

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND  
TOBAGO

B E T W E E N :

WILFRED BHOLA

Appellant

- and -

SEETAHAL LIMITED

Respondent

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CASE FOR THE RESPONDENT

Record

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1. This Appeal is from a Judgment of the Court of Appeal of Trinidad and Tobago, given on the 5th June 1975, allowing an Appeal of the Respondent against a Judgment given in the High Court of Trinidad and Tobago on the 30th May 1972 against the Respondent, which was the Defendant at first instance, and remitting the case for a fresh trial before a different judge of first instance. The Court of Appeal made no determination upon the Appellant's cross-appeal on quantum of damage.

p.25-30  
p.14-20

pp.24,29 1.30,  
31 1.3.

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2. The principal issue to be determined on this Appeal is whether the findings of the trial judge were sufficiently supported by evidence to be allowed to stand. It is not contended by the Respondent that its Appeal should have succeeded, or should now succeed, to the extent that judgment should be entered for it upon the Appeal, but only that the order for a new trial made by the Court of Appeal is correct and should stand.

p.30 11.31-35

Record

- p.9 11.20-24  
p.10 11.19-27
3. On the 6th August 1970 at about 7 p.m. the Appellant was riding his motor cycle from north to south along a highway known as the San Fernando By-Pass when he collided with a stationary lorry owned by the Respondent. He suffered personal injury and loss in consequence.
- pp.1-2
4. By a Writ of Summons dated the 14th July 1971 the Appellant instituted the present suit, claiming damages for nuisance and negligence against the Respondent. The essence of the Appellant's case as pleaded was that the Respondent had allegedly, by its servant the lorry driver, parked the lorry on the highway away from its nearside kerb and without lights. 10
- pp.3-5
5. By its Defence dated the 12th November 1971 the Respondents admitted the occurrence of the collision on the date at the place pleaded by the Appellant, but denied that the lorry was parked. It was the Respondent's case, as pleaded, that the lorry was travelling in the opposite direction to the Appellant when the Appellant, in overtaking an oncoming vehicle, collided with the lorry. 20
- pp.6-7
6. At the trial before the Honourable Mr. Justice J. Braithwaite in the High Court of Justice of Trinidad and Tobago, the Appellant gave evidence in accordance with his pleaded case, and further to the effect that the Respondent's lorry was parked with its offside wheels approximately on the centre line of the road, and without lights. 30
- pp.9-10  
p.10 11.29-31
7. The Appellant called as a witness Wilmot Hoyte, who testified that he passed the scene of the accident at a time when two injured people were at the side of the road, and saw an unlighted truck parked on the road, the time being about 6.45 p.m. He further testified that at midnight on the same night the same truck was in the same place, still without lights. 40
- p.11 11.1-20
8. The Appellant further called as a witness Neville James, an inspector of motor vehicles, who on the 7th August 1970 inspected the Respondent's lorry and found that if the dip switch was operated the truck would show no lights through its headlamps. He testified under cross-examination that he had no notes on the park lights of the lorry, and that those lights could have worked.
- p.11 11.26-36
- p.11 11.38-39

9. The driver of the lorry, the Respondent's servant Krisoondath Maharaj, testified for the Respondent that he had been driving North on the material road with his headlights on, the light being "dusk-dark," when the Appellant drove down the highway towards him. He testified that he pulled to his extreme left and stopped, with the left wheel of the lorry jammed to the pavement. He further testified that he went to report the accident, leaving the park lights on. He also testified that a policeman marked the position of the lorry before he, the witness, removed it to the cycle track; and that at 9.30 p.m. he then drove the lorry to Mon Repos Station and went home.
10. Cross-examined, the witness stated : "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."
11. The witness further testified that at the moment of collision he had pulled the lorry aside and brought it to a standstill.
12. Corporal John Carrington, a witness called on behalf of the Respondent, testified that 45 minutes after the accident he attended at the scene of the collided and saw the lorry parked on the cycle track on the Western side of the highway. He further testified that there were park lights on the lorry and that the lorry was driven by Maharaj to the station compound, arriving there at 9.25 p.m. He confirmed the location of the damage to the lorry.
13. By his Judgment given on the 30th May 1972, the learned trial judge treated the action as one in negligence. He found the Respondent wholly liable for the accident, and awarded the sum of \$20,924.70, with costs.
14. In the course of his Judgment the learned judge made the following findings :-
- (a) The driver of the Respondent's truck admitted that he knew that the dip switch was faulty;
- (b) The driver of the Respondent's truck

p.12 11.25-39

p.12 1.40-  
p.13 1.5

p.13 11.7-8,  
12-13

p.13 11.18-21

p.13 11.23-24

p.13 1.42  
p.13 1.27

p.13 11.34-35

p.13 11.35-37

p.13 11.38-40

p.15 11.2-8

p.18 11.48-49

p.20 11.18-19

p.15 11.39-41

Record

p.15 11.41-44 stated that his lights were operating on the dip switch when he was driving along the highway and immediately before and indeed when he stopped;

p.15 1.45 -  
p.16 1.1 (c) Therefore, just prior to the collision, no beam (full or dip) was showing to approaching traffic from the headlamps of the truck;

p.16 11.11-15 (d) The witness Hoyte, who testified that within moments of the accident he saw the truck without any park light on the road with no sign of occupancy whatever, and that the truck was still an unlighted hazard at 12 midnight, was the only independent person who was in a position to testify to the lighting on the truck at a point of time so near to the moment of collision as to indicate the probability that the truck had not even park lights at that particular moment: for that reason, and for others which might emerge in the course of the Judgment, the learned judge found that at the moment of impact the Respondent's truck was completely unlighted; 10

p.16 11.19-20

p.16 11.39-44

p.16 11.44-47 (e) There was a wide discrepancy between the evidence of Hoyte and that of Carrington, who testified that the truck had been parked in the compound of Mon Ripos police station since 9.25 p.m.; 20

p.16 11.16-17

p.16 11.20-22

p.17 11.25-33 (f) It was not reasonable or probable in view of the relative dimensions of the road and the vehicles upon it, that the driver of the truck was forced to pull to his left and stop because the Appellant was cutting in and out of the oncoming traffic; 30

p.17 11.33-41 (g) What was far more likely to have happened was that the driver of the truck, having no headlights of his own (on his own admission), was temporarily blinded by the combined headlights of the Appellant's motor cycle and the car which the Appellant was attempting to overtake, and stopped his truck on the portion of the road which it had been occupying before he was so blinded; 40

p.17.11.41-44 (h) For that reason the learned judge believed the Appellant's evidence that the front wheels of the truck were on the white line running down the centre of the road;

(i) The measurements taken by the witness Carrington were not in any way helpful in deciding the matter; p.17 1.44 -  
p.18 1.16

10 (j) The Appellant, in the process of overtaking another motor vehicle had been suddenly presented with the hazard of an unlighted truck and could, at that stage, take no reasonable steps to avoid a collision, especially since his vehicle was fitted with a single headlamp which showed only the road in front of these lights and not that at the side. p.18 11.39-47

15. The learned trial judge made no findings as to the conflicting evidence given by the witnesses Hoyte and Carrington concerning the position of the lorry at different times during the material evening. p.16 11.11-36

20 16. By its unanimous decision of the 5th June 1975, the Court of Appeal of Trinidad and Tobago allowed the Appeal of the Respondent, set aside the judgment of the Honourable Mr. Justice John Braithwaite and ordered that the matter be remitted to the High Court to be tried de novo before another judge, the cross-appeal standing undetermined. pp.25-31

17. In the leading judgment Corbin J.A. stated :

30 "The burden of the contentions by counsel for the company viz the Respondent before us was to the effect that the trial judge had failed to evaluate the evidence properly and that consequently he had made findings which were not supported by the evidence. The three main issues to be decided by the judge were (1) whether or not the truck was parked, (2) whether or not it was lit and (3) whether or not the Respondent overtook at a time when it was unsafe." p.26 11.17-26

40 18. The learned Justice of Appeal rightly held in relation to the first said issue that the trial judge did not appear to have accepted that the truck was parked before the accident, and that he had found that the truck was moving and came to a standstill before the accident. In those circumstances the learned Justice of Appeal rightly held: p.26 11.27-45

"The vital question to be decided, p.26 1.45 -

Record

- p.27 1.6 as was conceded for the Respondent, was whether or not the truck was lit at the time of the impact. The evidence on this point produced two sharply conflicting versions and it was necessary for the judge to make a very careful assessment of the witnesses and their evidence."
19. In relation to this, the second said issue, the learned Justice of Appeal rightly held : 10
- p.27 11.37-39 (a) That even if he was a truthful witness, Hoyte could not speak of the condition of the lights at the time of impact, since he arrived afterwards;
- p.27 11.11-22 (b) His evidence that when he had returned at about midnight the truck was still there without lights was at variance with the evidence of the witnesses Carrington and Maharaj that the truck was taken to Mon Repos police station at about 9.30 p.m.: if this was believed it meant that Hoyte was not a witness who could be relied on completely; 20
- p.27 11.22-23 (c) However, the learned trial judge had made no finding on this point;
- p.26 11.30-33  
p.27 1.40 -  
p.28 1.29 (d) That the supposed admission on the part of the Respondent's driver, Maharaj, relied on by the learned trial judge in addition to the evidence of Hoyte, was unsupported by the evidence and in any event inadmissible in law against the Respondent in that : 30
- p.28 11.6-7)  
p.13 1.7 ) (i) The driver's evidence was that he was driving on bright lights,
- p.28 11.7-8)  
p.13 11.7-8) (ii) The driver had told the police that he was driving on dip,
- p.28 11.9-12 )  
p.11 11.26-33) (iii) The dip switch had been found to be faulty after the accident, and there was no evidence of its condition before the impact, 40
- p.28 11.13-14)  
p.13 11.12-13) (iv) The acceptance by the driver that the lights were faulty on dip must have

related to the opinion expressed by the licensing officer, viz the witness James,

(v) There was therefore no evidence to support the finding of the learned trial judge that the driver was operating on dip switch up to the moment of the accident, p.28 11.15-18

10 (vi) The admission of the driver that he had told the police that he was driving on dip switch was not evidence of the truth of what he had stated but went merely to his credibility, as a statement contradicting his testimony on oath, p.28 11.18-23

(vii) If in law this was an admission, it did not affect the Respondent since the truck driver was not a party to the proceedings and was not shown to have had authority to make any admissions on behalf of the Respondent. p.28 11.23-29

20 20. As to the third said issue the learned Justice of Appeal rightly held that its determination depended on whether the evidence of the truck driver or of the cyclist was accepted. He further rightly held that the evidence of the truck driver did not really depart from his pleadings with regard to the question whether the lorry had been parked at the time of the impact. The learned Justice of Appeal rightly concluded : p.28 11.36-38  
p.28 1.45 -  
p.29 1.12

30 "In the final result the Judge's task was to decide whether he believed the Respondent's version of how the accident occurred or that given by the truck driver. In deciding in favour of the Respondent's version he made findings of fact which were not warranted on the evidence. His decision therefore cannot stand." p.29 11.13-19

40 21. The Respondent submits that the said Judgment, in which both other members of the Court of Appeal concurred without adding to the reasons, is right. p.29 11.34-41

22. On the 23rd October 1975 the Court of Appeal of Trinidad and Tobago granted final leave to the Appellant to appeal to Her Majesty in Council against their Judgment aforesaid. pp.31-32

23. The Respondent submits that the Judgment of the Court of Appeal should be upheld and this Appeal dismissed with costs for the following amongst other

R E A S O N S

(i) BECAUSE the Judgment of the Court of Appeal is right for the reasons given by them and for other good and sufficient reasons.

(ii) BECAUSE the initial finding of the learned trial judge, that at the moment of impact the Respondent's truck was completely unlighted, was founded entirely upon the evidence of the witness Hoyte, which evidence the learned judge had wholly failed to evaluate by reference to the conflict between it and the evidence of the witness Carrington. 10

(iii) BECAUSE the next finding of the learned judge, as to why the truck was at a standstill at the moment of impact, was founded upon the greater probability of the existence of facts as to the lighting of the truck which had no source in the evidence. 20

(iv) BECAUSE the finding of the learned judge that the Appellant was to be believed when he said that the front wheels of the truck were on the white line running down the centre of the road was not an independent finding but was derived expressly from the erroneous finding aforesaid 30

(v) BECAUSE in the premises the entire Judgment of the learned trial judge was vitiated by his failure to evaluate the evidence adequately and by his reliance upon matters of fact which were contrary to, or not proven by, the evidence before him. 40

(vi) BECAUSE the recorded evidence, property appraised, does not necessarily entitle either party to judgment, but requires a fresh appraisal of the



witnesses and of their evidence at a  
new trial.

STEPHEN SEDLEY

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