

30-07-04

IN THE CAYMAN ISLANDS COURT OF APPEAL

Civil Appeal No. 34/03
Grand Court Cause No. 740/01

BETWEEN:

RODNEY CHESTNUT

(Defendant) Appellant

and

LOFTER BLAIR VALGARDSON

(Plaintiff) Respondent

BEFORE:

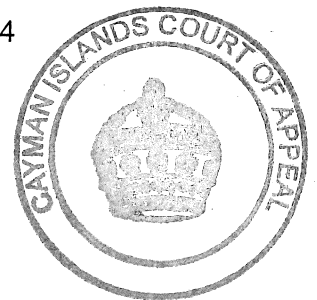
The Rt. Hon. Mr. Justice E. Zacca, President
The Hon. Mr. Justice G. Collett, J.A.
The Hon. Mr. Justice I. Forte, J.A.

Appearances: Melanie Crinis of Campbells for the Appellant and Hector Robinson of Quin & Hampson for the Respondent.

Heard: 20th July, 2004

Delivered: 30th July, 2004

JUDGMENT & REASONS



Collett, J.A.

This is an Appeal against the Judgment of Mr. Justice Panton in the Grand Court, whereby the learned Judge found the Appellant to be 100% responsible for the damages sustained by the Respondent/Plaintiff in a road accident, which occurred on 27th March, 2000 on West Bay Road, Grand Cayman. The Respondent had been travelling southwards on his pedal cycle

when, as the Judge found, he was struck by the Appellant's motor car being driven across the path of his cycle in an attempt to turn to the right from the centre lane of the road into the West Shore Centre.

The Respondent had been riding on the extreme left hand side of the road, in a position which the evidence showed was regarded generally as being the customary lane for cyclists, a factor which was within the knowledge of both parties, even though it has not been legally designated as such pursuant to the Road Traffic Law. The learned Judge found that his speed at the relevant time did not exceed 10 mph. As he approached the entrance to the shopping centre the Respondent noticed the traffic was at a halt in the southbound lane of the road behind a substantial sized bus, which was positioned just before the entrance to the shopping centre is reached. Seeing that the lane before him was clear he continued warily onwards and had nearly cleared the entrance when his cycle was struck in the vicinity of the front wheel forks by the front of the Appellants vehicle which had turned across his path in front of the stationary bus. The Respondent was unable to avoid the collision although he applied his rear hand brake, and the force of

the impact catapulted him over the handlebars into the side of the road, causing his right wrist to be fractured.

The relevant facts were not generally in dispute and where a dispute existed at the trial the learned Judge, as he was entitled to do, preferred the evidence of the Plaintiff/Respondent and found that the particulars of negligence alleged against the Appellant in the Statement of Claim had been proved. He held the Appellant to be totally responsible for the accident.

The Appellant's evidence at trial had been that he was stationary in the centre lane of the road facing north and waiting for a break in the stream of southbound traffic to enable him to proceed to his right into the shopping centre entrance. He noticed the bus stop and the driver signalled him to proceed in front of him. He hesitated to do so until the bus driver repeated his gesture, whereupon he put his car into motion and turned to his right in front of the bus.

It is clear from the Authorities and in particular Clarke vs. Winchurch and others (1969), 1AER 275, that the Appellant was not entitled to rely upon

the bus driver's signals as indicating that it was safe to turn: these only could be taken that the driver himself was prepared to let him proceed. In doing so without taking sufficient precautions to ensure, *inter alia*, that no cyclist was approaching from behind the bus, the Appellant was clearly negligent. The only question for this Court is whether, as the Judge found, he was solely responsible for the collision or whether some proportion of the blame ought to rest with the cyclist.

We have carefully considered the authorities helpfully cited to us by counsel but, since every traffic incident is peculiar to its own facts, we are not greatly assisted by these. The Respondent's evidence, which the Judge accepted, indicates that he had all but cleared the southern end of the entrance before his cycle was hit. This is confirmed by the sketch map prepared by the investigating police officer and by the evidence of the professional examiner who analysed the physical evidence and whose testimony was accepted by the Judge.

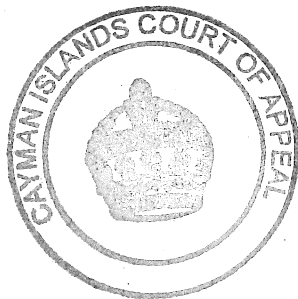
There might have been room at first instance for the trier of fact to apportion some minimal percentage of blame to the Respondent for not slowing down

further as he passed the bus or for not glancing to his right as he cleared the front of that vehicle. It is by no means certain that even if he had done so, the Respondent could have avoided the collision. In any event, it is not for this Court which has not enjoyed the advantage which the trial Judge had of seeing and hearing the witnesses to substitute any of our individual views for those which he formed at the conclusion of the trial.

We can therefore see no good reason to interfere with the findings of fact of the learned Judge. Accordingly this Appeal is dismissed with costs and the Judgment below is affirmed.

E. Zacca, P.

G. Collett, J.A.



I. Forte, J.A.