

C.A. CIVIL - R.M. Court - Negligence - Contributory negligence - finding of fact - Reasons for judgment - Reasoning of Resident Magistrate illogical but conclusions supported by evidence.  
Necessarily for R.M. to submit reasons for judgment under S 253 Indemnity Act emphasized - to be distinguished from findings of fact under S 291 of said Act.  
JAMAICA  
Appeal dismissed. No case argued to.

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 40/90

COR: THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN VINCENT FEARON PLAINTIFF/APPELLANT  
AND ISOLDA WRIGHT DEFENDANT/RESPONDENT

L.L. Cousins for appellant

David Henry for respondent

18th February, 1991

CAREY, J.A.:

This is a plaintiff's appeal against a judgment of His Honour Mr. R. Stewart, one of the Resident Magistrates for St. Catherine, sitting at Spanish Town on 25th January, 1990 whereby in rival claims for negligence involving the vehicles of the parties, he apportioned liability between the parties as to 80% against the Plaintiff and 20% as to the defendant.

Mr. Cousins who appeared on behalf of the appellant argued that the Resident Magistrate was wrong to fix the plaintiff with any liability for the defendant had failed to prove any degree of negligence on the plaintiff's part.

On the plaintiff's version of the accident, on 12th June, 1988 he was driving his Commer Van west on the main highway between Spanish Town and Old Harbour. He had passengers in the cab, a young man and a young lady. She gave evidence on his behalf. It was his intention to turn right at the intersection at Gutters. Accordingly he checked ahead and behind him and finding the road clear, he started to make a turn to the right. As he neared the white line, he heard the sound of a crash and saw a car 'fly' around him and park on the left. That car which was a Honda Accord, was the defendant's car. He had put on his blinker some one half to two chains from the intersection.

The evidence of his witness Miss Sonia Williams differed somewhat from the driver. She said that at the intersection, the plaintiff had come to a halt because a truck and a car were coming from the road to their right: the plaintiff never said he stopped and indicated that at the time of the collision, he was in motion. She spoke of the presence of other motor vehicles but he had said the road was clear.

The defendant's story was that nearing Gutters, she saw the appellant ahead of her. The road was dead straight and was devoid of traffic either ahead of her or behind her. The van was then travelling to the left of the roadway. She decided to overtake and began to do so. She had almost cleared the plaintiff's van when she heard a crash to the left rear of her car.

The Resident Magistrate made a number of findings of fact in his reasons for judgment. I set out those that I think important for the purpose of the appeal viz -

"1.....

2. Plaintiff did not put on indicator
3. Plaintiff stopped at the intersection.
4. Defendant overtook Plaintiff at intersection without sounding her horn.
5. While defendant overtaking her Plaintiff turned to the right.
6. Damage to Plaintiff's van - right front fender and bumper, and damage to Defendant's car - left rear door, left back wheel arch, left back fender. ...."

It is difficult to appreciate how the Resident Magistrate having found that the plaintiff had stopped at the intersection, nevertheless went on to find the Plaintiff 90% to blame. If he stopped, as was found, the fault must have been the defendant's. I would have regarded this conclusion as unreasonable but for the fact that the Plaintiff said in his evidence that when he checked

the roadway he saw no traffic whatsoever. But the defendant's vehicle was certainly present on the road. In the circumstances, he could not have been keeping a proper look-out and this failure on his part was really the cause of the accident. His failure to indicate his intention to turn right also amounted to a breach of his duty of care. The reasoning of the Resident Magistrate is illogical but his conclusion can be supported on the evidence which was before him.

We wish to make one observation. The Judicature (Resident Magistrates) Act Section 256 requires a Resident Magistrate to submit to this Court reasons for his judgment. That is not the same thing as the findings of fact required by Section 291 of the Act in regard to criminal cases tried by the Resident Magistrate. The reasons prescribed by statute, it is expected, must contain a review of evidence, the findings of fact and the application of the relevant law to the facts found by the Resident Magistrate. What was provided to the Court fell well short of those requirements. He was content to furnish us with findings of fact only. That is wholly unsatisfactory.

The appeal is dismissed, the judgment of the Court below is affirmed costs of appeal fixed at \$350.00.