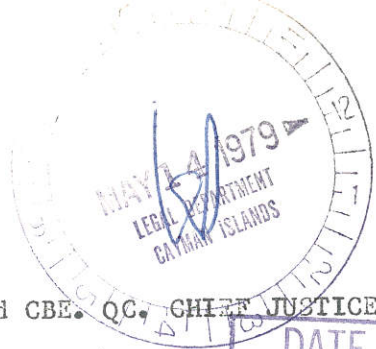


11.5.79



In the Grand Court of the Cayman Islands
Held at George Town on 15 March 1979

Before His Lordship, Sir John Summerfield CBE, QC, CHIEF JUSTICE

Cause No. 248 of 1978

ROBERT TRIGHT
v
DELVA EBANKS

Mr. Harding for plaintiff
Mr. Barrow for defendant

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FOR ACTION TO	
N F A PUT AWAY	Ø

JUDGEMENT

This action arises out of an accident at about 4.30 p.m. on the 22nd February 1978 on the West Bay Road opposite the construction site of the London House which was then being built. The plaintiff was driving his Honda motor cycle and the defendant was driving her Pontiac motor car.

At the hearing, it was agreed that the issue of liability should be tried first and that, depending on the finding on that issue, the question of damages would be determined.

On the preliminary issue I found that liability had been established and that the accident had been caused by the negligence of the defendant. I left open the question of contributory negligence, if any, for the final judgment when all issues are determined, including the reasons for the interim decision.

An interim order to that effect was made.

The reasons for that decision now follow.

In reaching my conclusions on the facts I have preferred the evidence of P. G. McLaughlin (who came to the scene shortly after the accident and prepared the sketch map Ex. 1), Franklyn Ebanks (time keeper and staff controller at the London construction site and responsible for the erection of the police warning notices) and Charles Stewart (a labourer working on the roof of a building on the site who had a birdseye view of the incident from close quarters) to that of the other witnesses where there

is any conflict.

The plaintiff is 63 years of age. At the relevant time he had a provisional licence for his Honda motor cycle and had had that licence for about five years. He had no other driving experience.

The West Bay Road is a main arterial road, some 23' 3" wide in the vicinity of the accident. On each side there is a shoulder about 3 - 4' wide. The weather conditions were good. The speed limit in this section ^{was} ~~is~~ 50 m.p.h. There were cars parked on each side of the road on the verge i.e. off the shoulder, in the vicinity of the accident.

The London House construction site was on the west side of West Bay Road. About 100 yards south (i.e. towards George Town) of the entrance to (or exit from) this building site was a sharp blind corner. The road leading up to this corner from George Town is straight for some distance, as is the road after this corner leading towards West Bay. Because of apprehended danger from traffic when workmen went to or left work on the site arrangements had been made to place police signs on either side of the entrance to the site. These signs, with a blue background, stood about 2½' high and were marked in white lettering "Police: Slow". Those signs were put in place before the workmen commenced work in the morning and were removed after work in the afternoon. This had been done for about 6 weeks before the accident. The relevant sign for the purpose of this case was on the left hand side, when proceeding north from George Town, about 30 yards before reaching the sharp bend. It was on the "shoulder" of the road. It was in place and erect at the time of the accident.

The defendant who lives in West Bay was familiar with this part of the road. She was aware of the London House development and sometimes saw the police signs in position as she passed the area. She would therefore have been aware that traffic used the entrance to the construction site.

irrelevant!

At the material time the plaintiff, who was a workman on the

construction site, was leaving the site on his Honda motor cycle. At the junction with the main road he stopped and looked to his left and right. The road was clear. He proceeded across the main road, virtually straight across it, but at a slight diagonal towards George Town, as he made his way towards the eastern side of the road to turn right and proceed into George Town. He was travelling at about 5 - 10 m.p.h. When the plaintiff was approximately in the centre of the road the defendant came round the sharp blind corner from the direction of George Town. As she came round the corner she was travelling at 30 - 35 m.p.h., having decreased her speed before making the corner. As the plaintiff continued across the road towards the east the defendant also kept pulling over towards her right (the east). She started braking and eventually collided with the plaintiff on his motor cycle, broadside on the plaintiff's right, when his front wheel was only 1' 8" from the eastern side of the road and the defendant's offside front wheel was only 2' 7" from that side. A score mark from the defendant's offside front wheel indicates that she had braked hard about 40' from the point of impact.

I accept that, as the plaintiff came across the road from the entrance to the construction site, he had his head over his left shoulder looking back at the site. He himself said that he never saw the car until it hit him. He heard no car horn, no screeching of brakes or sound of an engine.

I accept that, after the accident, the defendant said to the plaintiff words to the effect that, if she had driven straight, she would have hit the car - no doubt meaning one of the cars parked on her left on the grass verge.

The relevant provisions of section 55 of the Traffic Law are:
"55. It is the duty of every person driving any kind of vehicle upon a road -

- (a) to drive in such a manner as to have full control of the vehicle at all times;

- (b) to keep to the left half of the road except when travelling in a one-way street or overtaking, making a right hand turn or when otherwise directed by a traffic sign or signal or a police signal;
- (j) so to manage the vehicle as to be able to stop within the limit of vision available at any given time;
- (k) where any intersection or road junction is without a traffic sign or signal giving priority to any road, to drive in such a way as to avoid the possibility of collision with any other road user, irrespective of the relative size or condition of the intersecting or adjoining roads;"

Paragraphs (a) and (b) are amplified in the Traffic Code as follows:

- "4. (a) will be contravened by a driver who lets his attention wander, and the use of the hands, feet or eyes for purposes other than the business of driving may often result in such contravention;
- (b) does not require a driver to keep to the extreme left of the road when driving normally, a practice which can be dangerous having regard to the possibility of something suddenly coming onto the near side of the road; it is requisite, however, that drivers should give ample clearance to vehicles coming from the opposite direction or overtaking, and give way where there is an obstruction on their side of the road;...."

Section 52 of the Traffic Law provides:

"It is the duty of every road user to exercise care and attention when using the road and to have due regard to the safety and comfort of other road users and the preservation and protection of the public and private property."

I am of the opinion that the defendant contravened the duties

set out in section 52 and paragraphs (a), (b) and (j) of section 55.

She was not managing her vehicle so as to be able to stop within the limit of vision available as she came round the blind corner. This *was* compounded by failure to exercise due care and attention to the known dangers, and those warned by the police sign, as she came round the corner. Had she been exercising due care and attention, with full control of the vehicle, she would have avoided the accident by keeping to her proper side of the road. She did not start braking until well past the corner, although she would have seen the plaintiff as she came round it. She herself said that she saw the plaintiff just after she made the corner and that he was coming at an angle towards George Town to get to the other side of the road - going diagonally across the road; and that he was still moving as she came round the corner.

The plaintiff was also negligent in that, in looking backwards over his left shoulder, he was exercising insufficient care and attention to traffic hazards that might arise in the circumstances; and he could probably have taken avoiding action if he had been exercising due care and attention. Furthermore, having regard to the topography he should have proceeded at a greater speed than 5 - 10 m.p.h. to get across the road and thus get quickly out of the way of traffic which might come round the corner.

I apportion negligence which caused the accident on the basis of 50% being due to each party.

Special damages itemised in the Statement of Claim were admitted except for two items, namely, that particularised as "emergency visit \$190" and that particularised as miscellaneous expenses \$100". As to the emergency visit I find this claim proved. The claim for miscellaneous expenses was not proved.

Accordingly, special damages are ~~awarded~~ ^{assessed} in the sum of \$1428.95.

As a result of the accident the plaintiff suffered serious injury to his right knee. He was admitted to hospital on 22nd February 1978. He was in severe pain. He had a haemorrhage in the knee joint. There was great pain on movement of the joint and the joint ^{was} unstable and swollen. X-ray examination revealed a "plateau fracture" of the lateral condyle of the right knee. On the 23rd February 1978 a full length plaster cast was applied to the right leg from the base of the toes to a point about 2 inches below the groin. The application of the plaster reduced the pain. He remained in hospital for seven days. He ^{then} was discharged, still in plaster, to move about ~~a~~ crutches.

He was seen in the outpatients department on 21 March 1978 when his cast was strengthened. He was again seen in the outpatients department on 3 April 1978 when the cast was removed. He would have suffered moderate pain for about two weeks after the cast was removed. An X-ray showed good healing and reconstruction of the fracture site. There was still some swelling at the knee joint and limitation of movement due to long immobilisation. He continued on crutches for about a week when he was allowed to weight bear.

He was last seen in the outpatients department on 2 May 1978 when he was able to walk fairly well without mechanical aids. The knee was still swollen but had recovered nearly full range of movement. There was some instability i.e. lateral movements at the knee joint were excessive due to a torn medial collateral ligament of the knee joint.

He had a permanent disability in the right leg of about 10%.

There is a real possibility of arthritis developing in the affected area, become progressively more severe with advancing age.

The injury has affected his working capacity. He still gets some pain during inclement weather. His capacity to run has been reduced although it is doubtful if a man of his age would wish to do much running.

Bearing the foregoing in mind I assess general damages for pain and

suffering and permanent partial disability at \$5000.00.

Taking account of the fifty - fifty responsibility for the accident there will be judgment for the plaintiff in the sum of \$714.48 for special damages and \$2,500 for general damages amounting to \$3,214.48 in total, with ~~costs~~ *half his costs to be taxed or agreed.*

I will leave open to further argument the question of interest on this award.

SIR JOHN SUMMERFIELD

11th May, 1979.