

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE V HARRIS JA**

PARISH COURT CIVIL APPEAL COA2021PCCV00024

BETWEEN	KENRICK ALLEN	APPELLANT
AND	PETER CHUNG	RESPONDENT

Christos Brown instructed by Mel Brown & Co for the appellant

Respondent in person

25 and 26 October 2023

Endorsement read by V Harris JA

[1] The appellant, Mr Kenrick Allen, is appealing the decision of Her Honour Mrs Natesha Fairclough Hylton, judge of the Saint Elizabeth Parish Court (‘the learned judge of the Parish Court’) given on 1 April 2021.

[2] This matter arose from a claim initiated by the respondent, Mr Peter Chung, on 26 August 2014 in the then Resident Magistrate’s Court (now the Parish Court) for the parish of Saint Elizabeth. He sought damages for negligence relative to a motor vehicle accident on 16 September 2010, in which the tibia and fibula of his left leg were fractured.

[3] The main issue before the learned judge of the Parish Court was contributory negligence. Having considered the evidence and applicable law, she found that Mr Allen was negligent in the way he operated his motor vehicle and that the injury sustained by Mr Chung was a corresponding result. She also found that Mr Chung did not contribute to his injuries.

[4] As a result of those findings, the learned judge of the Parish Court gave judgment in favour of Mr Chung against Mr Allen in the sum of \$1,000,000.00 with interest at 3% from 26 August 2014 to 1 April 2021 for general damages and awarded special damages of \$6,000 plus interest at 3% from 16 September 2010 to 1 April 2021, among other things.

[5] Mr Allen's single ground of appeal before us was that the learned judge of the Parish Court erred when she found that Mr Allen was solely liable for negligence and, conversely, that Mr Chung was not contributorily negligent for his injuries.

[6] A determination of contributory negligence is based on the facts or circumstances of the case. Consequently, the principle in **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, that an appellate court will not disturb a finding of fact of a judge at first instance unless it is shown to be plainly wrong, is a relevant consideration to the disposition of this matter.

[7] Having assessed the evidence that was adduced before the learned judge of the Parish Court and the reasons for her decision, as well as the submissions of counsel and Mr Chung on appeal, it is our judgment that the learned judge of the Parish Court considered and applied the relevant law on contributory negligence, and her findings of fact were supported by the evidence. Therefore, we cannot say that she was plainly wrong. As such, there is no basis upon which to disturb her decision. Accordingly, we find that there is no merit in the appeal.

[8] In light of the foregoing, the court orders as follows:

1. The appeal is dismissed.
2. Costs in the sum of \$25,000.00 to the respondent.