

J A M A I C A .

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 20/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

BETWEEN OMER S. LLOYD THOMAS PLAINTIFF/APPELLANT
A N D GARFIELD BROWN DEFENDANT/RESPONDENT

Mr. Arthur Kitchin for Appellant

Respondent not present nor represented

29th January, 1990

CAREY, J.A.:

This is an appeal against the judgment of His Honour Mr. A. S. Huntley, Resident Magistrate for the parish of Kingston sitting at East Street on the 26th July, 1989, whereby he dismissed the plaintiff's action in negligence. In this court, the respondent to whom notices were sent, did not appear but we have listened with care to the arguments put forward by Mr. Kitchin on behalf of the plaintiff.

The facts in the case are quite simple and uncomplicated. On the 22nd December, 1988 at about 9:30 in the morning, the plaintiff was driving his Mercedes Benz in a northerly direction along Duke Street when he came to its intersection with what is described in the evidence as Heroes Circle. At that point, there are two distinct lanes.

The plaintiff was in the right-hand lane. The defendant in his evidence said he was in the left-hand lane. The plaintiff said in evidence that he moved right, as he was obliged to do, having regard to the lane in which he had positioned himself, and as he went around the eastern part of Herces Circle he felt an impact. That impact was caused by the defendant's car which came in contact with his; the right-hand front bumper of the defendant's car collided with the left rear bumper of the Mercedes Benz. The plaintiff had moved off before the defendant.

The plaintiff's car sustained damage which came to Three Thousand Three Hundred and sixty Dollars (\$3,360.00) and there was a claim for Five Hundred Dollars (\$500.00) for labour and One Hundred and Seventy Dollars (\$170.00) for preparation of an estimate, a total damage of Four Thousand and Thirty Dollars (\$4,030.00).

The learned Resident Magistrate in his reasons said this, and these, in our view, are the relevant findings:

"The Rabbit is the car driven by the defendant. He said the rabbit was not in the process of overtaking the Mercedes Benz. The Mercedes Benz was in the process of overtaking the Rabbit and pulled over too soon resulting in the contact between the two vehicles."

On those findings the learned judge came to the view that the defendant was not negligent. It seems to us that the learned Resident Magistrate did not use his opportunity of seeing and hearing the witnesses to fully appreciate the evidence nor did he draw the proper inferences which fairly arose on the primary facts.

The position as we understand it is this: A driver of a vehicle in the right-hand lane must of course turn right in order to traverse the Circle. A driver of a vehicle in

the left lane may do so. But plainly, if he intends to turn right, then he is obliged, as any prudent driver, to ensure that vehicles to his right which are in fact involved in manoeuvring right are not impeded by his actions. It is clear when the evidence is seen in that light, that is, having regard to the relative obligations of the drivers, that the driver to the left must ensure that he is not impeding vehicles to his right. He must allow them to proceed, and he must so manoeuvre his vehicle to prevent a collision. In our view, the defendant did not observe the elementary rule of ensuring that the transit way to his right, was clear. Had he done so, the accident would never have occurred.

It is not without significance that the witness whom he called to give evidence before the learned Resident Magistrate altered his evidence somewhat. He said initially that the driver of the car in which he was a passenger was in the left-hand lane, but obviously appreciating the problem posed by that position, shifted the position of his car to the right-hand lane. That change was significant but it appeared to play no part whatever in the consideration of the learned Resident Magistrate. In our view, it ought to have alerted him to the case that has been put forward by the defendant, and to raise a doubt with respect to the defendant's case.

In our view, the evidence indicated that the defendant was wholly to blame for the accident and the plaintiff should have been acquitted of blame.

The appeal must therefore be allowed, the judgment of the court below set aside and judgment entered for the plaintiff/appellant in the sum of Three Thousand Nine Hundred

and Twenty Dollars (\$3,920.00), which represents the actual costs of the repairs and the cost of the estimate of the damages prepared by the assessor. The plaintiff is entitled to the costs in the court below to be taxed if not agreed. The costs of appeal, we fix at Three Hundred and Fifty Dollars (\$350.00).