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IN THE COURT OF APPEAL

CAYMAN ISLAND APPEAL NO. 5/77

BEFORE:

THE HON. MR. JUSTICE ROBINSON P.
THE HON. MR. JUSTICE ZACCA J.A.
THE HON. MR. JUSTICE MELVILLE J.A. (Ag.)

BETWEEN:	WILLARD ANDREW McLAUGHLIN	Second Defendant/Appellant
AND	LESKEY DIXON	First Defendant/Respondent
	WILLIAM A. McLAUGHLIN	Plaintiff/Respondent

October 27, 1977

MELVILLE J.A. (Ag.)

The Second Defendant in this matter appeals to this court against an award made firstly as to liability which seemed to be a straight issue, as to whether the First Defendant and/or the Second Defendant was liable to the Plaintiff in this matter, who was a passenger in the Second Defendant's car. Insofar as liability is concerned, it appears to be a straight issue as to whether the Second Defendant was to be believed or the First Defendant was to be believed.

Simply, the facts are that the Second Defendant was driving a Buick car which we gather was bigger and heavier than the car which the First Defendant was driving, which I think was an Austin, and both going along in the same direction on a straight stretch of road. The evidence indicated that approaching a right-hand bend, said to be a 45 degree angle, the Second Defendant started to overtake the First Defendant whose speed at that stage was approximately 20 miles per hour, whilst on the Second Defendant's own admission he was travelling some 40-45 miles per hour. Somewhere along that stretch of road the two vehicles came in collision, and there is no doubt that the two of them were locked together. Both vehicles were pulled or dragged for some distance in that manner. The First

Defendant's car ended up on the left hand side in a post. The Second Defendant's car ended up on the right hand side in a light pole. In those circumstances the simple question that the Trial Judge had to decide was, was it the First Defendant who swung his car to the right into that of the Second Defendant or was it the Second Defendant who cut in front of the First Defendant's car.

There is evidence, which the Learned Trial Judge accepted, that it was the Second Defendant who was cutting back to the left approaching this corner and so was the sole cause of this accident. This was a question of fact for the Trial judge; he saw the witnesses, he came to that conclusion. He accepted what the First Defendant said was correct, that he was keeping a straight course going along when the Second Defendant's car collided into his. The inference is that the Second Defendant was cutting back to the left, approaching this corner. In addition to that, he pleaded guilty to the charge of careless driving arising out of this very same collision. This standing by itself, would convince any judge that the Second Defendant was at fault for this accident. Insofar as liability is concerned, there is no doubt as to the Trial Judge's conclusion that the Second Defendant was to blame for the collision and we see no reason to differ from that conclusion.

The other point taken on appeal, is as to the quantum of damages awarded the Plaintiff against the Second Defendant. There is no doubt that the Plaintiff suffered very serious injuries. The first seemed to be no more than a bruise to the right arm but it turned out that the muscles in the hand had been severed and so he had to undergo some considerable amount of treatment both here and in Jamaica. The real question here concerned an Item of $3,520 awarded in respect of a period from 1973 up to 1976, I think, when this action was tried. That concerns a period in which the Plaintiff alleged that he was working with his brother as a plumber in which he was getting $20 per day. Unfortunately his brother died in June 1976, and that work came to an end. The up-shot of that was that during this period which amounted to 704

working days, the evidence disclosed, that the daily rate for Carpenters of that class had increased and the Learned Trial Judge fixed the Plaintiff's loss during that period at the rate of $5 per day, amounting to $3,520. Much has been said about that, that there was no evidence before the Trial Judge to support that finding and that nothing ought to have been awarded under that head. But it seems that some time during this period the Plaintiff had been working on a boat, being offered remuneration on that boat which showed that if he had continued at that job he would have lost earnings when compared to the rate a carpenter got at that time. In the final analysis nothing was put before us to indicate that the Trial Judge acted on any wrong principle in arriving at that figure and we see no reason to disturb that award.

On the question of the loss of prospective earnings it was said that the award was made on a wrong basis in that the Plaintiff was only a casual worker whereas the calculation was made on the assumption that the Plaintiff was a carpenter. At all events, so went the argument, the sum awarded under this head as also that for pain and suffering were manifestly excessive. The evidence clearly indicated that at the time of the accident the Plaintiff was a carpenter, so that there was no basis for the submission that the calculation should have been made on the fact that he was a casual worker. We were taken through a number of comparable awards and the changes in the value of the currency as apparently had been the Learned Trial Judge. Having given the matter our careful consideration we are unable to say that these sums were manifestly excessive in all the circumstances.

Accordingly, the appeal is dismissed and the judgment affirmed with costs to the First Defendant/Respondent and to the Plaintiff/Respondent such costs to be agreed or taxed.