

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HELD AT GEORGE TOWN, GRAND CAYMAN

CIVIL APPELLATE JURISDICTION
BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD
CAUSE NO. 284/86
C.B.E., Q.C., J.P.

S.G. CIV. APP. NO. 3/86

The 6th August 1987.

4-09-87

BETWEEN	PAULA MERREN	APPELLANT/DEFENDANT
AND	BARBARA HODGSON	RESPONDENT/PLAINTIFF

Mr. Parkinson for appellant

Mr. Jenkins for respondent.

JUDGMENT

This is an appeal against the award of damages to the respondent in consequence of an accident between the car driven by the appellant and the car driven by the respondent. The accident occurred between 12 midnight and 12.15 a.m. on Christmas day, 1985, on the West Bay Road.

One ground of appeal merits consideration. It is in the following terms:

"The Summary Court erred in,

1. in law wrongfully admitting evidence of the Respondent/Plaintiff of her alleged loss and damage on the basis that the same was (1) hearsay and (2) offended the doctrine of certainty.

2.
3.".

The evidence of the damage to the respondent's vehicle is to be found in the photographs tendered - Ex. 2 - and the following passage in the respondent's evidence (and not otherwise) -

"The damage to my car was to left front bumper and left rear fender. I had an estimate for the repairs for the sum of \$850.00 I have not had the car repaired. I have it parked. The estimate

"is dated 17/3/86. The delay is caused because we both tried to settle it out of court."

The damage is clear to see from the photographs. However, no direct evidence was called on the question of quantum. The appellant now relies on the fact that that evidence is hearsay.

In my view, it is not open to the appellant to take that point at this stage. The evidence referred to above was admitted without challenge. It is the only evidence on the quantum of damage. If there was any objection to that evidence on that aspect it should have been taken at the relevant time. In the absence of any such challenge the learned Magistrate was entitled to accept it as the only unchallenged evidence on that aspect. It frequently happens that, in order to save costs, hearsay evidence on certain aspects of a case is admitted by consent without challenge, if it is not disputed. A party cannot sit back and allow such evidence to be admitted unopposed with a view to challenging it later on appeal. In the absence of any challenge the learned Magistrate was entitled to and did rely on it as the only, and unchallenged, evidence on the quantum of damage.

I could certainly not allow a party to escape liability on such a technicality which he acquiesced in at the relevant time, thus leading the court and his opponent to believe that the issue was not in dispute.

There is no merit in the remaining grounds of appeal. There was evidence before the learned Magistrate to justify his findings of fact and there are no sufficient grounds to disturb any of them.

For the foregoing reasons it is my view that the appeal must be dismissed with costs. It is so ordered.


Sir John Summerfield.

4th September 1987.