

J A M A I C A

IN THE COURT OF APPEAL

R.M.CIVIL APPEAL NO. 46 of 1971

Before: The Hon. Mr. Justice Fox - Presiding  
The Hon. Mr. Justice Smith  
The Hon. Mr. Justice Graham-Perkins

SQUIRE'S RENT-A-CAR LTD. v. ALVA GOWIE

Mr. W. K. Chin See for the Appellant  
Mr. A. Sanguinetti for the Respondent

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19th November, 1971.  
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FOX, J.A.:

Mr. David Squire is the Managing Director of the Plaintiff Company. At about 7.00 p.m. on the 30th of November, 1969, he was driving a Buick motor car of the Company from the Palisadoes Airport towards Harbour View. It was dusk and his headlights were dipped. He was going at a speed of about 35 to 40 m.p.h. and travelling on the left side of the road. In the vicinity of the entrance to Gunboat Beach, which is on his left side of the road, a car which he had seen approaching him from the Harbour View direction suddenly turned across his path into the entrance to the Gunboat Beach. Mr. Squire said that he tried to avoid the impending impact by applying the brakes of his car and pulling to his right. The left front fender and left front bumper of his car struck the left rear of the approaching car. After the impact Mr. Squire said that his car came to a stop about 15 feet from the point of impact and on the right side of the road.

Mr. Gowie, the defendant is a retired Civil Servant. He said that on the occasion he was driving his motor car, a Rambler, along the Palisadoes Road in the direction of the Airport. He was travelling on the left side of the road. He intended to turn into the entrance of Gunboat Beach and he put out his right indicator. At that time he saw,

he said, a car at the Airport round-about, a very far distance away from him. He turned to the right into the entrance of the Beach, completed the turn and then stopped because of persons who were standing in the entrance. About 2 feet 6 inches of the rear of his car protruded into the Palisadoes Road. When he was at a stop the car which he had seen at the Round-about, Mr. Squire's car, coming along at great speed (estimated by Mr. Gowie at between 80 to 90 m.p.h.) struck him on the left rear. He said further that this collision was caused by the approaching car being swung to its left into his car.

The Magistrate considered that the defendant's version of the accident was the more probable and on that view she arrived at findings of fact wherein she held that Mr. Squire was 40% to blame for the accident and the Plaintiff, Mr. Gowie 60% to blame.

The first point to note is that the judgment of the Magistrate is based upon the probabilities which emerged from the evidence. This Court is therefore in as good a position as the Magistrate to ascertain facts by means of that same criteria which she employed.

The second point to notice is that by virtue of the provisions of Section 44(1) of the Road Traffic Law Cap. 346, the driver of a motor vehicle is required to observe the eight rules of the road which are laid down in that sub-section. Section 44(1)(a) requires that -

"A motor vehicle meeting or being overtaken by other traffic shall be kept to the near side of the road;"

Section 44(1)(d) provides that the 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;"

Section 44(1)(e) requires that the motor vehicle

"proceeding from one road to another shall not be driven so as to obstruct any traffic on such other road;"

"Section 44(4) For the purposes of this section -

(a) a motor vehicle obstructs other traffic if it causes risk of accidents thereto;"

The effects of this section 44 are to describe the special statutory duty which the driver of a motor vehicle owes to other traffic in the particular circumstances envisaged in each rule. In this case the

Gowie in turning across the road was under a duty to ascertain whether there was any traffic approaching him which was near enough to cause the danger of an accident. To do this safely he had to make his judgments before he crossed the road. He was required to determine:

- (1) the distance Mr. Squire's car was away from the line of his proposed turn;
- (2) the speed at which Mr. Squire's car was approaching; and
- (3) on the basis of his calculations in 1 and 2, whether Mr. Squire's car was near enough to cause the risk of an accident.

Once Mr. Gowie had decided to cross the road and had actually allowed his motor vehicle to obtrude on Mr. Squire's half of the road, then consequent on Mr. Gowie's duty not to create the risk of an accident, he must proceed into the entrance to the Gunboat Beach and out of Mr. Squire's right-of-way as quickly as possible. It was also his duty to make sure before he crossed the road that the entrance way was clear and could have received his motor car. In this case Mr. Gowie said that he saw the persons there standing on the other side of the road, but he didn't realize that they were blocking the roadway until he had come up to them. In that situation he was obliged to stop.

In our view, the probabilities which distinctly emerged from the evidence are against an acceptance of the version of the accident described by Mr. Gowie.

Firstly, the evidence is that the road was 30 feet wide. If Gowie's car protruded 2 feet 6 inches on to Squire's left half, then available to Squire would have been 27 feet 6 inches on his right. In that situation it is entirely improbable to conclude that Squire would have swung to his left as Gowie said. The clear probability is that he would have swung to his right as Squire said.

Secondly, Squire's car stopped within 15 feet of the impact and on the right side of the road. This fact was not challenged. In these circumstances it is reasonable to conclude that Squire was not travelling at the very fast rate of speed Gowie stated, but that he was going at the moderate speed he said, namely, about 35 to 40 miles per hour.

Thirdly, the damage to Squire's car was to the left front. This is consistent with the version of the accident stated by Squire, and inconsistent with the version stated by Gowie.

Fourthly, in his evidence Squire said that ~~the~~ impact had taken place on his half of the road but towards the middle of the road. This was not challenged when he was giving his evidence. In cross-examination it was suggested to him that the portion of Gowie's car which was on his half (Squire's) of the road was that portion extending from the middle of the rear door to the rear of Gowie's car.

Squire said that the suggestion was not true. He implied that more of Gowie's car was on his side of the road than that. When Gowie gave his evidence he then said for the first time that only 2 feet 6 inches of his car was in the road and further, that Squire had swerved to the left, and that this had caused the accident.

In view of these inconsistencies in the case for Gowie, it was unreasonable for the Magistrate to accept his statement as to the position where the impact took place. The only reasonable conclusion is that the accident took place somewhere in the middle of the road as Squire stated. The clear conclusion which emerges from all these probabilities is that Gowie suddenly turned across the road and on to the right-of-way of Squire in breach of his duty to ensure that the manoeuvre could be executed without risk of accident. He did this suddenly and in circumstances which left Squire with no alternative but to take the action which he said he in fact took. It is clear from what has already been said that the Magistrate's reasons for her judgment are unsatisfactory. The findings of fact are therefore at large for a determination by this Court. In our view the probabilities indicate unmistakably that this accident was caused entirely by the fault of Gowie.

The appeal will therefore be allowed. Judgments on the claim and counter-claim are set aside. Judgment entered for the Plaintiff on the claim for Eight Hundred and Fifty-five Dollars (\$855.00) and on the counter-claim with costs to be agreed or taxed. The appellant to have the cost of the appeal - Forty Dollars (\$40.00).

