

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 29 OF 1992

BETWEEN:

TELFORD SHILLINGFORD

Appellant

and

POLICE

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Dr. N.J.O. Liverpool - Justice of Appeal
The Hon. Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. A. Piper for the Appellant
Mrs. D. Wilson for the Respondent

1993: March 10 and 11

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

The appellant was charged with the offence of driving without due care and attention contrary to section 54 of the Motor Vehicle and Road Traffic Ordinances 1961 (Cap. 200 of the Dominica Revised Laws). The offence is alleged to have been committed on the 5th June, 1991 at about 8.45 p.m. when the appellant was driving motor car No. 4630 which collided with pick-up van No. 318, driven by Reverend Celsus Auguiste along the Canefield Public Road.

On the 17th March, 1992, in the Magistrate's Court of Magisterial District 'E' of the Commonwealth of Dominica, Acting Magistrate G. Royer tried and convicted the appellant of the offence charged and fined him \$400.00 to be paid by the 30th April, 1992 and in default sentenced him to imprisonment for a term of one month. The appellant therefore appealed against that conviction.

Counsel for the appellant submitted that the evidence

indicated that the accident was caused by Rev. Auguiste's driving at an excessive speed and on the wrong side of the road. In support of the submission, counsel relied on the evidence of (1) the measurements by the police (2) the relative positions of the vehicles at the time of impact (3) the parts of the vehicles which were damaged and (4) the testimony of the appellant and his daughter as to how the accident occurred.

Assuming that the evidence established that Rev. Auguiste drove his vehicle negligently, the appellant was not thereby relieved of his obligation to drive with due care and attention. Accordingly for the purposes of this appeal, it is not necessary to determine whether Rev. Auguiste drove negligently or otherwise.

Reverend Auguiste was driving along a major road. The appellant drove from a minor road into that major road. The point of impact of the two vehicles was only twenty-three feet from the intersection of the minor and major roads. The proper inference to be drawn from those circumstances is that the appellant drove without due care and attention.

The learned Magistrate concluded as follows:

"From the above facts as related by both the prosecution and the defence it is clear that the defendant was travelling from a secondary road into a major road when the collision took place.

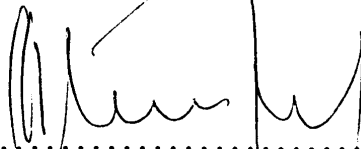
The vehicle which was travelling on the major road had the right of way. The defendant therefore had to ensure that the road was clear before he proceeded to cross the road to enter his correct land.

The areas of damage indicated on both vehicles and the point of impact agreed to by both drivers indicate that the defendant for one reason or the other was not aware of the approach of the other vehicle and therefore, the collision occurred."

We can find no fault with that conclusion. Accordingly, the appeal must be and is hereby dismissed.



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SIR VINCENT FLOISSAC
Chief Justice



.....
NICHOLAS J.O. LIVERPOOL
Justice of Appeal

appeal that the appeal should be dismissed



.....
SATROHAN SINGH
Justice of Appeal