

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE COURT CIVIL APPEAL NO. 82/72.

Before: The Hon. President
The Hon. Mr. Justice Edun
The Hon.. Mr. Justice Robinson (A.G.)

Carol Roberts v. Melville & Drew Construction Ltd.
- Negligence - Clarendon.

Mr. R.L. Taylor for the Plaintiff/Appellant.

**ATTORNEY GENERAL
CHAMBERS**

Mr. L. Cowan for the Respondent.

20th July, 1973.

GRAND CAYMAN B.W.L.

President:

This appeal arises out of an action for negligence which was heard by the learned Resident Magistrate in the parish of Clarendon, on the 10th of July, 1972, in which the learned Resident Magistrate found for the defendant with costs.

It appears from the evidence that the plaintiff was driving his car on the 7th of January, from Raymonds, going towards May Pen, when he came upon a double corner in the road and after going around the first corner and was about to take the second corner which was a lefthand corner to him, a pick-up passed him. After passing the pick-up he noticed a front end loader coming towards him at what he described as a 'hard' speed and he stopped, and the loader collided with its left bank, swung across the road to its right and hit into the car severely damaging it.

He was cross-examined and in the course of cross-examination denied that the driver in the pick-up was waving a red flag signalling him to stop. He also denied that the pick-up had been travelling in the middle of the road, and that he had overtaken it on its left, at a fast speed, having ignored the efforts of signalling. The defendant

company's driver, Louis Grant, testified that on that day, he was driving a pick-up in front of the front end loader, acting as a pilot to the loader; that he had in his hand a red flag which he used for the purpose of signalling any approaching traffic; that on coming to the double corner he then took to the middle of the road as the road at that particular spot was narrow, and because by doing so vehicles coming towards him could not easily pass him; that he saw the plaintiff's car approaching and he waved it down with the red flag but the driver apparently ignored the signal, passed him on his left side and went on. And that was as far as he knew, because the next thing was he noticed that the loader was not coming behind him, so he stopped the pick-up he was driving and went back to the spot where he then saw that the car had crashed into the loader.

The driver of the loader, one Stanley Williams, testified to the fact that he was being piloted by Grant in the pick-up, that he was on the left side of the road when the plaintiff's car suddenly came up and crashed into the loader he was driving. He said he was then going at a speed of about five to six miles an hour.

The learned Resident Magistrate made certain findings of fact in his reasons for judgment. He found, firstly, that the defendant company's front end loader was being piloted by the pick-up being driven ahead at the time of the collision. Secondly, that the driver of the pick-up, on seeing the plaintiff's car approaching at a fast speed, signalled to him to stop by waving the red flag he was carrying. Thirdly, that the driver of the plaintiff's car did not heed this signal but overtook the pilot car and crashed into the defendant's front end loader following behind. Fourthly, the account given by the witnesses for the defendant company

was correct.

The learned counsel for the plaintiff/appellant has submitted that the Learned Resident Magistrate erred in holding upon his findings of fact that the defendant/respondent was not negligent for the reason that the nature and characteristics of the road in the immediate vicinity of the accident as disclosed by the evidence, together with the position in which the pilot vehicle was being driven at the relevant time clearly necessitated the sounding of a horn of the pilot vehicle, of the vehicle behind, by way of warning to approaching vehicles; that the positioning of the pilot vehicle in the middle of the road was, in the circumstances, a dangerous and a negligent manner of driving and was substantially the cause of the plaintiff/appellant's passing to the left of the said vehicle and thereafter crashing into the front end of the loader; that the "safety measures" or "warning device" employed in the particular circumstances were inadequate and insufficient to meet the exigencies of the journey being made by the front end loader.

We have listened with interest to the submissions which the learned counsel has made upon his grounds of appeal, but we find ourselves unable to agree with him. We are of the view that every care was taken in order to prevent just such an accident as in fact happened, by the driver of the pilot vehicle, and in the circumstances the learned Resident Magistrate on the findings that he made, was entitled to come to the conclusion to which he did.

The appeal will, therefore, be dismissed with Forty Dollars costs to the respondent.

FOX J. A.

The appeal is allowed. The Judgment of the resident magistrate is set aside. Judgment is entered for the Plaintiff/Appellants in the sum of \$25 with costs to be taxed or agreed. An injunction as prayed is granted. The Appellants are to have the costs of the appeal faxed at \$40.