J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 63/73

BEFORE: His Lordship Mr. Justice Edun, J.A. Presiding
His Lordship Mr. Justice Hercules, J.A.
His Lordship Mr. Justice Zacca, J.A. (Ag.)

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B E T W E E N Edith Williams - Plaintiff/Appellant

A N D David Wilkins - Defendant/Respondent

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Mr. Horace Edwards, Q.C. for Plaintiff/Appellant
Mr. R.N.A. Henriques for Defendant/Respondent

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11th June, 1974

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EDUN, J.A.:

The appellant gave evidence that on 18th of June, 1966, she was a passenger in the respondent's mini-bus which was on its way to Rock Hall. About an hour before the accident occurred, she heard something rolling underneath the vehicle. Her witness, Headley Moore, said that there was a scraping and a knocking underneath the vehicle. The respondent, who was owner and driver of the vehicle, stopped it and remained there for about an hour, and as Moore puts it, he was "allowing the engine to cool." The journey was resumed and on the way up the hill the vehicle suddenly stopped and began to run backwards. The respondent tried to bank the vehicle on the light pole but it turned over twice. The appellant was thrown outside and she suffered injuries. She claimed damages.

The defence was a denial of negligence. The respondent gave evidence. He said that nothing happened on the way, but up the hill the engine shut off because the tube leading to the gas pump had choked. He applied the brakes and the vehicle skid backwards and turned over. He does not deny that the appellant was injured.

The learned/.....

The learned Resident Magistrate gave judgment for the respondent holding that he accepted the respondent's version as being the more probable and that res ipsa loquitur did not apply. It is against that judgment that the plaintiff/appellant has appealed.

The learned attorney for the appellant submitted that on the evidence the onus shifted to the respondent to establish inevitable accident and he failed to do so. Among the cases cited in support of his submissions he relied mainly upon Barkway v. South Wales Transport Ltd. (1950) 1 A.E.R. 392; Henderson v. Jenkins (1969) 3 A.E.R. 756.

Learned attorney for the respondent, in reply, submitted that the respondent gave evidence as to the cause of the accident and explained how it happened: the vehicle was seven months old and was last inspected two months before the date of the accident; the vehicle was last checked for brakes, oil, and everything. The learned Resident Magistrate, he said, accepted the respondent's evidence and as the learned Resident Magistrate, has not acted unreasonably, the appeal must fail.

I am of the view that from the facts and circumstances of the case the doctrine of res ipsa loquitur applies in favour of the appellant and the onus shifted upon the respondent on a balance of probabilities to establish inevitable accident because the event charged on negligence "tells its own story" of negligence on the part of the respondent. "The story so told being clear and unambiguous;" per Lord Murray in Arthurs v. McGreggor (1927) Scottish Cases, 816. I am also of the view that accepting the evidence given by the respondent in its entirety, he has not discharged the onus of establishing inevitable accident. All that the respondent said; "The tube that leads to the gas pump had a choke and she shut off on a very steep hill and wet road. I applied my brakes. First thing, it started to skid backwards....the vehicle was seven months old....the vehicle was checked all the while, oil, brakes and everything.. ...last time was April....two months before is enough."

The learned Resident Magistrate had misdirected himself in holding, one, that the doctrine of res ipsa loquitur did not apply; two, that the respondent's evidence amounted to a discharge of the onus of inevitable accident, and, three, he has not gone on to state why he rejected the plaintiff's evidence about a defect in the vehicle one hour before the accident in question.

At this/.....

At this stage I can do no better than recite what Erle, C.J. said in Scott v. London Dock Co., (1865) 13 L.T. p.148, and cited with approval in Barkway v. South Wales Transport Co. Ltd. (supra) "Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, then it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from lack of care." If the tube that led to the gas pump of the motor car engine had a choke which caused the engine to shut off suddenly, that event would not in the ordinary course of things happen unless negligence is inferred.

The respondent goes on to state in his evidence that the choking of that tube came about through an accumulation of mud in the choke. That is only the stating of a fact and is no explanation which shifts any onus of inevitable accident. It is obvious that the last "checking of oil, brakes and everything" by the respondent two months before the date of the accident, was, in the circumstances of this case, an omission to do something which in the ordinary course of things was obviously necessary to be done more regularly and more frequently. In other words, the very fact which constitutes evidence of negligence, is what is relied upon by the respondent as an explanation to rebut the onus of inevitable accident. In such circumstances, the defence must fail.

For the reasons given, I would allow the appeal and enter judgment for the appellant.

HERCULES, J.A.:

I should like to add a few words of my own to what has been said on the question of liability. The matter is not free of difficulty because of the manner in which the learned Resident Magistrate expressed his findings of fact. After reciting the salient features of the evidence for both sides, he ended by stating at paragraph six of his reasons, "On the totality of the evidence, I accepted the defendant's version as being the more probable and give judgment for him accordingly."

There are two critical issues to be determined. Assuming for one thing that it can be held that the engine choke was something latent which could not have been seen or foreseen, and developed beyond the control of the defendant, the defendant still had to surmount the hurdle of the performance of his brakes. He said the vehicle shut off suddenly on a steep hill and wet road. So, the vehicle clearly came to a standstill. Why then the brakes could not hold the vehicle there, as they are obviously intended to do; and why the vehicle had to start to skid backways from a standstill, whether the road was wet or dry, is beyond me. In point of fact, the defendant said he steered his vehicle into the bank, but admitted that the steering is useless in a skid. He even admitted attempting to start it over and over before it crashed and with the emergency brake right up; he still started to skid.

From the situation where the learned Resident Magistrate failed to spell out his findings of fact, it is my view that he has left the facts and inferences from proved facts at large, and there is abundant well known authority for this court to interfere. See, for example, Lord Thankerton in Watt Or Thomas v. Thomas, (1947) Appeal Cases, 484, at page 487, and also Powell v. Hibbert (1963) 6 W.I. Reports, p.43. It is my view that out of the defendant's own mouth there emerges ineluctably the inference that his brakes were not effective. The defendant, therefore, ran foul of the line of cases starting with Barkway v. South Wales Transport (1950) 1 A.E.R. p.392; Bain v. Mohammed (1964) 7 W.I. Reports, p.213, and Henderson v. Jenkins (1969) 3 A.E.R. 756. The defendant gave no evidence of a system to ensure efficiency of his brakes. Such evidence as he gave of a general check some two months before the incident, revealed the necessity for more frequent and specific checks in view of the use

he said/.....

he said he was making of the vehicle and ~~notwithstanding~~ that ~~it was~~ only seven months old.

I would also enter judgment for the plaintiff/appellant instead of judgment for the defendant/respondent as the learned Resident Magistrate did.

ZACCA, J.A. (Ag.):

I also agree that this appeal should be allowed.

EDUN, J.A.:

The appeal is allowed. Judgment for the plaintiff/appellant in the sum of Two Hundred and Forty-One Dollars ($241.00) with costs of the trial, to be taxed or agreed upon. Costs of the appeal, Forty Dollars ($40.00) to the plaintiff/appellant.