

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. S. Cv 2593 of 1987

BETWEEN

AMEER ALI

Plaintiff

AND

JOHN AWONG and

Defendants

TALIM BAKSH

Before the Honourable Mr. Justice P. Moosai

Appearances:

Mr. W. Seenath for the Plaintiff

Mr. A. Ramlogan for the Second Defendant

JUDGMENT

In this action the Plaintiff claims against the Defendants damages for personal injuries and loss sustained as a result of the negligence of the Second- named Defendant, the servant and/or agent of the First-named Defendant, in the driving and/or management of motor vehicle PAM 6139 on the 18th day of December 1983 at Clarke Road, Penal .

The Plaintiff has taken no active steps against the First-named Defendant in this action and therefore the only issue is as between the Plaintiff and the Second-named Defendant who is hereinafter referred to as “the Defendant” for convenience.

In his Statement of Claim the Plaintiff has pleaded that on the said 18th December, 1983 he was lawfully standing off Clarke Road, Penal, in the vicinity of the second mile-mark when the Second Defendant so negligently drove and/or managed motor vehicle PAM 6139 along the said road that he collided with the Plaintiff causing him to suffer severe personal injuries and loss. He is also relying on the maxim of res ipsa loquitur.

The injuries suffered by the Plaintiff are severe and are set out in the Statement of Claim as follows.

- (i) Severe head injury;
- (ii) Torn medial collateral ligaments of the right knee;
- (iii) Torn anterior cruciate of the right knee;
- (iv) Torn left internal collateral ligaments;
- (v) Torn posterior cruciate ligament;
- (vi) Injury to right and left hip;
- (vii) Damaged ankles;
- (viii) Damaged anterior cruciates and lateral menisci.

The Defendant by his defence has admitted that he was the driver of PAM 6139 on that date but has denied that the Plaintiff was involved in an accident with PAM 6139 either as alleged in the Statement of Claim or at all. He has denied negligence. At paragraph (6) of the Defendant's Defence he pleads inevitable accident and purports to give detailed particulars as to how the accident might have happened. As I consider paragraph (6) to be of great importance, I shall set out same in its entirety:

"6. Further or alternatively if, which is denied, the plaintiff was involved in an accident with motor vehicle PAM 6139 on the 18th December, 1983, the Second Defendant will contend that the said collision was the result of an inevitable accident and arose notwithstanding the exercise of all reasonable care by the Second Defendant.

PARTICULARS

On the 18th December, 1983 at around 8.30 p.m. the Second Defendant was driving motor vehicle PAM 6139 owned by one Kenny Sokdeo of 24 Drayton Street, San Fernando in an easterly direction along Clarke Road in the vicinity of the Trintoc Extension Road. The Plaintiff was travelling as a front seat passenger in the vehicle. A motor vehicle, number unknown, travelling in the opposite direction at a fast rate of speed and on the wrong side of the road collided with the right door mirror of motor vehicle PAM 6139. The second defendant brought motor vehicle PAM 6139 to a standstill. The other vehicle stopped at the back of PAM 6139. No one was injured. The Plaintiff came out of PAM 6139 and began quarreling with the persons in the other vehicle. At the same time a white van, number unknown, stopped on the scene of the accident with about eight (8) men on it. The second Defendant was seated in PAM 6139 at the time. One of the persons from the van held on to the Second Defendant's hair and began pulling him. The Second Defendant drove off and left the Plaintiff at the scene of the accident. The Plaintiff was not injured as a result of the aforesaid collision. The Second Defendant returned to the scene of the accident shortly thereafter, drove PAM 6139 into the Trintoc Extension Road and stopped at a distance of about 20 feet from Clarke Road. Persons on the scene began stoning and beating motor vehicle PAM 6139. One of the stones damaged the right rear door glass of PAM 6139 and entered the vehicle. In order to escape injury and possibly death the Second Defendant drove off bending in the vehicle as low as possible to avoid inter alia being hit by stones and other objects which were being thrown at the vehicle. The Second Defendant again left the Plaintiff on the scene of the accident."

THE EVIDENCE FOR THE PLAINTIFF

From the very outset the Court had indicated that it was only dealing with the question of liability as the Plaintiff was unable to prove damages at trial as the doctor was not present.

Having regard to the severe personal injuries the Plaintiff was wheeled in on a stretcher to give evidence.

In examination-in-chief his evidence was that on the 18th December, 1983, he was involved in an accident. A car bounced him. The Defendant was driving that car. He was in Penal. He was in J.P. Road, Penal. He couldn't remember where he was standing when the accident happened. An accident caused him to be like this. After the accident he recalled he was in the hospital. Before he was struck he did not remember where he was, only that he was on J.P. Road. He couldn't remember what he was doing on J.P. Road. He couldn't remember about what time it was in the evening. He recalled that on the evening of the incident he went to Penal with the Defendant to paint. He worked for the Defendant. He couldn't remember sitting down in the front seat of the Defendant's car, nor anyone throwing stones at same. He couldn't remember anyone pulling the Defendant by his hair.

Under cross-examination the Plaintiff's evidence was that at the time of the accident he was working for the Defendant and that the Defendant used to take him to work in his (the Defendant's) car. He remembered that the Defendant and he were returning from working in Penal. He then made a complete turnabout and stated that he was not in Defendant's car that day.

It was put to him that:

- (i) he was going home with the Defendant when the accident happened which he denied;
- (ii) it was when the Defendant was carrying him back from work in the car that there was an accident with another car which the Plaintiff denied;
- (iii) the side mirror of another motor vehicle being driven in the

- opposite direction hit the Defendant's side mirror which the Plaintiff denied;
- (iv) after the incident happened the Plaintiff jumped out of the motor vehicle and began arguing with the occupants of the other motor vehicle which was denied;
 - (v) whilst the Plaintiff was arguing a van with eight men pulled up and stopped which was denied;
 - (vi) it was those men in the van that jumped out of the van and began to beat the Plaintiff up.

At that stage Mr. Seenath objected to the line of questioning with respect to the beating-up as it was not pleaded. Having regard to the detailed particulars Mr. Ramlogan conceded that he was not pursuing that line of questioning. Thereafter, Mr. Ramlogan proceeded to cross-examine the Plaintiff to test his memory. It is clear to me that the Plaintiff had little or no recollection of the accident.

Police Constable David Harnarinesingh, the investigating officer attached to the Penal Police Station at the relevant time, was the only other witness called by the Plaintiff. The Plaintiff had also subpoenaed Rasheed Khan but he failed to turn up.

His evidence was that around 7.45 p.m. he was on duty at Penal Police Station when, as a result of a report of a road accident, he investigated same. His initial inquiries took him to the Trintoc Private Road, Penal, where he saw a number of persons whom he spoke with. He was told something about a brakes impression which led from the Clarke Road to the Trintoc Private Road. He was also told something about the two or three spots on the Trintoc Private Road.

He recorded the length of the brakes impression, the width of the road with the two or three spots. He went to San Fernando General Hospital, Casualty Department, where he saw the Plaintiff awaiting medical attention. Whilst he was there Rasheed Khan and Roopchand Ragoonath also came in for medical attention. Sometime later that night, about 3.00a.m., he went to the Defendant's home at Wright Trace, Cumuto Road, Barrackpore. The Defendant was not home at the time. He had a conversation with the Defendant's wife after which he inspected the motor vehicle PAM 6139. Some of the damages that he could recall were the grille, the right headlamp and the wing glass on the right rear door of the vehicle. He interviewed several witnesses and recorded statements from them.

On 19th December, 1983, the day after the accident, the Defendant went to the Penal Police Station where he was interviewed by Police Constable Harnarinesingh and a statement recorded from him. He subsequently received certain instructions and preferred a number of charges against the Defendant. These matters were called several times at the Siparia Magistrates' Court, and the Defendant pleaded not guilty to all of them. However on 21st October, 1986 the Defendant pleaded guilty to a charge of dangerous driving.

Under cross-examination Police Constable Harnarinesingh said that on this particular occasion when he made enquiries at the scene of the incident, there were four persons claiming to be eye-witnesses. But he was unable to produce any of the statements he recorded as they could not be found. He did not observe any blood on the

vehicle PAM 6139. There was a stone in the car. The right headlamp, the wing glass on the right rear door and the grille were damaged as far as he recalled. The brakes impression was consistent with a car swerving on the side. About eight charges were preferred against the Defendant. Three of those charges were for allegedly damaging individuals arising out of the incident. One of those persons was the Plaintiff. No evidence was offered by the Plaintiff.

Further under cross-examination Police Constable Harnarinesingh stated that the Defendant gave him a statement which also

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road, the other vehicle's door mirror collided with his mirror. The driver of the other motor vehicle then pulled to the back of the Defendant's vehicle. The Plaintiff came out of the Defendant's vehicle and the Defendant heard the Plaintiff arguing with the driver or somebody in the other car.

A few minutes after a white van with about eight men on it came on the scene. One of the guys from the van came towards the Defendant, held on to his hair and started pulling it, so the Defendant drove off. The Defendant made sure to emphasise at that point:

“Of course I drove off at a fast rate”

About quarter mile up he turned around, knowing that the Plaintiff was still on the scene, in order to pick up the Plaintiff. He pulled into Trintoc Extension Road, (which is the same Trintoc Private Road P.C. Harnarinesingh referred to) because the Clarke Road was blocked.

“There was a fight going on apparently Ameer Ali was being beaten by men.”

It bears remembering that earlier on in the cross- examination of the Plaintiff, Mr. Ramlogan had in fact conceded that he could not pursue that line of questioning namely, that the Plaintiff was being assaulted by men.

The Defendant thereafter stated that he pulled into Trintoc Extension Road, and stopped about twenty feet away in order to pick up the Plaintiff. Then some men started pelting at his vehicle. One of the stones broke a wing glass and came into the car so he had to duck and drive away leaving the Plaintiff for the second time on the scene. He then drove home. He could actually see they were beating the Plaintiff. Men on the scene there were beating him. This is on the Trintoc Private Road.

The first part of the incident took between five and fifteen minutes. When he said five to fifteen minutes he meant a quick time.

After he drove home that night he went to look for Kenny Sookdeo, the owner of the vehicle.

He did not know that the Plaintiff was damaged. He visited the police the next morning. He showed them the stone in the vehicle.

He didn't know the name of the driver of the other vehicle.

He first found out that the Plaintiff was injured from the police the next morning.

He tried to assist the Plaintiff with National Insurance, the reason being that he was on the way home from work with the Plaintiff and the Plaintiff was his friend. He did not let Kenny Sookdeo do that as the Plaintiff's relatives asked him to assist.

He did not with that motor vehicle bounce and injure the Plaintiff. He then stated:

“I stated this accident took place on Clarke Road and thereafter on the Trintoc Extension Road where the guys pelted the vehicle.”

J.P. Road is a road three to four miles away.

CROSS-EXAMINATION

Under cross-examination by Mr. Seenath the Defendant stated:

“I said a while ago the accident occurred on the Trintoc Road and I said yes sir. That is the same accident I pleaded guilty for dangerous driving at Siparia Magistrates’ Court I pleaded guilty to dangerous driving as I left the scene at a very fast rate.” [This was of course referring to the time he first left the scene.]

Mr. Seenath then asked:

“Question: Is it not strange that you pleaded guilty to dangerous driving?
Answer: [After a very long pause no answer is forthcoming from the Defendant.]

The Defendant was asked if he was annoyed when his hair was pulled. His response was that he was frightened . He said he couldn’t remember if he was annoyed. He heard the policeman in his testimony say there was a skid mark on that road. When asked by Mr. Seenath to explain the skid mark the Defendant stated that he had to apply brakes in such a fashion as to cause that skid mark on the road.

“That would not have been in the direction of the road. When I stopped to pick up the Plaintiff that is where I stopped to pick him up in the crowd. I said earlier I did not go in that direction but pulled into another road when I saw the crowd of people.”

When further cross-examined as to whether he went back to the scene of the accident after that he said no. Yet when asked further how he knew there was a skid mark he said:

“I knew there was a skid mark left by my car as the Policeman said so. I don’t remember if he told me what was the direction of the skid mark.”

When asked if he gave Police Constable Harnarinesingh the name of the driver of the other vehicle namely, Rasheed Khan, he denied telling the police officer that. The Defendant further stated that after he stopped that is when they start pelting the vehicle.

RE-EXAMINATION

The Defendant explained that he pleaded guilty to dangerous driving as he had to drive off fast.

“I had to drive off fast when I left the scene of the accident, that is when the person started pulling my hair. So I pleaded guilty for that reason. I did not plead guilty to dangerous driving because I hit anyone in that accident. That was the only reason I pleaded guilty.”

Further on the Defendant, in an attempt to explain how he knew there was a skid mark there, stated:

“When the police officer said he saw a skid mark, I am not definite that this skid mark was caused by my vehicle. I am not definite that my motor vehicle could have left the skid mark the police was talking about. I think my motor vehicle could have left the skid mark the police was talking about. My motor vehicle would have left a skid mark in Trintoc Extension Road. Ameer Ali would have been standing on Clarke Road at the time. I could have left that skid mark. Ameer Ali would have been about thirty feet away.”

In answer to questions asked by the Court, the Defendant stated that on the night of the incident, he drove the motor vehicle home. It was in a working condition. He then hired a motor vehicle driven by a friend, Sair Ali as he was nervous and frightened. He

didn't know how much money he paid to Sair Ali. He hired the vehicle to go and look for the man Mr. Kenny Sookdeo. He did not see Mr. Sookdeo that night as he had gone out with his relatives. There was nobody home. Mr. Sookdeo lived far from him. He lived in San Fernando. When he did not meet Sookdeo he went back home. It was almost morning. It was almost daylight.

Then in further answer to the Court he said:

“Actually before I brought the motor vehicle to a complete stop, stones started hitting my motor vehicle even before I stopped. I then stopped the vehicle. I stopped the vehicle to take up Ameer Ali. Ameer Ali was about thirty feet away from where I stopped.

The damage to the motor vehicle was the headlamp, the grille was cracked, the right side back door wing glass and there were little impressions on the fender. When he said the grille was cracked he meant it wasn't completely broken. It was bent. It was plastic. The throwing of the stones caused the grille to crack. He can't recall if he told the police that the grille was bent as a result of the throwing of the stones. The police officer told him that there were three people injured that day.”

ANALYSIS OF THE EVIDENCE

I must confess that I was perplexed as to what exactly was the defence in this matter. Paragraph (6) pleaded the defence of inevitable accident by stating:

“Further or alternatively if , which is denied, the Plaintiff was involved in an accident with motor vehicle PAM 6139 on the 18th December, 1983, the second Defendant will contend that the said collision was the result of an inevitable accident and arose notwithstanding the exercise of all reasonable care by the second Defendant.” (emphasis mine).

Indeed I specifically asked Mr. Ramlogan to address me on paragraph (6) of his Defence and he admitted that he was a bit perplexed by the pleading. Notwithstanding that it seemed to me that the Defendant was contending at paragraph (6) that the Defendant would rely on the defence of inevitable accident.

Suddenly and for the first time we had during the course of the trial, the Defendant raising for the first time a positive assertion as to how exactly the Plaintiff was injured namely, that the Plaintiff was being beaten by a group of men, or as he said under cross-examination he could actually see the men beating the Plaintiff.

One would have thought that had this been the case and the Defendant was raising such a defence, it would have been pleaded, but it was not. This therefore puts the bona fides and credibility of the Defendant seriously in jeopardy.

I am further fortified in my view because the material particulars pleaded at paragraph (6) of the Defence were so specific that one would have thought that if this was the Defendant's case, the material facts of the assault would also have been pleaded.

Further the particulars of the defence of inevitable accident were so comprehensive, detailed and specific that one thought that the Defendant was contending that, having regard to the hail of stones being thrown by the men at his vehicle, he had to duck for cover and drive off, and that is how he managed to bounce the Plaintiff. Yet further the Defendant gave evidence consistent with the particulars at paragraph (6) of his Defence with respect to the defence of inevitable accident but, at the eleventh hour,

then proceeded to change the very substratum of his Defence by introducing, for the first time, the allegation of assault. This further reinforces my view as to the complete lack of bona fides of the Defendant. He has now not collided with the Plaintiff but placed the Plaintiff some twenty feet away from him when he returned to the scene (increased to thirty feet in answer to a question posed by the Court).

Having attempted to allege assault, the Defendant's Attorney has not even condescended to asking for an amendment of his Defence to reflect the new position so that, as it stands, the pleading is in its original form.

Even when cross-examined by Mr. Seenath as to how the accident occurred (meaning the accident between himself and the Plaintiff) his evidence was that:

“I said a while ago the accident occurred on the Trintoc Road...”

Yet nowhere in his evidence-in-chief was there any admission by him of an accident with him and the Plaintiff, nor of any accident on Trintoc Road.

The bounds of incredulousness are taken one step further by other contentions of the Defendant in this matter. Having pleaded guilty at the Siparia Magistrates' Court to a charge of dangerous driving, the Defendant now contended that the reason why he pleaded guilty was because one of the men had jumped out of the van and began pulling his hair and “he left the scene at a very fast rate.”

Again when cross-examined about the skid mark, he proceeded to explain in a very cogent, compelling, comprehensive and convincing manner how the skid mark happened to be on the road.

It is passing strange that a Defendant who, if he is to be believed, had to leave the scene so quickly, and who, as he said, never re-visited the scene would know with such precision the type of skid marks made and the direction in which they flowed. In re-examination, as has been the pattern for the greater part of his evidence, the Defendant now suggested that when the police officer said he saw the skid mark he (the Defendant) was not definite that his motor vehicle would have left that skid mark.

Again the evidence of Police Constable Harnarinesingh was that he went to the Defendant's home at 3.00 a.m. on the morning of 19th December, 1983 but the Defendant was not home. (The accident happened at about 7.45 p.m.) The Defendant's testimony was that he went to look for Kenny Sookdeo that night.

In answer to questions posed by the Court, the Defendant stated that although he drove the said motor vehicle home that night he hired a vehicle driven by a friend, Sair Ali, to go and look for the owner of the said motor vehicle. Kenny Sookdeo lived in San Fernando. He visited Kenny Sookdeo's home. He was not home. Yet the Defendant in his evidence said he returned home (he lived at Barrackpore) when it was almost morning, almost daylight! Again the Defendant does not strike me as being a credible witness.

The evidence of Police Constable Harnarinesingh is the only independent testimony that we have in this entire case. I found him to be a credible witness. The uncontradicted and unchallenged evidence of Harnarinesingh was that as a result of a report of a road accident received at Penal Police Station at about 7.45 p.m. he visited the scene. His enquiries took him to Trintoc Private Road, Penal, where he saw a number of persons whom he spoke with. He was told something about a brakes impression which led from Clarke Road to Trintoc Private Road (the very same skid mark described with precision by the Defendant). He was also told something about the two or three spots on the Trintoc Private Road. It is clear to me that the combined effect of the Plaintiff's evidence that the Defendant's motor vehicle bounced him and the evidence of Police Constable Harinarinesingh, with respect to the skid mark and the two or three spots on the Trintoc Private Road, was that the Defendant's motor vehicle collided with the Plaintiff on the Trintoc Private Road. This in my view, suffices to raise a prima facie case of negligence against the Defendant. This is supported by the Defendant's evidence in cross-examination as, when asked by Mr. Seenath to explain the skid mark, the Defendant stated:

“That would not have been in the direction of the road where I stopped to pick up the Plaintiff. That is where I stopped to pick him up in the crowd. I said earlier I did not go in that direction but pulled in to another road when I saw the crowd of people.”

Finally the evidence of Police Constable Harinarinesingh is that, as a result of the report made and investigations conducted, he received certain instructions to prefer some

eight charges against the Defendant, including three for allegedly damaging individuals arising out of the incident. One of those three individuals was the Plaintiff. Police Constable Harinarinesingh also recollected seeing two other people at the San Fernando General Hospital the night of the incident namely Rasheed Khan and Roopchand Ragoonath. In addition the Defendant gave him a statement. In that statement he mentioned that he was involved in a trivial accident that said evening with a motor vehicle driven by Mr. Rasheed Khan. The Defendant throughout his evidence at the trial denied knowing a Rasheed Khan. The Defendant is asking the Court to believe the evidence of Police Constable Harinarinesingh, but disbelieve Harinarinesingh when he said that the Defendant told him about the said Rasheed Khan. I again prefer the evidence of Police Constable Harinarinesingh on this point.

Further, as I indicated, this is the only independent testimony that we have in this case. To support the Defendant's theory, it would mean that the police themselves in the investigation of this case would have, with the knowledge of what the Defendant was saying and with the knowledge of the examination of the locus in quo and with the statements of the other witnesses, deliberately and/or falsely and/or maliciously and/or wrongly prosecuted the Defendant knowing fully well that what the Defendant was contending was that about eight men had assaulted the Plaintiff thereby occasioning him grievous bodily harm. Surely if this were the case the police would have, as a result of their independent investigation, preferred charges against the men concerned or certainly would not have preferred charges against the Defendant. To compound it all, the Defendant then goes and pleads guilty to dangerous driving as aforesaid! The Court

therefore frowns on allegations which have no basis in logic.

STONES:

The Defendant said he first drove off . Then about quarter mile up he turned around as he knew that the Plaintiff was still on the scene and he had to go and pick him up. He pulled into Trintoc Extension Road because the Clarke Road was blocked. I interject here to point out that this again conflicts with the Defendant's earlier version as to the vehicle leaving a skid mark.

The Defendant thereafter stated that he pulled into Trintoc Extension Road, stopped about thirty feet away in order to pick up the Plaintiff. I again pause to point out that this again conflicts with the Defendant's earlier testimony namely:

“When I stopped to pick up the Plaintiff that iŷÁ_M

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Further, although the Defendant has denied negligence, he has also expressly pleaded in the alternative inevitable accident. The Plaintiff must therefore raise a prima facie case of negligence. The burden of proof is then thrown upon the Defendant to establish facts negating his liability and one way in which he can do this is by proving inevitable accident.

In Charlesworth Ibid. paragraph 3-115 the Learned authors state:

“Inevitable accident is where a person does an act, which he may lawfully do, but causes damage, despite there having been neither negligence nor intention on his part... It is doubtful whether much advantage is gained by the continued use of the expression inevitable accident.” To quote the words of Lord Greene: [in Browne v. De Luxe Car Services [1941] K.B. 549. 552]

“I do not feel myself assisted by considering the meaning of the phrase ‘inevitable accident.’ I prefer to put the problem in a more simple way, namely, has it been established that the driver of the car was guilty of negligence?”

At Charlesworth Ibid. paragraph 3-116:

“Apart from Admiralty cases few are the reported cases, in which the defence of inevitable accident has succeeded, because the question is entirely one of fact. Nevertheless the defence itself is quite well established.”

At paragraph 3-120 Charlesworth Ibid. on the burden of proof states:

“The burden of proof of inevitable accident is upon the person setting it up, viz. the Defendant.”

In the instant case I have already shown that the Plaintiff has raised a prima facie case of negligence. The Defendant has failed to show what was the cause of the

accident, and to show that the result of that cause was inevitable. In fact the Defendant has departed from his pleading to set up an entirely different reason for the Plaintiff's injury namely, assault by a group of men. He has further placed the Plaintiff some twenty feet (thirty feet under cross-examination) away from the motor vehicle. Again if, as the Defendant said, it was before he brought the vehicle to a complete stop that stones started hitting his motor vehicle, it would seem to suggest that the Defendant, with the knowledge that stones were being thrown at his vehicle, drove into the crowd of people. The Defendant has failed to prove inevitable accident.

RES IPSA LOQUITUR

The maxim is no more than a common-sense approach to the assessment of the effect of evidence in certain circumstances. Such cases are where the Plaintiff proves the happening of the accident and nothing more. It may be that he cannot prove more but whether he can or not, he does not proceed to prove any specific act or omission on the part of the Defendant. The mere happening of the accident "speaks for itself," since it may be more consistent with negligence on the part of the Defendant than with any other cause. If that is so, the Court may find negligence on the part of the Defendant, unless he gives a reasonable explanation to show how the accident may have occurred without negligence on his part: Charlesworth Ibid paragraph 5-102.

I have already found that the Plaintiff has established a prima facie case. In evaluating the evidence as a whole, I have already shown that the defendant has not given a reasonable explanation as to how the accident happened. In the circumstances, I find,

on a balance of probabilities, that the maxim applies and that the Defendant is liable.

PLEA OF GUILTY

In Hollington v F.W. Hewthorn and Company Limited [1943] 2 AllE.R. 35 it was held, inter alia, by the Court of Appeal of England that a certificate of conviction cannot be tendered in evidence in civil proceedings and therefore the certificate was rightly rejected. On a subsequent civil trial the Court should come to a decision on the facts before it without regard to the proceedings before another tribunal.

At page 42E, of the decision Lord Justice Goddard in dealing with a guilty plea stated:

“ It may frequently happen that, where bigamy or any other crime has to be proved in a civil proceeding, the prisoner on his trial had pleaded guilty, Proof by a witness present at the time of the confession is admissible, because an admission can always be given in evidence against the party who made it. In the present case, had the Defendant before the magistrate pleaded guilty, or made some admission in giving evidence that would have supported the plaintiff’s case, this could have been proved, but not the result of the trial.”

In the instant case the Defendant pleaded guilty to dangerous driving but provided the court with an explanation which this Court did not find plausible namely, the reason he pleaded guilty was that he drove off at a very fast rate of speed when one of the men in the pick-up grabbed on to his hair.

What then is the evidential force of a plea of guilty to a criminal charge in subsequent civil proceeding arising on the same facts? There seems to be a dearth of

authority on point. In the Canadian case of Cromarty v Monteith [1957] 8 D.L.R (2d) 112, the Plaintiff was a guest in the Defendant's house and was assaulted by the Defendant after molesting the Defendant's wife. Subsequently the Defendant pleaded guilty in a police Court to a charge of assault causing actual bodily harm. Then the Plaintiff brought civil proceedings and it was contended on his behalf that the Defendant's guilty plea was a conclusive admission of guilt which precluded the civil court from hearing any evidence which might contradict it. Wilson J looked at the textbook opinions and concluded his examination of textbook authority in the following passage:

"I think that Mr. Phillips has correctly stated that law. The plea of guilty is receivable in evidence as an admission against interest but it is not conclusive. It should be regarded as would any other admission by a litigant, and evidence of the circumstances under which it was made must be received in order to decide upon the weight to be attached to it. The fact that the admission has been made in a judicial proceeding is a factor to be considered, but any presumption which might arise from this circumstance might be rebutted by evidence, for instance, that the plea has been induced by fraud or threats. The Defendant may also, I think, be heard in a subsequent civil trial, to say that the admission was made under a misapprehension of law ...but I think once the admission is placed on record, it is incumbent upon the litigant to prove the existence of circumstances which detract from its apparent effect."

Wilson J. then went on to find that in the case before him there was no suggestion of fraud, compulsion, inducement or mistake of law. In consequence he attached considerable weight to the admission of guilt, found that the force used by the Defendant against the Plaintiff was excessive in proportion to what might legitimately have been used in defence of the Defendant's wife and therefore gave judgment for the Plaintiff though with costs.

In Jorgensen v News Media (Auckland) Limited [1969] N.Z L.R 961 the New Zealand Court of Appeal held that a certificate of Jorgensen's conviction is not merely conclusive evidence of the fact that Jorgensen had been found guilty of the murder of Speight but also is admissible evidence, while not conclusive, of the fact of guilt of the crime charged against Jorgensen at the time and place named in the indictment. Whether such evidence discharges the evidential burden of proof at any stage is for the trial Court to decide on the whole of the evidence tendered at that stage.

I agree with the reasoning above. It is therefore a question of what weight I should attach to the admission. In the instant case, although there was no direct evidence that the Defendant was represented at the Siparia Magistrates' Court, Mr. Ramlogan thought he might have been. I do not find the explanation offered by the Defendant as to why he pleaded guilty to be a plausible one. In the instant case, there being no reasonable suggestion of fraud, compulsion, inducement or mistake of law, I attach considerable weight to the admission of guilt as evidence of negligence. I should mention that, even without taking into account the plea of guilty, I still find on the totality of the evidence that the Defendant is negligent.

THE RULE IN HOLLINGTON v HEWTHORN

In 59 Law Quarterly Review (1943) volume 59 at p. 299 Dr. Goodhart expressed doubts as to the correctness of the judgment in Hollington v Hewthorn. In the same year a critical article appeared in the Canadian Bar Review by Mr. C.A. Wright.

In New Zealand the Court of Appeal in Jorgensen v News Media (Auckland) Limited [1969] N.Z.L.R 961 refused to follow Hollington v Hewthorn.

In England, a strong Court of Appeal comprising Lord Denning M.R. Lord Justices Danckwerts and Salmon in Goody v Odhams Press Limited [1966] 3All E.R. 369 all expressed the opinion that the decision in Hollington v Hewthorn was wrong. Again in Barclays Bank Ltd v Cole [1966] 3 All E.R. 948 Lord Denning M.R in discussing the rule in Hollington v Hewthorn said that he hoped the rule would be altered. Lord Diplock also agreed that the rule was a technical rule which was ripe for re-examination.

These criticisms prompted the enactment of the U.K. Civil Evidence Act [1968]. As the Law Reform Committee (including Lord Pearson, Lord Justice Diplock, Lord Justice Winn, Mr. Justice Buckley, Mr. Justice Orr) appointed to consider the law of evidence in civil cases with respect to the rule in Hollington v Hewthorn said, after referring to the facts of the case:

“Rationalise it how you will, the decision in this case offends one’s sense of justice. The defendant driver has been found guilty of dangerous driving by a Court of competent jurisdiction. The onus of proof of culpability in criminal cases is higher than in civil; the degree of carelessness required to sustain a conviction for careless driving is, if anything, greater than that required to sustain a civil cause of action in negligence. Yet the fact that the defendant driver had been convicted of careless driving at the time and place of the accident was felt not to amount even to prima facie evidence of his negligent driving at that time and place. It is not easy to escape the implication in the rule in Hollington v Hewthorn that, in the estimation of lawyers, a conviction by a criminal Court is as likely to be wrong as right.... Any lawyer would, we

think, regard the fact of such conviction as a firm foundation for the belief that the accused had conducted himself in such a manner as to constitute the criminal offence of which he was convicted and, if such criminal offence would also constitute a civil wrong, that the accused had also committed a civil wrong also. We, too, share this commonsense view ... we have no doubt in principle that evidence of the conviction should be admissible.”

In Hunter v. Chief Constable of West Midlands and another [1981] 3All E.R.727, Lord Diplock (with whom all the other Law Lords agreed) in delivering the judgment of the House of Lords, remarked that Hollington v Hewthorn is generally considered to have been wrongly decided.

It is respectfully suggested that perhaps the time is ripe for our Parliament to consider enacting legislation similar to the United Kingdom legislation making a conviction of a criminal offence before a Court of competent jurisdiction admissible in subsequent civil proceedings. In any event, having regard to the criticisms levelled against the rule in Hollington v Hewthorn, I would have declined to follow it had the matter been directly in issue before me.

CONCLUSION

When one looks at the evidence of the case in its entirety, I am of the view that the Defendant is liable to the Plaintiff for damages for negligence. The combined effect of the Plaintiff's evidence and that of Police Constable Harnarinesingh's, together with the plea of guilty to dangerous driving by the Defendant at the Siparia Magistrates Court, together with the evidence of the Defendant as aforesaid reinforces my view that I am

correct in this matter.

In all the circumstances I find that the Defendant is wholly to blame for the damage. There will accordingly be judgment for the Plaintiff with damages to be assessed by a Master in Chambers. The second Defendant shall pay the Plaintiff the costs of the action to be taxed in default of agreement.

Dated this 1st day of December, 1997.

Prakash Moosai

Judge