JAMAICA

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IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL No. 92 of 1972

BEFORE: The Hon. President.
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Robinson, J.A.(Ag.).

BETWEEN IVY BROWN - PLAINTIFF/APPELLANT

AND HUBERT SAMUELS - DEFENDANT/RESPONDENT

Hugh Small for the plaintiff/appellant.

D.A. Scharschmidt and V.V. Elliott for defendant/respondent.

July 20, 1973 and
September 28, 1973

ROBINSON, J.A.(Ag.):

This appeal is against the judgment of the learned Resident Magistrate for Hanover on a claim and counter-claim for damages for negligence in which he "found that the cause of the accident was the failure on both sides equally to take sufficient care"; he therefore proceeded to quantify the damages between the parties.

We allowed this appeal at the hearing on the 20th July on the basis that the defendant was wholly to blame for the collision; we set aside the judgment of the learned Resident Magistrate and entered judgment for the plaintiff/appellant for $782.14 with costs to be agreed or taxed and with costs of the appeal fixed at $40. The Court also indicated that its judgment would be put in writing. This we now do.

The case for the plaintiff was that on the 21st June, 1971, she was driving her Ford Escort motor car on the main road from Kendal to Grange in Hanover, this bit of road has many curves. In the vicinity of the collision there was a left hand corner ahead of her. She saw defendant's truck laden with stones coming around the corner in the opposite direction at a speed of about 20 m.p.h. on her side of the road. She was driving then at about 15 m.p.h. and immediately stopped her car on her left side of the road. The truck continued in its path, cleared the corner and swerved into the right front upright of her windscreen, smashing the

windscreen, right headlamp and removing her right front fender completely from the car - that fender fell in the road; broken pieces of headlamp glass were "just" by her car. The truck stopped about 20 feet beyond her car. The section by the right back wheel of the truck had collided with the car.

One Mr. Sommerville gave evidence for the plaintiff; he was passing at the scene of the accident and stopped. He said that both vehicles were on their left side of the road and about 20 feet apart. He gave the following measurements which he had taken:

Right front wheel of car was 10' 6" from its right bank
Right rear wheel of car was 12' 3" from its right bank
Left front wheel of car was 5'10" from its left bank
Left rear wheel of car was 3' 9" from its left bank
Width of car was 4ft. 8 inches.

This witness described the plaintiff as irritable as of the date of the collision. These measurements support the conclusion that -

(1) the road was somewhere in the vicinity of 21 feet wide;

(2) the car was at an angle with its front more out in the road than its back and that the right front wheel was about on the centre of the road.

As to the right front fender of the car, this witness said it was torn off and about 3 feet to the right of the car and in line with its front bumper; that the windscreen, right front upright and right headlamp of the car were all smashed and that there was broken headlamp glass in the vicinity of the front of the car covering an area of about 15 inches in diameter.

The case for the defendant as given by him was that he was driving his loaded truck at about 15-20 m.p.h. on his left side of the road; he was about to make a right hand bend when a car approached travelling at about 45-50 m.p.h. in the middle of the road and as his truck passed the car, he heard a sound, the car had swerved into the back wheel of his truck; he stopped on his left about 15 feet from the car. A joist about the middle of body of truck was broken; that this joist was about the height of the broken upright of the car, his right outer rear tyre was also ruined. His evidence as to the damage to the car was, in substance, as given by the plaintiff. He said he saw Mr. Sommerville take out a tape measure.

Mr. M.N. Hamaty, attorney for the plaintiff in the court below submitted:-

(1) Defendant's story was fantastic.

(2) The significance of the broken lamp glass in the context of the evidence supported the plaintiff's story that she had stopped as she said, on her left side of the road.

In his very terse reasons for judgment the Resident Magistrate

(1) concluded that the plaintiff gave her evidence in a manner consistent with Sommerville's description of her as "irritable" and so rejected her evidence as untruthful that she had in fact stopped before the collision.

(2) He accepted Sommerville's evidence and concluded from that, that the point of impact was in the centre of the road and therefore both parties were blameworthy.

In the first place, we were at a loss to see what "irritability" had to do with the ability to speak the truth in a case of this nature. It is not necessary to say anything further about this, except to observe that, in our view, this quality of being "quick to anger" may more properly be relevant in divorce proceedings where the ground alleged is "cruelty". Of course, a man may be annoyed and lose his temper if the driver of a scrambola negligently smashes into his Rolls Royce.

The case for the plaintiff was that she was driving this small car comparatively slowly on her left side of the road, saw this laden truck approaching on her side of the road, she stopped and the truck ran into the right front of her car. The damage to the motor vehicles show that the middle of the truck body on its right side came in contact with the car. By inference she was saying that the truck in going back to its side of the road, "side-swiped" her car and this caused the damage. The evidence of her witness, Mr. Sommerville, which the Resident Magistrate accepted supports this in that the car was at an angle, the front being more out in the road than its back.

On the other hand, the Resident Magistrate says that because of Sommerville's measurements and broken headlamp glass in the middle of the road, both parties were to blame. The basis and validity of this reasoning is doubtful. The fact that the car was at an angle with its right front in the middle of the road as also broken glass, does not necessarily mean

that the plaintiff was guilty of negligence. If the plaintiff was travelling in the middle of the road it is reasonable to infer that an impact like this would bring the front of her car more over beyond the middle of the road; the measurement of Sommerville is therefore more consistent with her stopping before the accident. In this regard the Resident Magistrate failed to take into account in his reasons the juxtaposition of the motor vehicles after the accident, the position of the glass and fender vis-a-vis the car, the damage and its location on both motor vehicles.

The crux of this case in the light of diametrically opposite versions, is how did this collision take place. In arriving at his conclusion the Resident Magistrate has not evaluated the relevant and material evidence as given by the plaintiff or for that matter, by the defendant. In fact, his purported "Reasons for Judgment" is not reasoned and is most unsatisfactory. It is the view of this court with every respect to the opinion of the learned Resident Magistrate that he arrived at a wrong conclusion as regards liability in the plaintiff.

The principles governing an appellate court when reviewing the findings of a judge sitting alone, without a jury, are well known and are set out in a number of cases, some of which were cited by Mr. Small. I quote from the speech of Lord Thankerton in Watt or Thomas v. Thomas (1947) A. C. at p.488.

"The appellate court either because the reasons given by the trial judge are not satisfactory or because it unmistakenly so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court." A court of appeal is also "generally in as good a position to evaluate the evidence as the trial judge." Benmax v. Austin Motor Co. Ltd. (1955) 1 A.E.R. 326 at p. 329.

We took the view that upon a proper evaluation of the evidence, it was reasonable to conclude that at the time of the accident, the plaintiff's car was in the position she described and the learned Resident Magistrate should have so found. In our judgment therefore the defendant respondent was wholly to blame for this accident.