

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. K 013/1984

|         |                                |               |
|---------|--------------------------------|---------------|
| BETWEEN | CRANMER KING                   | PLAINTIFF     |
| A N D   | JAMAICA PUBLIC SERVICE LIMITED | 1ST DEFENDANT |
| A N D   | LESLIE BRYAN                   | 2ND DEFENDANT |

Claim in Negligence

W. B. Frankson Q.C., Mrs. M. Forte, M. Frankson, and B. E. Frankson instructed by Gaynair and Fraser for the Plaintiff.

S. Shelton. instructed by Myers, Fletcher and Gordon, Manton and Hart for the defendants.

HEARING ON June 23, October 20, 1988, June 5, 1989 and April 3, 1990.

REASONS FOR JUDGMENT

BINGHAM J:

On April 3, at the conclusion of this matter, I gave a brief oral Judgment for the defendants and I then promised to have my reasons for arriving at this decision reduced into writing. This I now do.

The Claim in negligence arose out of a motor vehicle collision on Saturday, September 3, 1985 between a BMW motorcar owned and driven by the Plaintiff who was at the time of the collision a Detective Superintendent of Police, and an Isuzu pick up owned by the first defendant company and driven by the second defendant.

The Plaintiff at all material times resided in May Pen, Clarendon and on the date of the collision was then stationed at Area 4 in the corporate area.

The defendant resided in the corporate area, but was at the time of the collision temporarily stationed at Duncans, Trelawny.

They were both on their way to their respective homes, when the collision occurred. The Plaintiff had worked all day and after setting up an operation around 7:30 p.m. he was at 10:45 p.m. proceeding along the main road between Spanish Town and Old Harbour, St. Catherine on his way to his

home at May Pen in Clarendon while the defendant who temporarily resided at Duncans, Trelawny during the working week was on his way to his home in Saint Andrew. He, on his journey home had made a brief stop at Kendal in Manchester travelling to this destination through Upper Trelawny to carry out a routine check there. It was after leaving Kendal and on his way home to Daytona Drive in Saint Andrew, that the pick up he was driving collided with the Plaintiff's BMW motor car on a bridge at Church Pen which is at a section of the main road between Old Harbour and Spanish Town, a distance which it is common ground was on the evidence estimated to be about two and a half miles from Old Harbour as one proceeds towards Kingston.

As a result of the collision both vehicles were extensively damaged and the Plaintiff and the second defendant received serious injuries, the Plaintiff being the more serious.

As there was no counter-claim filed in this action and in the light of the decision at which I came to on the issue of liability there does not arise the need for me to undertake an examination of the nature and extent of the injuries which the Plaintiff incurred, as the question of damages do not, therefore, fall for consideration.

#### THE EVIDENCE

##### The Plaintiff's Account

On Saturday September 3, 1983 about 10:45 p.m. while driving his BMW motor car along the Spanish Town to Old Harbour main road and on reaching a section of the road called McCook's Pen (Church Pen) and a bridge he was approaching/driving at a speed of about 35 m.p.h. He saw the lights of an oncoming vehicle approaching from the opposite direction. It was a vehicle with four headlights, which lights were described as being very bright lights. He dimmed his lights, (which having regard to the make of his car would have been equipped with four headlights) and kept to the left of the road and continued travelling and upon entering the bridge he then observed that the oncoming vehicle was a red pick up which approached the bridge as his car was about to complete the bridge. The Plaintiff positioned his car as being then at a distance of some 5 - 6 yards and later on he estimated it to be 3 - 4 yards from completing the crossing of the bridge.

At this stage the pick up swerved over to its right and hit the right front of the car causing the left rear fender of the car to hit onto the rails of the bridge with the pick up resting on the right front fender of the car. The Plaintiff was rendered unconscious as a result of the impact and regained consciousness the following day about 3 p.m., while then a patient in the Medical Associates Hospital. He spent five days in that institution during which period he was treated for his injuries.

According to the Plaintiff the collision took place on his correct side of the road and at the time of the impact he had positioned his car about one foot to eighteen inches on the left side of the road from the bridge as one faces west - the Old Harbour direction.

It was common ground on the evidence that the width of the asphalt surface of the road on the bridge was between 20 - 22 feet. It was also common ground that there were two corners situated facing the Spanish Town and Old Harbour directions, at distances from the bridge of 2 - 3 chains in the Spanish Town direction and five chains in the Old Harbour direction, which allowed a motorist approaching the bridge from the Old Harbour direction to have an undisturbed visibility of at least seven chains between both corners. The Plaintiff further stated that upon observing the oncoming vehicle as it approached from the Old Harbour direction, apart from appearing to have four headlights all on bright (high beam), it was approaching the bridge at a faster rate of speed than his car. After dimming his lights, the pick-up bright lights were still on. The pick up was then to its left and about two chains from the bridge when he first saw it, after which it then pulled over to its right and collided into the right front of his car.

Given this account by the Plaintiff as to how the collision occurred had it remained consistent throughout the hearing and been accepted the more probable of the two versions, a finding of negligence on the part of the second defendant would clearly have been inevitable.

Under cross-examination by Learned Counsel who appeared for the defendants when the Plaintiff's account was put to the test, however, a

totally different version emerged as to how the collision occurred.

Before I proceed to examine this area of the Plaintiff's evidence, however, it may be convenient at this stage to mention that although the Plaintiff in his evidence sought to relate an account which gave the impression that it was only the left rear fender of his car that came in contact with the bridge at a point in time when his car was some 3 - 4 yards (or 5 - 6 yards) from completing the bridge the assessor's report (Exhibit I) revealed damage not only to the right front of the car, but to the left front and side of that vehicle.

That report noted the following damage:

"Left rear fender  
Rear bumper  
Left rear lamp  
Left front door  
Left front fender  
Bonnet  
Grille  
Front bumper  
Front panel  
Radiator  
Radiator support  
Windscreen  
Roof  
Left classics  
Headlamp  
Fire-wall  
Right suspension  
Dashboard  
Right side shield  
Flooring  
Right running board  
Stabilizer bar  
Right control arm  
Air-conditioner condenser  
Road wheel  
Right door stanchion  
Right chassis  
Right rear quarter."

In the light of this evidence under cross-examination, the Plaintiff now sought to explain that the reason for the damage to the left side of his car, which he at first had made no mention of, was caused by the force of the impact which pushed the left side of his motor car unto the left rails of the bridge. Given this explanation under cross-examination the Plaintiff's account had now been altered from one in which he was contending that there was only one section of the bridge damaged, that being in the area where the force of the impact had pushed the left front of his car unto the left rails

of the bridge in the area where the impact took place, to one which now sought to explain any other damage to the Old Harbour end of the bridge at which his car had reached at the time of the collision.

Further inroads were then made into this account when under cross-examination the following dialogue now emerged:

"Q: There would be therefore, no damage to the bridge at the Spanish Town end of it?

A: I am unable to say.

Q: Are you able to say if there is, whether it was your vehicle that caused it?

A: It could be.

Q: I want to be exactly fair. Think again about the question. If there was damage to the bridge at the Spanish Town end of it, could it have been caused by your vehicle?

A: There was no damage to the left rail at the Spanish Town end of the bridge.

Q: Let me suggest to you that there was damage to the Spanish Town end of the bridge caused by your car?

A: Yes sir. There was damage by the rail in that direction. There was also damage to the Old Harbour section of the bridge caused by my car."

(Emphasis mine).

In the light of the position in which the Plaintiff had positioned his car from completing the bridge his admission that there was damage caused by his vehicle to the section of the bridge to the Spanish Town end of, it was given his earlier explanation damaging as to his credibility and given his account as to how the collision took place is inexplicable.

For an explanation of this, however one only has to resort to the defendant's account of how the collision occurred.

#### The Defendant's Account

Having left Kendal at around 9 p.m. he was driving the pick-up on the main road between Old Harbour and Kingston. Upon reaching Church Pen (McCook's Pen) which is about two and a half miles after passing through Old Harbour he negotiated a corner which is about five chains from a bridge.

He then observed the bright lights of an approaching vehicle which was travelling at a fast rate of speed. By this time he was now almost approaching the bridge. His headlights which consisted of two, one to either side of the front of the pick-up were now on dim. The oncoming vehicle then went from its right to its left and the left front of this vehicle hit the first column of the bridge as one is proceeding from Spanish Town. Having hit the bridge column the vehicle then swerved over to the right and the right front of the car collided into the right front of the pick-up.

This account of the defendant was not shaken in cross examination and is supported by the admission of the Plaintiff of there being damage to both ends of the left rails of the bridge as one proceeds in the direction that the car was travelling. It was given the respective accounts as to how the collision occurred, the more probable of the two as:-

1. The accounts given by the Plaintiff had been discredited under cross-examination and is supported by the evidence contained in the assessor's report (Exhibit I) in relation to the damage to the left front and side of the Plaintiff's car.
2. The damage to the section of the bridge to the Spanish Town end which was unexplained on the Plaintiff's account, until admitted in cross-examination, was given the defendant's account, lend credence to his account as to how the collision occurred; this being that the Plaintiff having negotiated the corner at the Spanish Town end of the bridge, a mere two to three chains from the bridge, and finding his vehicle more over to the right of the road, upon seeing the pick-up approaching and in attempting to negotiate his vehicle back to its correct side of the road, collided with the left column at the entrance to the bridge causing the left front chassis to be bent, resulting in the car getting out of control and going over to the right of the road and colliding into the right front of the defendant's pick-up, which was then positioned on its correct side of the road on the bridge.

Having regard to the evidence that the road surface on the bridge in question was estimated to be between 20 - 22 feet wide and given the respective width of both vehicles which was stated in the unchallenged evidence of the second defendant to be about six feet each, there was more than adequate space for two motorists operating their vehicles in a reasonable and prudent manner to be able to pass each other with safety on that bridge.

On the defendant's account, which was consistent throughout his evidence, he was proceeding at a speed of about 25 m.p.h. and on his correct hand with the headlights of his pick-up dimmed when the collision occurred in the manner as he has described.

I found the defendant's account of how the collision occurred to be the more probable. On the other hand, the account given by the Plaintiff was discredited in several material particulars and more so in relation to the damage to the left front chassis of his car which supported the defendant's account as to how the collision occurred.

As much as one regrets the serious injury which the Plaintiff incurred, in the light of the evidence no blame can be attributed to the second defendant, and there must, therefore, be Judgment entered for both defendants with costs to be agreed or taxed.