

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO. 3 of 1992

BETWEEN:

SEYMOUR HERBERT

Appellant

and

EVERTON MITCHAM

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. C.M.Dennis Byron - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Vernon Veira, Mr. Lindsay Grant with him for
Appellant
Respondent in person

1993: March 24;
Sept. 27.

JUDGMENT

SATROHAN SINGH, J.A.

On Saturday, March 23, 1991 at about 11 a.m., at the junction of Cayon street and Victoria Road, the appellant's and the respondent's vehicles collided resulting in damage to both vehicles. On March 4, 1992, in a Suit for negligence brought against the respondent by the appellant for the damage to his vehicle, Magistrate Lynch-Wade, having heard evidence from the appellant and the respondent and from the police officer who investigated the accident, in his reasons for decision, considered the following four possibilities, whether:

- (1) both Drivers were to be blamed;
- (2) the Appellant was to be blamed;
- (3) the Respondent was to be blamed;
- (4) neither the Appellant nor the Respondent was to be blamed;

and concluded as follows:

"Having not been able to apply the principle of '*A balance of Probabilities*' in apportioning blame the Court dismissed the Suit and made no order for costs."

The appellant appeals for this order of the learned Magistrate and contends that the magistrate erred in law when he failed to determine the matter on a balance of probabilities, this being a civil matter.

On this issue, the law is trite that the standard of proof required in a civil matter of this nature is proof on a balance of probabilities. The Magistrate, from his reasons for decision, found himself unable to apply this standard of proof, yet he purported to dismiss the suit of the appellant. We find it difficult to understand how in these circumstances he could have arrived at the conclusion to dismiss. We therefore find merit in this ground of appeal.

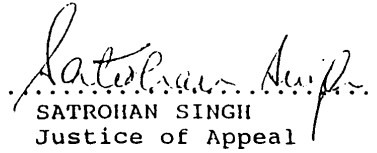
The appellant, as his second ground of appeal, contends that the magistrate having failed to decide the matter on a balance of probabilities erred in not finding in favour of the appellant. This ground necessarily involves an excursion into the facts. The evidence of the appellant shows that he drove out of Victoria Road and turned left into Cayon Street when the respondent drove his car out of Fort Street and turned right into Cayon Street thereby hitting the appellant's right back fender. The respondent's version is that he drove out of Fort Street and turned right into Cayon street and, as he made his manoeuvre, the appellant's vehicle "hustled" out of Victoria Road into Cayon Street pulling out the left end of his front bumper. The measurements show the agreed point of impact to be 8' 8" from the Mountain or Victoria road Side of Cayon Street, a street that is 23' 5" wide.

This evidence shows that both vehicles came out of opposite minor roads onto a major road, Cayon Street. They both had the intention of turning to travel in the same direction in Cayon Street, a dual carriage-way. From the measurements, the reasonable inference to be drawn is that at the time of the impact,

the respondent's vehicle had already safely crossed the first half of Cayon Street and was already in the second half or the Victoria road side of that street attempting to straighten up when the appellant's vehicle entered Cayon Street from Victoria road. In our view, this inference allows, on a balance of probabilities, of the other inference that this manoeuvre on the part of both drivers was more consistent than not with care on the part of the respondent and lack of care on the part of appellant in executing same having regard to the distance that the respondent must have travelled from the junction of Fort Street with Cayon Street before he reached the point of impact, and the fact that the appellant gave no evidence of excessive speed or any other form of bad driving on the part of the respondent. The appellant's opinion to the police when he said "the driver was looking around as if he was talking to somebody" is harmless to the respondent on the issue of negligence or careless driving. It is an equivocal opinion which could also be consistent with the evidence of the respondent that before crossing, he looked East, West and in front to ensure it was safe to cross. As against that, there is some evidence from the explanation given to the police by the respondent, for what it is worth, that the appellant "hustled" out of Victoria Road.

Support for this inferential finding can also be had, from the further silent testimony of the damage to the respondent's vehicle from which another reasonable inference can be drawn that the pulling out of the end of the front bumper of the respondent's vehicle would, on a balance of probabilities, be more consistent with the respondent's version of the accident that he had already safely crossed and that it was the appellant who "hustled" out of Victoria road and impacted with the respondent's vehicle with the back end of his car. If the appellant's version were to be believed that the respondent's vehicle struck his rear fender, it is not reasonable that such an impact would pull out the left end of the front bumper of the respondent's car. The bumper would more likely have been smashed. For these reasons we see no merit in this ground of appeal.

Accordingly, because of our conclusion on the second ground and not for the reasons given by the Learned Magistrate, we would affirm the Magistrate's Order dismissing the case of the appellant and order that this appeal do stand dismissed with costs to the Respondent in this Court to be taxed if not agreed.

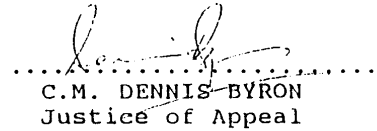

 SATROHIAN SINGH
 Justice of Appeal



I concur.

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 SIR VINCENT FLOISSAC
 Chief Justice

I concur.


 C.M. DENNIS-BYRON
 Justice of Appeal