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IN THE COURT OF APPEAL

R.M. COURTS CIVIL APPEAL NO. 45/64

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston (Acting)

BETWEEN ERIC MASON - PLAINTIFF/RESPONDENT
AND ROSE HALL LTD. - DEFENDANTS/APPELLANTS

Mr. N. Hill for Defendants/Appellants

Mr. R.N.A. Henriques and Mr. M. Tenn for Plaintiff/Respondent

18th February, 1966

HENRIQUES, J.A.,

This appeal arises out of an action for negligence heard on the 9th of March, 1964, by the learned Resident Magistrate for the parish of St. James, in which judgment for the plaintiff was given in the sum of £120 and costs. The defendants now appeal.

According to the case for the plaintiff as it was presented at the trial, the plaintiff's driver, one Amos Boothe, was driving on the 22nd of February, 1963, his motor bus from Kingston to Lucea. When the bus arrived in the vicinity of the Bay Roc Hotel on the main road between Montego Bay and Falmouth on a straight stretch of road, the driver of the bus saw the defendants' truck approaching from the Montego Bay direction. A cyclist was also seen riding in the same direction as the truck, about half-a-chain ahead of the truck and two-and-a-half chains from the approaching bus. The truck was travelling at about 40 miles an hour and the bus about 25 m.p.h. to 30 m.p.h., and when the truck was about two chains from the cyclist, it started to overtake the cyclist and the driver of the bus seeing that there was likely to be a head-on collision, turned his vehicle on to the bank. The truck then hit the bus on the right side towards the top,

the top, removing a portion of it and throwing it some 12 to 25 yards on the other side of the road.

Lionel Bowen, the cyclist gave evidence for the plaintiff that he was riding his cycle on the road and he heard a noise coming from behind him and he saw the bus in front of him about 4 chains away, and he noticed the truck coming from behind at about 40 miles an hour. As he appreciated the difficulty or hazard of his position, he jumped off his cycle and threw both it and himself on the bank, and the truck passed him closely, about 18 inches - 18 inches from the left bank, and immediately thereafter there was a collision between the bus and the truck.

Clarence Smith, the defendants/appellants' driver and driver of the truck on that day gave evidence that he was travelling on the road from Montego Bay to Rose Hall, that he saw a cyclist in front of him going in the same direction, that the road was clear ahead and he started to pass the cyclist when he saw the bus approaching, that the bus was then some three chains away and coming around the corner, that the bus came up and swung away from him to its left, its tail end out in the road, and the top of the bus tilted towards the left side of the road.

He went on to say that he had already passed the cyclist and got back to the left side of the road when the bus had swerved, pushing the tail end out, and the front of the truck came in contact with the right rear of the bus.

The learned Resident Magistrate in her reasons for judgment stated that: 'I accepted the evidence of the witnesses for the plaintiff as to how this accident happened. I was not impressed with the witness for the defendants, Clarence Smith, as a witness of truth. Where his evidence and that of the witnesses Amos Booth and Lionel Bowen differed, I preferred the latter version,' and then went on to record this: 'In my opinion the accident was caused by Clarence Smith, that is, the truck driver, driving at a fast rate of speed on a road wide
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enough to accommodate only the truck and the motor bus abreast, each other, and persisting in his effort to overtake the cyclist in front of him in too short a distance, in view of the speed with which both vehicles approached each other and thereby causing the cyclist to take himself and his bicycle out of the road to the safety of the bank, and causing the driver of the motor bus to fear a head-on collision and to mount the bank to avoid it. It was due entirely to the negligence of the driver of the defendants' vehicle in failing to drop back when he discovered that the road was not clear.'

A number of submissions have been made to us by learned Counsel for the appellants, submissions in which the reasons for judgment have been stringently criticised by learned Counsel. I have examined these criticisms of learned Counsel and Counsel. I confess I find little merit in them, in fact those submissions were based on a view of the case which were presented for the first time in this Court, by the appellants, and not upon the manner in which the case was conducted and adjudicated upon at the trial.

In my view there was evidence before the learned Resident Magistrate which entitled her to draw the inference that the speed of the truck was in fact the vital factor responsible for this accident. I would therefore dismiss this appeal with costs £12.

MOODY, J.A.,

I agree.

ECCLESTON, J.A.(Actg.),

I agree.