Privy Council Appeal No. 46 of 1975

Wilfred Bhola – – – – – – – – – *Appellant*

v.

Seetahal Limited – – – – – – – *Respondents*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY 1978

Present at the Hearing:

LORD SALMON
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL

[*Delivered by* LORD KEITH OF KINKEL]

On 6th August 1970, during the hours of darkness, the appellant was riding a motor cycle along a highway on the Island of Trinidad known as the San Fernando Bye-Pass. He made to overtake a car, and came into collision with a motor lorry which had been proceeding in the opposite direction. It was owned by the respondents and being driven at the time by their servant Krisoondath Maharaj. As a result of the accident the appellant suffered serious personal injuries. He sued the respondents in the High Court of Trinidad and Tobago, claiming that the accident was caused by the negligence of their servant in parking the said motor lorry on the near side of the highway without lights. Nuisance was founded on as a further ground of claim, but that is no longer in issue. The respondents by their defence admitted the fact of the collision but denied that their lorry was at the time parked on the highway and that it was unlighted. They averred that their vehicle was in motion at the time of the collision, and they pleaded that the accident was caused or in any event contributed to by the negligence of the appellant in overtaking when it was unsafe to do so.

The case was tried by Braithwaite J., who on 30th May 1972 decided in favour of the appellant, absolved him of contributory negligence and awarded him damages of $20,924·70. The respondents appealed on the merits to the Court of Appeal, and the appellant entered a cross-appeal on quantum of damages. On 5th June 1975, the Court of Appeal (Sir Isaac Hyatali C.J., Corbin and Rees JJ.A.) allowed the respondents' appeal and ordered a new trial. The cross-appeal was left undetermined. The appellant now appeals to this Board with final leave of the Court of Appeal dated 23rd October 1975.

As was to be expected in a case such as this, the evidence led at the trial was neither lengthy nor complicated. It appeared that the accident occurred some time between 6.30 and 7 p.m. in darkness or heavy dusk. The appellant deponed that as he went to overtake a car he collided with a truck parked without lights on his off side of the road and with its offside wheels on the white line in the middle of the road. A witness named Wilmot Hoyte stated that he came by the scene of the accident about 6.45 p.m. and saw two injured people (the appellant had a pillion passenger) by the roadside, and a lorry parked nearby without any lights. In answer to a question by the Court he said that on his return journey at about midnight he nearly collided with the same truck at the same place, still unlighted, although there was evidence by the respondents' driver and a police officer that the lorry had been removed by 9.30 p.m. There was, in addition, evidence from an inspector of motor vehicles that on the day after the accident he examined the lorry in question and found a defect in the headlamp dip-switch which had the effect that if the dip was operated no lights at all showed from the headlamps. The respondents' driver, for his part, deponed that he was driving on the bright lights and that the park lights were also on. He said that he saw a motor cycle coming in the opposite direction cutting in and out among vehicles and eventually approaching his truck. He pulled to his extreme left and stopped, and the collision then occurred. The driver also said that he told the police he was driving on dip, and later that he " would accept that lights was faulty on dip ". Corporal Carrington, who arrived at the scene about 8.15 p.m., said that there were park lights on the truck which by then had been moved on to the cycle track on the eastern side of the Bye-Pass.

Upon that brief summary of the relevant parts of the evidence it is apparent that the only issue in the case was whether the respondents' lorry was adequately lit at the time of the accident. It had ceased to be in dispute whether the lorry was stationary before the collision, but on the lighting aspect there was a conflict of testimony to be resolved, between the appellant and the witness Hoyte on the one hand, and the respondents' driver on the other hand.

In the event, the learned trial judge came to the conclusion that the respondents' lorry was completely unlighted at the time of the collision. In reaching this conclusion he first considered the evidence of the respondents' driver in relation to the evidence about the fault in the dip-switch found by the examiner of vehicles on the day after the accident. He appears to have treated the driver's evidence on this matter as amounting to an admission that he knew the dip-switch to be faulty, and further, that he was driving on dip before and at the time of the collision. So the learned judge found that the lorry was not showing any headlights during the material period. He then went on to consider the position as regards park lights, giving particular attention to the evidence of Hoyte, whom he described as an independent witness and one in a position to give evidence about the state of lighting on the lorry so soon after the collision as to warrant the drawing of an inference about the situation at the critical time. He adverted to the discrepancy between Hoyte's evidence and the police evidence as to the presence of the lorry at the same place on the highway at midnight, but did not expressly resolve it. In the end of the day he accepted Hoyte's evidence on the lights aspect, and so reached the conclusion that the lorry was completely unlit at the moment of impact.

In the Court of Appeal the only judgment delivered was that of Corbin J.A., with which Sir Isaac Hyatali and Rees J.A. agreed. Corbin J.A. took the view that the learned trial judge had not dealt satisfactorily with the conflicting evidence upon the vital question whether or not the lorry was lit at the time of the collision. He referred to the circumstance that the judge had not made any finding whether or not the lorry was still standing unlit at the same place on the roadway at midnight, the matter upon which

the evidence of Hoyte was at variance with that of Corporal Carrington, and he observed that even if Hoyte was truthful he could not speak to the condition of the lights at the time of impact since he arrived afterwards. That observation is undoubtedly correct, but Hoyte's evidence on the point is not for that reason to be denied any significance. He did arrive on the scene very soon after the accident, and in the circumstances it would have been legitimate to infer that the situation as regards the lighting of the lorry as observed by him was the same as it had been at the time of the accident, particularly in the absence of any evidence that the lorry driver or someone else extinguished the lights after the accident. Hoyte's evidence about the absence of lights was therefore corroborative of that of the appellant. Corbin J.A. then submitted to criticism that passage in the judgment of the learned trial judge where he said that the driver admitted knowing that the dip-switch was faulty and that he was driving on the dip at the time of the accident. He pointed out, correctly enough, that the driver's statement that he accepted the dip-switch was faulty did not necessarily mean that he accepted it was so before the accident, and further that the driver, so far as the somewhat terse notes of evidence show, did not in the witness box admit that he was driving on the dip, but only that he had told the police so. There can be no doubt that the judgment of the trial judge did not accurately express the effect of this part of the evidence. Corbin J.A. ultimately expressed in these words the reason for which in his view the appeal should be allowed:

> " In the final result the judge's task was to decide whether he believed the respondent's (i.e. the present appellant'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 in fact which were not warranted on the evidence. His decision therefore cannot stand."

Their Lordships agree that the learned trial judge's résumé of the evidence could have been better expressed but do not agree that he made findings of fact which were not warranted by the evidence. Their Lordships are of opinion that, taking the evidence as a whole, the judge was right to reach the conclusion that on a balance of probabilities the lorry was unlit at the time of the accident. The driver's admitted statement to the police that he was driving on the dip was at variance with his evidence that he was driving on bright lights, and therefore substantially impaired the credibility of that evidence. As regards the witness Hoyte, nothing appeared to indicate that he was not a truly independent witness, and while the matter upon which his evidence and that of Corporal Carrington were at variance required to be considered in assessing his credibility, that matter was of a subsidiary nature and did not bear directly on the vital question as to the state of the lighting on the lorry at the time of the accident. On that question their Lordships take the view that, as already mentioned, Hoyte's evidence is corroborative of that of the appellant, to the effect that the lorry was entirely unlit at the time of the accident. The evidence of the vehicle examiner about the condition of the dip-switch is also of some significance. While that evidence was directly concerned with its faulty condition on the day after the accident, it is capable of founding a legitimate inference that the same condition existed at the time of the accident, in the absence of any evidence that the accident itself caused or might have caused the faulty condition. If that inference is drawn it follows that the lorry must have been driven at the time of the accident either with its headlights full on, or with no headlights showing at all. For the reasons already stated, it is highly unlikely that any of the lorry's lights were on: the appellant would hardly have attempted to overtake the car in front of him had there been a lorry bearing down on him with full headlights a short distance away on what appears to have been a straight stretch of road. On a balance of probabilities therefore their Lordships think the right conclusion was arrived at by the learned trial judge, namely that the respondents' lorry was being driven without any lights.

In their Lordships' opinion this is a case where, on the evidence, in spite of certain slips in the learned trial judge's recital, the reasons for his decision were sound and the Court of Appeal should not have ordered a new trial with its concomitant delay and extra expense. Their Lordships do not consider there to be any real doubt, upon an assessment of that evidence as a whole, that the decision of the learned trial judge was correct, both in finding that the accident was caused by the negligence of the respondents' driver and in absolving the appellant of contributory negligence.

For these reasons the appeal will be allowed with costs. The appellant's cross-appeal upon the measure of damages still stands undetermined, and the case will therefore be remitted to the Court of Appeal for the purpose of their dealing with it.

The respondents must pay to the appellant his costs of the proceedings before Braithwaite J. and of the appeal to the Court of Appeal.

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In the Privy Council

WILFRED BHOLA

v.

SEETAHAL LIMITED

DELIVERED BY

LORD KEITH OF KINKEL

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