

Judgment 5 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 46 of 1975

O N A P P E A L  
FROM THE COURT OF APPEAL OF TRINIDAD & TOBAGO

5/78

B E T W E E N :-

WILFRED BHOLA

Appellant

- and -

SEETAHAL LIMITED

Respondent

---

RECORD OF PROCEEDINGS

---

GASTERS  
44 Bedford Row  
London WCLR 4LL

Solicitors for the Appellant

B. M. BIRNBERG & CO.  
103 Borough High Street  
London Bridge SE1 1NN

Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

WILFRED BHOLA

Appellant

- and -

SEETAHAL LIMITED

Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT</u>		
1.	Writ of Summons	14th July 1971	1
2.	Statement of Claim	14th July 1971	3
3.	Defence	12th November 1971	6
4.	Reply to Defence	24th November 1971	8
5.	Notes of Evidence		9
6.	Judgment	30th May 1972	14
7.	Formal Judgment	4th July 1972	20
	<u>IN THE COURT OF APPEAL</u>		
8.	Notice of Appeal	3rd August 1972	21
9.	Notice of Cross Appeal	17th August 1972	24
10.	Judgment	5th June 1975	25
11.	Formal Judgment	5th June 1975	30
12.	Order granting final leave to Appeal	23rd October 1975	31

1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 46 of 1975

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

RECORD OF PROCEEDINGS

No. 1

In the High  
Court

Writ of Summons

          
No. 1

IN THE HIGH COURT OF JUSTICE

Writ of  
Summons

Sub-Registry - San Fernando  
TRINIDAD AND TOBAGO

14th July  
1971

No. 560 of 1971

Between

WILFRED BHOLA

Plaintiff

And

SEETAHAL LIMITED

Defendant

ELIZABETH II by the Grace of God  
Queen of Trinidad and Tobago and  
of her other Realms and Territor-  
ies Head of the Commonwealth

TO: SEETAHAL LIMITED of Sum Sum Hill, Claxton Bay,  
in the Ward of Point-A-Pierre, within 3 miles of  
the Point-A-Pierre Railway Station.

We command you that within Eight days after the  
Service of this Writ on you inclusive of the day of  
such service you do cause an appearance to be  
entered for you in an action at the suit of

10

20

In the High Court

WILFRED BHOLA

-----  
No. 1  
Writ of Summons  
14th July 1971  
(continued)

and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness the Honourable Mr. Justice Clement Phillips, Acting.

Chief Justice of Trinidad and Tobago this 14th day of July, 1971.

N.B. This Writ is to be served within twelve calendar months from the date thereof or if renewed within six calendar months from the date of such renewal including the day of such date and not afterwards.

10

A defendant who resides or carries on business within the above-mentioned District must enter appearance at the office of the Sub-Registry of that District.

A defendant who neither resides or carries on business within the said District may enter appearance either at the office of the said Sub-Registry or at the Registry, Port of Spain

20

The Plaintiff's claim is for damages for personal injuries, damages done to his Motor-Cycle PM-918 and for loss and expense incurred as a result of the negligence and or nuisance of the servant and/or agent of the Defendant Company in parking Motor-Lorry TK-218 on the Highway known as the San Fernando By Pass in the vicinity of St. Joseph Village on the 6th day of August, 1970.

30

This Writ was issued by Laurence, Narinesingh & Co of 75 Broadway San Fernando whose address for service is the same place Solicitors for the Plaintiff

/s/ Laurence, Narinesingh & Co.  
Plaintiff's Solicitors.

This Writ was served by me at

on the Defendant  
on the day of

Endorsed the day of

No. 2

In the High Court

Statement of Claim

No. 2

TRINIDAD AND TOBAGO

Statement of Claim

IN THE HIGH COURT OF JUSTICE

14th July 1971

Sub-Registry, San Fernando

No. 560 of 1971.

Between

WILFRED BHOLA Plaintiff

And

10

SEETAHAL LIMITED Defendant

STATEMENT OF CLAIM together with the Writ of Summons of the above-named Plaintiff filed this day of July, 1971, by Messrs. Laurence, Narinesingh & Co., of No. 75, Broadway San Fernando Solicitors for the Plaintiff herein.

Sgd. Laurence, Narinesingh & Co.  
Plaintiff's Solicitors.

20

1. The Plaintiff is an Auto Electrician residing at No.10, Mousette Vale, Cocoyea Village in the Ward of Naparima, in the Island of Trinidad, and was on the 6th day of August, 1970 and at all material times the owner of Motor-Cycle PM-918.

2. The Defendant is a limited liability Company with its registered office at Sum Sum Hill Claxton Bay, in the Ward of Point-A-Pierre, in the Island of Trinidad and was on the said 6th day of August, 1970 and at all material times the owner of Motor Lorry TK-218.

30

3. On the said 6th day of August, 1970, the Plaintiff was riding his said Motor Cycle PM-918 from North to South along the Highway known as the San Fernando Bye Pass in the vicinity of St. Joseph Village, when the servant and or agent of the Defendant Company so negligently parked the said Motor Lorry TK-218 on the Western side of the said Bye Pass without lights or other means of illumination in consequence of which the Plaintiff collided

In the High  
Court

No. 2

Statement of  
Claim

14th July  
1971  
(continued)

with the said Motor Lorry resulting in severe personal injuries pain and suffering, damage to Motor Cycle PM-918 and loss and expense to the said Plaintiff.

PARTICULARS OF NEGLIGENCE AND/OR  
NUISANCE

The Defendant Company's servant and/o agent was negligent in:-

1. Parking the said Motor Lorry TK-218 on the highway known as the San Fernando Bye Pass. 10
2. Parking the said Motor Lorry TK-218 on the said Highway without any park or other lights or illumination indicating its presence on the said Highway.
3. Failing to take any or any proper steps to have the said Motor Lorry parked off the said Highway or alternatively, to have the said Motor Lorry parked as near as possible to its left or correct side of the said Highway or Bye-Pass. 20
4. Leaving the said Motor Lorry on the said Highway or Bye-Pass Stationary in the dark without any front lights.
5. Causing or permitting the said Motor Lorry to be and/or to become and/or to remain a danger to persons lawfully using the said Highway or Bye-Pass.
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
7. Failing to take any or any effective measures to prevent the said Motor Lorry from being run into from the front.
8. Failing to have any or any sufficient regard for the safety of the users of the said Highway or Bye-Pass.
4. Further or in the alternative the Defendant Company's servant and/or agent wrongfully obstructed the said Highway or Bye-Pass and wrongfully caused or permitted the said Motor Lorry to be 40

and/or to become and/or to remain a danger to persons lawfully using the said highway or Bye-Pass by leaving the said Motor Lorry thereon stationary in the dark without any front lights and he wrongfully committed a nuisance on the Highway or Bye-Pass.

In the High Court

No. 2

Statement of Claim

14th July 1971

(continued)

5. In the further alternative the Plaintiff will rely upon the happening of the said accident as in itself constituting evidence of negligence.

10

PARTICULARS OF PERSONAL INJURIES

Crushed right leg with compound comminuted fractures of the leg bones, necessitating an above knee amputation.

PARTICULARS OF SPECIAL DAMAGE

	a.	To loss of one Ray Band Shades .....	₹ 45.00
	b.	To loss of Shoes .....	₹ 14.00
	c.	To loss of one Fortis Wrist Watch ...	₹ 73.00
	d.	To damage to one Pair of Trousers ...	₹ 10.00
	e.	To damage to one shirt .....	₹ 3.00
20	f.	To loss of cash .....	₹ 45.00
	g.	To damage and/or loss on Motor Cycle	₹ 370.00
	h.	To Medicines .....	₹ 43.35
	i.	To cost of Medical Certificate .....	₹ 10.00
	j.	To costs of Measurement for arti- ficial limb .....	₹ 15.00
	k.	To costs of bandages for artificial limb .....	₹ 10.00
	l.	To costs of artificial limb .....	₹ 644.40
30	m.	To costs of one pair of shoes for artificial limb .....	₹ 18.95
	n.	Travelling expenses for treatment as an out-patient at General Hospital .....	₹ 18.00
	o.	To loss of earnings at the rate of ₹40.00 per week from the 6th day of August, 1970 still continuing	₹
	p.	Travelling expenses and subsistence from 6th August, 1970 at ₹12.50 and continuing .....	₹

40

AND THE Plaintiff claims damages.

Ramesh L. Mah raj.

OF COUNSEL.

6.

In the High  
Court

No. 3

Defence

          
No. 3

Defence

12th November  
1971

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry, San Fernando.

No. 560A of 1971.

Between

WILFRED BHOLA

Plaintiff

And

SEETAHAL LIMITED

Defendant

10

D E F E N C E

1. The Defendant Company admit paragraphs 1 and 2 of the Plaintiff's Statement of Claim.

2. As to paragraph 3 of the said Statement of Claim, the defendant Company admits so much thereof as alleges that on the 6th day of August, 1970 that there was a collision on the San Fernando Bye Pass in the vicinity of St. Joseph Village between motor cycle No. PM-918 but denies that the said TK-218 was parked without lights and other means of illumination as alleged or at all and further denies that the said collision was due to the negligence of the Defendant's Company servant and/or agent or that the Plaintiff suffered the alleged or any personal injuries, pain and suffering and damage to Motor Cycle PM-918. 20

3. If, which is denied, the plaintiff suffered the alleged damage, the defendant Company says that the same was caused or contributed to by the negligence of the Plaintiff. 30

4. The Defendant Company categorically denies the allegations contained in paragraph 4 of the Plaintiff's Claim.

5. The Defendant Company will contend that at the time of the said collision TK-218 was not



parked as alleged or at all but that the said vehicle was in motion and travelling from South to North along the said road when the Plaintiff travelling in the opposite direction overtook a vehicle in front of him and in so doing collided with TK-218.

In the High Court

No. 3

Defence

12th November

1971

(continued)

PARTICULARS OF NEGLIGENCE

- a. Rode too fast;
  - b. Rode without due care and attention;
  - 10 c. Rode on the wrong side of the said road and in to 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's Company vehicle;
  - f. Failed to apply his brakes in time or at all and/or so to manage, swerve or control the said PM-918 so as to avoid the said collision.
- 20 6. Save as to the admissions herein the defendant Company denies each and every allegation and/or implication of fact in the Statement of Claim contained as if the same were herein specifically set out and traversed seriatim.

Basdeo Panday

OF COUNSEL.

30 DEFENCE of the above named defendant delivered by his Solicitors Messrs. J.B. Kelshall & Co., of No. 9a Harris Promenade San Fernando, this 12th day of November, 1971.

J. B. Kelshall & Co.

Defendant's Solicitors.

We hereby accept delivery of the Defence herein although the time for so doing has expired.

Plaintiff's Solicitors.

8.

In the High  
Court

No. 4

No. 4

Reply

Reply

TRINIDAD AND TOBAGO

24th November  
1971

IN THE HIGH COURT OF JUSTICE

Sub-Registry - San Fernando

No. 560A of 1971

Between

WILFRED BHOLA

Plaintiff

And

SEETAHAL LIMITED

Defendant

10

R E P L Y to Defence of the above named  
Plaintiff delivered by his Solicitors Messrs.  
Laurence, Narinesingh & Co., of No. 75 Broadway  
San Fernando, on the 24th day of November, 1971.

sgd. Laurence, Narinesingh & Co.

Plaintiff's Solicitors

1. The Plaintiff joins issue with the Defendant  
on its Defence save in so far as admissions  
therein are concerned.

2. The Plaintiff specifically denies that he  
was negligent in any of the respects alleged in  
the said Defence or that the injuries and damage  
suffered by him was caused or contributed to by  
any negligence on his part as alleged or at all.

20

3. The Plaintiff specifically denies that the  
Defendant Motor Lorry TK-218 was in motion at the  
time of the collision.

4. The Plaintiff repeats paragraph 3 of the  
Statement of Claim and the Particulars of  
negligence and/or nuisance therein contained.

30

Ramesh L. Maharaj.

OF COUNSEL.

No. 5

Notes of Evidence

In the High Court

TRINIDAD AND TOBAGO

No. 5

IN THE HIGH COURT OF JUSTICE

Notes of Evidence

Sub-Registry, San Fernando

No. 560A of 1971

Between

WILFRED BHOLA

Plaintiff

And

10

SEETAHAL LIMITED

Defendant

Before the Hon. Mr. Justice J. Braithwaite.

NOTES OF EVIDENCE

Mr. Ramesh Maharaj for Plaintiff

Mr. Seenath holding for Panday for Defendant.

Wilfred Bhola sworn states:

Wilfred  
Bhola  
Examination

20

No.10 Sussex Bay, Cocoyea Village, San Fernando, Auto Electrician employed by Laughlin & De Gannes. On 6th August, 1970 I was involved in accident with truck. About 7.00 p.m. I was riding a Yamaha Motor Cycle PM-918 from Marabella Roundabout to Mon Repos. It was dark. I was to overtake a car when I struck a truck parked without lights on the Western side of the road, Patricia Bayon my cousin was riding with me at the time. I was taken to hospital. The Highway is a busy Highway with traffic going and coming.

30

There are no street lights at the place of the accident. I had right leg amputated above knee. I lost Ray Bano Shades \$45.00, Shoes \$18.00, Wrist Watch \$73.00 ((o) not proceeding with) trousers \$10.00, Shirt \$7.00. I lost \$45.00. I lost \$370.00 for Motor Cycle. I paid \$43.00 for Medicines. (All items up to (n) admitted by Counsel for Defendant). I paid for travelling to

In the High Court

No. 5

Notes of Evidence (continued)

work \$18.00 per week. I still have to go to work. I suffer occasionally from dizziness. I still suffer from pain in my leg. I cannot go on outside jobs which lead to promotion. Two persons junior to me have been promoted. I now get \$45.00 per week. At the time of the accident I was getting \$40.00 per week. I did not know truck was there. If I had known I would not have attempted to overtake.

Cross-examination

To Seenath:

10

I have a license for about 2 years. I had been riding for some months previously. PM-918 was a new Motor Cycle about 2 weeks. It was a 125 c.c. I was still breaking in the vehicle. It was a possible maximum speed of 100 m.p.h. on the speedometer. 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 vehicle 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.

20

There was a white line. The truck right wheels were about along the white line. There were no lights on truck nor was it moving. I was not travelling fast - nor was I overtaking a number of cars nor did I misjudge distance of truck and ran into it. I cannot remember if I overtook other cars in that vicinity. It was safe to overtake. I was dazed after the impact. The case in Magistrate's Court was dismissed. I do not know what happened to car. I had my shades clipped on to belt. It was a Thursday. The money was given to me by my girl's mother. The motor cycle was a complete write-off. I got \$112.00 from the Insurance Company.

30

40

Re-examination

To Maharaj:

The lights shone straight in front of me.

Wilmot Hoyte sworn states:In the High  
Court

No. 5

Notes of  
Evidence  
(continued)  
Wilmot Hoyte  
Examination

10 Of Marabella, I work at the San Fernando  
Borough Council. On 6th August, 1970 I saw two  
injured people at the side of the road on left  
side of the road, going to San Fernando. There  
was a truck parked on the right side going to  
San Fernando. There was nobody in the truck nor  
was it at all lighted. If there was anybody in  
the truck I would have seen them, provided the  
person was not lying down inside truck. I went  
to Marabella Station to report but found out that  
a report had already been made. This was about  
6.45 p.m.

To Seenath:

I was travelling on a motor scooter on left  
side of road.

To Court:

20 At 12 midnight I came back from show and very  
nearly ran into the same truck in the same place  
without lights. TK-218 was the number.

Wilfred Bhola sworn states: (Recalled)Wilfred  
Bhola  
(Recalled)

Laughlin and De Gannes had cricket, football  
and cricket facilities. I am 22 years old and was  
selected to represent team in cricket and football.

Neville James sworn States:Neville  
James  
Examination

30 I am an Inspector of Motor Vehicles. On 7th  
August, 1970 I inspected TK-218. I made notes at  
the time, at licensing Office, San Fernando.  
Registration No. TK-218. Leyland Super-six Painted  
red, green and light. Vehicle was damaged.  
Right front including right front fender and  
wheel. General condition tyres good. Lights  
were faulty on dip. Brakes efficient. Vehicles  
licensed for current year. If the dip-switch  
was operated the truck would show no lights  
through it headlamps.

To Seenath:

I checked the lights. I have no notes on  
park lights. The park lights could have worked.

40 (Case for the Plaintiff closed subject to  
the doctor)

In the High  
Court

Adjourned 24/5/72.

—  
No. 5

Notes of  
Evidence  
(continued)  
Henry  
Collymore  
Examination

Henry Collymore sworn states:

Member of the Medical Board of Trinidad and Tobago. San Fernando General Hospital. Specialist Orthopaedic. I attended the Plaintiff, he had crushed right leg compound commuted fractures of leg bones. I had to amputate leg above knee. I saw him on the 5th June, 1971 for assessment 90% permanent partial disability.

Considerable amount of pain before and after amputation. Still probability of pain. He has already been fitted with artificial leg. It is possible that he could ride a Motor Cycle but I have never seen it happened. 10

To Seenath:

He has progressed reasonably satisfactory. He can move around without crutches. He can climb stairs with difficulties. It would be uncomfortable for him to stand for long periods. Artificial leg can bend at the knee. 20

Stump being tender may cause him not to wear the leg.

(Case for the Plaintiff closed).

Krisoondath  
Maharaj  
Examination

Krisoondath Maharaj sworn states:

Claxton Bay, I am a truck driver. On 6th August, 1970 I drove a truck TK-218 for Seetahal Limited. 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 30

40

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 Office where it was checked.

In the High Court

—  
No. 5

Notes of Evidence  
(continued)

To Maharaj:

10 I was driving on the bright lights. I told the Police I was driving on dip. Police took measurements. I did not see what measurements he took. I spoke to the Policeman. I noticed air in tyres was going down. It was after impact that I noticed that tyres was cut. I would accept that lights was faulty on dip. When cycle struck me I was not moving. At time of accident vehicle was stopped not as in pleadings. I would say that it is a traffic hazard.

To Seenath:

20 Vehicle was stationary when it was hit. I had pulled aside and was at a standstill. I could see lights of beam in front of me. The park lights were on.

Corporal John Carrington sworn states:

30 On 6th August, 1970 as a result of a report I went to Mon Repos Bye-Pass and saw TK-218 and PM-918. Report was made by Maharaj. I saw the truck parked on the cycle track on the Western side of the Bye-Pass. The Motor bike was on cycle track on Eastern side of 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. From marking to Western side - 6' ..... markings to Motor-Cycle - 50'. Width of the road 22'. No brake impressions; 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. Wheel base is about 6'. Right front tyre was blown and a dent on a metal position in line of wheel. The outside of tyre was damaged. I got on scene at 8.15 p.m.

Corporal  
John  
Carrington  
Examination

To Maharaj:

40 I went to scene at 45 minutes after accident.

In the High Court

No. 5

Notes of Evidence (continued)

Seenath addresses

Maharaj replies:

Nuisance, Diamond v. Pierre  
1972 (Current Law) - p. 169  
Watson v. Settler 1971.

70%

30%

Cornillac v. St. Louis

Alger v. Newton James.

NOV. 1963.

10

Adjourned: 30/5/72 for decision.

No. 6

Judgment  
30th May 1972

No. 6

Judgment

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry - San Fernando

No. 560A of 1971

Between

WILFRED BHOLA

Plaintiff

And

SEETAHAL LIMITED

Defendant

20

Before the Honourable  
Mr. Justice John Braithwaite

Ramesh Maharaj for the Plaintiff.

Seemath holding for Pandey for the Defendant.



J U D G M E N TIn the High  
Court

No. 6

Judgment

30t 1972  
(continued)

10 This is an action in which the plaintiff claimed damages against the defendant for negligence or nuisance. At the outset may I say that having regard to the facts as I have found them, I do not think that I should regard this action as one in nuisance. I prefer to regard it as an action in negligence. I will therefore turn immediately to the allegation of negligence made by the Plaintiff against the defendant. What in brief the Plaintiff contended was that the defendant parked his truck on an unlighted highway without showing any lights and that while he was in the process of overtaking a motor car he ran into the parked truck which he did not see until it was too late to take evasive action.

20 What in turn the defendant maintained was that as a result of the somewhat erratic approach of the Plaintiff, he the defendant was forced to pull to his extreme left and stop in order to attempt to avoid a head on crash with the Plaintiff's motor vehicle. As it turned out (and this is admitted by both parties) the Plaintiff's motor cycle came in contact with the right front fender of the defendant's truck. The Plaintiff and his pillion passenger were thrown a distance of 50' and the Plaintiff received a severe injury to his right leg which necessitated an amputation of that leg above the knee.

30 I am approaching the assessment of the credibility of these two parties (no other eye witness evidence was led by either side save the plaintiff and the defendant) by adverting to the uncontradicted evidence of an Inspector of motor vehicles, Mr. Neville James. Mr. James inspected the defendant's truck on the 7th August, 1970 and found inter alia that the front headlights were not showing when the dip-switch was employed. What is more is this; that the driver of the  
40 defendant's truck admitted that he knew that the dip-switch was faulty and followed this up by stating that his lights were operating on the dip-switch when he was driving along the Highway and immediately before and indeed when he stopped.

It seems therefore clear to me that, whatever were the other existing circumstances just prior to the collision, no beam (full or dip) was showing to approaching traffic from the headlamps

In the High  
Court

—  
No. 6

Judgment

30th May 1972  
(continued)

of his truck. So that on his evidence, the truck which he was driving was at a standstill (to which he had put it) without showing lights of any kind which were capable of giving reasonable notice to oncoming traffic of its presence on the road save possibly his park lights. This brings me to another point. When the investigating policeman came on the scene, he said that he found the truck parked off the roadway with its park lights on. That was some 45 minutes after the accident. As against this, a witness for the plaintiff testified that within moments of the accident he saw the truck without any park light on the road with no sign of occupancy whatever.

10

There was a wide discrepancy between his evidence and that of Investigating Policeman as to the continued presence of the truck on the road. The witness swore that the truck was still an unlighted hazard at 12 midnight. The Corporal said that it has been parked in the compound of the Mon Repos Police Station since 9.25 p.m. What struck me as strange was the necessity for the driver of the defendant's truck to keep on his park lights when the truck had been completely removed from the Highway.

20

On the other hand, I saw no reason for the policeman to fabricate this piece of evidence. Out then too I saw no reason for Hoyte to be inaccurate or mistaken in what he said he saw. At anyrate, whatever may have been the truth about the presence of the truck on the road at midnight There can be little doubt that it was parked to the western side of the roadway at the time the witness Hoyte came upon the two bodies lying on the left on the eastern side of the road. This must, in the nature of things have been almost immediately after the collision.

30

Hoyte then 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 this reason and for others which may emerge in the course of this judgment, I find that at the moment of impact the defendant truck was completely unlighted. Three questions of fact remain to be resolved:-

40

- (1) Was the driver of the defendant's truck forced by the act of the Plaintiff to pull over to his left and to bring the truck to a standstill?

In the High Court

—  
No. 6

- (2) Notwithstanding the fact that the defendant's truck was at a standstill without lights immediately before the collision (2 car lengths away) was there not a duty on the Plaintiff to make sure that the road on his right was clear before he attempted to overtake the car immediately before him?

Judgment

30th May 1972  
(continued)

- (3) If there was such a duty (and I have no doubt that there was) should the plaintiff have been able, observing reasonable care to see that there was an unlighted truck at a standstill on the right side of the road?

In answer to the first question, I am of the view that if the driver of the truck thought that a collision was imminent because of the dangerous manoeuvring of the Plaintiff, he would have sounded his horn or could have applied his brakes and come to a standstill before the impact. Or as he said in his pleadings that he did, he could have continued on keeping as near as possible to his left side of the road. After all, the road, was 22' wide and allowing the average width of a car to be 4' the width of the truck being 6', the plaintiff has an approximately 12' space within which to pass safely. I cannot therefore accept as reasonable and probable that because as the driver of the truck testified, the Plaintiff was cutting in and out of the oncoming traffic, he was forced to pull to his left and stop. What I think is far more likely to have happened is 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 plaintiff motor-cycle and the car which the plaintiff was attempting to overtake, stopped his truck on the portion of the road which it had been occupying before he was so blinded. It is for this reason that I believe the Plaintiff when he said that the front wheels of the truck were on the white line running down the centre of the road. May I state at this point that I did not consider the measurement taken by the Investigating police officer to be in any way helpful in deciding this matter. This officer came upon the scene a

In the High  
Court

—  
No. 6

Judgment

30th May 1972  
(continued)

considerable period after the time of the collision; the truck itself had been removed from the spot it had occupied on the roadway to a cycle-track adjoining the roadway; certain marks have been placed on the road to indicate the position of the truck at the time of the collision. These marks were said by the truck driver to have been placed by another policeman, who one would have thought would have been a most important witness, but who was not called), and finally it was on the truck driver's ipse dixit that the police officer took the important measurement from the point of impact to the western side of the roadway. (None of the other evidence, e.g. broken glass, dust or debris was present.)

10

The answer to the second and third questions which I have posed for myself, involve certain consideration of law on which much has been written. My own view, after reviewing the authorities and particularly those put at my disposal by Counsel for the Plaintiff, is that where a person is put in a position of jeopardy by the act of another, unless that first person has sufficient opportunity to appreciate the nature and quality of the jeopardy and to take reasonable measures to avoid the danger which is imminent, that first person cannot be held to be blame-worthy for any consequence of a collision. It is therefore my opinion that when the driver of any vehicle on the road intends to overtake another vehicle it is his duty to make sure that to overtake that vehicle would be a reasonably safe manoeuvre. However, where a driver comes suddenly upon a hazard and is by the nature of the hazard unable to avoid that hazard and is injured as a consequence then he cannot be regarded as blameworthy in any respect. Applying these concepts to the instant case, I find that the plaintiff in the process of overtaking another motor vehicle was suddenly presented with the hazard of an unlighted truck and could, at that stage, take no reasonable steps to avoid a collision. This is especially so in this case where the Plaintiff's vehicle was fitted with a single headlamp which showed only the road in front of those lights and not that at the side.

20

30

40

I find the defendant totally liable in negligence for the damages done to the plaintiff.

I now turn to the assessment of the general damages.

In the High  
Court

—  
No. 6

Judgment

30th May 1972  
(continued)

10 The Plaintiff is 22 years old. Prior to the accident he took an active part in the athletic programmes of the Company by which he is employed, principally cricket, football and table tennis. He is no longer able to engage in these activities. He excelled at cricket, having been chosen to represent his Company's first eleven on many occasions. He has been fitted with an artificial leg which, in my view, enables him to carry out his normal duties as an electrician, but otherwise would impair his social life. He has suffered a great deal of pain and is likely to continue to suffer soreness of the shimp of his leg. I have reviewed the decisions both local and overseas on this type of injury and have found the awards to range between \$24,000 to \$35,000.

20 The damages I propose to award may seem on the face of it to be somewhat high. What influenced me, on the evidence of Mr. Collymore particularly, and to a lesser extent on that of the Plaintiff, is the fact that it is highly unlikely that he will be able to ride a motor cycle again. The plaintiff says he cannot do so. The doctor says, and I quote "It is possible that he could ride a motor cycle, but I have never seen a person suffering from his type of injury doing so (even when fitted with an artificial leg)".

30 The plaintiff's uncontradicted evidence was that his immobility (so to speak) has already cost him one promotion with his company. He also stated that one of the norms of proficiency in his avocation with his company is his availability for field jobs. Without some measure of transport within his means, he cannot hope to attain this standard of proficiency. I regard this disability as a serious impairment of the Plaintiff's future life. It is for this reason principally that I am assessing the general damages to be paid to the Plaintiff at \$20,000.00 (As a matter of interest, though not of influence) Mr. Collymore assessed the plaintiff's permanent partial disability at 90%. This is 20% above the notoriously conservative evaluation for similar injuries under the 2nd schedule to the Workmen's Compensation Ordinance. As a minor of 17 years he would have been entitled to receive \$12,960.00 as an adult over 17 years he

40

In the High Court

No. 6

30th May 1972  
(continued)

would have been entitled to merely \$6,480.00. These evaluations do not take into consideration matters like pain and suffering, loss of future earnings, loss of social amenities and other embarrassments. Professional, medical and surgical witnesses ought, outside claims made under the Workmen's Compensations Ordinance, to be discouraged by their legal advisers from giving percentages of disability whether permanent or partial and should be restricted to their findings, their opinions and their prognoses - no more. Be that as it may, according to the surgeons' percentage evaluation and to the other imponderables of the plaintiff's disability and it is well nigh a total partial (one important limb) disability, I have made the assessment.

10

Special damages are assessed at \$924.70. Judgment will be for the Plaintiff in the sum of \$20,924.70 and costs.

Stay of execution 28 days.

20

Dated the 30th day of May, 1972.

John A. Braithwaite.

Judge.

NNo.7

No. 7

Formal Judgment

Formal Judgment

4th July 1972

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

Sub-Registry - San Fernando

No. 560A of 1971

Between

30

WILFRED BHOLA

Plaintiff

And

SEETAHAL LIMITED

Defendant

Entered the 13th day of July, 1972

On the 4th day of July, 1972.

Before The Honourable Mr. Justice Braithwaite.

THIS ACTION having been tried on the 23rd and 24th days of May, 1972 before The Honourable Mr. Justice Braithwaite and the said judge having on the 4th day of July, 1972 ordered that judgment be entered for the Plaintiff in the sum of \$20,924.70 with costs to be taxed.

In the High Court

—  
No. 7

Formal Judgment

4th July 1972  
(continued)

THEREFORE IT IS THIS DAY ADJUDGED

10 That the Plaintiff do recover against the Defendant the sum of \$20,924.70 and his costs of suit to be taxed.

AND IT IS DIRECTED

That execution herein be stayed for a period of 28 days from date hereof.

Asst. Registrar.

No. 8

Notice of Appeal

TRINIDAD AND TOBAGO

20 IN THE COURT OF APPEAL

Civil Action No. 560A of 1971

CIVIL APPEAL NO. 41 of 1972

In the Court of Appeal

—  
No. 8

Notice of Appeal

3rd August 1972

Between

SEETAHAL LIMITED Defendant/Appellant

And

WILFRED BHOLA Plaintiff/Respondent

30 TAKE NOTICE that the Defendant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of The Honourable Mr. Justice J. Braithwaite dated the 4th day of

In the Court  
of Appeal

No. 8

Notice of  
Appeal

3rd August  
1972  
(continued)

July, 1972 doth hereby Appeal to the Court of  
Appeal upon grounds set out in paragraph 3.

And the Appellant further states that the  
names and addresses including its own of the  
persons directly affected by the appeal are set  
out in paragraph 5.

2. Judgment in favour of the Plaintiff/Respondent  
as follows:-

- a. General damages ..... \$20,000.00
- b. Special damages ..... 924.00 10
- c. Costs to be taxed ..... \$

3. GROUND OF APPEAL

a. That the decision of the Learned Trial Judge  
is against the weight of evidence and  
accordingly should be set aside.

b. (i) That the learned Trial Judge misdirected  
himself in excluding from his considera-  
tion that "the Plaintiff Respondent was  
overtaking motor vehicle when it was  
unsafe so to do and without regard for  
other users of the road. 20

(ii) That the Plaintiff/Respondent's head  
light showed up to a distance of 100  
yards before him and that this light  
together with the lights of the vehicle  
he was overtaking would show an oncoming  
vehicle or even a parked vehicle on the  
other side of the road.

(iii) That the Defendant/Appellant's vehicle  
had its head lights and park lights on. 30

(iv) That due to the careless riding of the  
Plaintiff/Respondent the Defendant/  
Appellant was forced to stop to try avoid  
the collision and that the Plaintiff/  
Respondent collided with the Defendant/  
Appellant's motor truck.

(v) That the Plaintiff/Respondent was over-  
taking and came into the pathway of the  
Defendant/Appellant's motor truck while



it was travelling in the opposite direction and on its left and proper side of the road.

In the Court  
of Appeal

          
No. 8

Notice of  
Appeal

3rd August  
1972

(continued)

(vi) That the Plaintiff/Respondent is fitted with an artificial limb which enables him to move about without crutches ride his motor bike, climb stairs and go about his duties normally.

10

(vii) That since the accident the Plaintiff/Respondent has received a rise in salary.

4. RELIEF SOUGHT

The Judgment should be set aside and/or contributory negligence on the part of the Plaintiff/Respondent should be awarded.

5. PERSONS DIRECTLY AFFECTED BY THIS APPEAL

WILFRED BHOLA,

COCOYEA VILLAGE.

SEETAHAL LIMITED,

SUM SUM HILL,

20

CLAXTON BAY.

Dated this 3rd day of August, 1972.

SGD. J.B. KELSHALL & COMPANY

J.B. KELSHALL & CO., Solicitors  
for the Defendant/Appellant  
herein

Their address for service in  
San Fernando is 9a, Harris  
Promenade and in Port of Spain  
is in care of Mr. Nath Persad  
Sharma of No. 6, Pembroke  
Street.

30

In the Court  
of Appeal

No. 9

Notice of Cross Appeal

No. 9

Notice of  
Cross Appeal

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

17th August  
1972  
(continued)

Civil Appeal No. 41 of 1972

Between

SEETAHAL LIMITED

Defendant/Appellant

And

WILFRED BHOLA

Plaintiff/Respondent

TAKE NOTICE that upon the hearing of the above  
Appeal the Respondent herein intends to contend  
that the decision of the High Court of Justice,  
San Fernando dated the 4th day of July, 1972  
should be varied as follows:-

10

(i) That the damages should be increased.

AND TAKE NOTICE that the grounds on which  
the Respondent intends to rely are as follows:-

(i) That the damages awarded is inordinately too  
low.

D A T E D this 17th day of August, 1972.

20

sgd. Laurence, Narinesingh & Co.  
Solicitors for the Plaintiff/Respondent.

To: The Registrar, Court of Appeal, Port of  
Spain.

AND TO: Messrs. J.B. Kelshall & Co., of Harris  
Promenade, San Fernando  
Solicitors for the Defendant-Appellant herein.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL No. 41 of 1972

Between

SEETAHAL LIMITED

Defendant/Appellant

And

WILFRED BHOLA

Plaintiff/Respondent

10 Coram: Sir Isaac Hyatali C.J.  
M.A. Corbin J.A.  
E.A. Rees J.A.

June 5th 1975

M. de la Bastide, Q.C. and C. Razack - for the  
Appellant.

Dr. F. Ramsahoye, Q.C. and R. Maharaj - for the  
Respondent.

J U D G M E N T

20 On 6th August, 1970 at about 7.00 p.m. the  
respondent was riding his Motor Cycle PM-918 from  
north to south along the Highway known as the San  
Fernando Bye-Pass in the vicinity of St. Joseph  
Village when he collided with a truck TK-218 owned  
by Seetahal Ltd. (hereinafter called "The Company").  
He received severe injuries which resulted in his  
right leg being amputated above the knee. He is  
able to walk now with the aid of an artificial  
limb which has been fitted, but his permanent  
30 partial disability was assessed at 90% by the  
orthopaedic specialist.

His claim against the Company was founded on  
nuisance as well as negligence. By his Statement  
of Claim delivered on the 14th July, 1971 he  
alleged that the accident occurred because the  
Company's truck was parked on the western side of  
the road without lights. By the defence delivered

In the Court  
of Appeal

—  
No.10

Judgment

5th June 1975  
(continued)

on the 12th day of November, 1971 the Company denied that the truck was parked without lights, alleged that at the time it was travelling from south to north and pleaded that the respondent had overtaken a vehicle when it was unsafe to do so and collided in the result with the Company's truck. In his reply the respondent denied these allegations.

At the hearing the evidence followed the pleadings and the learned trial judge found in favour of the respondent on the basis of the Company's negligence and awarded \$20,924.70 damages. The Company has now appealed against the finding and the award. The respondent has cross-appealed on the ground that the award of damages is too low. 10

The burden of the contentions by Counsel for the Company 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. 20

He does not appear to have accepted that the truck was parked before the accident for he said in his judgment at p.16 lines 33-42:

"What I think is far more likely to have happened is 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 plaintiff motor-cycle and the car which the plaintiff was attempting to overtake, stopped his truck on the portion of the road which it had been occupying before he was so blinded. It is for this reason that I believe the Plaintiff when he said that the front wheels of the truck were on the white line running down the centre of the road." 30 40

Having found that the truck was moving and that it came to a standstill before the accident, the vital question to be decided, 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.

In the Court  
of Appeal  
—  
No.10  
Judgment  
5th June 1975  
(continued)

10 In finding that the truck was not lit at that time he relied mainly on the evidence of a witness, Wilmot Hoyte, and on what he termed an admission on the part of the Company's driver.

20 The witness Wilmot Hoyte testified that he arrived on the scene shortly after the incident, had seen the two bodies lying at the side of the road and the truck parked without lights. He went on to say that he had returned at about midnight and the truck was still there without lights. This latter part was at a variance with the evidence of Cpl. Carrington and of the truck driver who said 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 but the judge made no finding on this point and merely said:

30 "On the other hand, I saw no reason for the policeman to fabricate this piece of evidence. But then too I saw no reason for Hoyte to be inaccurate or mistaken in what he said he saw. At any rate, whatever may have been the truth about the presence of the truck on the road at midnight, there can be little doubt that it was parked on the western side of the roadway at the time the witness Hoyte came upon the two bodies lying on the left or the eastern side of the road. This must, in the nature of things, have been almost immediately after the collision."

But even if the witness was truthful he could not speak of the condition of the lights at the time of impact since he arrived afterwards.

40 In so far as the admission was concerned the judge found at p.15 of the judgment lines 2 - 7:

"What is more is this; that the driver of the defendant's truck admitted that he knew that the dip-switch was faulty and followed this up by stating that his lights were operating

In the Court  
of Appeal

—  
No.10

Judgment

5th June 1975  
(continued)

on the dip-switch when he was driving along the Highway and immediately before and indeed when he stopped."

The relevant parts of the evidence of the driver as appear in the record are:- "The vehicles on the road had headlights on as did mine. I was driving on bright lights. I told the Police I was driving on dip - I would accept that lights was faulty on dip." It might be noted that the Licensing Officer had said he found the dip-switch to be faulty after the accident and there was no evidence of its condition before the impact. This statement by the truck driver must relate to the opinion expressed by the Licensing Officer. There was no evidence to support the finding that the driver was "operating on dip-switch when he was driving along the highway and immediately before and indeed when he stopped." His admission that he had told the police so, fell to be regarded as a statement contradicting his testimony on oath. As such it was not evidence of the truth of what was stated but went merely to the credibility of the witness. But then it was submitted by Counsel for the respondent that this was admission against interest. If at all it had been an admission, it did not affect the Company since the truck driver was not a party to the proceedings and more-over he was not shown to have had authority to make any admissions on behalf of the Company.

10

20

In the circumstances I must respectfully disagree with the findings of the learned trial judge (a) that the driver was driving at the material time on his dip switch; and (b) that if he did it was an admission against the interest of the Company by which it was affected.

30

The determination of the third issue depended on whether one accepted the evidence of the truck driver or that of the cyclist. The judge preferred that of the cyclist and held on p.16 lines 30-33:

" ..... I cannot therefore accept as reasonable and probable that because as the driver of the truck testified, the plaintiff was cutting in and out of the oncoming traffic ....."

40

Counsel for the respondent submitted that the evidence led on behalf of the appellant had departed

10 from his pleading since in his defence he had denied that the truck was parked whereas in evidence the driver said he was at a standstill at the moment of impact. In my view there was really no departure. Clearly the pleadings meant that the truck had not been parked for some time as alleged by the respondent and this could not be read to be in conflict with the evidence that the truck in the course of travelling on the road came to a standstill at the material time in consequence of the respondent's manoeuvre therein with his motor cycle.

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.

20 There are circumstances in which a Court of Appeal is in a position to substitute its own views for those of the trial judge but this is not one of those cases for a finding on the main issues in the case depends on the credibility of the witnesses whom we have neither seen nor heard. The proper course for this Court to take therefore is to allow the appeal with costs and to order a new trial before another judge. I would order accordingly.

30 In the circumstances the question raised in the cross appeal as to the inadequacy of the damages does not fall for determination.

M. A. Corbin  
Justice of Appeal

SIR ISAAC HYATALI, C.J.:

I agree

I.E. Hayatali  
Chief Justice

REES, J.A.:

I also agree

E.A. Rees  
Justice of Appeal.

In the Court  
of Appeal

—  
No.10

Judgment  
5th June 1975  
(continued)

In the Court  
of Appeal

No. 11

Formal Judgment

No.11

Formal  
Judgment

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

5th June 1975

Civil Appeal No. 41 of 1972

Between

High Court	SEETAHAL LIMITED	Defendant/ Appellant
Action No.		
560A of 1970	And	

WILFRED BHOLA	Plaintiff/ Respondent	10
---------------	--------------------------	----

Dated and Entered the 5th day of June, 1975

Before the Honourable The Chief Justice  
Mr. Justice M. Corbin  
Mr. Justice E. Rees

UPON READING the Notice of Appeal filed on behalf of the above-named Appellant dated the 3rd day of August, 1972 the Cross Appeal filed on behalf of the above-named Respondent dated the 17th day of August, 1972 the Notice dated the 13th day of May, 1975 to adduce further evidence, the affidavit of William Ward sworn on the 13th day of May, 1975 and the Judgment hereinafter mentioned

20

AND UPON READING the record filed herein

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

- (i) that this Appeal be allowed, 30
- (ii) that the Judgment of the Honourable Mr. Justice John Braithwaite dated the 4th day of July, 1972 be set aside and that the matter be remitted to the High Court to be tried de nova before another Judge,



(iii) that the costs of this Appeal be taxed and paid by the Respondent to the Appellant,

(iv) that the cross Appeal do stand undetermined,

(v) that there be no order as to costs in the Cross Appeal.

/s/ Wendy Sandra Punnet.

Asst. Registrar.

In the Court of Appeal

No.11

Formal Judgment

5th June 1975  
(continued)

No. 12

Order granting Final Leave to Appeal

10 TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF APPEAL

Civil Appeal No. 41 of 1972

Between

WILFRED BHOLA

Appellant

And

SEETAHAL LIMITED

Respondent

Entered the 29th day of October, 1975.

On the 23rd day of October, 1975.

20 Before the Honourable The Chief Justice, Sir Isaac Hayatali  
Mr. Justice Maurice Corbin  
Mr. Justice Evan Rees.

UPON motion made unto this Court this day by Counsel for the abovenamed Applicant for an Order granting the said Applicant final leave to appeal to Her Majesty's Privy Council against the Judgment of the Court of Appeal dated the 5th day of June, 1975.

30 UPON READING the Notice of Motion dated the 30th day of September, 1975 and the affidavit of

No.12

Order granting Final Leave to Appeal

23rd October 1975



O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD & TOBAGO

B E T W E E N :-

WILFRED BHOLA

Appellant

- and -

SEETAHAL LIMITED

Respondent

---

RECORD OF PROCEEDINGS

---

GASTERS  
44 Bedford Row  
London WCLR 4LL

Solicitors for the Appellant

B. M. BIRNBERG & CO.  
103 Borough High Street  
London Bridge SE1 1NN

Solicitors for the Respondent