IN THE COURT OF APPEAL OF BELIZE, A.D. 2001

CIVIL APPEAL NO. 12 OF 2001

BETWEEN:

RUPERT RITCHIE
and
BARRINGTON WRIGHT — **Appellants**

and

RAQUEL RODRIGUEZ
RISELA RODRIGUEZ
(by next friend Adi Rodriguez) — **Respondents**

BEFORE:
The Honourable Mr. Justice Mottley
The Honourable Mr. Justice Sosa
The Honourable Mr. Justice Carey, JJA

Mr. Hubert Elrington for Appellants.
Mrs. Samira Musa Pott for Respondents.

2001: October 19 and 2002: March 8.

CAREY, JA:

1. This was an appeal from a finding of negligence by the Chief Justice against the owner of an articulated vehicle Mr. Rupert Ritchie and his driver Mr. Barrington Wright who on 7 September 1998 collided with and injured both the plaintiffs, school girls, as they were endeavouring to cross the roadway near the intersection of Western Highway and Central American Boulevard in Belize City.

2. The driver of this vehicle was negotiating a blind 45° angle right hand turn into Western Highway from Central American Boulevard and

although he had observed them before he turned, lost sight of them in the course of his manouevre. He therefore relied on the sideman but he was flirting with the girls (a fact the sideman denied). At all events, the truck struck the girls down.

3. The defence pleaded was that the girls were wholly to blame but in my opinion, there was no evidence to justify that optimism.

4. There was a duty cast upon the driver of this articulated vehicle to ensure that it was safe to make this turn. He could not by reason of the characteristic of such vehicles, see the schoolgirls in the course of his manouevre but that fact did not diminish his duty of care. That he failed in that duty, is plain.

5. Mr. Elrington, counsel for the appellants, had the difficult and unenviable task of persuading the court that it should interfere with findings of fact by the judge below. There are a number of authoritative decisions which make it perfectly clear that on questions of fact, an appellate tribunal will generally defer to the conclusion which the trial judge has formed. See for example *Powell v. Streatham Manor Nursing Home [1935] A.C. 243*, a case cited by Mrs. Musa Pott, counsel for the respondents.

6. In *Watt or Thomas v. Thomas [1947] A.C. 484* the law is succinctly stated in the head-note, thus:

> ***". . . 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 therefor 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 the instant case which involved a pure question of fact, we cannot be indifferent to the caveat explicit in this authority by which we are bound.

7. The driver of this articulated ten wheel vehicle, said this at p. 109:-

> ***“…Whilst making the turn I had to check with my sideman (Jason Saldano) to see that the trailer was clear of the traffic or pedestrian…”***

and again -

> ***“… While making the turn I asked sideman Jason to look on his side because it was a blind turn. He stretched out and looked. When the truck was more than ¾ on the Western Highway, he shouted out ‘Girl stop – boy, you knock down somebody’…”***

It is plain that the driver could not see the roadway his vehicle was to traverse and it is equally plain that the sideman on whom he relied, was not keeping a proper look out as he only saw the pedestrians when the collision was imminent.

8. In the face of that evidence Mr. Elrington did not recoil from urging that the plaintiffs were one hundred percent to blame for the accident, or as he put it “the plaintiffs were grossly negligent”. He was quite unable, I fear, to demonstrate how he arrived at this conclusion.

9. I would have thought that the evidence of the driver was more than enough to show where the fault lay. The learned Chief Justice came to a right decision. He also saw and heard the witnesses, a position of advantage which is denied to us. But in reality, the evidence was all one way. This was an entirely unmeritorious appeal.

10. It was for these reasons that I agreed with others of my brothers in affirming the decision of the court below and dismissing the appeal with costs.