on my main beam. I was travelling at 35 m.p.h. on the speedometer. Before trying to overtake the car, I was behind the car. The car had its lights on. The road was clear ahead. When my main beam is on it points straight in front, not on the side of the road. There were no lights on the truck that's why I could not see. I saw the lights of other vehicles in the distance coming towards me. The car which I overtook was travelling roughly the same speed. I had to develop speed. The truck was on the right hand side going North. There was a white line. The truck right wheels were about along the white line. There were no lights on the truck nor was it moving. I was not travelling fast, nor was I overtaking a number of cars nor did I misjudge

40

Record

distance of truck and ran into it.  
I cannot remember if I overtook other cars in that vicinity. It was safe to overtake."

P.11  
Line 1-20

7. The Appellant was supported by an independent witness, Wilmot Hoyte, who testified that when he arrived at the scene of the accident he saw the Lorry parked on the right side of the road and two injured persons at the side of the road on the left. He said there was nobody in the lorry at the time nor was it at all lighted.

10

P.11  
Lines 30-39

8. For the Appellant, Neville James an Inspector of Motor Vehicles, testified that he examined the Lorry on the day after the accident. He said:

"..... Vehicle was damaged. Right front including right front fender and wheel. General condition - tyres good. Lights were faulty on dip. Brakes efficient. If the dip switch was operated the truck would show no lights through its headlamps ... I checked the lights. I have no notes on park lights. The park lights could have worked."

20

9. The Respondent called Kissoondath Maharaj, the driver of the Lorry. He said:

P.12  
Line 25-  
P.13  
Line 5

"..... On 6th August 1970 at 6.30 p.m. I was travelling along Marabella Bye Pass - near (150 yards) from Drive-In Cinema travelling North. I saw a motor bike cutting in and out between vehicles coming opposite direction. I could see about  $\frac{1}{4}$  mile. Reaching about 2 or 3 car lengths I saw him coming towards the truck, I pulled to extreme left and stopped. He hit my right side and went off to the left. It was about dusk dark. The vehicles on the road had headlights on as did mine. My vehicle was not parked. My right front tyre was cut as a result. My left wheel was jammed to the pavement. My truck was about 6' wide. I went to Fire Brigade and made a report and thereafter to the Mon Repos Police Station. I left the park lights on. I removed vehicle to cycle track. The policeman marked the spot before I did this and before he took measurements. I drove truck at 9.30 to Mon Repos Station and went home. I drove truck to Licensing

30

40

50

Record

Office where it was checked".

10 In the cross-examination the driver said "I was driving on the bright lights. I told the Police I was driving on dip .... I would accept that lights was faulty on dip. When cycle struck me I was not moving.... I would say that it is a traffic hazard" Re-examined he said "I had pulled aside and was at a standstill. I could see lights of beam in front of me. The park lights were on." The Policeman who marked the spot did not give evidence, but the defence called Police Corporal Carrington who attended at the scene after the lorry had been moved

P.13  
Line 7

10. Corporal Carrington said:

20 ".... on the 6th August 1970 as a result of a report I went to Mon Repos Bye-Pass. Report was made by Maharaj. I saw the truck parked on the cycle track on the western side of the Bye-Pass the motorbike was on a cycle track on the eastern side of the Bye-Pass. I was shown markings on the road by Maharaj. Cyclist was not there, I understand there was another police officer there. I took measurements. Width of the said road 22'. From marking to Western side 6' markings to motor cycle 50'. No brake impression; there were park lights on the vehicle. I instructed driver to take truck to Mon Repos Police Station. Truck got to station compound at 9.25 p.m. .... I got on scene at 8.15 p.m. I went to scene at 45 minutes after the accident."

~~P.12 line 25-~~  
P.13 line 5 23

40 11. Having heard the evidence the Learned trial Judge reserved judgment, and on 30th May 1972 he held the Respondent to be liable in negligence but not in nuisance. He found that the lorry was not parked, but had come to a standstill immediately before the accident, and he found further that at the moment of impact the lorry was completely unlighted. He absolved the Appellant from contributory negligence on the ground that he, being in the process of overtaking, was suddenly presented with the hazard of an unlighted truck, and could at that stage take no reasonable steps to avoid a collision.

P.17  
Lines 33-41

P.16  
line 47

P.18 Line  
39-44

12. The respondent appealed to the Court of Appeal on the grounds set out in the Notice of Appeal and the Appellant served notice of his intention to seek an increase in the award of

P21-23  
P.24

Record

damages on the ground that they were inordinately low. The appeal was heard by the Court of Appeal (Sir Isaac Hyatali C.J., Corbin and Rees J.J.A.) and judgment was delivered on the 5th June 1975 by Corbin J.A. with whose reasoning Hyatali C.J. and Rees J.A. concurred. The Respondent's appeal was allowed and a new trial ordered. No opinion was expressed on the cross notice. The (Plaintiff) Appellant was ordered to pay the costs of the Appeal.

10

13. Corbin J.A. took the view with which the Appellant respectfully agrees, that the vital question to be decided was whether or not the truck was lit at the time of the impact. However, he thought that the Learned trial Judge in arriving at his conclusion on that question fell into error:

P.27  
line 1

P.27  
lines 37-39

(a) In relying upon the testimony of Hoyte, because (i) that witness arrived at the scene after the accident had occurred and could not speak of the condition of the lorry's lights at the time of the impact and (ii) because there was a conflict between his evidence and that of Police Corporal Carrington on a different point.

20

<sup>7</sup>  
P.28 line  
20-36

(b) In relying upon the testimony of the Inspector of vehicles as to the condition of the lorry's dipswitch on the day after the accident, because it was not evidence of its condition before the accident.

30

P.28 line  
9-12

P.28 line  
16-18

(c) In finding that the lorry driver was "operating on dip switch when he was driving along the highway and immediately before and indeed when he stopped" since the driver's statement went to credit only and was not evidence of the truth of what was stated against the Respondent, his employer.

40

14. In relation to the evidence of Hoyte, the Appellant submits that the trial Judge did not find that the witness could speak of the condition of the lorry's lights at the time of impact, but he had before him the following:

P.11 line  
8-9

(a) According to Hoyte the lorry showed no lights very shortly after the accident.

(b) The driver said that he went to report the accident and left the park lights on, but he did not say that he had switched off the headlights before the arrival of Hoyte.

P.12 line  
40

(c) There was no evidence of accident damage to the lighting system of the lorry, and no attempt by defence to establish such damage.

P.11 line  
26-36

10 The Appellant submits that subject to the credibility of Hoyte, it is a reasonable inference from the above that the lorry showed no headlights immediately before the impact, and that the Judge was entitled to draw that inference if he thought fit, and to weigh it in the balance with the other facts and matters before him.

20 15. As to the credibility of the witness Hoyte, there was a conflict between his testimony and that of Police Corporal Carrington as to the location of the lorry some five hours after the accident, but the Judge considered this and having seen Hoyte under examination and cross-examination he concluded that whatever may have been the explanation for the conflict on that point, Hoyte's evidence could be relied upon as to the state of affairs immediately after the accident. The Court of Appeal did not decide that the Judge was wrong in so relying, and the  
30 Appellant respectfully submits that he was not.

P.16 line  
29-38

16. As to the condition of the lorry's dipping system, the learned trial Judge had before him the following facts:

(a) The day after the accident there was a defect in the lighting system of the truck such that when the dipswitch was in the "dip" position, the headlamps did not light.

P.11 line  
34-36

40 (b) There was no evidence that the defect had arisen at the time of or after the accident, and no attempt was made by the defence to show that it had.

Again it is submitted that it is a reasonable inference from the above that the dipping system was faulty before the accident, and that

Record

the Judge was entitled to draw that inference if he thought fit and to weigh it in the balance.

17. As to the driver's statement that he told the police he was driving on dip, the Appellant submits:

(a) that it was not necessary to determine whether or not the statement was an informal admission (so as to be evidence against the Respondent by virtue of an exception to the rule against hearsay), because the statement was made by the driver himself in Court.

10

P.13 line  
9

(b) that the trial Judge was aware that the driver's statement to the Police was inconsistent with his testimony at the trial, and did not attach undue weight to that statement.

(c) If, as submitted at paragraph 16 hereof, the dipswitch was faulty before the accident, then even if the driver's statement as to its operating position is disregarded, the existence of the defect offers an explanation for the presence of the vehicle on the road at the relevant time without headlights, and lends credibility to the Appellant's version of events.

20

18. The Court of Appeal also thought that the trial Judge found as a fact that the driver knew before the accident that the dipswitch was faulty. The Appellant submits that it is not clear from his judgment that he did so find, nor is it clear from the trial Judge's note of the evidence that the Court of Appeal was right in concluding that when in cross-examination the driver said "I would accept that lights was faulty on dip" he was referring to their condition at the time of inspection on the day after the accident. If the Judge did find that the driver knew of the fault in the dipswitch before the accident he probably did so from his recollection of the driver's evidence which he had heard six days before he delivered judgement, but in any event his finding on this point, if such it be, did not adversely affect the Respondent.

30

P.15 line  
39-44  
P.28 line  
8-9

40

19. The Appellant respectfully submits that the Court of Appeal should have asked itself not whether the trial Judge had made findings of fact

not warranted on the evidence but whether, taking the evidence as a whole he had, in finding for the Appellant, fallen into error which led to substantial injustice. In summary the evidence before the trial Judge was as follows: P.29 line 16-19

(a) In support of the Appellant's contention that the lorry was unlit at the time of the accident:

- 10 (i) the Plaintiff's own evidence, which was clear on the point, and unshaken in cross-examination.
- (ii) the evidence of Hoyte (paragraphs 14 and 15 supra).
- (iii) the evidence of the inspector of vehicles (paragraph 16 supra).
- (iv) the driver's statement as to the operating position of the dipswitch (paragraph 17 supra).

20 (b) In support of the Respondent's contention that the lorry showed headlights immediately before the accident there was the driver's testimony alone. Further, that testimony was weakened by the fact that the driver had told the police soon after the accident that he was driving on dip, whereas he told the Court that he was driving on the bright lights. He made no attempt to deny the truth of his statement to the police, nor to explain it away. P.13 line 7-8 P.13 line 8

20. The Appellant respectfully submits:

- 30 (i) that this appeal should be allowed and that the Respondent be ordered to pay the costs of this appeal and of the proceedings below.
- (ii) that the damages awarded to the Appellant should be increased or alternatively that the case be remitted to the Court of Appeal of Trinidad and Tobago with a direction that the Appellant's cross-appeal be heard and determined.

40 FOR THE FOLLOWING (amongst other):

R E A S O N S

1. Upon considering the evidence before him as a whole and having heard and assessed the credibility

Record

of the witnesses, the learned trial Judge was at liberty to find for the Appellant.

2. The decision of the Court of Appeal was based upon a misunderstanding of the judgment of the trial Judge and was erroneous in law.

3. That the decision of the learned trial Judge was not against the weight of the evidence.

P.9  
line 29  
p.10  
line 7  
p.12  
line 2-22

4. That having regard to the evidence of the Appellant and his medical witness the damages awarded to the Appellant were too low, and ought to have been increased by the Court of Appeal.

10

5. The reasons given by the learned trial Judge.

FENTON RAMSAHOYE

ROY McAULAY

IN THE PRIVY COUNCIL No: 46 of 1975

---

---

O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME  
COURT OF JUDICATURE OF TRINIDAD AND  
TOBAGO

---

---

B E T W E E N :-

WILFRED BHOLA

(Plaintiff) Appellant

- and -

SEETAHAL LIMITED (Defendant)

Respondent

---

---

CASE FOR THE APPELLANT

---

---

GASTERS,  
44 Bedford Row,  
London,  
WC1R 4LL