

Sup Court - Negligence - Motor Vehicle Accident - Evidence - 20 Sept 92 - whether defendant negligent, whether Plaintiff solely or jointly negligent. Damages - Assessment

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. J061/91

BETWEEN JAMAICA NATIONAL BUILDING SOCIETY]
AND FIRST JAMAICA NATIONAL BANK] PLAINTIFFS
AND VIRON FORBES - DEFENDANT

David Henry and Lowel Morgan for Plaintiffs
Christopher Samuda for Defendant

HEARD. October 13 & 14, 1992
July 15, 1994

CHESTER ORR, J.

This action arises from a motor vehicle accident at the intersection of Washington Boulevard and Molynes Road in the parish of St. Andrew.

Washington Boulevard runs from north to south and Molynes Road from east to west. At the intersection of these roads there are three lanes of traffic going north on Washington Boulevard. The intersection which is controlled by traffic lights, is wide, estimated at some 100 feet.

CASE FOR PLAINTIFFS

On the 1st October, 1990 at about 7.00 p.m. Everton Corrie was driving a Honda Accord motor car owned by the plaintiffs in a northerly direction along Washington Boulevard. When he approached the intersection the traffic lights facing him were showing red, so he stopped in the extreme left lane. No vehicles were ahead of him in that lane. In a lane to his right, he is uncertain whether it was the middle or extreme right lane, there was a truck stocked with bottles of drink. When the lights showed green he moved off. The truck moved off and then stopped. Within a split second he saw a Land Rover approaching from his right along Molynes Road. He applied the brakes but was unable to prevent a collision

with his car and the Land Rover. The impact caused the Land Rover to spin around and it ended up facing the direction from which it had come. He was unable to see the Land Rover before the impact because the truck blocked his vision. He had travelled 10 to 20 feet into the intersection before the collision occurred. The front section of the car was extensively damaged. He was employed to the plaintiffs and the car was assigned to him for the performance of his duties. As a result of the accident he was unable to use the car for a period of approximately three (3) months. He used his own car during this period for which the first named plaintiff paid him rental of about \$2,000.00.

In cross-examination he stated that the car was a right hand drive and that the Land Rover collided with the bumper of the car. The Land Rover passed the intersection and ended up about 20 feet to his left on Molynes Road. The truck was turning right on Molynes Road. He denied that there was a stream of traffic going in a westerly direction along Molynes Road, that he entered the intersection when the lights facing him were showing red and that the collision occurred when the Land Rover was about to exit the intersection. He estimated the speed of the Land Rover to be about 50 to 70 miles per hour. The speed of his car was between 5 and 10 miles per hour.

Mr. Patrick Guthrie a cyclist gave evidence for the plaintiffs. He stated that he stopped some distance behind the car at the intersection. When the lights showed green the car moved off as also a truck to the right of the car. Suddenly, a Land Rover went in front of the truck and collided with the car. The impact caused the Land Rover to spin around and face the direction from which it had come. The car was hit on the right fender. In cross-examination he gave the point of impact as about the middle of the intersection on Molynes Road.

THE DEFENCE

The sole witness for the defence was the defendant. He testified that he was driving his Land Rover in a northerly direction along Molynes Road with the headlights on. Vehicles were in the right and middle lanes

going north on Washington Boulevard. There were none in the extreme left lane. As he approached the intersection the lights facing him changed to green. He entered the intersection travelling at a speed of about 20 miles per hour. When he had almost cleared the intersection a car suddenly approached from Washington Boulevard and collided with the side of the Land Rover. The Land Rover spun around and ended up at an angle facing north on Washington Boulevard. The vehicles in the middle and right lanes on Washington Boulevard had not moved. The traffic light facing him on Molynes Road was showing amber while he was in the intersection. Other vehicles were going in the opposite direction while he was in the intersection. His speed at the time of the impact did not exceed 20 miles per hour. Damage was done to the left front fender and left door of the Land Rover.

Under cross-examination he said that the vehicle in the right lane on Washington Boulevard could have been a bus or a truck. He described it as a big front vehicle. There were vehicles ahead of him when he approached the intersection. He was almost in the middle of the intersection, he had gone across the first lane when the lights showed amber.

FINDINGS OF FACT

I accept the evidence of Mr. Corrie and Mr. Guthrie as to the manner in which the collision occurred. Mr. Guthrie did not have a very good grasp of measurements: this is understandable having regard to the level of his education revealed as he gave evidence.

I find that the lights facing Mr. Corrie were showing green when he entered the intersection and that the lights facing the defendant were showing red when he, the defendant entered the intersection. This caused the truck to the right of the car to stop when it had moved off. The defendant, having entered the intersection when the lights were against him drove at a fast rate of speed in order to cross the intersection and thus caused the collision. I find that the defendant was negligent.

The defence pleaded that Mr. Corrie was solely or contributorily negligent. Submissions were made and cases cited for and against this proposition.

In Joseph Eva Ltd. v. Reeves [1938] 2 All E.R. 115 a case of a collision at an intersection it was held that Reeves one of the drivers --

"owed no duty to traffic entering the crossing in disobedience to the lights, beyond a duty, that, if he in fact saw such traffic, he ought to take all reasonable steps to avoid a collision."

In Radburn v. Kemp [1971] 3 All E.R. 249 Edmund Davies L.J. giving the judgment of the Court at 252 cited with approval the observations of Barry J. in the unreported case of Godsmark v. Knight Brothers Ltd.

"Here the lights had just turned green in favour of Mr. Knight, and in his Lordship's opinion . . . there was an obligation on Mr. Knight to see that no other vehicles had entered the cross-roads while the lights were amber. [Then followed the important sentence]. Mr. Knight was bound to contemplate that some vehicles which had properly entered the cross-roads might still be passing across, although the lights had changed to green; he was not entitled to cross in the way he did. It was impossible to absolve him of blame." (emphasis supplied)

In this case the defendant had entered the intersection when the lights facing him were showing red. He could not be said to have properly entered the intersection. I hold that there was no duty on Mr. Corrie to contemplate his presence. Mr. Corrie stated that he applied his brakes as soon as he became aware of the presence of the Land Rover, but was unable to avoid the collision. In the circumstances I find that he was not negligent.

RE DAMAGES

Mr. Samuda contended that there was no evidence from the plaintiffs to support the claim for loss of use. However, Mr. Corrie, who was the Financial Manager for the first named plaintiff stated that he used his personal car for about three months for which he was paid a rental of about \$2,000.00, but he bought gas and stood all his expenses as usual. I infer from this that the sum of \$2,000.00 was an additional amount

incurred by the plaintiff company as a result of the loss of use of the car normally assigned to Mr. Corrie. I therefore award the sum of \$1,400.00 for loss of use as claimed.

The other items were agreed.

There will therefore be judgment for the plaintiffs on the claim for \$48,217.40 and on the counter claim with costs to be agreed or taxed.

Cases referred to

- ① Joseph Eva Ltd v Reeves [1938] 2 All E.R. 115
- ② Raeburn v Kemp [1971] 3 All E.R. 229