REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CvA. No. 39/2000

BETWEEN

PIUS DUNTIN the administrator of the Estate of Annabelle Duntin, as the administrator on behalf of himself and other dependants JOEL DUNTIN, JERMAINE DUNTIN, GISELLE DUNTIN & PIUS DUNTIN, as the father and next friend of Gisele Duntin and Pius Duntin	**APPELLANTS**

AND

NAZRUDEEN KHAN & JAIKERAN SINGH	**RESPONDENTS**

CORAM:

R. HAMEL-SMITH, J.A.
J. PERMANAND, J.A.
A. LUCKY, J.A.

APPEARANCES:

MR H. SEUNATH, S.C. AND MR S. ROOPNARINE
APPEARED ON BEHALF OF THE APPELLANT

MR S. PARSAD
APPEARED ON BEHALF OF THE SECOND RESPONDENT

DATE DELIVERED:

23rd January, 2002

REASONS

DELIVERED BY LUCKY J.A.

On 10th December, 2001 after hearing counsel for each side we dismissed the appeal and indicated that reasons would be given at a later date. We do so now.

The question to be determined in this appeal is whether the judge was correct in finding that the appellants had failed to prove their claim in negligence, that the respondent negligently drove his vehicle along the Matilda Road, Princes Town and struck two pedestrians, the deceased Annabelle Duntin and her daughter Giselle. Annabelle died as a result of injuries from the accident.

The facts

On 15th December 1999, Annabelle Duntin and her daughter Giselle were walking along Matilda Road when, the plaintiff alleges, the respondent Jaikeran Singh so negligently drove or managed his car, PT 6554, which he was driving along the said road that he collided with Annabelle and Giselle. Annabelle died as a result of injuries she received. Pius Duntin filed the action as Administrator of the Estate of Annabelle for himself and their children and as the father and next friend of Giselle. The matter was not pursued against the first defendant/respondent.

The Respondent had testified that although he was the owner of PT 6554, his vehicle was not involved in any collision as alleged by the appellants.

The appellants case depended primarily on the evidence of one Seawan Sydney who said that he witnessed the accident from the front seat of a maxi taxi in which he was a passenger. He said he saw a white Datsun 120Y, registration number PT 6554 overtake the maxi taxi and a 280C motor car. It proceeded along the road in front of the 280C, a green pick-up van overtook the maxi and the 280C and while overtaking the 120Y he said: **"it seems that the van hit the right side of the 120Y which swerved to the left and struck two people – a lady and a girl child."** They were walking at the side of the road towards oncoming traffic. Both fell. The pick-up van came to a standstill some distance from the point of impact. The woman and child were taken from the scene.

The learned judge narrowed the issue to whether the respondent was responsible for the death of the deceased and injuries to the second appellant, Giselle. He had to focus his attention to the evidence of Sewan Sydney, the only 'eye-witness' to the accident and arrived at the following findings of fact:-

(a) that by the very admissions of Sydney of what is contained in a statement he had given to the police three days after the accident do not suggest that he saw the accident;

(b) He came up to the scene after the accident had occurred;

(c) Sydney did not tell the investigating officer, Sargeant Boodram that he saw the accident.

The judge also found it difficult to accept Sydney's account of the accident because:-

(a) Sydney could not have seen the licence number from at least 200 feet away at that time of the evening;

(b) Sergeant Boodram said that at the time of the report of the eyewitness, the vehicle number was known but not to Sydney;

(c) There was debris at the scene of the accident consisting of glass and dirt, but Sergeant Boodram saw no evidence of any broken glass on the respondent's vehicle;

(d) There was no evidence of a collision with a green vehicle on the second respondent's vehicle.

The judge also found that there was no direct evidence that the respondent's vehicle struck the deceased and her daughter and no credible evidence that they were struck by the respondent's vehicle.

Counsel for the appellants urged the Court to review the findings of the trial judge because, he argued, that apart from the evidence of Sydney, there was circumstantial evidence which could have implicated the respondent.

In this regard, Counsel submitted that on the night of the accident Sergeant Boodram was informed that a 120Y motor car, registration No.PT 6554 was involved in the accident and secondly, that as the investigating officer, within an hour after the report of the accident, he went to the place where the respondent's vehicle was located and there made certain observations. One of his observations was that the vehicle had damage to the (right) fender. He asked the respondent about the damage but was told that it was was not recent. While Counsel contended that that was strong evidence that the vehicle had been involved in the accident, no evidence was produced to substantiate whether the damage was recent or not in spite of the claim that a forensic report on the damage was available. Having done so, he interviewed the respondent.

In the light of the interview and observations, Counsel contends that there was sufficient circumstantial evidence to link the 120Y with the accident.

He submitted that Sergeant Boodram who had been called by the appellants as a witness did not secure permission to testify and did not produce the police files with the reports. But, an application had not been made for the files, neither was an application made to the Court prior to or during the hearing requiring the Commissioner of Police to produce same, consequently there was no forensic evidence to link the respondent's vehicle with the evidence.

Counsel for the respondent argued that the trial judge who had heard and seen the witnesses had made the correct findings of fact. This Court was being asked to enter into a realm of speculation because Sergeant Boodram did not consider Sydney an eye-witness and the learned judge rejected Sydney's evidence for very valid reasons.

In my view the issue was in reality a matter of fact for the judge to determine. He correctly reasoned why the evidence of Sydney was unacceptable and there was no evidence to support the appellants' contention that it was the respondent's vehicle that struck Annabelle and her daughter, Giselle.

Counsel was asking the Court to reverse the decision of the trial judge who had accepted the evidence of witnesses and given judgment accordingly.

It is trite law that when a question of fact, as in this matter, has been tried by a judge and it is not suggested that he has misdirected himself in law, an appellate court should not disturb his judgement unless it is plainly unsound or the grounds are unsatisfactory. See ***Yuill v Yuill*** *1945 A.C. P. 15; and* ***Watt OR Thomas v Thomas*** *1947 A.C. 484.*
In this appeal, I am of the view that the judge having seen and heard the witnesses has carefully set out the reasons for arriving at his findings of fact and I can find no reason to disturb his judgement.

In ***Yuill v Yuill*** the Court held that:-

"Where a judge has accepted the evidence of a witness or witnesses on one side of a case on a careful observation of his or their demeanour, and has given judgement accordingly, an appellate court can reverse the decision, but only in the rarest cases, and when it is convinced by the plainest considerations that it is justified in holding that the judge has formed a wrong opinion".

In the instant matter I am not convinced that the judge formed a wrong opinion. His reasons are clear and explicit.

In ***Watt OR Thomas v Thomas*** it was held that:-

"When a question of fact has been tried by a judge without a jury and it is not suggested that he has misdirected himself in law, an appellate court in reviewing the record of the evidence should attach the greatest weight to his opinion, because he saw and heard the witnesses, and should not disturb his judgment unless it is plainly unsound. The appellate court is, however free to reverse his conclusions if the grounds given by him therefore are unsatisfactory by reason of material inconsistencies or inaccuracies or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses or has failed to appreciate the weight and bearing of circumstances admitted or proved".

In this matter the reasons set out in the judgement are sound, the judge seems to have correctly assessed the evidence in arriving at his findings of fact. I can find no reason to disturb his judgement.

For the foregoing reasons I dismissed the appeal with costs to be paid by the appellants to the respondent.

I agree with the judgement of Lucky JA and I do not wish to add anything to it.

R. Hamel-Smith
Justice of Appeal

I also agree

J. Permanand
Justice of Appeal

A. Lucky
Justice of Appeal