

Liberty

Judgment Book

SUPREME COURT
KINGSTON
JAN 1997 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. 1994/B057

BETWEEN WILLIAM BLACKWOOD PLAINTIFF
AND GLORIA STEPHENSON 1ST DEFENDANT
AND ALEXANDER STEPHENSON 2ND DEFENDANT

Miss N. Anderson instructed by Crafton Miller & Co for Plaintiff

Mr. Hector Robinson instructed by Patterson, Phillipson & Graham for second Defendant.

Heard - September 18, 19, 23, November 28, 1997

REASONS FOR JUDGMENT

HARRISON J.

Cause of Action

The plaintiff brings this action in Negligence against the Defendants. The first Defendant is now deceased so the plaintiff proceeded solely against the second Defendant. On November 28, 1997 I gave judgment for the second Defendant both on the claim and counter claim in the sum of \$7,000 with costs to be taxed if not agreed. I had promised to put my reasons for judgment in writing so I now seek to fulfill this promise.

Evidence led on behalf of the Plaintiff

Evidence led on behalf of the Plaintiff came from the Plaintiff himself and a witness called on his behalf. The plaintiff had testified that on the 29th day of March 1993 he was riding his pedal cycle

from Gordon Pen, St. Catherine to his work place in Portmore, His route took him through De La Vega City, across the Spanish Town by-pass road, Lilliput road and finally unto Port Henderson Road. His evidence revealed inter alia:

“....On the morning I ride along and come across the highway, come down Lilliput Road and enter Port Henderson Road. I ride through De La Vega City come to the by-pass.....I come across the by-pass. No accident happened when I crossed the by-pass road. After I come across I come down Lilliput Road. I continue on my way. I enter pon the Port Henderson Road.....I continue on my left straight ahead. I was riding on the left hand side of the road along Port Henderson Road. After I turn left the accident happened about ¼ mile from there.”

He further testified that Port Henderson Road meets with Lakes Pen Road and that there was a stop sign facing traffic proceeding along the latter road. He described the location and said:

“ I was coming along. On reaching the intersection of Lakes Pen and Port Henderson Roads I saw a car coming from Lakes Pen Road. When I see that the car was coming towards me I swerve away on mi right and there I got knock down. I never see the car stop at the stop sign.

...the car was coming very fast, about 30 - 35 m.p.h.
The car stop on me. I was on the right side of the road when the car hit me.”

Under cross-examination he said that there was a stop sign at the intersection of the Spanish Town by-pass road and the road which forms the junction with a road leading from De La Vega City. He said he had stopped at that intersection before he rode across the highway in order to enter Lilliput Road.

He agreed that the by-pass road would be the major road and maintained that not much traffic was on the by-pass road when he got there. Under further cross-examination he said that he was aware of only one accident that morning and that it took place at the intersection of Lakes Pen Road and Port Henderson Road which is some distance from the Spanish Town by-pass road and Port Henderson Road.

The plaintiff was admitted into Spanish Town Hospital. He had multiple injuries including a comminuted fracture of the middle third of the left tibia/fibula. There was hip dislocation which was reduced. The leg was treated by external fixation. He was referred to Kingston Public Hospital and was seen at regular intervals. On August 1, 1994 Dr. K. Williams indicated that there was a need for open reduction of the fracture, debridement of the infected bone and bone grafting. He went to the late Professor Sir John Golding who saw no clinical movement at the fracture site and the fracture of the tibia appeared to be healed. He was last seen by Professor Golding on the 4th November 1994. He opined that the plaintiff had not yet reached maximum medical improvement and he would probably have an impairment of about 20% of the lower extremity. Dr. A Mansingh, Orthopaedic Consultant saw the plaintiff on the 5th September 1997 for the purposes of a medical report. His examination of the plaintiff revealed a malunion of the fracture site of the leg, that it was in good alignment and had healed. There was no evidence of draining sinuses or active infection. He was assessed as having a healed fracture but a cosmetically unacceptable malunion representing a 3% whole person impairment. There was some risk of the plaintiff developing chronic osteomyelitis in the future.

It did cost the plaintiff \$7,420.00 to replace his bicycle. Counsel had submitted a reasonable sum for loss of earnings would be \$62,400.00, that is 2 years at \$602.77 per week. Medical expenses were agreed in the sum of \$28,366.94.

The plaintiff called Augustus Williams as a witness. He testified that he was standing at the intersection of Lakes Pen Road and Port Henderson Road on the date of the accident. He said inter alia:

"The accident was at "Y" section. Most on Port Henderson Road. The

driver near to come off Lakes Pen Road coming out of Lakes Pen Road on to Port Henderson Road.

The accident happened some time after seven in the morning. I was standing on the side of Port Henderson Road with my back turned to Bernard Lodge. My face is towards Spanish Town. I see the car man lick the bicycle in the middle. The bicycle was on Port Henderson Road..."

Under cross-examination he admitted that a number of accidents do occur at the said intersection he was standing. He further admitted that from where he stood he could not see traffic coming from Lakes Pen Road and he never saw the car until the collision took place.

Evidence led on behalf of the second defendant

The second defendant testified that on the morning of the 29th March he was driving his wife's car to work in Old Harbour. He left from Stony Hill in St. Andrew at about 7:00 a:m and travelled along the Mandella Highway then to the Spanish Town by-pass road. He was driving on his left and on reaching the intersection of Port Henderson Road and the Spanish Town by-pass road he saw a police radio car to his left and that it had stopped at a stop sign on the Port Henderson Road. He eased down and beckoned with his hand to the driver of the police car to proceed but the driver beckoned back to him to continue. He said:

"... I continue. While I was going along by-pass road there was a big truck park over the other side of the road and a bicycle man coming from up Port Henderson road just fly across from my right and he switched in front of my car and he hit in the car, mash the headlight and he was thrown by force of car over the left hand and thrown into the soft shoulder. There was a stop sign on Port Henderson Road..."

The accident took place about 7:45 a : m . The traffic was not so busy

at that time. Most people were going to Town. Traffic going towards Kingston was heavier."

He also testified that he had never driven along Lakes Pen Road and neither did he travel via Lakes Pen Road and Port Henderson Road on his way to Old Harbour on the morning of the accident. He denied that the accident occurred at that intersection. Under cross-examination he said:

"The police car was my left. I never come to a full stop when I signalled him. I slowed down to about 5 m.p.h to signal him to proceed. The driver beckoned to me to continue. I continued by footing (sic) on gas. I reach to about 35 m.p.h. I drive pass the police car. After I pass the police car the bicycle man fly cross way the stop and go and fly in front of my car."

He was asked whether or not he had seen the cyclist before the accident. He responded as follows:

"I first saw the bicycle man coming down Port Henderson Road from Spanish Town. He was about Three (3) chains away when I first saw him. I had reached to where I was signalling the policeman when I saw him. I was moving off when I see him.

I agree that the bicycle man would have to come up a grade to the stop and go. On top of the road is where the road meets the by-pass."

In relation to the parked truck he said:

"The truck was parked on my right. It park a few chains from the crossing of Port Henderson Road and the by-pass. The truck was closer to the Kingston end. It was parked at spot before you got to the intersection.

I would have to cross intersection to level with the truck. I don't know

if it was closer to Kingston or closer to Old Harbour. The truck never block my view. I saw everything. The accident happened before I pass the truck.”

Cpl. Donald Hines gave evidence on behalf of the second defendant. He was stationed at Spanish Town at the time of accident. On the morning of the accident he was on his way to work and was travelling in a police car driven by Ag. Cpl. McLean. They travelled along Lakes Pen Road and then went on to Port Henderson Road where it meets with the Spanish Town/Old Harbour by-pass road. He said that at about 7:00 a.m. when they got to the said intersection the by-pass road was very busy. Vehicles were going in both directions. He said:

“ I noticed a pedal cyclist was coming from De La Vega City section. I can't recall seeing a stop sign at the intersection of by-pass road and road from De La Vega City. One coming from De La Vega City would be required to stop though because it is a very busy highway.

The line of traffic going to Kingston slowed down and the cyclist got a break and was riding across to the other section of the road. The flow of Traffic on the other side was flowing continuously. He was trying to cross on to the other section of the highway when he rode into the path of a motor car.”

Under cross-examination, Cpl. Hines said that the intersection of Lakes Pen Road and Port Henderson Road was about four (4) chains from the by-pass and Port Henderson Road. He also said that at the time of the accident his vehicle was facing the by-pass road and his driver was trying to cross the by-pass road. He saw the defendant's motor vehicle coming from Kingston direction and proceeding towards the direction of Old Harbour at about 25 - 30 m.p.h. When asked about the vehicles proceeding towards Kingston direction he said:

“ The traffic going towards Kingston slowed down. I can't recall seeing the cyclist before the cars slowed down. Motor cars were

coming up the highway also from De La Vega City end. When the cars slowed down the cars turned left towards Kingston. That is time the cyclist got a break and he came across. The car that hit cyclist had slowed down before the collision.

.....

The car did not pass us before the collision took place. I would say it was precisely in front of us when the collision occurred. The car was travelling on the left towards Old Harbour at the time of the collision."

In relation to the location of the accident he was asked:

Q. "Is it possible that you are mistaken as to where the accident happened?"

The witness answered:

A. "I am not mistaken. The accident never occurred at the intersection of Lakes Pen Road and Port Henderson Road. It happened precisely at the by-pass."

Issues

The issues I had to decide in my view were:

1. The location of the accident.
2. The point of impact.
3. Whether there was a stop sign at the location where the accident occurred.
4. Whether other vehicles apart from the defendant's motor car were on the road at the time of the collision.
5. Whether there were eye-witnesses to the accident.

The relevant Law

Section 44 (1) (d) of the Road Traffic Act provides that a motor vehicle shall not be driven so as to cross or be turned in a road if by so doing it obstructs any traffic. Regulation 193 of the Road Traffic Regulations states as follows:

“All traffic shall stop at such sign and before continuing shall ascertain that there is no on-coming traffic near enough to cause danger of an accident.”

What are the respective duties therefore of a motorist on a major road and of a motorist on a minor road where they are approaching the junction of a major road and the minor road? The Court of Appeal held in the case of *Hall & Spence v Shepherd* 10 JLR 515 that at such an intersection which is controlled by a stop sign, there was always the possibility of a motorist entering the intersection from the minor road after having stopped in obedience to the stop sign and that it behoved the motorist on the major road to approach the intersection at a speed which enabled him to take precautions to avoid an accident. It means then that the point of time when the motorist or cyclist enters the intersection after coming to a stop depended on his judgment as to whether or not traffic is near to cause danger of an accident if he were to emerge from the minor road.

Findings

The credibility of the witnesses in the instant case was of great significance. I had the opportunity of assessing their credit-worthiness and to observe their demeanour. I must say that at the end of the day I was impressed however with defendant's account of how this accident occurred. I accepted both the second defendant and his witness Cpl. Hines as witnesses of truth. On the other hand, I did not find that the plaintiff gave an honest account of this accident and I found him to be untruthful. So far as the plaintiff's witness, Augustus Williams is concerned, he failed to impress me as a witness of truth and I got the distinct impression that he was not an eye-witness to the accident. The following were the facts that I found :

1. That an accident did occur at the intersection of the Spanish Town by-pass road and Port Henderson

Road sometime after seven o'clock in the morning on the 29th March, 1993.

2. That there was a stop sign erected at the intersection where Port Henderson Road (coming from the vicinity of De La Vega City) meets the by-pass road.

3. That there was also a stop sign at the point where the police vehicle had stopped at the opposite end where Port Henderson Road which continues across the by-pass road, intersects the said by-pass road.

4. That the second defendant was proceeding between 25 - 30 m.p.h on his left along the Spanish Town by-pass road from the direction of Kingston and had slowed down to allow the police vehicle on his left to emerge from the stop sign where it had stopped.

5. That the driver of the police vehicle beckoned to the second defendant to continue whilst he remained stationary at the stop sign.

6. That there was vehicular traffic going in the directions of Kingston and Old Harbour respectively, along the Spanish Town by-pass road shortly before the collision.

7. That there was a truck which was parked on the right hand side of the Spanish Town by-pass road in close proximity with Port Henderson Road coming from the direction of De La Vega City.

8. That vehicles proceeding towards Kingston had slowed down and the plaintiff who was riding his pedal cycle from the direction of De La Vega City seized the opportunity go across the busy by-pass road.

9. That the plaintiff did not stop at the stop sign erected at the intersection of Port Henderson Road and the Spanish Town by-pass road; he proceeded to enter the major road and collided with the second defendant's motor car which was travelling on the left and on its proper side of the by-pass road.

10. That this accident did not occur at the intersection of Lakes Pen Road and Port Henderson Road as contended by both the plaintiff and his witness. Further that this intersection was some four (4) chains away from the point where the accident occurred.

Conclusion

It was my considered view that the facts presented depicted the case of a pedal cyclist coming out from a side road and riding into the path of a motorist who had the right to use the main road expecting that traffic coming from De La Vega City direction to his right, would conform with the requirements of the law that he should halt and the further requirement that proceeding from a minor road he should give way to traffic proceeding along the main road.

In the circumstances judgment was given for the second defendant on the claim and counterclaim with costs to be taxed if not agreed.