JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 30 of 1966

BEFORE: The Hon. Mr. Justice Shelley
The Hon. Mr. Justice Luckhoo
The Hon. Mr. Justice Smith (Ag.)

EDWIN S. CLARKE v. COLIN EDWARDS

Mr. W. Frankson for the Defendant/Appellant

Mr. Emile George for the Plaintiff/Respondent

21st July, 1970

SMITH, J.A.

This is an appeal from the judgment of Mr. Justice Robinson in the trial of an action in 1966 arising out of a collision between the plaintiff's motor car and the defendant's truck on Long Lane in the parish of St. Andrew, on the 22nd June, 1965.

The defendant's truck was parked at night on Long Lane facing towards Stony Hill and the plaintiff was driving his Chevy II motor car towards Stony Hill when it ran into the back of the defendant's truck. This particular stretch of road was up-hill and it had street lights, admittedly, on it. The learned trial Judge gave judgment for the plaintiff, holding that the defendant was solely to blame for the accident. There was an allegation by the defendant of negligence in the plaintiff, that he was either solely responsible for the accident ~~completely~~ or contributed to it, but the learned trial judge held that the plaintiff was blameless.

In this appeal, Mr. Frankson for the defendant admitted that before he could begin to argue the appeal he had to satisfy this Court that the facts and the law in the case satisfied the principles under which Appellate Courts interfere with judgments of the Court below and he said that the Appellate Court would only interfere if the trial Judge had been guilty of some error of law or mis-applied some principle of law or so mis-directed himself on the facts as would entitle this Court to say that it would be manifestly unjust to allow the verdict of the trial judge to stand. Mr. Frankson said that the defendant complains that the trial Judge did not address his mind fully to blame-worthiness, though he did so with reference to causation. This complaint is based on the principles stated in Brown v. Thompson, (1968) 2 All E.R. 708. I think that Mr. Frankson has correctly stated the principles upon which this Court will interfere in a Judgment of this sort.

It was submitted that the matter for consideration in this case is whether the learned trial Judge came to a correct decision on the question of liability and we were addressed on several aspects of the case which are entirely matters of fact which were in issue. Learned Counsel dealt first of all, in his criticism of the judgment, with the trial Judge's finding that there was no tail-light or any light at all on the defendant's truck as it was parked on the street, but during the course of his argument he appears to have conceded that there was evidence upon which that finding could be supported.

Mr. Frankson next dealt with the question of whether or not there were reflectors on the back of the truck, which were required by the Road Traffic Regulations. The evidence given by the plaintiff and his witnesses was that they saw no reflectors. On the morning after the accident the plaintiff went and took a coloured photograph of the back of the truck and in that photograph it appears that there was one reflector on the left rear upright of the body of the truck; this reflector appears to have been at a height greater than the height

required by the regulations. There is no evidence in the photograph of any other reflector on the back of the truck. The defendant said that his truck had been fitted with four reflectors as required by the regulations but there was abundant evidence on which the learned trial Judge could find that there was just one reflector as the photograph indicated and Mr. Frankson, I think, frankly conceded that there was evidence on which this finding could be supported.

The main contention for the appellant was that the plaintiff was either driving at a speed which was excessive in the circumstances and/or was not keeping a proper lookout. Mr. Frankson criticised the finding of the learned trial Judge on the question of speed. The plaintiff said that at the time he was travelling at 25 to 30 m.p.h. He stated different speeds at different times in his evidence but the speed stated by him - he was estimating this speed - varied from 25 to 35 m.p.h. The learned trial Judge found that the plaintiff was travelling at a speed of between 30 and 35 m.p.h. before the accident. Mr. Frankson criticised this finding and sought to say that in this finding the learned trial Judge must have taken into account evidence given by a witness James Brown, who was called for the plaintiff, who said he had carried out an experiment and as a result of that experiment he came to the conclusion that the plaintiff could not have been travelling at a greater speed than 35 m.p.h. at the location on Long Lane at which the accident occurred. Objection was taken at the trial to this evidence but it was admitted by the learned trial Judge "for what it was worth". Speaking for myself I do not think that this evidence was worth anything at all, for reasons which will be obvious on reading the record, and I doubt that the learned trial Judge could have given any weight at all to this evidence. It seems to me that he must have accepted the plaintiff's evidence as to the speed at which he drove coupled with a commonsense approach to the

to the question having regard to the physical evidence in the photograph, the damage to the truck, the damage to the car and the injuries that the plaintiff sustained.

The evidence which was contrary to the plaintiff's evidence of speed was given by witnesses called by the defendant, two sidemen and one Mr. Murdock who lives on Long Lane, and they said that the plaintiff was travelling at a fast rate of speed, and one of the sidemen said, "I think he was going at 60 to 65 m.p.h.". I think it is a matter of commonsense that with the car going at that speed and running flush into the back of the truck it is very unlikely indeed that the plaintiff could have come out of the accident alive or with the relatively minor injuries which he suffered. It seems to me that the finding that the plaintiff's speed was 30 to 35 m.p.h. is a reasonable one for the learned trial Judge to have arrived at on the evidence which was before him. But Mr. Frankson submitted that granted that the plaintiff was travelling at that speed, still he was not keeping a proper lookout, having regard to the surrounding circumstances including the street lights and the lights of approaching vehicles which admittedly were there as well as a statement made by the plaintiff in cross-examination to which I will refer.

On the question of street lights, the learned trial Judge came to this conclusion after examining all the evidence about street lights: "I have come to the conclusion that the street lights were not powerful enough to effectively give warning to the plaintiff as to the presence and position of the truck on the road". I see no reason to disagree with this finding.

I think Mr. Frankson's main submission on the question of not keeping a proper lookout is that the trial Judge did not consider all the matters that called for consideration in deciding whether the respondent was negligent and he mentioned this question of street

lights, but I think the main point that he makes is that at the speed at which the plaintiff said he was travelling he should have seen the truck and be able to stop before he came into collision with it. The plaintiff said he was driving with his lights dipped and in the circumstances prevailing, where there was approaching traffic, it was reasonable for him to do so. He said that the lights when dipped illuminated the road to a distance of 20 to 25 yards ahead of him. In cross-examination he said this:

> "Q. Does it come to this that you were driving at a speed which made it impossible to stop within the range of your vision?
>
> A. Yes. My headlights went under the truck and the first thing I became conscious of was the concrete pipes."

I should have said that the truck was laden with concrete pipes which, apparently, had a white appearance. In the photograph these concrete pipes can be seen; they are of varying sizes and the broadside of some of these pipes faced the rear. The plaintiff's evidence continued: "If I had 4 or 5 yards more I may have stopped. My headlamps were on the dip and pointing to the ground and the beam of light pointed under the truck. When I first saw the truck I was within the range of my headlights - i.e. I was rather less than 20 - 25 yards (the range of my headlights) by 4 or 5 yards. When I first saw the truck I must have been within a range of 15 to 21 yards from the truck - my head lamps went underneath the truck and it was a little while before I realised that it was a truck parked in front of me - it loomed up in front of me."

It is on that evidence that Mr. Frankson said that the learned trial judge did not come to the proper finding as to whether or not the plaintiff was keeping a proper lookout. He referred us to a number of cases in which there was an unlighted vehicle on the road and there was an accident by someone driving into the unlighted vehicle. He pointed out that in all the reported cases that he has been able to find, save two, whenever the driver of a motor vehicle crashes

into the back of another vehicle the driver was held liable. He referred us to the cases that he found in support of his proposition. First of all there was the case of Tart v. G. W. Chitty and Co., (1933) K.B. 453. He referred us to the headnote, in which it was stated that

> "On the facts the accident happened either because the plaintiff was not keeping a proper lookout or because he was going too quickly and had not his motor cycle under such control that he was unable to avoid collision and in either event he was guilty of negligence."

This was a case in which the plaintiff gave evidence that he had a lamp on his motor cycle which cast a beam of light for 15 yards and he said in his evidence that he could easily pull up within 15 yards. Based on this it is not surprising that it was found that he was negligent.

Then he referred us to Baker v. E. Longhurst and Sons Ltd. re reported in the same volume of the Law Reports at page 461. In this case it was held:

> "That the accident was due either to the fact that the plaintiff was going at a speed at which he could not stop within the limits of his vision or that he was not keeping a proper look-out and that in either case he was guilty of negligence and was not entitled to recover."

This case was largely decided on the basis that the plaintiff was negligent because he was not able to pull up within the limits of his vision, but in Tidy v. Battman, (1934) 1 K.B. 319 this was held to be not a correct statement of the law.

Mr. Frankson referred lastly to the case of Hill-Venning v. Beszant,(1950) 2 All E.R. 1151. In this case however, the plaintiff was admittedly negligent but the report does not state for what reason he was negligent, so I do not think this case can assist Mr. Frankson's argument. In Tidy v. Battman, to which I have referred, it might be helpful to refer to a statement by Lord Wright. Lord Wright said at page 322:

"This is a pure question of fact. The cases of Tart v. G. W. Chitty & Co. (2) and Baker v. E. Longhurst & Sons Ld. (3) show that no one case is exactly like another, and no principle of law can in my opinion be extracted from those cases. It is unfortunate that questions which are questions of fact alone should be confused by importing into them as principles of law a course of reasoning which has no doubt properly been applied in deciding other cases on other sets of facts."

Mcnaghten, J. who tried the case of Tidy v. Battman and whose judgment was apporved by Lord Wright and Hewart, L.C.J., said in that case:

"At night time the visibility of an unlighted obstruction to a person driving a lighted vehicle along the road must necessarily depend on a variety of facts, such as the colour of the obstruction, the background against which it stands, and the light coming from other sources. It is common observation that lights placed in the footway beside a road cast shadows which cause considerable difficulty in seeing objects in the road, and indeed for that reason on many roads, where there is considerable traffic, the light is suspended from the centre of the road so as to obviate, as far as possible, the difficulty in which even the most careful driver is placed, by shadows cast by lights at the side.

It cannot, I think, be said that where there is an unlighted obstruction in the roadway, a careful driver of a motor vehicle is bound to see it in time to avoid it, and must therefore be guilty of negligence if he runs into it. The circumstances may be such that a prudent and careful driver proceeding at a proper pace and exercising the care which everybody ought to exercise, may be unable to observe

it in time to stop before he reaches it."

The latter part of this passage in my view, applies in this case. It appears that the effect of what the plaintiff said in the evidence to which I have referred, on the face of it he appears to be saying - and Mr. Frankson relies heavily on it - that if he had seen the truck when he should have seen it, that is to say when it first reached the extremity of his dip lights, if he had seen it then he would have been able to stop before driving into the truck, because he said that if he had four or five yards more he would have stopped and he did not see the truck until he had driven four or five yards so to speak within the range of vision. But it must be remembered that the plaintiff said that the light shone under the truck and that he apparently did not realise it was a truck until he had driven some distance with his lights under the truck with his lights dipped. It must also be remembered that there was approaching traffic; there was a truck which the plaintiff said was some 30 yards away from him which would put it in the front of the parked truck and which made it impossible or unsafe for him to overtake the parked truck. In all the circumstances, it is my view that the learned trial Judge was justified in deciding that there was nothing which the plaintiff could have done in the circumstances to avoid a collision and in finding that the plaintiff was in no way liable for the collision I would dismiss the appeal.

LUCKHOO, J.A.

I agree.

SHELLEY, J.A.

I agree. The result is that the appeal is dismissed with costs to the respondent to be agreed or taxed.