Privy Council Appeal No. 3 of 1958

John Wesley Phipps - - - - - - - - - *Appellant*

Winston Everard Eugene Powell - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF BERMUDA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL, 1959

Present at the Hearing:

LORD SOMERVELL OF HARROW
LORD DENNING
MR. L. M. D. DE SILVA

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal by the defendant from a judgment of the Supreme Court of Bermuda (The Honourable Sir Allan Smith, Assistant Justice) awarding the plaintiff £6,562 14s. 0d. for damages for negligence.

The plaintiff who was eighteen or nineteen years old at the time of the accident was riding as a pillion passenger on a motor bicycle driven by his father. The defendant was driving a motor car. The plaintiff was coming south down Cedar Avenue and the defendant was coming along Angle Street, from the East intending to cross Cedar Avenue.

The first question is whether the defendant drove negligently and if so whether that negligence was a cause of the accident. The learned Judge was favourably impressed by all the witnesses. The plaintiff's father said that as he approached the cross roads he passed two boys on auxiliary bicycles. He saw the defendant's car stop at the stop sign in Angle Street. Cedar Avenue is the main road. He assumed the car would stop for him to pass. The car however came out slowly into Cedar Avenue and turned right—that would be towards the continuation of Angle Street which is staggered to the north. The plaintiff's father said he braked suddenly and turned left into the entrance to Angle Street to avoid hitting the car. He took out his clutch as he braked ; but he lost his balance somewhat at the sudden turn ; accidentally let the clutch in again and his bicycle shot ahead and hit the wall in the south of Angle Street. It was the two jerks first at the braking and second when the clutch engaged that threw the plaintiff off the seat and caused the injuries.

This account is confirmed in substance by the defendant. He said that he stopped at the stop sign. He saw the plaintiff's father pass the auxiliary bicycles. " He appeared to be coming pretty fast." The defendant then, he said, pulled in line with the west edge of the sidewalk. It is not possible to see traffic approaching from the south from the stop line. Having already seen the plaintiffs father when he was at the stop sign he continues " I now "—that is when he had already come over the stop sign some distance—" looked to the right and noticed Powell coming

pretty fast and he appeared to be coming directly at me and then pulled out and crossed Cedar Avenue." If there was, as the defendant thought, a pause when he was in line with the west edge of the sidewalk it must have been of inappreciable duration. It is also clear that at that stage the car or most of it must have been well out in Cedar Avenue.

On this evidence it is in their Lordships' opinion plain that the defendant was negligent. He should clearly have waited at the stop sign till the plaintiff's father, who appeared to be going pretty fast had passed. It is said that as the auxiliary bicycles succeeded in passing in front of the car the plaintiffs father could have done the same. It was however a perfectly reasonable assumption when he saw the defendant move over the stop line that he would go straight over the road and the safer course was to turn into Angle Street. Once that is decided it is impossible to treat his loss of balance and the letting in of the clutch as a new and independent cause of the accident.

The question whether the plaintiffs father was driving too fast only arises if this could be treated as the sole cause of the accident. It clearly cannot. If the defendant was right when he said the motor bicycle appeared to be coming pretty fast when he saw him from behind the stop line that would be a further reason for waiting until he and the other bicycles had passed.

It was then submitted that the plaintiff was himself negligent in not holding on to his father. On this point the learned Judge allowed the parties to call expert evidence. There was a conflict. One witness said it was better to hold on. Two others on the whole thought it better not to. The learned Judge who heard the evidence was in a better position to resolve this conflict than are their Lordships. Their Lordships see no reason to differ from the learned Judge who held that the plaintiff was not negligent in having his hands on his knees.

The last point was on damages. The injuries were severe and permanent. The vertebrae which were injured are deformed and this prevents the plaintiff doing heavy manual work. There is a residual anaesthesia which affects the bladder and the nerves of the buttocks. There is a probability of arthritis with further probable disability. He had hoped to follow his father's trade as a mason but this is now impossible. The learned Judge awarded £6,000 in addition to special damage of £562 14s. 0d. When an appeal was entered he added " Reasons for Judgment " under section 14 of the Bermuda Appeals Act, 1911. He had assessed, he said, " £2,000 as representing pain, suffering, discomfort and general disability plus risk of further illness and shortening of life consequent on the serious and permanent injury to the spine and bladder, and £4,000 as representing loss of earning capacity of approximately £200 a year."

The defendant submitted that the evidence did not support the figure of £200 a year and further that whatever was the right figure for estimated annual loss it should not be multiplied by twenty. The plaintiff submitted that if the figure of £4,000 was too high the figure of £2,000 was too low. Their Lordships think the figure of £2,000 was well justified but see no grounds for increasing it.

The plaintiff before the accident was earning £15 a week as a skilled mason's labourer. There was no evidence as to his prospects as a mason. Since the accident, the effects of which he clearly met with courage and determination he has obtained work as a postman. The immediate difference is £4 a week but he himself said he hoped for increases. Apart from the probability of his earning more in the future as a mason their Lordships think the figure of £200 a year is justified by the general disadvantage in the labour market due to his disability. On the other hand they think the multiplier is too high.

Their Lordships will humbly advise Her Majesty that the appeal be allowed as to the quantum of damages and judgment entered for £5,562 14s. 0d.

The appellants will pay four-fifths of the respondent's costs of the appeal.

(39736) Wt. 8021—25 100 4/59 D.L.

In the Privy Council

JOHN WESLEY PHIPPS

v.

WINSTON EVERARD EUGENE POWELL

DELIVERED BY
LORD SOMERVELL OF HARROW

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