COPY

IN THE SUPREME COURT )
OF THE TERRITORY OF )
PAPUA AND NEW GUINEA )

1952 No. W.S.56

KELLY, J.

At Rabaul

BETWEEN NEW BRITAIN TAXI AND CARRYING COMPANY LIMITED
Plaintiff

AND VUNAMAMI VILLAGE COUNCIL
Defendant

Reasons for Judgment

At about 8 am, on 15th August 1952 a collision occurred between a Ford 5-ton truck owned by plaintiff and a Bedford 3-ton truck owned by defendant.

The driver of each truck claimed, as was pleaded, that he pulled his truck to a standstill before the collision. One is wrong.

Smith, a witness for plaintiff, arrived at the scene of the accident shortly after the collision. He saw plaintiff's truck on the left side of the road, with the Bedford truck about halfway along the length of the Ford truck. He noticed tyre marks indicating that the driver of plaintiff's Ford truck had applied his brakes immediately before stopping.

At about 10 am. Police Officer Sub-Inspector Park arrived at the scene of the accident. He prepared a sketch, but he did not make exact measurements. He admits that one of his measurements, the distance between the left down side of the road and a ditch may be a foot out.

Three of the defendant's witnesses, Kanit, Towalom and Alwas admitted that when Sub-Inspector Park arrived at the scene plaintiff's truck was in the same position as it was at the time of the collision.

Sub-Inspector Park gave evidence that from the brake marks of plaintiff's truck it would appear that that truck had been forced back about six inches by the weight of impact of the collision.

On the evidence of Sub-Inspector Park and Smith I find that plaintiff's truck had been brought to a standstill on the left side of the road with its front near (left) wheel approximately 1 foot 6 inches from the edge of the road and its rear near (left) wheel approximately 2 feet 6 inches from the edge of the road.

All witnesses for defendant claimed that there was a much wider space on the left side of plaintiff's truck. In speaking of the left and right sides of the trucks they were referring to the near and off sides respectively. Talip gave six feet, Kanit eight feet, Towalom plenty, Alwas enough for a jeep to pass.

As against Sub-Inspector Park and Smith I find it impossible to believe that evidence by all witnesses for defendant.

At the scene of the accident the road is sixteen feet wide, uphill from the plaintiff's truck's approach, and downhill from the defendant's

truck's approach, bending but apparently on a gradual, or at most, a medium gradient.

The overall width of the body of the plaintiff's truck is 6 feet 7½ inches. The overall width of the body of defendant's truck is 7 feet 2 inches and the overall width of front tyres 5 feet 4½ inches.

On Smith's evidence, who noticed tracks, plaintiff's truck was travelling on the crown of the road thirty yards back, when it veered sharply to the left. And on his evidence defendant's truck was travelling on the crown of the road about 20 yards back when it veered slightly to the left. Travelling on the crown of the road is not, in itself, negligence.

On the whole of the evidence I do not believe that defendant's driver pulled his truck to a standstill before the collision. And so I find.

I believe plaintiff's driver when he says he pulled his truck to a standstill before the collision. And so I find.

Mr. James, counsel for defendant, submits that if in the stress of the moment defendant's driver took an unwise course in seeking to avoid the accident he is not to be held responsible. Chaplin v.Hawes (1828) 3 C & P p.554 N.P. But on the evidence I cannot see the grounds for that submission. It does not come from plaintiff's evidence. And all witnesses for defence claim that defendant's driver pulled his truck to a standstill before the collision - which I do not believe. There was no alternative evidence for defendant that defendant's truck's brakes failed, or other evidence,as I see it, on which I might accept the submission and make a finding accordingly.

Unfortunately no exact measurements were taken at the scene of the collision. On some of the evidence there might appear the possibility that had defendant's driver slowed down and moved carefully he could have passed plaintiff's truck although very closely. Sub-Inspector Park, for plaintiff, stated the trucks would have to pass very close to pass on the sixteen foot road. Kanit, for defendant, thought there was room for defendant's truck to pass plaintiff's truck but it would have to go very close to the road's edge. Towalom, for defendant, fixed three feet six inches between the near front wheel of defendant's truck and the drain on the left side of the road.

It may be that defendant's driver had that opportunity of avoiding the collision, or alternatively, in my opinion, he could have pulled his truck to a standstill, which he says he did but in which I do not believe him, thereby allowing one or other of the trucks to be realigned to provide clear passage.

I find that when plaintiff's driver pulled his truck to a standstill on the left side of the road he exercised all care necessary under the circumstances to avoid the collision.

Even if defendant's driver did not have the opportunity of passing closely to plaintiff's truck then I find that in not adopting the alternative of pulling his truck to a standstill he failed to exercise that care necessary under the circumstances and that such failure constituted negligence, which negligence was the cause of the collision.

Judgment for plaintiff.

338

A. KELLY, J.

8/1/54.

332