IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. S204/1991

BETWEEN	CLIVE SEWELL	PLAINTIFF
AND	MAUREEN JONES	1ST DEFENDANT
AND	ALLAN DAVIS	2ND DEFENDANT

Mr. C. Cousins instructed by Rattray, Patterson and Rattray for Plaintiff.

Mr. P. Foster instructed by Dunn, Cox and Orrett for Defendants.

Heard; 30th September, 1st October, 1993; April 6, 1994

Judgment

HARRISON J. (Ag.)

The plaintiff, an ice-cream vendor, alleged in his Statement of Claim that on the 5th day of May 1991 he was riding a pedal cycle along Whitehall Avenue, St. Andrew, when he was hit by a motor van owned by the first defendant and driven by the second defendant.

As a result of this collision he sustained injuries and suffered loss. He has therefore claimed damages.

The particulars of negligence of the second defendant have been pleaded as follows:

1) Failing to heed the presence of a stationary vehicle on the left of the road.
2) Failing to give any or any proper warning of his approach.
3) Failing to keep any or any proper look out for other road users who were or might reasonably be expected to be on the road.
4) Driving on the incorrect side of the road and colliding with the plaintiff's bicycle.

The defence admitted that there was a collision between the defendant's motor van and the plaintiff's bicycle but denied that the collision was caused by the negligence of the second defendant as alleged or at all.

The following particulars of negligence on the part of the plaintiff were pleaded:

a) Riding from a minor road into a major road without stopping and thereby colliding with the plaintiff's vehicle.

b) Failing to keep any or any proper look out.

c) Failing to heed the presence of the first defendant's motor van travelling along the said road.

d) Failing to give any or any proper warning of his approach.

e) Failing to stop, slow down, swerve or in any other way manage or control his bicycle so as to avoid the said collision.

Now, Section 44(1) of the Road Traffic Act provides that a motor vehicle shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic. Accordingly, it obstructs other traffic if it causes the risk of an accident.

Section 44(1)(c) of the abovementioned Act also provides that a motor vehicle proceeding from one road to another shall not be driven so as to obstruct any traffic on such other road.

Further, notwithstanding anything contained in section 44 of the Road Traffic Act it shall be the duty of a driver of a motor vehicle to take such action as may be necesssary to avoid an accident and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other vehicle from the duty enforce on him by this provision (See Section 44(4) of the Road Traffic Act.)

The principle has been well established that the point of time when the driver or rider on the minor road enters the major road after coming to a stop, depends on his judgment as to whether or not traffic is near enough to cause danger of an accident if he were to emerge from the minor road. It means therefore, that a driver or rider must firstly, stop and secondly, not to continue until it has been ascertained that there was no oncoming traffic on the major road near enough to cause danger of an accident.

Equally, it behoves the driver on the major road approaching a road junction to bear in mind the possibility of traffic emerging from the minor road into the major road. If danger is reasonably apparent he must take the precaution to avoid an accident. To be able to do so he must approach the junction at a speed which would enable him to take the necessary precuations. Although he was entitled to approach the junction on the assumption that the plaintiff would give him way, Carberry C.J. Ag. in McNish v. Delisser 1951 6 J.L.R. at page 55 issues a caveat.

He states as follows:

> "This does not mean that he was to approach and drive through the intersection as though he were wearing blinkers and unable to see anything to his right and left. A general state of attentiveness is always required of a driver .... if there was an opportunity for him to take evading action after the driver had entered the intersection and he failed to do so, that would be negligence making him liable to the plaintiff ...."

I turn now to the evidence in this case which reveals inter alia:

1. That 60 Lane adjoins Whitehall Avenue
2. This junction is not regulated by a stop sign.
3. Devon Lawrence also known as "Bagga" operates a shop at 60 Lane which faces Whitehall Avenue.
4. The front of the shop is about 3 feet from that road junction.
5. It is not possible to see up or down Whitehall Avenue from the shop unless, you go to a point where 60 Lane adjoins Whitehall Avenue.

The plaintiff testified that after he had finished selling fudge by "Bagga's" shop, he went on his bicycle, looked behind him and then looked up the road. He did not see any moving vehicle. There was a parked vehicle however, on the right hand side of Whitehall Avenue facing Red Hills Road and some men were also on that side of the road fixing a motor bike. He therefore moved off and made about four "pumps" up Whitehall Avenue. He further stated that he was travelling on the left hand side of the road and as he was about to pass the parked vehicle, "I got lick off my bicycle." He never saw what hit him. He said further, "It was something coming from up the Lane or around the Lane. I don't know if it is up the road or around the next Lane."

Under cross-examination he denied riding out of 60 Lane and colliding into the van.

Devon Lawrence was called as a witness for the plaintiff. He stated that when the plaintiff completed his sale, "he rode off, take the left and go up Whitehall Avenue." He did not see the plaintiff after he turned and some three seconds later he heard tyres "bawl" and heard a "fumble" like someone get "lick down." He left from the front of his shop and saw the fudge-man lying about three (3 ft.) below his gate on the left hand side of Whitehall Avenue with his bicycle on top of him. He was unable to say what had hit down the plaintiff. He saw a

van however parked some 12ft. on the left hand side going down Whitehall Avenue and it had passed the junction of 60 Lane and Whitehall Avenue.

Under cross-examination, Lawrence said, "After Sewell rode off he stopped and viewed the road up and down before he turned up Whitehall Avenue. I see him stop and look up and down." When he was further cross-examined he said, when the plaintiff came to the corner he "pripse" before turning up Whitehall Avenue.

Allan Davis, the second defendant, gave evidence that he was driving down Whitehall Avenue on his left. On reaching about 10ft. from the intersection of 60 Lane and Whitehall Avenue he noticed a pedal-cyclist coming out of 60 Lane without stopping and headed straight across the road. He applied his brakes but a collision could not be avoided. The cylist collided with the front section of his van in the area of the right wheel arch.

Davis further testified that after the bicycle bumped into his van the rider stumbled and fell as the bicycle rebound. He contended that the collision took place immediately in front of 60 Lane and further that the plaintiff did not blow any horn before emerging from the Lane. He strongly denied that there was any parked vehicle on his left in the vicinity of the impact and that the plaintiff had turned up Whitehall Avenue whom he emerged from 60 Lane.

Davis' evidence also revealed that there was an obstruction in the vicinity of the accident. A partly covered trench about 4-5 ft. wide was on the left side as you proceeded down Whitehall Avenue. He further stated that as the roadway was about 25ft. wide at the point of impact this obstruction did not necessitate him trespassing over to the right lane.

After the collision Davis saw the plaintiff lying very close to the middle of the road. He denied under cross-examination that he was middling the road and that he was doing so because of the obstruction on his left.

I now turn to the issue of liability. The plaintiff's evidence was that after he completed his sale by the shop he looked behind him and looked up the road and except for the parked vehicle and motor cycle on the right side of Whitehall Avenue there were no other vehicle. He moved off and made about four pumps up Whitehall Avenue and as he was about to pass the parked vehicle which was on his right he got lick off his bicycle. HIs witness said in chief, that

With this sudden and dangerous manoeuvre on the part of the plaintiff, it is not surprising therefore when he said he did not know what had hit him nor from whence whatever hit him came. The inescapable conclusion therefore is that his failure to stop at the road junction and riding directly into the defendant's vehicle were the direct causes for the accident.

Now, did the second defendant contribute in any way to this accident? On the facts of the case the evidence revealed that the road is straight in the vicinity where the accident took place. This defendant did say that when he was about ten feet from the intersection he saw the plaintiff emerging from 60 Lane. According to him, he applied his brakes but a collision could not be avoided. There was no allegation of speed on his part and neither was there evidence to find that he was speeding. His evidence that the plaintiff collided with the right wheel arch has remained uncontradicted. It is therefore consistent with the plaintiff riding and colliding in the vehicle and the probabilities are that this occurred as he rode across Whitehall Avenue.

Could the second defendant have gone more to his left to avoid this collision? That action was not possible; there was a trench to his left. The plaintiff seemed to have accepted this as it was suggested to the second defendant that he was middling Whitehall Avenue because of construction work to his left. I accept that even though there was construction work being carried out along Whitehall Avenue the second defendant did not have to encroach on the right lane.

Finally, I accept the second defendant's evidence as to how the accident occurred and find that the plaintiff demonstrated a total lack of care for his own safety and is wholly to be blamed for this collision.

If I am wrong on the question of liability damages would be assessable. The plaintiff in his claim for special damages has proved the following:

1.	Medical expenses	$ 200.00
2.	Cost of bicycle	2,000.00
3.	Loss of earnings (30 days at $500.00 per day)	15,000.00

I would therefore award him $17,200.00 special damages with interest at 3% as of the 5th May, 1991.

General Damages

Gneeral damages would involve a consideration of pain and suffering and loss of amenities. Based on the plaintiff's evidence and on a consideration of all the circumstances, I am of the opinion that an award of $50,000.00 with interest at 3% as of the date of the service of the Writ of Summons would have been adequate compensation.

There shall be judgment however, for the defendant with costs to be taxed if not agreed.

McNish v Delisser 195- 6 JLR 55