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WONG TAN ON

Plaintiff

-and-

UNITED BUILDERS COMPANY

Defendant

J U D G M E N T.

This is what is commonly called a running down action. It appears that the Plaintiff was driving his new Holden Sedan motor car on the 7th August 1954, on his way from Rabaul to Keravat where he had a store. With him were his two children. At a little after 11 a.m. he had gone about 7 miles on his way and had passed over a small culvert quite close to the trade store of Mrs. Leo. His speed was, according to himself, between 20 and 25 miles per hour. The road at the point near the culvert curves slightly to the left going towards Keravat. Round this curve, from the direction of Keravat, there came a Ford tipper truck driven by one SEETO CHIN KEUNG, the servant of the Defendant Company. In the back of the truck was a number of Chinese workmen, and sitting beside the driver was a Chinese named LIN PAK. The car and the lorry came into collision.

The Plaintiff claimed a total sum of £910.16.11. for damages. The Defendant Company denied liability and counter-claimed the sum of £99.7.9. for damage done to its truck, alleging that the accident was caused by the negligence of the Plaintiff.

The onus of proof upon the claim is upon the Plaintiff. He must show a duty owed to the other road user, the Defendant Company. It is the duty of a person who drives a vehicle on the highway to use reasonable care to avoid causing damage to other persons on the highway. If the Plaintiff proves that the Defendant Company has been negligent on the highway, then the breach of duty is also proved. (Hambrook -v- Stokes 1925. 1 K.B. at p. 156).

The question is whether the Plaintiff has, in fact, discharged the onus of proof, and if he has not, whether it is shown that the accident was due to his negligence, so that the Defendant Company is able to succeed on its counter-claim.

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The Plaintiff himself gave evidence and relied further on the evidence of his Counsel, who had visited the scene of the accident the day afterwards and had taken certain measurements.

The Plaintiff himself said that he was travelling between 20 and 25 miles an hour. He had just passed over a small culvert when he saw the Defendant Company's truck only six feet away - he first saw the truck at a distance of six feet. He swerved slightly to the left. He said that the truck was coming at a reasonable speed down the hill. Then he said it was coming fast. But he saw it first only six feet away. He did not hear it or see it before. I do not think his evidence as to the speed of the truck is worth considering. The only oral evidence as to the speed of the truck is to be had from the driver of the truck and two occupants. The speed, according to them, was about 25 miles per hour. There was no speedometer on the truck, but these three witnesses hold driving licenses and had had considerable experience of truck driving. With such experience, they claimed to be able to judge the speed. To show by other means the excessive speed of the truck, evidence was adduced by the Plaintiff with regard to the position of the truck when it came to a standstill after the collision. Counsel for the Plaintiff measured it as 60 feet, while the Police Officer, who had repaired to the scene immediately after the accident, said the distance between the car and the truck was about 30 feet, in his observation.

It does not appear to me that, taking the greater distance as being correct, it was an inordinate distance for the truck to have travelled after impact, particularly when the driver did not apply his brakes as he said he did not, so this distance travelled is not helpful in arriving at the speed of the truck, even when the fact of the truck having passed over the concrete edge of the culvert is taken into consideration. I must accept it that the Plaintiff has not established that the truck was travelling at a greater speed than 25 miles per hour, a speed which was not excessive in the circumstances.

Now as to the relative positions of the vehicles. The Plaintiff says that when he first saw the truck coming, he was on the left side of the road, his correct side. The Police Inspector saw the position of the car immediately after the accident. The car was then facing outbound towards Keravat and the truck on the inbound side of the road. The front portion of the car was in the centre of the roadway, part of the offside front mudguard being on its incorrect side of the road, and the rear of the vehicle was facing the left-

hend side of the road, about diegonally across the road. The truck was facing Rabaul and it was completely off the road. The Police Inspector traced the tracks of the car back towards the culvert. These tracks showed that the rear of the car had skidded towards the right. There was a small hole in the road which was estimated to be on the car's incorrect side of the road. It was agreed that this hole was made by the rim of the offside rear wheel of the car and marked the point of impact. From this hole there were 4 or 5 smaller holes going to the left caused by the rim of the same wheel after the impact.

From this point of impact, the Police Inspector traced the tracks of the truck back towards Koravat for a distance of 18 to 20 feet. Both the front and rear near side wheel tracks of the truck were plainly visible, as they were well over on the left-hand side of the road where the edges were inclined to be soft. These tracks showed the truck was following the curve of the slight bend of the road, well over on its left and correct side. It was accepted that the usable road was 24 feet wide.

From these facts and others following, a reconstruction of the incident can be made.

Neither vehicle was travelling at an excessive speed. The Plaintiff was travelling on the crown of the roadway, almost down the middle. The truck was well over on its correct side. The Plaintiff saw the truck approaching only when it was almost upon him. He swerved to the left to avoid a collision; the rear wheels skidded to the right, bringing his car at an angle to the oncoming truck. This angle was shown by the Plaintiff to be about 30 degrees. The truck struck the car a little to the rear of its centre and slewed it round. The truck then continued on but still well to the left, as proved by the path it took in going along on top of the concrete edge of the culvert.

To be in the position he was at the point of impact, it seems that the Plaintiff must have been travelling partly on his wrong side of the road before the collision, because, according to his own evidence, he swerved to the left upon seeing the truck straight ahead of him and bearing down upon him. Why did he not see the truck earlier when it was approaching? The Police evidence was that where the accident happened, there was a slight curve and one vehicle could see another 45 to 50 yards away. The Plaintiff's evidence agrees with that. The only conclusion one can come to is that the Plaintiff was not keeping a proper look out.

The driver of the truck says he saw the whole of the car about 50 feet away. He had seen the top of it when he had reached the bottom of the hill and had changed back into top gear. It was reasonable for him to presume that the car would keep to its proper side (vide Chaplin -v- Hawes and others 172 E.R. 543).

The middle of the usable portion of the road was 12 feet from either side. The width of a Holden Sedan is 5 feet 6 inches, so that he had ample room to pass the truck if he had been keeping to his proper side.

If there is no other traffic on the road, the driver of a vehicle may drive on the crown of the road or even on his wrong side, but if he does so, he must keep a proper look out and use more care than if he were driving on his proper side.

In my judgment, the Plaintiff has not proved that the Defendant Company was negligent.

On the other hand, it has been shown that the real cause of the collision was the negligence of the Plaintiff in that he was not keeping to his proper side of the road and not keeping a proper look out.

The result is that I give judgment for the Defendant Company in the action and judgment for the Defendant Company on its counter-claim in the sum claimed, namely £99.7.9. with costs.

Hedges J. Eaves

A/C.J.
5/9/55.