

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO

NO. S.692 OF 1990

B E T W E E N:

MANIRAM MANBODH

PLAINTIFF

AND

VICTORIA COUNTY COUNCIL

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

DEFENDANTS

BEFORE THE HON. MR. JUSTICE STOLLMAYER

Appearances:

Mr. S. Parsad for the Plaintiff
Miss D. Noel for the Defendants

R E A S O N S

The Plaintiff claims against the Defendants in breach of statutory duty arising out of the collapse of a bridge spanning the Cumuto River on 18th May 1989 while the Plaintiff's vehicle was being driven over it.

The Plaintiff was at the material time the owner of a Nissan dump truck registration number TAE 978. On the day in question it was being driven by his employee, Ramraj Baldeo, from south to north along the Cumuto South Trace transporting earthfill for Mathura Bissessar. Mr. Bissessar lives at Rochard Douglas Road and had hired the services of the Plaintiff to transport the earthfill from south of Cumuto South Trace to the north end of the trace. To do so it was necessary to cross the bridge in question.

The Plaintiff's truck had transported two such loads of earthfill and when crossing the bridge with the third load it collapsed and the truck fell into the river.

Ramraj Baldeo, the driver of the truck, used Rochard Douglas Road to get on to Cumuto South Trace and crossed the bridge to get to the earthfill site. This was the first occasion on which he had driven on Cumuto South Trace and he was not familiar with the Cumuto area in general, and the trace in particular. Although there was no evidence as to where the intersection of Rochard Douglas Road and Cumuto South Trace is located in relation to the intersection of Hamilton Trace and Cumuto South Trace. I came to the conclusion that it lay to the north of the latter. Hamilton Trace is some 600 feet north of the bridge. Rochard Douglas Road is about ¼ mile away from the bridge and there are no other roads which join Cumuto South Trace between Hamilton Trace and the bridge. Cumuto South Trace is a dead end at its southern extremity. Anyone approaching the bridge can only do so while travelling south along Cumuto South Trace and after passing Hamilton Trace.

Effectively there were two issues to be decided. The first was whether the Plaintiff was the owner of the truck on the 18th May 1989. The second is whether the accident was caused by the First Defendant being in breach of its statutory duty to maintain the bridge under the provisions of Section 19 of the Highways Act, Ch. 48:01. This, as Mr. Parsad submitted for the Plaintiff at the outset, turned on whether the Defendant had discharged its duty by placing the sign (to which I will come presently) where it claims to have done so.

As to the issue of ownership of the truck, I came to the conclusion that it was owned by the Plaintiff on 18th May 1989. Much was made at the trial of his name not being so entered on the certified copy of the certificate of ownership in evidence before me, and that it was not transferred into his name from his son's name until 4th May 1993. I accepted the evidence of the son, Rampersad Manbodh, that his father, the Plaintiff, had bought the truck from Junior Sammy Contractors in 1988 and I also accepted the reasons he gave for it not being registered in the Plaintiff's name until 1993.

As to the First Defendant being in breach of its statutory duty, Section 19 of the Highways Act imposes a duty to repair upon a highway authority. There was no dispute that the Victoria County Council was the highway authority with responsibility to maintain the bridge in question. Section 150 of the Highways Act preserves the common law exemption from liability afforded a highway authority arising from non repair, i.e. from non-feasance as opposed to mis-feasance. Failure to repair is non-feasance. Carrying out repair work negligently is mis-feasance.

The bridge was inspected by Steve Heru, then a Roads Officer I employed by the Defendant, on 1st May 1989 and two of the four runners of the bridge were found to be in a state of decay. He ordered a sign reading "road closed dangerous bridge ahead" to be erected at the intersection of Hamilton Trace and Cumuto South Trace about 600 feet north of and away from the bridge. This had been done when he again visited the bridge on 4th May. It was a large sign 2 metres by 1 metres, about 1.75 to 2 metres above ground level with orange lettering on a white background. The sign specified no alternative route. This evidence as to the sign is supported by Hubert Ramnarine, the County Superintendent assigned to the First Defendant at the time, who said that this sign was there when he visited the scene of the accident on 18th May 1989.

Mr. Ramnarine also said in his evidence that repair work had been carried out on the bridge between January and March 1989 and that this repair work included removal and replacement of lumber used in the construction of the bridge.

Mathura Bissessar's evidence is that he saw what appeared to be new planks on the bridge when he crossed it about one week before the accident. Further, he said that he crossed the bridge every day and saw no sign at all at any time before or after 18th May 1989 when the bridge collapsed.

His evidence was supported by the driver of the truck Ramraj Baldeo who said in examination-in-chief that "if there were signs that the road was closed I would have seen them." He did not, however, say that there were no signs. In cross-examination he said he "can't say if I know the corner of Hamilton Trace and Cumuto South Trace." Indeed, the only sign he says he saw was the "Cumuto South Trace" sign at its junction with Rochard Douglas Road. Not being familiar with the area he would have obviously been keeping a particular watch out to ensure that he got on to Cumuto South Trace.

On balance I concluded that the evidence of Mr. Bissessar and Mr. Baldeo was not of sufficient weight to persuade me that I should accept their evidence in preference to that of Steve Heru and Hubert Ramnarine. I therefore came to the conclusion that there had been no mis-feasance on the part of the First Defendant in so far as the repair of the bridge was concerned. There was no evidence to show what repairs had been carried out between January and March of that year and/or that they had been carried out negligently and caused the bridge to collapse. Indeed Mr. Bissessar said in his evidence that the bridge looked to be in good condition.

Additionally I came to the conclusion that there was in place on 18th May 1989 the sign which Steve Heru described and that its positioning was such so as to sufficiently warn all users of Cumuto South Trace proceeding to the bridge of its condition and that the road was closed. I was not persuaded that the First Defendant need have done anything more. What it had done in my view was reasonable in the circumstances.

Mr. Parsad also submitted that the Defendant was in breach of the provisions of Section 39 of the Highways Act, having closed Cumuto South Trace without providing alternative access to property owners, and that this would entitle the Plaintiff to succeed on his claim. I did not agree. The Plaintiff's claim, if any, arising out of a breach of the

provisions of Section 39 of the Act would not lie for the losses suffered on and as a consequence of the accident of 18th May 1989.

In the circumstances I therefore dismissed the Plaintiff's claim with costs.

DATED this 3rd day of January 2000

C.V.H. STOLLMEYER
JUDGE