

A T L A U T O K A

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Civil Jurisdiction

Action No. 27 of 1979

BETWEEN:

SURESH CHAND s/o Hira Lal

Plaintiff

A N D :

ANWAR ALI, MAHMOOD ALI & AMJAT ALI
all sons of Habib Ali

Defendants

Mr. Kalyan
Mr. A. Patel

Counsel for the Plaintiff
Counsel for the Defendants

J U D G M E N T

The Plaintiff's motor cycle was involved in an accident with the motor car of the defendant in which the plaintiff suffered a fractured ankle and superficial bruises.

The plaintiff now sues the defendant for damages in respect of his injuries, alleging that the accident was the result of the defendant's negligence. The defendant has denied negligence and claimed that the plaintiff himself was negligent.

The plaintiff was travelling on the road from the market towards the bus station, which road takes a right angled turn to the left at Yusuf's shop, the defendant's car was coming from the opposite direction and was or would have been obliged to take a right-angled turn at Yusuf's towards the market. The road on which the defendant's car was driving is about 20 feet wide. The road on which the plaintiff was riding appears to be much wider, but in fact opposite Yusuf's there is provision for cars to park at right angles to the curb, so that the effective width of this road is probably the same as the other road, namely about 20 feet.

The plaintiff who, although he claims to have been riding his motor cycle for one year, is still a learner driver, wished to visit a milk bar on the bus station side of the road opposite Yusuf's. Although he talked of an access road beside the milk bar, it is clear that there never in fact was a road beside the milk bar, and any attempt to go straight across to the milk bar on the corner must be fraught with danger. Vehicles travelling on the road on which the defendant's car was travelling, and having to turn right at Yusuf's corner would not expect any traffic coming in the opposite direction to try to go straight across the road towards the milk bar.

The plaintiff said he stopped at the corner of his correct side of the road before attempting to cross the road and the defendant's car came fast in the ^{two} opposite direction and bumped straight into him, pushing the motor cycle back/to three yards.

The defendant's driver said he was driving slowly because people crossed the road from the bus station, but as he was starting to negotiate the bend the plaintiff came from the other road, waved to a friend on the pavement and tried to cross in front of him to the milk bar side of the road. The plaintiff was described as trying to make a U-turn in the road, but it seems clear that what might have appeared at first to be a U-turn was in fact the plaintiff's attempt to cross over to the milk bar. The driver of the defendant's car said that he hooted and braked, and since he was only travelling 5-6 $\frac{1}{2}$ miles per hour at the time, he stopped immediately he applied his brakes. But the plaintiff rode into the front of the car, the motor cycle ended up under his front bumper, and the plaintiff bounded off to lie about five feet from his motor cycle.

The plaintiff put the impact near the curb on his correct side of the road. In fact five witnesses, two for the plaintiff and three for the defendant all put the accident in different places, none of the others putting the point of impact quite so close to the curb outside Yusuf's as the plaintiff did. Perhaps the most independent witness was Ahmad Ali, the last witness called by the defendant. He had been crossing the road from the bus station. He saw the defendant's car before the accident and said it was coming slowly behind him. He never saw the motor cycle as he crossed the road, he never saw the impact, but heard a noise and saw the vehicles after the collision. He put the point of impact rather more round the bend towards the market than the other witnesses, and it is clear from what he said that the defendant's car was not going fast as the plaintiff claimed and the collision occurred not on the plaintiff's side of the road, but at least in the middle of the road. He also said that he saw no drag marks on the road, which would have indicated that the motor cycle had been pushed back two to three yards as the plaintiff claimed. His evidence was very much more in favour of the defendant than the plaintiff, and I think his evidence was the most reliable.

I understand that the police visited the scene of the accident, took measurements and made a rough sketch plan, but for some reason neither party chose to make these available to this Court. If the evidence of the police would have been more favourable to the plaintiff than to the defendant, if it showed the point of impact more to the plaintiff's correct side of the road, if it showed drag marks on the road to support the plaintiff's claim that the speed of the car had pushed the motor cycle back two to three yards, it was incumbent on the plaintiff to produce that evidence. There is after all an onus on the plaintiff to prove his case on the balance of probabilities, and in my opinion he has failed to discharge that onus. On balance the evidence is more in favour of the defendant's version of the accident, and this shows that the accident occurred because the plaintiff - perhaps because he is still only a learner/driver, was trying to do something which was

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intrinsicly dangerous, and was doing it so carelessly that he put himself at risk. He was lucky that the defendant's driver was going very slowly and was quick enough to stop immediatly. If the car had not stopped, and if the car had hit the motor cyclist rather than the other way round the plaintiff might have suffered more severe injuries. But it was the plaintiff's own negligence that caused the accident and I cannot say that there was any negligence on the part of the defendant's driver.

The plaintiff's claim will therefore be dismissed with costs, to be taxed if not agreed.

LAUTOKA,
6th November, 1980

(sgd.)
(G. O. L. Dyke)
JUDGE