

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2025/0009

BETWEEN:

ERICA THOMAS

Appellant

and

KELLY PAUL

Respondent

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mde. Esco L. Henry
The Hon. Mde. P. Nicola Byer

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Justin Simon, KC with him Ms. Shannon Potter for the Appellant
Ms. Kivinee Knight-Edwards with Ms. Dericia Browne and Mrs. Elizabeth Drakes-Laviscount for the Respondent

2026: March 23;
July 30.

Civil Appeal – Motor Vehicular Collision – Appeal against findings of fact – Apportionment of liability – Whether the judge erred in apportioning liability equally between both parties - Whether the judge erred in finding that the appellant was driving at an excessive speed – Weight placed on photographic evidence – Whether the judge failed to give sufficient weight to the photographic evidence – Cross-Appeal – Whether the judge erred in finding that the respondent contributed to the accident at all - Whether the judge erred in placing unreasonable weight on the respondent’s operation of a left-hand drive vehicle in determining liability and apportioning responsibility for the accident

This is an appeal against the trial judge’s findings on liability whereby the learned judge determined that both the appellant and respondent were equally liable for a motor vehicular collision. The originating proceedings in the court below stem from an accident which occurred on 10th March 2017, involving a motor car driven by the appellant, Ms. Erica

Thomas ("Ms. Thomas") and a pickup truck owned by Mr. Kelly Paul and driven at the material time by his wife, Mrs. Helen Paul ("Mrs. Paul"). Mr. Kelly Paul (who died before the proceedings below were concluded and the matter thereafter proceeded through his wife, Mrs. Paul as representative of his estate) initiated proceedings in the court below alleging that Ms. Thomas negligently drove her vehicle into the pickup truck causing substantial damage thereto. The appellant, however, denied negligence and maintained throughout the proceedings that the collision was caused entirely by the manner in which Mrs. Paul manoeuvred the pickup truck into the roadway. Mr. Paul sought damages against Ms. Thomas for repairs to the pickup truck in the sum of \$53,342.24 together with interest and costs. Ms. Thomas thereafter filed a defence and counterclaim denying negligence and asserting instead that the accident was wholly caused by Mrs. Paul. In the counterclaim, Ms. Thomas sought special damages in the sum of \$12,180.00 together with general damages.

The central dispute between the parties concerned the positioning of the vehicles immediately before impact, the manner in which each vehicle was being driven, and whether either or both drivers had contributed to the collision by failing to exercise reasonable care whilst using the roadway. Mr. Paul claimed that Ms. Thomas, who was driving her vehicle in the opposite direction, suddenly and without warning swerved to her right and entered the pickup truck's lane causing a collision between the vehicles. On the other hand, Ms. Thomas contended that Mrs. Paul swerved to her right into the path of the appellant's vehicle and that the right front wheel of the pickup truck collided with the right side of the appellant's vehicle causing her vehicle to be pushed towards the gutter on the left-hand side of the roadway. Ms. Thomas further contended that in an effort to avoid entering the gutter, she sharply manoeuvred her vehicle to the right and it eventually came to rest at the rear of the pickup truck on the eastern side of the road.

In a judgment delivered on 20th February 2025, the learned judge determined that responsibility for the collision ought properly to be apportioned equally between the parties. In short, the judge found that Mrs. Paul's pickup truck was positioned in the middle of the roadway at the time of the collision and that this positioning impeded Ms. Thomas' ability to safely manoeuvre her vehicle, while on the other hand, Ms. Thomas had been travelling at an excessive speed. Judgment was accordingly entered for Mr. Paul (as the claimant) in the sum of \$21,947.50 together with prescribed costs and interest.

Both parties, being dissatisfied with the findings and conclusion of the learned judge, filed a notice of appeal and notice of cross-appeal respectively, predominantly challenging the learned judge's findings of fact on liability. The salient issues for determination by this Court are, in summary: (i) whether the learned trial judge erred in finding that the appellant was driving at an excessive speed; (ii) whether the learned trial judge failed to place sufficient weight on the photographic evidence of the respondent's vehicle which showed the right wheel angled outwards to the right from under the fender and in the path of the appellant's oncoming motorcar; (iii) based on the judge's finding that the respondent's pickup truck was positioned in the middle of the roadway with its right front wheel angled towards the appellant's vehicle, whether the learned trial judge erred in apportioning liability equally between the parties rather than holding the respondent wholly responsible for the collision or alternatively whether the judge was entitled on the evidence to find that the respondent had contributed to the accident at all; and (iv) whether the learned trial judge erred in placing

unreasonable weight on the respondent's operation of a left-hand drive vehicle in determining liability and in apportioning liability against the respondent on that basis.

Held: dismissing the appeal and cross-appeal, affirming the judgment of the trial judge and ordering that each party shall bear their own costs on appeal, that:

1. It is trite law that an appellate court would not lightly interfere with a trial judge's findings of fact where they are being challenged on appeal. This cautionary approach by the appellate court is also not confined to findings of primary fact but extends to the trial judge's evaluation of those facts and to the inferences drawn from them. To meet the threshold for appellate interference on findings of facts, an appellant needs to identify a material defect in the judge's reasoning or conclusion rather than merely advancing a competing interpretation of the evidence. Accordingly, an appellate court should not depart from a trial judge's conclusion on the printed evidence unless it is satisfied that the advantage enjoyed by the trial judge from seeing and hearing the witnesses could not sufficiently explain or justify that conclusion.

Watt (or Thomas) v Thomas [1947] AC 484 applied; **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2015] 1 LRC 232 followed; **Biogen Inc v Medeva plc** [1997] RPC 1 applied; **FAGE UK Ltd v Chobani UK Ltd** [2014] EWCA Civ 5 applied; **Augustin Stephen v Sabrina Butcher** SLUHCMAP2022/0007 (delivered 14th October 2024, unreported) followed; **Shaheel Jagroop (by his next friend Fabian Jagroop) v Lucretia Johnny (Administratrix of the estate of Gregory Johnny and Velina Johnny)** SLUHCVP2023/0023 (delivered 15th October 2025, unreported) followed.

2. Where an appellant alleges that there was no cogent evidence before the learned judge to support the finding that she made, the appellate court must first look at and analyse the evidence that was before the learned trial judge and determine whether from that evidence the judge was entitled to come to the finding of fact that she did. In this appeal, the issue of the speed at which the appellant was driving was a point of dispute, namely that the learned judge did not properly assess the totality of the evidence relating to the manner in which the appellant was driving. Having reviewed the evidence elicited from both the appellant and respondent, the testimony of the son of the respondent who was a passenger in the pickup truck and the evidence of the expert, the Court is satisfied that the learned judge was entitled to draw the reasonable inference that the appellant's vehicle collided with the respondent's truck at a considerable rate of speed. It was also evidentially open to the judge to conclude that the appellant was driving in an unsafe manner. To the extent that the appellant seeks to rely on alleged discrepancies between Mrs. Paul's oral testimony and her statement to the police on this issue, no particular discrepancy has been identified as materially undermining the evidence concerning the appellant's speed or as rendering the inference drawn by the learned trial judge unavailable to her.
3. The allocation of weight to be given to a particular piece of evidence is principally a matter for the trial judge. Where the complaint concerns the weight which the trial

judge attached to competing pieces of evidence, the appellate court must be especially cautious. Interference by an appellate court is warranted only where the weight attributed to the evidence produced a conclusion which cannot reasonably be explained or justified. In the appeal at bar, it is to be understood that the appellant's complaint is not that the error committed by the judge is that the photographic evidence was ignored, but rather that the learned judge did not treat them as establishing that the respondent was wholly responsible for the collision. The Court is satisfied that the photographs were carefully considered and not merely mentioned in passing and further appreciates that the photographs were not capable, standing alone, of establishing the precise position of the wheel before impact, the position of the respondent's truck upon the roadway or which vehicle first entered the path of the other. These matters required an assessment of the evidence as a whole. It is clear that the learned trial judge drew from them an inference favourable to the appellant and incorporated that inference into her ultimate assessment of liability. The fact that the appellant contends that greater weight ought to have been placed upon the photographs does not demonstrate that the learned judge's assessment was plainly wrong.

Shaheel Jagroop (by his next friend Fabian Jagroop) v Lucretia Johnny (Administratrix of the estate of Gregory Johnny and Velina Johnny)
SLUHCVP2023/0023 (delivered 15th October 2025, unreported) followed.

4. Where an appeal involves a challenge to the finding of the learned judge from two diametrically opposed viewpoints, it is incumbent on the appellate court to assess the evidence that was before the court to determine whether the finding was one which was open to the court to make, bearing in mind the principles of appellate restraint. It is clear on this appeal that the respondent considered that the learned judge was not entitled, on the evidence, to find that the respondent's vehicle had been positioned in the middle of the roadway at all which contributed to the accident, while the appellant took the opposing view that given the judge's finding on the position of the respondent's vehicle, then the respondent had to be, ipso facto, responsible for the collision and thus all the liability must rest with her rather than there being joint liability. The learned judge sufficiently engaged with the evidence before her, including the evidence of the expert which was heavily relied on in determining the manner in which the collision occurred given that he had seen the respondent's vehicle, as well as the evidence of the respondent and her witness. She was therefore entitled to make the findings that she did on the position of the respondent's vehicle. Further, the fact that the judge came to this conclusion does not automatically presume that the respondent was solely responsible for the accident as there was also evidence from which the judge could infer that the appellant had been driving in an unsafe manner which contributed to the collision. It was therefore entirely open to the learned trial judge to find that both parties had contributed significantly to the collision.
5. The statements made at paragraphs [46] and [48] of the judgment cannot be said to be conclusive findings by the judge that the respondent's operation of a left-hand drive vehicle was determinative of her liability and apportionment of responsibility

for the collision. When considered cumulatively, the paragraphs record the judge's comments as to the use of a left-hand drive vehicle but did not inform the finding of joint liability. The respondent's contention in this regard is not borne out.

JUDGMENT

- [1] **BYER JA:** This appeal arises from a decision of Drysdale J ("the learned judge") delivered on 20th February 2025, in which the learned judge found both parties equally liable for a motor vehicular collision which occurred on 10th March 2017 along the Seatons Main Road in Antigua and Barbuda, in the vicinity of the St. Stephen's Anglican Church. The learned judge accordingly entered judgment for the claimant in the sum of \$21,947.50 together with prescribed costs and interest.
- [2] The appellant, Ms. Erica Thomas ("Ms. Thomas"), was the defendant in the court below. The respondent, Mr. Kelly Paul ("Mr. Paul"), was the claimant. Mr. Paul died before the proceedings below were concluded and the matter thereafter proceeded through his wife, Mrs. Helen Paul ("Mrs. Paul"), who was appointed as the representative of his estate.
- [3] The proceedings below concerned a collision involving motor car A46506 driven by Ms. Thomas and pickup truck C3254 owned by Mr. Paul and being driven at the material time by Mrs. Paul. The essence of the claim was that Ms. Thomas negligently drove her vehicle into the pickup truck causing substantial damage thereto. The appellant, however, denied negligence and maintained throughout the proceedings that the collision was caused entirely by the manner in which Mrs. Paul manoeuvred the pickup truck into the roadway.
- [4] By claim form and statement of claim filed on 3rd July 2017, Mr. Paul sought damages against Ms. Thomas for repairs to the pickup truck in the sum of \$53,342.24 together with interest and costs. In the statement of claim, it was pleaded that on 10th March 2017, Mrs. Paul was driving the pickup truck in a northerly direction along the Seatons Main Road when Ms. Thomas, who was

driving her vehicle in the opposite direction, suddenly and without warning swerved to her right and entered the pickup truck's lane causing a collision between the vehicles. Particulars of negligence were pleaded against Ms. Thomas including failing to keep a proper lookout, failing to drive at a safe speed, swerving into the path of oncoming traffic and failing to stop or otherwise control her vehicle.

- [5] The matter did not proceed straightforwardly. A default judgment was initially entered against Ms. Thomas on 3rd August 2017. That judgment was, however, subsequently set aside by order dated 1st July 2019 and the matter thereafter proceeded to trial.

- [6] On 3rd July 2019, Ms. Thomas filed a defence and counterclaim denying negligence and asserting instead that the accident was wholly caused by Mrs. Paul. The appellant contended that Mrs. Paul swerved to her right into the path of the appellant's vehicle and that the right front wheel of the pickup truck collided with the right side of the appellant's vehicle causing her vehicle to be pushed towards the gutter on the left-hand side of the roadway. Ms. Thomas further contended that in an effort to avoid entering the gutter, she sharply manoeuvred her vehicle to the right and it eventually came to rest at the rear of the pickup truck on the eastern side of the road. In the counterclaim, Ms. Thomas sought special damages in the sum of \$12,180.00 together with general damages.

- [7] The pleadings therefore revealed from an early stage that the central dispute between the parties concerned the positioning of the vehicles immediately before impact, the manner in which each vehicle was being driven, and whether either or both drivers had contributed to the collision by failing to exercise reasonable care whilst using the roadway.

- [8] The evidential basis upon which the parties advanced their respective cases was comprised principally of the witness summary of Mrs. Paul, the witness statement of Mr. Jamine Paul, the witness statement of Ms. Thomas, the police report, the

photographs of the damaged vehicles, and an expert report emanating from Modern Auto Body Shop concerning the condition of the claimant's pickup truck and, in particular, the damage to the spindle and axle assembly, as well as oral testimony.

[9] In her witness summary filed on 4th May 2023, Mrs. Paul stated that whilst travelling along the Seatons Main Road near the St. Stephen's Anglican Church she observed Ms. Thomas' vehicle travelling 'at a high rate of speed', swerving and thereafter colliding with the pickup truck. Mrs. Paul maintained that she was at all times on her proper side of the roadway and further stated that the impact caused the axle of the pickup truck to break and the vehicle to stop at the point of impact.

[10] Ms. Thomas, however, maintained that it was the pickup truck which moved into her path. Indeed, the appellant's case throughout the proceedings was that the right front wheel of the pickup truck was angled outwardly towards the roadway and into the path of her approaching vehicle. This aspect of the evidence assumed considerable significance before the learned judge and now forms a substantial aspect of the appeal before this Court.

Judgment in the Court Below

[11] The matter came on for trial before the learned judge on 24th November 2024. The witnesses who testified were Mr. Jamine Paul, Mr. Stanlie Matthew, Mrs. Helen Paul and Ms. Erica Thomas.

[12] In the judgment delivered on 20th February 2025, the learned judge considered the oral testimony, the police report, the photographs and the expert material placed before the court. The learned judge accepted that there were deficiencies in aspects of the evidence presented by both parties. Nevertheless, after reviewing the factual matrix, the learned judge concluded that responsibility for the collision ought properly to be apportioned equally between the parties.

[13] The learned judge found that Mrs. Paul's pickup truck was positioned in the middle of the roadway at the time of the collision and that this positioning impeded Ms. Thomas' ability to safely manoeuvre her vehicle. The learned judge appeared to attribute this positioning, at least in part, to the operation of a left-hand drive vehicle upon the roadway.

[14] However, the learned judge also concluded that Ms. Thomas had been travelling at an excessive speed. In reaching that conclusion, the learned judge relied upon what was regarded as the significant force of the impact, the deployment of airbags in the pickup truck, the damage sustained to the vehicles, and the distance travelled by Ms. Thomas' vehicle after impact. The learned judge rejected Ms. Thomas' explanation that the distance travelled after the collision was attributable not to speed but to her efforts to avoid obstructing the roadway and to regain control of her vehicle.

[15] At paragraph [47] of the judgment, the learned judge stated:

“The Defendant's testimony regarding the circumstances of the collision raises several concerns. Her assertion that her extended stopping distance was attributable not to excessive speed but rather to a desire to clear the roadway for other vehicles is unpersuasive...”

[16] The learned judge therefore concluded at paragraph [48] of the judgment that both parties' actions materially contributed to the accident and that liability ought properly to be apportioned equally between them. Judgment was accordingly entered in favour of the claimant in the sum of \$21,947.50 together with prescribed costs and interest.

The Appeal and Cross-Appeal

[17] Dissatisfied with the findings and conclusions of the learned judge, Ms. Thomas filed a notice of appeal on 2nd April 2025 seeking to have the judgment set aside. The grounds of appeal advanced by Ms. Thomas are as follows:

- “(1) The learned trial Judge erred in finding that the Defendant was driving with excessive speed based on the testimony of the Claimant in her witness summary, and that of her son in his witness statement, both made on May 4, 2023, which contradicts the Claimant’s statement to the police given on the very day of the accident on March 10, 2017.
- (2) The learned trial Judge in coming to her conclusive finding of fact failed to place sufficient weight on the photographic evidence of the Claimant’s vehicle which showed the right wheel of her vehicle angled outwards to the right from under the fender in the path of the Defendant’s oncoming motorcar.
- (3) The learned trial Judge erred in accepting that the distance of 51 feet between both vehicles as indicated in the police report represented the Defendant’s stopping distance after the accident, in light of the Defendant’s evidence that following the impact she swerved from the gutter on her left to her right ending up at the rear of the Claimant’s truck, and then moved her car back to the left side of the road upon regaining control.
- (4) Having found as a fact that the Claimant’s truck was at the time of the accident in the middle of the road with its right front tyre angled towards the Defendant’s oncoming motorcar, the learned trial Judge erred in failing to hold the Claimant totally responsible for the accident.”

[18] The respondent, for his part, filed a notice of cross-appeal on 28th April 2025 challenging the learned judge’s finding that Mrs. Paul had contributed to the accident at all. The grounds of the cross-appeal advanced by Mr. Paul are as follows:

- “(1) The Learned Trial Judge erred in finding that the Claimant was positioned in the middle road. Having arrived at the above findings, the Learned Trial Judge failed to give sufficient or reasonable consideration, against the weight of evidence to the Witness Summary of the Claimant and her son filed on 4th May 2023, which remained unchallenged under cross-examination.
- (2) The Learned Trial Judge erred in fact and in law when she placed unreasonable weight on the Claimant (sic) operation of a left-hand drive vehicle to determine the issue of liability, and apportioned 50% to the Claimant because of the same.”

[19] The appeal and cross-appeal ultimately came on for hearing before this Court on 23rd March 2026 and judgment was reserved.

The Appellate Approach – Findings of Fact

- [20] Since several of the grounds of appeal challenge findings of fact made by the learned trial judge, it is necessary at the outset to consider the well-established principles which govern the circumstances in which an appellate court may interfere with such findings.
- [21] The determination of disputed facts is primarily the responsibility of the trial judge. The trial judge hears the evidence advanced by the parties, observes the witnesses as they give their evidence and considers that evidence in the context of the proceedings as a whole. Where the evidence consists principally of oral testimony, the trial judge must assess the credibility and reliability of the witnesses, including their honesty, candour and powers of recollection. The evidence is tested through cross-examination and the trial judge is therefore uniquely placed to evaluate the impression made by the witnesses during that process.
- [22] An appellate court does not enjoy those advantages. It is ordinarily confined to the written judgment, the transcript and the documentary evidence placed before the court below. It follows that the appellate court must exercise considerable caution before disturbing findings made by a judge who has seen and heard the witnesses. This principle was explained in **Watt (or Thomas) v Thomas**,¹ where the House of Lords stated that an appellate court should not depart from a trial judge's conclusion on the printed evidence unless it is satisfied that the advantage enjoyed by the trial judge from seeing and hearing the witnesses could not sufficiently explain or justify that conclusion.
- [23] The restraint exercised by an appellate court is not merely a matter of professional courtesy to the trial judge. It reflects the practical reality that an appellate court cannot recreate the trial or fully replicate the advantages enjoyed by the judge who presided over it. The written record cannot convey every matter of emphasis,

¹ [1947] AC 484.

hesitation, qualification or nuance which may have influenced the trial judge's assessment of a witness or of the evidence as a whole.

[24] In **Beacon Insurance Company Limited v Maharaj Bookstore Limited**,² Lord Hodge explained that the expression 'plainly wrong' does not refer to the degree of certainty with which the appellate court considers that it would have reached a different conclusion. Rather, it requires the appellate court to determine whether it was permissible for the trial judge to make the findings which were made in the face of the evidence as a whole. The appellate court must identify an error in the judge's evaluation of the evidence which is sufficiently material to undermine the conclusion reached. Such an error may arise where the judge failed properly to analyse the entirety of the evidence.

[25] This restrictive approach was recently applied by this Court in **Augustin Stephen v Sabrina Butcher**.³ There, the Court relied upon the following passage from **Re B (A Child) (Care Order: Proportionality: Criterion for Review)**:⁴

"Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first)."

[26] The principle of appellate restraint is not confined to findings of primary fact. It also extends to the trial judge's evaluation of those facts and to the inferences drawn from them. In **Biogen Inc v Medeva plc**,⁵ Lord Hoffmann explained that the expressed findings of even the most meticulous trial judge are necessarily an

² [2015] 1 LRC 232.

³ SLUHCMAP2022/0007 (delivered 14th October 2024, unreported).

⁴ [2013] UKSC 33.

⁵ [1997] RPC 1 at page 45.

incomplete account of the impression produced by the primary evidence. The reasons given are surrounded by matters of relative weight, emphasis, qualification and nuance which cannot always be precisely expressed but which may play an important part in the judge's overall evaluation. An appellate court should therefore not undertake a fresh evaluation of the evidence merely because no direct issue of credibility arises.

[27] The extent of the restraint required will nevertheless depend upon the nature of the particular finding under challenge. At one end of the spectrum lies a direct conflict of oral evidence in which the credibility and reliability of witnesses are decisive. In such a case, the appellate court will rarely be in a position to interfere. At the other end lies an inference drawn from undisputed primary facts or wholly documentary evidence, where the appellate court may be in as good a position as the trial judge to draw the appropriate inference. Where, however, the inference drawn is itself dependent upon the judge's assessment of the credibility or reliability of witnesses who gave oral evidence, similar caution must be exercised.

[28] In **Shaheel Jagroop (by his next friend Fabian Jagroop) v Lucretia Johnny (Administratrix of the estate of Gregory Johnny and Velina Johnny)**,⁶ this Court adopted the comprehensive statement of principle in **Group Seven Limited v Notable Services LLP**,⁷ which recognised that first instance conclusions fall along a spectrum extending from findings of primary fact to pure questions of law. The Court stated:

“At one end of the spectrum, the appeal court will rarely even contemplate reversing a trial judge's primary findings of fact. This appellate restraint extends also to the trial judge's evaluation of the significance of factual findings or the inferences to be drawn from them. The degree to which this restraint should be exercised in the individual case may, however, be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case or from first-hand experience of the testing of the evidence. In the end, however, no first-instance judicial

⁶ SLUHCVP2023/0023 (delivered 15th October 2025, unreported) at paragraph 31.

⁷ [2019] EWCA Civ 614.

conclusion is altogether immune from appeal and where a decision is shown to be wrong or to result from a serious procedural error, it is the duty of the appeal court to say so.”

[29] The trial judge’s immersion in the evidence is an important consideration. The judge will have heard the case unfold and will have considered the evidence as part of a connected whole. The appellate court, by contrast, ordinarily encounters selected portions of the record directed towards the grounds of appeal. This difference explains the observation in **FAGE UK Ltd v Chobani UK Ltd**⁸ that the trial judge has regard to the whole sea of evidence, whereas an appellate court is often only island hopping. It also explains why the trial is regarded as the main event and not as a preliminary attempt which may be repeated on appeal.

[30] The judgment in **Jagroop** further confirms that an appellate court will only interfere where the conclusion is plainly wrong. The relevant test was expressed in the following terms:

“It must either be possible to identify a material error in the judge’s process of reasoning – such as a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence; or, if there is no such identifiable error and the question is simply one of judgment as to the appropriate weight to be given to the relevant evidence, the appellate court must be satisfied that the judge’s conclusion cannot reasonably be explained or justified.”⁹

[31] Accordingly, where the complaint concerns the weight which the trial judge attached to competing pieces of evidence, the appellate court must be especially cautious. The allocation of weight is principally a matter for the trial judge. It is not sufficient for the appellant to invite the appellate court to place greater emphasis on evidence which the trial judge considered but did not regard as decisive. Interference is warranted only where the weight attributed to the evidence produced a conclusion which cannot reasonably be explained or justified.

⁸ [2014] EWCA Civ 5.

⁹ Henderson v Foxworth Investments Ltd [2014] UKSC 41.

- [32] Similarly, the fact that a judgment does not expressly refer to every item of evidence or every submission made by counsel does not, without more, establish that the evidence or submission was overlooked. Unless there is a compelling indication to the contrary, an appellate court will ordinarily proceed on the basis that the trial judge considered the evidence as a whole. A judgment is to be read fairly and in its entirety. The judge is required to identify the principal issues and give sufficient reasons to disclose the basis of the decision but is not required to rehearse every evidential detail or address every argument advanced.
- [33] Greater restraint is also exercised where the finding under challenge is a concurrent finding of fact, having been made or affirmed at more than one level of adjudication. As stated in **Jagroop**, the weight of the evidence, without more, is not a sufficient reason to depart from the settled practice of declining to interfere with concurrent findings. Ordinarily, some serious violation of legal principle or procedure, or some other exceptional circumstance, must be demonstrated.¹⁰
- [34] The authorities therefore disclose several circumstances in which interference with a finding of fact may be warranted. These include where the trial judge made a material error of law; made a critical finding unsupported by evidence; demonstrably misunderstood material evidence; failed to consider relevant evidence; failed to properly analyse the evidence as a whole; reached a conclusion which cannot reasonably be explained or justified by the evidence; or reached a conclusion which no reasonable judge could have reached. These examples are not exhaustive, but each reflects the need for the appellant to identify a material defect in the judge's reasoning or conclusion rather than merely advancing a competing interpretation of the evidence.
- [35] Findings of fact are therefore not immune from appellate review. The threshold for interference is, however, a high one. The appellate court must not retry the case or

¹⁰ Shaheel Jagroop v Lucretia Johnny SLUHCVP2023/0023 (delivered 15th October 2025, unreported).

substitute its own assessment merely because it would have preferred one version of the evidence or attached different weight to a particular circumstance. It must be satisfied that the finding under challenge resulted from an identifiable and material error, lacked a proper evidential foundation, or was otherwise outside the range of conclusions reasonably open to the trial judge.

- [36] It is against these principles that the appellant's challenges to the findings of the learned trial judge must be considered. Before addressing the individual complaints, I will examine the evidence which was placed before the court below and the findings which the learned judge made upon that evidence.

Issues to be Determined

- [37] The notice of appeal and the notice of cross-appeal raise several distinct grounds. However, upon review of the grounds and the parties' written submissions, the following four issues fall to be determined and will be discussed, in turn:

- (1) Whether the learned trial judge erred in finding that the appellant was driving at an excessive speed, having regard to the inconsistencies between the respondent's contemporaneous police statement and the later witness evidence, and in treating the 51-foot distance between the vehicles after the collision as representative of the appellant's stopping distance;
- (2) Whether the learned trial judge failed to place sufficient weight on the photographic evidence of the respondent's vehicle which showed the right wheel angled outwards to the right from under the fender and in the path of the appellant's oncoming motorcar;
- (3) Whether, having found that the respondent's pickup truck was positioned in the middle of the roadway with its right front wheel angled towards the appellant's vehicle, the learned trial judge erred in apportioning liability equally between the parties rather than

holding the respondent wholly responsible for the collision, and whether the learned judge further erred in finding that the respondent had contributed to the accident at all; and

- (4) Whether the learned trial judge erred in placing unreasonable weight on the respondent's operation of a left-hand drive vehicle in determining liability and in apportioning liability against the respondent on that basis.

Issue 1 – Whether the learned trial judge erred in finding that the appellant was driving at an excessive speed, having regard to the inconsistencies between the respondent's contemporaneous police statement and the later witness evidence, and in treating the 51-foot distance between the vehicles after the collision as representative of the appellant's stopping distance – Grounds 1 and 3 of the Notice of Appeal.

Appellant's Submissions

- [38] Counsel submitted that the learned judge erred in concluding that the appellant was travelling at an excessive speed in circumstances where there was no cogent evidence capable of sustaining such a finding. In support of this submission, reliance was placed on the dictum of de la Bastide CJ in **Trinidad and Tobago Electricity Commission v Bridgemohan Sookram and Another**,¹¹ approved by Byron CJ in **Grenada Electricity Services Limited v Isaac Peters**,¹² that:

“It is trite law that he who alleges must prove. The burden of proving an allegation of negligence is on the party who makes it.”

- [39] Counsel submitted that the learned judge's finding on excessive speed rested substantially on the witness summary of Mrs. Paul and the witness statement of Mr. Jamine Paul, both filed 4th May 2023, more than six years after the accident, and which contained material allegations absent from the contemporaneous police

¹¹ (1999) 57 WIR 473 at page 482.

¹² Civil Appeal No. 10 of 2002 (delivered 28th January 2003, unreported).

statement made by Mrs. Paul on 12th March 2017. Counsel highlighted that in the statement given shortly after the accident, Mrs. Paul merely stated that she observed a motorcar approaching in the opposite direction and thereafter heard a loud sound before the vehicles collided. There was no allegation that the appellant had been speeding or swerving. However, in the witness summary filed years later, Mrs. Paul alleged for the first time that the appellant was travelling 'at a high rate of speed' and had 'swerved' prior to impact.

[40] Counsel therefore argued that these later allegations represented a marked departure from the contemporaneous account and ought to have been approached with considerable caution by the learned judge. It was submitted that had the appellant in fact been speeding or swerving dangerously immediately before impact, those matters would undoubtedly have featured prominently in the original police statement. Counsel contended that the learned judge failed to properly assess the credibility and reliability of the respondent's evidence in light of these inconsistencies, particularly where there was no expert evidence, no independent eyewitness evidence and no physical evidence capable of objectively establishing speed.

[41] In contrast, counsel submitted that the appellant's account remained materially consistent throughout the proceedings. Reference was made to the appellant's police statement in which she stated that the respondent's pickup truck had come onto her side of the roadway and that she attempted to pull slightly to the left in order to avoid the collision. Counsel also relied on the photographs of the appellant's vehicle which showed damage near the driver's side door and fender junction together with damage to the side mirror and driver's door rather than frontal impact damage. Counsel argued that this pattern of damage was consistent with the respondent's pickup truck moving into the appellant's lane and striking the side of her vehicle.

- [42] Counsel further submitted that the learned judge erred in relying on the 51-foot post-collision distance recorded in the police report as evidence of excessive speed. It was argued that the appellant's evidence, which was neither contradicted nor discredited, was that following impact her vehicle was propelled toward the deep gutter on the left-hand side of the roadway and that she manoeuvred sharply to the right in order to avoid entering the gutter before eventually bringing the vehicle to a controlled stop behind the pickup truck. Counsel therefore submitted that the learned judge failed to engage with this explanation and instead adopted the 51-foot measurement uncritically as indicative of excessive speed.
- [43] Counsel also attacked the reliability of the police report itself, highlighting that it recorded that the appellant swerved to avoid a pothole notwithstanding that Mrs. Paul accepted in cross-examination that there was no pothole at the scene. Counsel further argued that the measurements recorded in the report lacked internal coherence and were incapable of reliably supporting any inference as to speed. In support of these submissions, reliance was placed on the dictum of Lord Wright in **Caswell v Powell Duffryn Associated Collieries Ltd**¹³ that:
- “There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish...”
- [44] Counsel therefore submitted that the learned judge's conclusion on excessive speed rested not on positive facts proved but on speculation and conjecture.
- [45] Counsel also challenged the learned judge's reliance on the deployment of airbags in the respondent's vehicle as evidence of excessive speed, arguing that airbag deployment may result from several factors including the angle and nature of impact and not necessarily the speed of the vehicles involved. In the absence of expert evidence concerning the speed thresholds required for deployment, counsel submitted that the learned judge had no proper evidential basis upon which to infer excessive speed from that fact alone.

¹³ [1939] 3 All ER 722 at 733.

[46] Counsel therefore submitted that the learned judge's finding that the appellant was travelling at an excessive speed was unsupported by the evidence and represented a conclusion which no reasonable tribunal properly directing itself could have reached. Counsel finally submitted that even if excessive speed had been established, which was expressly denied, speed alone does not automatically amount to negligence. Reliance in this regard was placed on **Grealis v Opuni**,¹⁴ **Michael Francois v Ryan Richards**¹⁵ and **Nigel Lindsey v James Allen**.¹⁶ Counsel therefore maintained that the learned judge erred both in fact and in law by treating the allegation of excessive speed as determinative of negligence without properly considering the broader factual matrix surrounding the collision.

Respondent's Submissions

[47] The respondent's starting point was that the appellant's challenge was fundamentally one against the learned judge's findings of fact and credibility and that such findings attract considerable appellate restraint. In support of this submission, counsel relied on the well-known dictum of Lord Thankerton in **Watt (or Thomas) v Thomas** concerning the deference to be afforded to findings made by a trial judge who had the advantage of seeing and hearing the witnesses testify.

[48] Against that background, counsel submitted that the appellant incorrectly characterised the learned judge's finding on excessive speed as having been based solely on the evidence of Mrs. Paul and Mr. Jamine Paul. Counsel argued that the learned judge expressly rejected the appellant's own evidence on the issue of speed and found her explanation for the extended stopping distance to be unpersuasive. Counsel therefore maintained that the learned judge's assessment of the appellant's credibility formed a central aspect of the conclusion that the appellant had been travelling at an excessive speed.

¹⁴ [2003] EWCA Civ 177.

¹⁵ GDAHCVAP2013/0033 (delivered 1st June 2018, unreported).

¹⁶ MNIHCV2009/0021 (delivered 26th July 2011, unreported).

- [49] Counsel further submitted that the appellant's denial of speeding was undermined during cross-examination and that the learned judge, having had the opportunity to observe the appellant's demeanour and manner of answering questions, was fully entitled to reject her account.
- [50] Counsel also rejected the appellant's contention that there was no corroborative evidence of speed. It was argued that the police report, which formed part of the agreed bundle and was relied on by both parties, recorded that the appellant's vehicle travelled approximately 51 feet after impact. Counsel submitted that this constituted objective physical evidence consistent with a vehicle travelling at an excessive speed. Further, counsel argued that the physical measurements, the resting positions of the vehicles and the evidence observed during the site visit all formed part of the evidential matrix considered by the learned judge.
- [51] Counsel therefore submitted that the learned judge did not rely on a single strand of evidence but instead considered the testimonial, documentary and physical evidence cumulatively in arriving at the finding on speed.
- [52] Counsel maintained that the learned judge properly assessed the totality of the evidence relating to the manner in which the appellant drove and was entitled to conclude, as she did at paragraphs [47] and [48] of the judgment, that the appellant had been travelling at such a speed which resulted in her acting in such a manner that was below the standard expected of a prudent driver and had thereby breached the duty of care owed to other road users.
- [53] Counsel therefore submitted that the findings of the learned judge were fully open to her on the evidence and disclosed no basis for appellate interference. The respondent accordingly urged this Court to dismiss the appeal in its entirety.

Discussion

[54] In considering this ground, it is clear that I have to look at and analyse the evidence that was before the learned trial judge and whether from that evidence she was entitled to come to the finding of fact that she did, on the issue of speed.

[55] At trial, evidence was elicited from all parties about the speed at which the appellant was driving. Thus, on cross examination of the respondent Mrs. Paul, she had this to say in response to questions from learned King's Counsel:

"Q. And when you say a high rate of speed, was she driving faster than you were driving?

A. Yes, sir.

Q. Would you have any idea of how fast she was – she may have been driving?

A. Well, I won't – I won't know –

Q. You wouldn't know.

A. – the limit, but it was fast indeed.

Q. Okay.

A. She fly over the hill.

Q. And then you saw the motor car swerve and it collided with your vehicle. So you say?

A. Yes. It collided."¹⁷

[56] She then went on to further state:

"Q. And you are saying out of the blue Mrs. Thomas swerved towards you and hit you.

A. Yes, sir.

Q. Just like that.

¹⁷ Transcript of proceedings, Hearing Bundle, page 422 lines 13-25.

A. Yes, sir. Because of the speed that she was in.

...

Q. Nowhere did you mention that the motor car was driving fast.

...

Q. The question was, is that you did not – is it not true that you did not tell the police that the motor car swerved on your side of the road?

A. I did tell them at the night –at the night when they came on the scene.

Q. But here is your statement here which you signed, and I am sure the police would have asked you to read the statement and if you agree with it, then you sign it; am I right?

A. Yes, sir.

Q. But you didn't say anything about her swerving towards your pickup. Am I right?

A. No, sir."¹⁸

[57] The court also heard from the son of the respondent who was a passenger in the truck when the collision occurred. In his examination in chief, he told the court that as they were travelling along the Seatons Main Road "I saw the Defendant's vehicle with speed travelling from North to South coming from the opposite direction."¹⁹ He then went on to say in cross-examination that the appellant's vehicle did not stop after the impact that her car continued driving²⁰ and that both airbags exploded.²¹

[58] Then there was the evidence of the expert Mr. Stanlie Matthew who noted that when he inspected the respondent's vehicle the axle was broken because of the impact.²²

[59] Finally, the trial judge had the appellant's own evidence in which she stated the following: (i) she was a recent driver,²³ (ii) that she pulled to the left away from the

¹⁸ Transcript of proceedings, Hearing Bundle, page 425 lines 18-23, page 428 line 22, page 430 lines 6-18.

¹⁹ Paragraph 3 of the Witness statement of the Jamine Paul filed 4th May 2023.

²⁰ Transcript of proceedings, Hearing Bundle, page 388 lines 1- 2.

²¹ Ibid, page 389 lines 5-8.

²² Ibid, page 396 lines 11- 13.

²³ Ibid, page 438 lines 19 – 23.

oncoming vehicle which then collided with her some two feet into what the measurements showed was the respondent's side of the road ²⁴ and, (iii) that she stopped some distance away from the collision. ²⁵

[60] This was the totality of the evidence on this issue before the trial judge.

[61] In my mind it was clearly evidentially open to the learned judge to find as she did at paragraphs [47] and [48] of the judgment. It would be useful to set out those paragraphs in their entirety here.

“[47] The Defendant's testimony regarding the circumstances of the collision raises several concerns. Her assertion that her extended stopping distance was attributable not to excessive speed but rather to a desire to clear the roadway for other vehicles is unpersuasive. The evidence suggests that the Defendant had ample opportunity to bring her vehicle to a stop well before it ultimately came to rest. It is far more probable, given the available evidence, that the Defendant's vehicle collided with the Claimant's truck, at a considerable rate of speed. This **forceful impact is the likely cause of the simultaneous deployment of both airbags within the Claimant's truck**. The fact that both airbags deployed in the Claimant's truck, a vehicle demonstrably larger and more substantial than the Defendant's car, further underscores the severity of the impact and **lends credence to the theory of a high-speed collision**. Following the collision, the Defendant likely required a period of time to regain control of her vehicle, which further explains the extended stopping distance. **The significant damage sustained by the Claimant's truck, coupled with the airbag deployment, suggests a forceful impact, which is inconsistent with the Defendant's claim of moderate speed.**

[48] ... Simultaneously, the Defendant's excessive speed contributed significantly to the collision. **Driving at an unsafe speed reduced her reaction time and ability to avoid the collision, even with the Claimant's improper positioning.** Therefore, I find that both parties' actions were contributing factors to the accident, making them equally at fault.” (Emphasis added)

[62] In considering the findings of the learned trial judge, I am unable to agree with the appellant that the judge erred in finding that the appellant had been driving at a

²⁴ Ibid, page 445 lines 19 - 25 and page 446 line 1.

²⁵ Ibid, page 442 lines 20 – 21 and page 443 lines 8-10

speed that was unsafe in the circumstances. The learned trial judge undertook a cumulative assessment of the evidence and was entitled to draw the reasonable inference that the appellant's vehicle collided with the respondent's truck at a considerable rate of speed. To the extent that the appellant seeks to rely upon alleged discrepancies between Mrs. Paul's oral testimony and her statement to the police, that complaint is so nebulous that it does not disclose any legitimate basis upon which the learned trial judge's finding on speed may be disturbed. No particular discrepancy has been identified as materially undermining the evidence concerning the appellant's speed or as rendering the inference drawn by the learned trial judge unavailable to her. Accordingly, the fact that the learned trial judge did not place any stock in those alleged discrepancies does not affect my assessment of her reasoning or the conclusion to which she came. On a roadway that was not particularly wide and which required road users to exercise vigilance, it was incumbent upon the appellant to proceed at a speed that was safe in the prevailing circumstances. I can discern no error in the learned trial judge's conclusion that the appellant had failed to do so. Grounds 1 and 3 of the Notice of Appeal must therefore fail.

Issue 2 – Whether the learned trial judge failed to place sufficient weight on the photographic evidence of the respondent's vehicle which showed the right wheel angled outwards to the right from under the fender and in the path of the appellant's oncoming motorcar – Ground 2 of the Notice of Appeal

Appellant's Submissions

- [63] By Ground 2 of the Notice of Appeal, the appellant complained that the learned trial judge failed to place sufficient weight on the photographic evidence of the respondent's vehicle, which showed its right front wheel angled outwards from beneath the fender and in the direction of the appellant's oncoming motorcar. The appellant maintained that the photographs constituted objective physical evidence which supported her account that the respondent's vehicle had moved to its right and into the appellant's path.

[64] In her written submissions, the appellant contended that the outward angle of the wheel was not merely an incidental feature of the post-collision damage. Rather, it was said to be a material circumstance bearing directly upon the manner in which the collision occurred. The appellant argued that the position of the wheel shown in the photographs was inconsistent with the respondent's assertion that she had remained on her proper side of the roadway and had not swerved. It was also said to be inconsistent with the evidence of the respondent's son, that the respondent had slowed down and pulled partly off the road, upon observing the appellant's approaching motorcar.

[65] The appellant further contended that the outward position of the wheel supported the inference that the respondent was either in the course of turning to her right or had otherwise permitted the front of her vehicle to move towards the centre of the roadway immediately before impact. On that basis, the appellant submitted that the photographic evidence lent support to her case that it was the respondent, rather than the appellant, who entered the opposing lane and initiated the collision.

Respondent's Submissions

[66] The respondent's written submissions identified Ground 2 as one of the issues raised by the appellant but did not provide a separate or detailed response to the appellant's reliance upon the outward angle of the right wheel shown in the photographs. The respondent's answer to the appeal was directed principally to the learned judge's finding that the appellant had been travelling at an excessive speed and to the appellant's wider contention that the findings concerning the positioning of the respondent's vehicle required the respondent to be held wholly liable.

[67] The respondent submitted generally that the learned trial judge had considered the totality of the testimonial, documentary and physical evidence and that the appellant had not established any basis upon which the appellate court could interfere with the judge's factual findings. The respondent further maintained that the evidence

did not establish that her vehicle was positioned in the middle of the roadway at the time of the collision.

- [68] The respondent did not, however, specifically address whether the post-collision angle of the right wheel established that the wheel had been similarly positioned immediately before impact. Nor did the respondent advance any detailed submission concerning the precise evidential value which could properly be attached to the photographs themselves. The response to this ground was therefore confined, in substance, to the general contention that the learned judge's overall assessment of the evidence should not be disturbed.

Discussion

- [69] In my mind this ground of appeal has little substance to it. This was borne out at the hearing of the appeal when learned King's Counsel was unable to articulate with any clarity the precise error said to have been committed by the learned judge, given the limited nature of the photographic evidence that was before the court below.
- [70] A review of the record reveals that no discrete argument concerning the angle of the respondent's right wheel, or the inference which ought to be drawn from the photographs, was developed in the parties' pre-trial memoranda. The respondent's closing submissions in the court below similarly made no reference to the photographs or to the position of the wheel depicted in them. The photographs were nevertheless among the documents filed by the appellant and agreed by the respondent and were therefore properly before the learned judge.
- [71] The photographs were also expressly relied upon during the trial. In the course of Mr. Matthew's evidence, learned King's Counsel directed him to two photographs of the respondent's truck. Mr. Matthew confirmed that the photographs were familiar to him and accurately reflected the vehicle, including its right wheel, as he had

observed when he examined the truck.²⁶ The necessary connection between the photographs and the respondent's vehicle was therefore established.

[72] However, the difficulty for the appellant lies elsewhere. The photographs showed the condition of the respondent's vehicle after the collision, with the right wheel displaced and angled outward from beneath the fender. They did not depict the collision itself, the position of either vehicle immediately before impact or the location of the respondent's truck in relation to the centre of the roadway. Counsel for the appellant also conceded, correctly in my view, that there was no evidence as to when the photographs were taken.

[73] Further, although Ground 2 described the wheel as being angled outward 'in the path of the appellant's oncoming motorcar', the photographs themselves did not show the appellant's motorcar, the roadway or the respective lanes in which the vehicles had been travelling. They therefore showed the post-collision angle and condition of the wheel but could not, without more, establish that the wheel had been in the same position immediately before impact or that it had then extended into the appellant's lane.

[74] When questioned by the panel about this limitation, the appellant's argument shifted from the photographs themselves to the evidence of Mr. Matthew concerning the mechanics of the damage and the conclusions which could be drawn from his examination of the respondent's vehicle. That evidence raises a separate issue concerning the alleged positioning of the truck and the possible causes of the damage. The narrow question arising under Ground 2 of the Notice of Appeal therefore becomes whether the learned trial judge failed to give sufficient weight to the photographic evidence itself.

[75] In my view, the judgment demonstrates that the learned trial judge did not overlook or disregard the photographs. At paragraph [44], she expressly referred to the

²⁶ Transcript of proceedings, Hearing Bundle, pages 399-401.

photographic evidence showing the right wheel misaligned and angled outward. She considered that evidence to be inconsistent with the respondent's assertion that she had not swerved or taken evasive action and that her wheels had remained aligned with the vehicle.

[76] The learned judge again returned to the photographic evidence at paragraph [46], where she observed that the angle of the right wheel towards the paved surface strongly indicated that the respondent was in the course of initiating a turn. She considered that circumstance together with the narrowness of the roadway, the respondent's operation of a left-hand drive vehicle and the evidence concerning the grassy shoulder and drop-off. Those matters informed her finding that the respondent had been positioned towards the middle of the roadway and had thereby contributed to the collision.

[77] The photographs were therefore not merely mentioned in passing. The learned trial judge drew from them an inference favourable to the appellant and incorporated that inference into her ultimate assessment of liability. Indeed, the judge's reliance upon the angle of the wheel formed part of the basis upon which she rejected the respondent's account and attributed 50 per cent of the responsibility for the collision to her.

[78] The appellant's complaint is therefore not that the photographs were ignored, but that the learned judge did not treat them as establishing that the respondent was wholly responsible for the collision. However, the photographs were not capable, standing alone, of establishing the precise position of the wheel before impact, the position of the respondent's truck upon the roadway or which vehicle first entered the path of the other. Those matters required an assessment of the evidence as a whole.

[79] In those circumstances, the weight to be attached to the photographs was a matter for the learned trial judge. She expressly considered them, drew a permissible

inference from them and gave effect to that inference in her findings on liability. The fact that the appellant contends that greater weight ought to have been placed upon the photographs does not demonstrate that the learned judge's assessment was plainly wrong. I therefore do not find that this ground of appeal has been made out.

Issue 3 – Whether, having found that the respondent's pickup truck was positioned in the middle of the roadway with its right front wheel angled towards the appellant's vehicle, the learned trial judge erred in apportioning liability equally between the parties rather than holding the respondent wholly responsible for the collision, and whether the learned judge further erred in finding that the respondent had contributed to the accident at all – Ground 4 of the Notice of Appeal and Ground 1 of the Notice of Cross-Appeal

Appellant's Submissions

- [80] The appellant approached the learned judge's finding concerning the position of the respondent's truck on the basis that it was properly made but contended that the necessary consequence of that finding was that the respondent ought to have been held wholly responsible for the collision. Counsel submitted that the learned trial judge having found at paragraph [46] of the judgment that the respondent's vehicle was positioned in the middle of the road with its right front wheel turned into the appellant's lane, and that this finding was supported by the expert evidence regarding the nature and point of impact, erred in nevertheless apportioning liability equally between the parties. Counsel argued that the learned judge, having made those findings, improperly attributed fault to the appellant on the speculative basis that she had been travelling at an excessive speed, notwithstanding that there was no credible or objective evidence to support such a conclusion.
- [81] Counsel further submitted that the learned judge's conclusion on speed stood in direct contradiction to the court's own findings on the positioning of the vehicles and the expert evidence as to the cause of the collision. It was contended that the respondent's act of encroaching into the appellant's lane on a narrow roadway

constituted a clear breach of the duty of care owed to oncoming traffic and was the immediate and effective cause of the accident.

- [82] Counsel relied on the decision in **Froom v Butcher**²⁷ wherein Lord Denning MR stated that apportionment must reflect both the causative potency and blameworthiness of the parties' conduct. Counsel argued that, applying those principles, the respondent's conduct was not only blameworthy but was the sole and operative cause of the collision, as it was her act of turning into the appellant's lane with her right front wheel protruding from beneath the truck's fender that brought about the accident. Counsel therefore submitted that the learned judge erred in law and principle in apportioning liability equally and that the respondent ought properly to have been held wholly liable for the accident.

Respondent's Submissions

- [83] The respondent approached the same finding from the opposite standpoint, contending that the learned judge was not entitled, on the evidence, to find that the respondent's vehicle had been positioned in the middle of the roadway at all. Counsel for the respondent submitted that the learned trial judge's finding that the respondent had contributed to the accident by driving in the middle of the road was against the weight of the evidence and unsupported by the factual matrix before the court. Counsel argued that whilst the learned judge found at paragraph [46] of the judgment that the respondent's operation of a left-hand drive vehicle may have contributed to her inadvertently driving over the centre of the road and further found at paragraph [48] that her positioning impeded the appellant's ability to manoeuvre safely, there was no evidential basis upon which those findings could properly have been made.

- [84] Counsel relied on the principles governing appellate interference with findings of fact as stated in **East Pine Management Ltd v Tawney Assets Ltd et al**²⁸ and

²⁷ [1976] QB 286.

²⁸ BVIHC VAP2012/0035 (delivered 24th March 2014, unreported).

Golfview Development Limited v St. Kitts Development Corporation²⁹ and submitted that an appellate court is entitled to interfere where a trial judge misdirects herself, fails to properly evaluate the evidence, or draws erroneous inferences from the facts. Counsel contended that in the present case, the learned judge failed to give proper consideration to the evidence of the respondent and her son, both of whom consistently maintained that the respondent's vehicle was on its proper side of the road, with its left wheel on the grassy shoulder.

[85] Counsel further submitted that the learned judge failed to have regard to the witness summary of the respondent, the witness statement and cross-examination evidence of Jamine Paul, and the fact that none of the evidence relating to the positioning of the respondent's vehicle had been challenged in cross-examination. It was argued that the learned judge also failed to consider that a driver operating a left-hand drive vehicle on the left side of the roadway would in fact have been better positioned to gauge the distance from the shoulder rather than the centre of the road.

[86] Counsel additionally submitted that the learned judge failed to consider the contents of the police report, which had been included among the agreed documents and relied on by both parties at trial. Counsel argued that the report placed the collision on the respondent's side of the road and recorded that the appellant's vehicle was positioned some nine feet into the respondent's lane. It was therefore contended that there was no expert, photographic or physical evidence establishing that the respondent's vehicle had been in the centre of the roadway and that the learned judge's finding of contributory negligence was based on speculation rather than evidence.

[87] Counsel relied on the decision in **Langsam v Beachcroft LLP**³⁰ and submitted that appellate intervention is justified where a judge reaches a conclusion which, on the evidence, he was not entitled to reach. Counsel therefore argued that the learned

²⁹ Civil Appeal No 15. of 2004 (delivered 31st March 2005, unreported).

³⁰ [2012] EWCA Civ 1230.

judge was plainly wrong to conclude that the respondent contributed to the accident and that this Court was entitled to interfere with that finding.

Discussion

- [88] These two grounds are clearly inextricably linked even though the parties approach the finding of the learned trial judge as to the positioning of the respondent's truck from two diametrically opposed viewpoints. It is clear that the respondent considers that this was not a finding that was open to the trial judge while the appellant says that if the trial judge made this finding, then the respondent had to be, ipso facto, responsible for the collision and thus all the liability must rest with her rather than there being joint liability.
- [89] Like with all appeals against the finding of facts by a court below, the starting point of restraint must be engaged and more importantly the evidence that was before the court must be assessed to determine whether the finding was one which was open to the court to make.
- [90] In this regard, it must be remembered that the evidence of the expert was heavily relied upon by the learned trial judge to determine the manner in which the collision occurred given the damage that he saw on the respondent's vehicle. In that regard it will be noted that the expert stated the following: a) that there were no photographs that showed the truck in situ at the scene of the collision and that he in fact examined the truck in a yard sometime after the event;³¹ b) that the damage he saw to the truck was caused by the collision;³² and c) that the damage seen to the wheel of the respondent's truck was likely caused by the wheel being outside of the fender.³³ Additionally, the learned trial judge at paragraphs [44] and [45] directly engaged in the evidence that was presented to the court by the expert and the respondent and her witness and found that the logics of the version of events of the respondent was

³¹ Transcript of proceedings Hearing Bundle, page 399 lines 6-10,15-17, 23-25.

³² Answers to questions to joint expert filed 21st February 2023.

³³ Transcript of proceedings Hearing Bundle, pages 407-414 and page 410 lines 21- 25.

lacking. At paragraph [45] the learned trial judge after having analysed what was said to her and the evidence including the site visit, said this:

“The claimant would then have been acutely aware that her vehicle was not properly positioned on the road. A prudent driver would likely perceive the alteration in traction between the paved road surface and the adjacent grassy shoulder. Furthermore, recognizing the traversal of a drop off which would have resulted in an uneven vehicle position, corrective action to fully return the vehicle to the paved surface would be reasonably expected.”

[91] Having found that the respondent had made some corrective action and that the appellant was driving in an unsafe manner, in my view it was an entirely reasonable inference to hold, that even if the respondent was on her side of the road and which the untested measurements determined, the respondent in taking her corrective action pulled to the right hand side of her notional lane with her wheel turned to the right which then left it exposed to the unsafe driving of the appellant coming in the opposite direction.

[92] As my learned brother Farara JA in the case of **Lisa Vernita Alexander v Neil Noel**³⁴ stated at paragraph [68] thereof in which he was making an assessment of the findings of negligence by the learned judge below:

“...the findings...were reasonable and proportionate in all the circumstances and properly open to the learned judge to make on the evidence and on her unassailable findings of fact. In making these findings the learned judge committed no errors either of fact or law. It follows therefore that there is no discernible basis entitling this court to disturb or set aside the judge’s finding...”

[93] Having therefore found that neither the respondent nor the appellant was solely responsible for the manner in which the collision occurred but rather that it was a continuation of a sequence of events that led each of them to act in breach of their duty to the other, it was entirely open to the learned trial judge in my opinion to find that both parties had contributed significantly to the collision.

³⁴ SLUHCVP2024/0012 (delivered 10th March 2025, unreported).

[94] I therefore do not believe that I can improve on the above quoted statement from my learned brother on the findings made by the learned trial judge below and adopt the same and apply them to the circumstances of this case and state that both the ground of appeal and the ground in the cross-appeal on this issue must therefore fail.

Issue 4 – Whether the learned trial judge erred in placing unreasonable weight on the respondent’s operation of a left-hand drive vehicle in determining liability and apportioning responsibility for the accident – Ground 2 of the Notice of Cross-Appeal

Respondent’s Submissions

[95] By her cross-appeal, counsel for the respondent submitted that the learned trial judge erred in placing unreasonable weight on the fact that the respondent was operating a left-hand drive vehicle in determining liability and in consequently apportioning liability equally between the parties. Counsel argued that the learned judge’s finding at paragraph [46] of the judgment, that the operation of the vehicle ‘could have contributed’ to a misjudgment of positioning, was speculative and unsupported by the evidence. It was contended that the learned judge thereby imputed contributory negligence to the respondent solely on the basis of the type of vehicle she operated, without any proper evidential foundation, and that the apportionment of liability on that basis ought therefore to be set aside with a finding that the appellant was wholly liable for the collision.

Appellant’s Submissions

[96] In response to the respondent’s cross-appeal, counsel for the appellant submitted that the learned trial judge’s findings at paragraph [46] of the judgment, regarding the respondent’s operation of a left-hand drive vehicle on a narrow roadway, were firmly grounded in the photographic, expert and other physical evidence before the court. Counsel contended that the learned judge was entitled to conclude that the positioning of the respondent’s right front wheel, angled outward into the appellant’s path, together with the narrow roadway and reduced nighttime visibility, supported

the inference that the respondent may have misjudged the position of her vehicle and drifted over the centre of the road. It was argued that the learned judge properly assessed all the surrounding circumstances in determining liability and that no undue weight was placed on the left-hand drive configuration of the respondent's vehicle.

Discussion

- [97] At paragraph [46] this is what the learned trial judge said about the respondent's left-hand drive truck:

"The Claimant's operation of a left-hand drive vehicle on a narrow road introduces another element of potential misjudgment. Drivers of left-hand drive vehicles in right-hand traffic situations may find it more challenging to accurately gauge the vehicle's position on the right-hand side, particularly on narrow roadways. This could have contributed to the Claimant inadvertently drifting over the centre of the road particularly at night when visibility is reduced."

- [98] The learned judge's final finding on the issue is once again contained in paragraph [48] of her judgment:

"Having carefully considered the presented facts and evidence, I have reached the considered opinion that both the Claimant and the Defendant bear responsibility for the accident. The Claimant's contribution to the accident stems from her position in the middle of the road, which likely impeded the Defendant's ability to safely manoeuvre her vehicle. This positioning suggests a lack of due care on the Claimant's part, as drivers are expected to maintain a proper lane position. Simultaneously, the Defendant's excessive speed contributed significantly to the collision. Driving at an unsafe speed reduced her reaction time and ability to avoid the collision, even with the Claimant's improper positioning. Therefore, I find that both parties' actions were contributing factors to the accident, making them equally at fault."

- [99] When I therefore consider the cumulative effect of the statements contained in these two paragraphs, it does not appear to me that the learned trial judge was in fact making any finding of fact but rather issuing a comment as to the use of a left-hand drive vehicle. Her commentary did not inform the finding of joint liability. The respondent's contention to the contrary is not borne out.

[100] In fact, both parties having challenged the finding of equal liability, I can find no fault in the decision of the learned trial judge to apportion liability equally between them, at 50% each.

[101] It was clear from all the circumstances which the learned trial judge found to have existed at the time of the collision, and which were substantiated by the evidence before her, that neither party could be held solely responsible for the accident. It was therefore entirely open to the learned trial judge to find as she did. I would not disturb this finding and find that this ground of appeal on the cross-appeal is not made out.

Disposition

[102] In light of all that has been said above, the judgment of the learned trial judge is affirmed and the appeal and the cross-appeal are dismissed.

[103] Further, it being clear that neither party has been successful on their appeal in any way, I further order that each party is to bear their own costs on this appeal.

I concur.
Margaret Price Findlay
Chief Justice [Ag.]

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar