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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/S203

BETWEEN	WAYNE STEWART	PLAINTIFF
A N D	TEAPE JOHNSON LTD.	1ST DEFENDANT
A N D	JUNIOR BAILEY	2ND DEFENDANT

Ms. Carleen McFarlane instructed by McNeil and McFarlane for Plaintiff.

David Johnson instructed by Piper & Samuda for Defendants.

HEARD: 25th November, 2002, 27th & 31st January, 14th February 30th April, 26th & 28th May, 6th 9th & 11th June, 4th July, 2003 & 18th December, 2003

REID, J.

Wayne Stewart riding in the cabin of a pickup was injured in a collision with a much larger truck. Just before the impact, the vehicles, both left-hand driven, were heading along the highway through Phoenix Park facing Moneague in the parish of St. Ann. The impact occurred just as the pickup was making an exit turn right. It rested athwart a culvert or drain, a light-post to its left; to its right the other vehicle, virtually alongside.

It was late evening, twilight probably or a little later, on 11th July, 1995. The state or quality of prevailing light formed no part of the final submissions. The pleadings together with the evidence on this aspect merit no further mention.

The real issue is, which of the two drivers was substantially at fault. Before arriving at that, it must first be asked:

1. Did the driver of the pickup enter the highway from the left, that is, into the path of the truck?

If the answer is no, then,

2. Did the driver of the pickup make an exit turn to the right without due care, or,

3. Did the truck's driver, indifferent to the signal by the other, precipitately attempt to overtake?

Ronald Newell had been driving his pickup for an hour or so, returning from Tydixon with a payload of lumber. To arrive at his furniture-shop at Phoenix Park he would turn, right, onto the highway for half kilometer approximately. Next, he properly signalled he says, and, in the exit turn, felt an impact as his vehicle was three-quarters into the minor road.

The defence contends that the pickup had entered the highway from an inlet on the other side, into the path of the truck. The Court's visit to the locus confirms that the junction from Tydixon is on the side of the highway as Newell states. The testimony of Barrington Kitson who rode abreast of Bailey, the driver of the truck (by objective inference), confirms Newell's account up to this point. Kitson could not tell if the pickup had emerged from 'a bush or out of a yard.'
He was content to assert that it 'come out from the left.' Speculative it would be to say that this 'retro-fit' arose in the discussion aftermath, among the truck's crew.

Of significance is the evidence in the exhibit photo-print subsequent, confirming as did the visit to the locus, that the truck would have completed a left bend on the roadway some three chains before arriving at the accident spot.

As to the second and third issues, several factors must be balanced. The excellent road surface, slightly down-gradient, might be conducive to speeding, particularly by a big truck returning to base, Kingston, after delivery of goods and virtually empty. Even at a moderate pace, its momentum would be considerably greater than that of the pick-up, the latter presumably slowing for its exit turn.

Save that the pickup came to rest by a light-post and sustained considerable damage as the photo-print Exhibit 5 shows, it was certainly not pushed beyond its exit turn nor into a turn-around position ordinarily associated with an impact of considerable force. But, neither could it be said to have pushed the truck except to impart moderate deflection. The position of the latter suggests moderate speed just before impact, its momentum, relatively controlled.

Newell's failure to be aware of the truck before the impact denotes his omission to satisfy himself that he could safely make the exit turn.

In the event, I find that he was the driver substantially at fault.

Contributory Negligence

In the light of the findings above, this merits only passing mention, and only because of submissions by the defence. On neither presentation was it an issue. The plaintiff opted not to join Newell (incidentally his employer at the time) as a defendant; neither did the defendants make him a third-party for indemnity or contribution in the event of an adverse finding.

Section 3 of the Law Reform (Tort-feasors) Act explicitly deals with:

> "Proceedings against and contribution between joint
> and several tort-feasors."

Sub-section 3(1)(a) reads:

> "Where damage is suffered by any person as a result of a tort (whether or not such tort is also a crime) –
> judgment recovered against any tort-feasor liable in respect of such damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage." (emphasis supplied)

There will be judgment for the Defendants against the Plaintiff, with costs, taxed or agreed, but reduced by one-third.

The reduction reflects the undue protraction of proceedings, controverting as the defence did, that the pick-up, returning from Tydixon had re-engaged the highway in a manner other than as found.