IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUPREME COURT REGISTRY
KINGSTON
JAMAICA

IN COMMON LAW

SUIT NO. C. L. C381/1977

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| Between | Osmond L. Campbell | Plaintiff |
| A n d | Clover Green | Defendant |

Mr. J. Vassell, instructed by Messrs. Dunn, Cox and Orrett, attorneys-at-law for plaintiff.

Mr. A. D. Manning and Mr. Frankson, instructed by Messrs. Gaynair and Fraser, Attorneys-at-law for defendant.

Hearing on: 17th and 18th January 1980

BINGHAM J:

The plaintiff and the defendant are "good friends and drinking partners". This claim, however, arose out of Motor vehicle collision on 11th August, 1975 between a Peugeot 504 Motor car owned and driven by the plaintiff and a truck owned and driven by the defendant.

On 11th August 1975 the account of the plaintiff is that he was returning from Moneague in St. Ann, where he works with the Forestry Department, to his home at Kellits District in Clarendon. This was a journey which he made regularly, although not every day. He made a stop at Claremont where he collected two female passengers and also some chickens. Having secured his load, he then set out on the journey home. When he got to the main road between Harmony Vale and Bensonton in St. Ann, it was now around 6:15 p.m. He made another stop to let off one of his passengers. After moving off and when just leaving Harmony Vale he approached a bend. There was a slight grade in going down. This was a left hand corner to him. He blew his horn as he approached the corner and started to take the bend keeping as close as possible to his left where there was a stone embankment. He was doing about 25 - 30 m.p.h. Suddenly, he just saw a truck approached more on his side. He applied his brakes. The truck hit into his car. It was the right front fender of truck which hit his car. The truck was then way over on his correct left hand side. The car did not stop but continued on hitting into the right rear wheel of the truck. The vehicle then came to a stop at this point. The plaintiff further states that it was the bumper section of the truck which hit into his car.

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The plaintiff's vehicle was badly damaged as a result of the collision. The entire right front of the car right down to about the middle of the right side was damaged. The chassis was bent and broken. The car was towed away from the scene by the defendant's truck and eventually repaired, at the General Overseas Garage in Kingston. The repairs took five weeks. The cost of the repairs is not in issue. Only liability and loss of use are now left to be determined.

During the period that the plaintiff's car was laid up for repairs the plaintiff get around by using the Forestry Department vehicle and had to hire a vehicle on two occasions to collect his children from Knox College where they are boarders. The cost of hire on each of these two occasions was between $35 - $40.00. The plaintiff further stated that at the time of the collision the defendant's truck came at a fast rate of speed and he is of this opinion because before he realised what had happened the collision had taken place.

The defendant's version of the collision on the other hand is that on the day in question he was on his way home from doing work also for the Forestry Department. He had worked that day and was on his way home from Colonels Ridge in Clarendon. When he got to the main road between Harmony Vale and Claremont it was sometime in the afternoon. He was driving on a straight. He was travelling around 25 - 30 m.p.h. He approached a bend. He was going up hill. The bend was a greater bend from the opposite direction. He could see for a distance of at least two chains or more around the bend. Whilst going up the hill he saw the plaintiff's car approaching. It was then two chains away from his vehicle. It was travelling fast about 45 - 50 m.p.h. and coming in the middle section of the road.

He brought his truck almost to a stop. He pulled more to his left, cut down his speed and stopped. The car came down and the right front tyre of the car touched and grazed three of the lugs to the side of the right front wheel of the truck and also gave the right side of the front fender a slight dent. The car then skidded into the right rear wheel of the truck where it came to a stop. The right rear of the truck

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Stopped the car from going any further.

Following the impact, the Police came on the scene and took measurements. The point of impact was agreed by both parties, as being where the vehicles came to rest.

It is further common ground that the width of the road at the point of impact was about 17 feet and that the width of the plaintiff's car was 5 feet 6 inches and the width of the truck was 8 feet. While on the subject of the physical evidence it is common ground that there were on the asphalt surface of the road/bits of broken glass from the shattered head lamp of the plaintiff's car as well as drag marks made by the wheels of the plaintiff's car. The plaintiff puts these drag marks at 5 feet long, beginning a short distance from the front wheels of his car and extending backwards and towards the rear wheels of the car. The defendant on the other hand puts these drag marks as covering of 25 - 35 feet beginning somewhere on either side of the imaginary centre line of the road and varying slightly more over to his correct side of the road.

It is true to say that there is very little common ground to be found in the two accounts given by these two gentlemen, who are admittedly good friends. To add to this apart from their conflicting accounts, there is the further difficulty caused by the total absence of supporting witnesses. Although there is evidence that there was a passenger in the plaintiff's car at the time of the collision, and three other occupants in the truck, not to mention the very importance assistance that the Court could have derived from the evidence of the Police Officers who came to the scene following the collision and took measurements, again the Court has not been assisted in any way in arriving at the truth as to how in fact this collision took place. As a result one has been left to resort to a large extent to the accounts given by these two friends of an accident which took place some four and a half years ago and about which their powers of recollection rather getting better would tend to become less certain with the passage of time as even to merit the label of being hazy on occasions. Despite this I have attempted in reviewing the

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evidence to try to do my best with the limited material available in coming to a conclusion as to what is the more probable account of what took place, having regard to the evidence when look at as a whole. I have benefitted in this regard from the very able manner in which the two attorneys in this matter Mr. Manning and Mr. Vassellsummoned up the cases on behalf of their respective clients.

In assessing the account of the plaintiff, the first thing which strikes me is that he has not been entirely frank in giving his account as to his manner of driving on the day in question. Although from his account he was negotiating a bend close to his left which enabledhim to have, what would have been in effect, a better range of visibility than the vehicle coming from the opposite direction, he did not see the truck until the collision was almost imminent. This, without more,lead me to the conclusion that he could not have been keeping a proper look out. When his account of the relative positions that the vehicles were in prior and up to the collision is examined then his account of this cannot be true as had the collision taken place with the vehicles in the positions as he has indicated the relative damage to both vehicles would have been in the nature of a head-on collision rather than one in which the right front and side of the plaintiff's car ended up as it did in/to the right side of the defendant's truck.

The lengths of the drag marks as given by the plaintiff cannot support his case, but supports more the defendant's case that the plaintiff was not properly observing the road ahead of him. If he was, why is it that his application of brakes managed only to leave a 5 ~~feet~~ feet drag mark just before the point of impact?

The relative damage to the plaintiff's car supports his account that the collision took place while both vehicles were in the act of negotiating a bend. From the position in which the vehicle ended up, it appears more probable than not that the plaintiff managed to swerve away from the front of the truck but then found his path blocked by the right rear of the truck with the result that the right front of the car collided into the right rear wheel of the truck.

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When the defendant's version on the other hand is looked at this is also not tenable and his account is also conflicting. At first he would have had me believe that the collision took place on a bend. He stated under examination in chief that "he approached a bend. He was going up hill. This bend was a greater bend from the opposite direction. He could see for a distance of two chains". Further on in his evidence, in cross-examination, he now states that "the road at the point of impact is also a straight. There is a corner further up the gradient beyond the point of impact. This was about 8 chains from the point of impact". Again further on he states "when I came to stop I saw the car. The plaintiff ought to have seen me. The plaintiff had passed the corner long time. It was just straight road between us. The impact took place on a straight road."

The defendant's account as to the relative position of his truck at the time of the collision is that it was parked close to its left bank with the left front wheel touching the left bank and the left rear wheel a half inch from the left bank. This would have made the manner in which the plaintiff's car ended up with its right front and half of the right side of the car positioned at an angle into the right side of the truck towards the rear, virtually impossible. Had the truck been in that position one would have expected either:

(a) A head-on collision between both vehicles;

(b) A collision involving the right front of both vehicles, that is, assuming that plaintiff was not keeping a proper look out, saw the truck too late, and then tried to avoid it by swerving to his left;

(c) A collision to the right side of plaintiff's car, again assuming that he saw the truck too late and swerved managing to manouvre the front of his vehicle away from front of the truck but not being able to avoid the right side of the car hitting into the right front of the truck.

So on this vital issue as to what was the relative position of both vehicles in the road at the time of the impact, the accounts given by either the two parties cannot be reconciled and are totally unacceptable. Had I been assisted in this regard by the measurements

taken by the investigating officer who visited the scene of the accident, I would have able to determine which if any of the two accounts was the truthful one.

Although the defendant gave evidence of certain measurements with a view to establishing that it was the car which collided with his truck which was properly parked at the time on its left, leaving a space of at least eight feet six inches of road for the car to pass, this is not bourne out by the manner in which the car ended up following the collision and it must be remembered that it is common ground that neither vehicle moved following the impact.

I came to the conclusion therefore that in all probabilities the collision was caused by:

1. The plaintiff's car being driven down grade at a speed of at least 40 m.p.h. or certainly in excess of the permitted limits for driving on a winding narrow country road.

2. That the plaintiff was not keeping a proper look out although he was positioned more to his correct half of the road.

3. That the truck was negotiating a bend and in so doing had to encroach over and unto a portion of the plaintiff's half of the road and that the defendant, just prior to the collision, was in the act of negotiating his truck back over towards his correct side and that the **front** of the truck was more to its left, but the rear of the truck had not yet gone back to its correct half of the road.

4. That the truck was going up hill and was negotiating the bend at a moderate speed.

5. That the collision was caused by a combination of these two main factors:

   (a) The plaintiff travelling at a speed which the conditions of the road did not render safe and also was not keeping a proper look out for onconing vehicles which as a prudent motorist he ought to have done.

   (b) The defendant's truck encroaching over unto a portion of the road reserved for the onconing traffic more than it was reasonably safe to do in the circumstances.

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The evidence here being that two large vehicles driving cautiously could safely negotiate that bend. Mr. Vassel in his final submissions gave me the impression that he was contending that a finding that the collision took place over on the plaintiff's half of the road would necessitate a determination that the defendant would be solely to blame, for a resulting collision. If this is intended to be a statement of law to be applied without regard to the particular facts as I have found them then I must respectfully disagree. For although one would concede that this might be so on a straight road wide enough for two or more vehicles, it certainly would not be applicable on a narrow, winding country road where there is a precipice on the defendant's side rendering some caution on the defendant's part necessary in negotiating his truck around a bend.

Having regard therefore to my observations I am of the view that as I have found that both parties were at fault and in some measure to be blamed for the collision which took place, the only remaining question is to what extent do I hold them to be responsible? On these facts if there was even a case which called for an equal apportionment of blame this one certainly falls into that category. Having said that I so hold.

On the issue of loss of use, although the amount claimed was for three weeks at $150.00 per week, a total of $450.00, the evidence led on behalf of the plaintiff sought merely to establish proof of two days hireage at $40.00 per day, a total of $80.00.

The plaintiff succeeds therefore as follows:

1. Special damages as follows:

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| A. | Repairs to motor vehicle | $2,398.70 |
| B. | Assessor's fee | 10.00 |
| C. | Loss of use | 80.00 |
| | Total | $2,488.70 |

less 50%, the extent to which I hold that he is to blame for the collision.

There will be judgment entered for the plaintiff therefore for $1,244.35 with costs to be agreed or taxed.

D. O. Binghan
Puisne Judge (Ag)