

ANGUILLA

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO:5 OF 1992

BETWEEN:

GRACE RICHARDSON

- Appellant

and

HERBERT RICHARDSON

- Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Dr. Nicholas Liverpool - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Thomas Astaphan for the Appellant
Miss Palmavon Webster for the Respondent

1993: May 13;
June 21.

JUDGMENT

SATROHAN SINGH, J.A.

This is an Appeal from a decision of Magistrate Blackman questioning the learned Magistrate's finding of negligence against the appellant and his award of damages therefor. The appellant contends that the decision of the Magistrate on negligence was unreasonable and that there was no admissible evidence to justify the award of damages of E.C. \$670.00 .

On the issue of negligence, the Magistrate had before him evidence of the appellant's and the respondent's vehicles in a reversing manoeuvre which caused the collision. The learned Magistrate having seen and heard the witnesses preferred the evidence of the respondent over that of the appellant and found negligence on the part of the appellant. Learned Counsel for the

appellant, challenges this preference of the Magistrate. He referred to certain discrepancies within and between the evidence of the respondent and his witness Merlyn Richardson and urged this Court to find the preference unreasonable. To put it more succinctly, Counsel for the appellant does not challenge the learned Magistrate's evaluation of the facts he found. The challenge is to the Magistrate's perception of the facts of the matter. The main thrust of his argument questioned the credibility of the witnesses whose evidence was accepted by the Magistrate.

The principles upon which a Court of Appeal will act in disturbing a decision of a tribunal on a question of fact were crystallised by the House of Lords in Benmax v Austin Motor Company Limited (1955) 1 A.E.R. 326 as follows:

" An appellate court on appeal from a case tried by a Judge alone, should not lightly differ from a finding of the trial Judge on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where there is no question of the credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial judge, and should form its own independent opinion, though it will give weight to the opinion of the trial judge."

At p. 327 Viscount Simmonds made this observation:-

"This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness"

As earlier mentioned, the argument of Counsel for the appellant on the issue of liability centered mainly on the question of credibility. On this question, we must recognise the advantages enjoyed by the trial tribunal over this Court. As Lord Reid puts it at p. 328 of Benmax v. Austin Motor Co. Ltd:

"But the trial judge has seen and heard the witness, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases

that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is, and should be, slow to reverse any finding which appears to be based on any such considerations".

Applying these principles to the instant matter on appeal, and despite the fervour in the arguments of learned Counsel for the appellant, we can find no legal justification to interfere with the findings of the Magistrate on his perception and evaluation of the facts in this matter. We do not find this to be one of the rare cases referred to by Lord Reid. We are cognisant of the discrepancies in the evidence referred to by Counsel for the appellant but we do not feel that they are serious enough to warrant total disbelief of the evidence of those witnesses. A Magistrate in appropriate cases, in perceiving facts, is free to accept a part of a witness's testimony and reject a part and he can do so having considered the frailties of human nature and all the circumstances placed before him.

On the issue of damages, we agree with Counsel for the appellant that there was no admissible evidence to justify the award made by the Magistrate. The Magistrate based his award on an estimate purporting to come from a mechanic. The mechanic did not testify and so the quality of that estimate could not have been ascertained by the test of cross-examination. The estimate was given to the respondent in the absence of the appellant. It was given to the Court in a copy of a letter purportedly written to the appellant from the Chambers of Counsel for the Respondent. The appellant denied receipt of that letter. The respondent could not prove that the appellant ever received that letter. We find this evidence which is the foundation of the award of damages to be not only self-serving but inadmissible hearsay. Counsel for the

respondent in a valiant attempt to justify the award referred the Court to the evidence of the respondent, a retired bailiff when he testified that he is also a mechanic and that he knew the value of the damage but he forgot the amount and having seen the copy of his Solicitor's letter he accepted it was \$670.00. Looking at the context in which he gave this evidence, we are of a view that the estimate he gave was not his but that of his absent mechanic, again inadmissible hearsay. Not surprisingly this evidence was not used by the Magistrate in making the award.

Accordingly, whilst we can affirm the learned Magistrate's finding on liability and that there was some damage to the respondent's vehicle, we are constrained to set aside the award of \$670.00 damages. The final issue left to be addressed is the entitlement if any of the respondent in these circumstances.

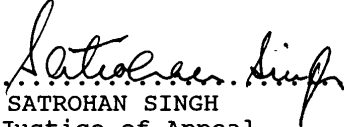
The Tort of Negligence is not actionable per se, therefore damages do not flow as of right. Damages must be proved. None was proved in this matter. In McGregor on Damages, 15th Edition 1988, it is stated at p.398 paragraph 399 that nominal damages may be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given, as in the instant matter.

An example of such an award is in Dixon v. Deveridge (1825) 2 C & P 109. We feel that the only legally permissible award of damages given the circumstances of this matter, is one of nominal damages.

Counsel for the respondent spoke of \$100 E.C. as nominal damages.

In Beaumont v. Greathead (1846) 5 C.B. 494, Maule J at p.499 said "Nominal damages means a sum of money that may be spoken of, but that has no existence in point of quantity." Lord Halsbury in The Mediane (1900) A.C. 113, at p. 116 says nominal damages does not mean small damages. Examples of Awards of nominal damages appear in McGregor on Damages at paragraph 401 and there is a range from £1 to £25. We will make an Award of nominal damages in this matter in the sum of \$25 E.C.

But for the varying of the Award of damages to \$25 E.C., we would order that this appeal do stand dismissed. The order for costs in the Court below is affirmed and the appellant will have half her costs in this Court.

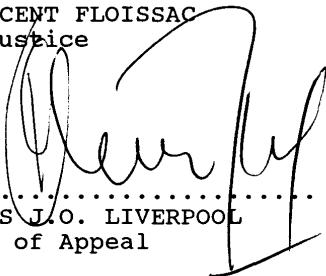

 SATROHAN SINGH
 Justice of Appeal

I concur.



 SIR VINCENT FLOISSAC
 Chief Justice

I concur.



 NICHOLAS J.O. LIVERPOOL
 Justice of Appeal