



[2012] JMSC Civ. No. 23

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2007 HCV 04768

BETWEEN	ADMINISTRATOR GENERAL JAMAICA (Adminstratrix of Estate Charles Patrick Tate, deceased)	CLAIMANT
AND	CONGITA BENNETT (near relative and next of kin of estate Charles Patrick Tate, deceased)	2ND CLAIMANT
AND	JATLIN CONSTRUCTION AND ASSOCIATES LIMITED	1ST DEFENDANT
AND	DWIGHT POWELL	2ND DEFENDANT

**Ms. Marion Rose-Green and Miss Tanya Mott instructed by
Marion Rose-Green & Co. for the Claimants
Mrs. T. Madourie instructed by Nunes, Scholefield DeLeon
& Co. for the Defendants**

Heard on 17th February, 2011 and 28th February, 2012

**Written submissions ordered to be filed by 4th March, 2011, Defendants
submission filed 8th March, 2011, Claimant's written submissions not
received.**

***Motor vehicle/Pedal Cyclist – Collision – Traffic lights – Presumption that
traffic lights in working order – Death***

CORAM: MORRISON, J

[1] At the time of writing this judgment the Court had yet to receive from the Claimants their written submissions ordered pursuant to Rule 39.4 of the Civil Procedure Rules 2002 (Revised as at September 2006) "The Rules". So as not to encourage any further default or disobedience of the order I am to proceed to the delivery of judgment in keeping with the overriding objectives of The Rules.

[2] It is a presumption in law that where a court finds that traffic lights are showing green one way, the court is entitled to infer, unless the contrary is proved, that they are showing red the other way.

[3] It was a fated day for Mr. Charles Patrick Tate and his dependants. After being impacted by the second Defendant's driving of the first Defendant's car on the 29th March, 2005, he crossed over to the great divide on the 31st March, 2005, a mere two (2) days after the accidental collision. There are rival factual contention on both sides which require analysis.

The Claim

[4] The Claim is for damages under the Fatal Accidents Act, for the benefit of the dependants of Charles Patrick Tate, deceased, and damages under the Law Reform (Miscellaneous Provisions) Act, for the benefit of the estate of the said Charles Patrick Tate.

[5] The deceased came to his untimely demise when, on the 29th day of March 2005, as he was riding his bicycle he collided with a motor vehicle registered 2570EB at the intersection of Harbour Street and Norman Manley Boulevard: the deceased having exited Harbour Street as the second Defendant was proceeding northerly from the Norman Manley Boulevard. The first Defendant is the owner of the motor vehicle.

[6] The particulars of negligence of the second Defendant as set out by the Claimant's depicts a raft of incidental failings: -

- (a) driving at a speed which was excessive in the circumstances;
- (b) failing to have an or any proper look out along the roadway;
- (c) failing to have any or any sufficient regard for other persons using the roadway and in particular the deceased who was or might reasonably be expected to be at the intersection of the road;
- (d) failing to conform to the red light traffic signal which was then showing to traffic coming from his direction;
- (e) failing to see the deceased who was riding his bicycle in any or any sufficient time so as to avoid colliding with him from behind;
- (f) failing to stop, slow down, to swerve, or in any other way so to manage or control the motor vehicle as to avoid the collision.

The Defence

[7] The factual contentions of the Claimants were traversed in every respect and aspect and the particulars of negligence were denied, *en bloc*.

The Evidence

[8] The main witnesses in this pitched battle comprise one (1) for the Claimants and two (2) for the Defendants. Their respective accounts of the accident are diametrically opposed. One account, certainly, in the absence of evidence that the traffic lights were not in proper working order, must be factitious.

[9] Mr. Alvin Barnes is a businessman who has been selling ice by the front of the Ice Factory compound, Harbour Street, Kingston for the past twelve (12) years. On 29th March, 2005 as he stood on Harbour Street in front of the Ice Factory and about fifty (50) feet from the traffic lights thereon he witnessed the accident. The Harbour Street road runs one way and it does so from west to east where it meets Victoria Avenue which runs south to north in a one-way

direction; South Camp Road as this juncture runs parallel to Victoria Avenue which accommodates one-way traffic and which flows from the north to the south; Norman Manley Boulevard (so called by the witnesses) is one part of a dual carriage way which, on its east-west leg, as far as it relevant to this case, filters onto Victoria Avenue. At this intersection of Harbour Street, Victoria Avenue and South Camp Road there are electronically operated traffic lights that regulate the flow of vehicular traffic.

[10] Mr. Barnes' evidence is that the deceased had stopped his pedal cycle in obedience to the traffic lights, then showing red on Harbour Street. Motorists who were also using Harbour Street at that same time had also stopped. They waited on the electronic signal to proceed and after a 4-second wait the signal "green," to go, was displayed. The deceased then rode off ahead of a motor car that he was then alongside of and proceed to turn left onto Victoria Avenue. I am at once, for ease of understanding, to refer to photographs that were admitted into evidence as Exhibits 1A through to 1G, which depicts the accident scene. On these photographs are various markings placed by the witnesses in reference to the physical lay-out and statics of the *locus in quo*

They are as hereunder:-

1A - shows the general intersections of the area with the traffic lights;

1B - shows the area with the latter "E" thereon made by Mr. Barnes to show where the deceased ended up after being impacted; the letter 'L' is made by Mr. Barnes to show where the Defendant's motor vehicle (pick up) stopped after the collision; the letter "C" made by Mr. Barnes to show where the deceased was while he was at the stop light; the letter "P" made by Mr. Barnes to show where the pick-up was coming from; the letter "A" made by Mr. Barnes to show where the collision took place; the letter "H" to show the traffic lights facing Harbour Street.

"1C" shows the general layout of the intersection

“1D” shows another view of the intersection from the vantage of Constable Hinds with the letter “X” thereon made by him depicting where he was on “Victoria Avenue” and “E2” depicting where he had seen the deceased after the accident;

1E shows the damage to the bicycle from its rear;

1F shows a side view of the damage done to the bicycle;

1G – depicts another view of the damaged bicycle.

There are other Exhibits in the case, however, they do not reflect on the dynamics of the accident. The evidential value of the various depictions, chiefly that of Mr. Barnes, serves to highlight the statics of the deceased, before he rode off; the point of collision after he rode off; and, where he landed after impact. They also show the state of the deceased’s pedal cycle with damage mainly to its rear section. The markings also depict the general traverse of the second Defendant’s vehicle, vis-à-vis the statics of the deceased, as described.

[11] One thing is obviously and irrevocably clear: at the junction of Harbour Street and Victoria Avenue the second Defendant’s vehicle as it proceeded up Victoria Avenue was more to the right side of that road than to the left before its impact with the deceased and his pedal cycle, after its impact, and, where it stopped after the impact. Even more poignant is the fact that the deceased ended up on the “island”, that is, the narrow strip of land which separates Victoria Avenue from lower South Camp Road. To put the action of the deceased into relief the action demonstrates that the deceased rode off from the left of Victoria Avenue to over to its right side and into the path of the first Defendant’s vehicle. The statics I find, reveal the dynamics of the accident. Both serve, prefactorily, to illustrate and validate the impartial correctness of the evidence of Constable Orlando Hinds.

[12] I now turn to the witnesses for the Defendants. Firstly, the evidence of Mr. Dwight Powell can be succinctly stated. On March 29, 2005 at sometime between the hours of 5.30p.m. to 6.00p.m. he was driving a 1993 GMC pick-up

owned by the first Defendant, along the Michael Manley Boulevard in a westerly direction. In the vehicle with him were one Kenrick Lennon and Glenford Hart. As he got to the roundabout in the vicinity of South Camp Road and the Ice Factory the traffic lights which were then on “green” approved his proceeding. He did so.”Suddenly and without any warning”, in his words “a make pedal cyclist rode out of Harbour Street from my left across the front of my vehicle and was hit by the front of my vehicle.” He had applied his brakes to avoid the impact but to no avail – the action of the pedal cyclist was sudden and the impact unavoidable. Significantly, “that before the impact I had passed a police patrol vehicle that was parked just below the intersection at the corner of Harbour Street and South Camp Road. The front of the police vehicle was turned toward the same direction I was heading.”

[13] Following on the accident, he went to the Elletson Road Police Station where he made a report. He was neither charged nor warned.

[14] Orlando Hinds , a police constable, stationed at the Motorised Patrol Unit, Lower Elleston Road, gave vital, if not pivotal evidence in support. He was indeed, at the material time, on the 29th March 2005, parked in the left lane of South Camp Road, near the intersection of Harbour Street, facing Victoria Avenue. From that vantage he was able to see the traffic lights facing him and the one controlling traffic along Harbour Street. He was on patrol duties along with a colleague.

[15] Here is the vital and pivot: “At about minutes to 6.00 p.m. I saw GMC pick-up drive pass heading towards Victoria Avenue. The traffic lights facing us at at the time were green, while the light facing Harbour Street motorist was red (sic). The driver of the GMC pick-up was proceeding straight ahead when I saw a pedal cyclist ride straight out of Harbour Street into the path of the GMC pick-up. The driver of the pick-up applied his brake but the pick-up still bit the cyclist who then fell in the right lane in front of the GMC pick-up.” Thereafter, Corporal

Myers and himself drove up to the intersection where they took up the injured cyclist who they then transported to the Kingston Public Hospital.

Analysis of Evidence

[16] I find that Constable Orlando Hinds, by the nature of his profession, training and disinterestedness is more to be trusted on the facts than his evidential counterpart, Mr. Alvin Barnes. After all, he was on patrol duties. I am to say, therefore, that where there is a conflict on the evidence as between both eyewitnesses the evidence of Constable Hinds is to be preferred. It seems to me strange, on the evidence of Mr. Barnes, that with a car being at the head of the traffic lights on Harbour Street and with the pedal cyclist to its left, for Mr. Barnes to maintain that, "I saw that the car had allowed Charles to ride out. I had seen Charles in front of the car. I am not sure – I am assuming that the car had allowed Charles to ride out from in front of it." His hesitancy apart, even more telling is paragraph 4 of Mr. Barnes witness statement, the latter part from which he resiled when confronted: "Whilst Charles was approaching the intersection of Harbour Street and lower Camp Road the traffic light indicating to traffic coming from Harbour Street was red, when he reached the light he rode up to the front motor vehicle waiting at the intersection, as he reached the intersection the traffic light which was indicating red changed to green."

[17] I find that the accident was neither materially caused nor materially contributed to by the second Defendant. The second Defendant had proceeded having had the benefit of the green light signal to proceed. It follows that the deceased had disobeyed the traffic signal on Harbour Street which had to be displaying the red signal. Accordingly, the presumption that where traffic lights are showing green one way that they are showing red on the other way has not been deflected by the Claimant.

[18] The other issues have been rendered redundant. Having regard to any findings of facts, on a balance of probabilities, judgment is hereby entered in

favour of the Defendants with the costs of trial awarded to them which is to be agreed or taxed.