

Privy Council Appeal No. 142 of 1919

The West India Electric Company, Limited - - - *Appellants*

v.

Alan D. Roberts - - - - - *Respondent*

Alan D. Roberts - - - - - *Appellant*

v.

The West India Electric Company, Limited - - - *Respondents*
(*Consolidated Appeals.*)

FROM

THE SUPREME COURT OF JUDICATURE OF JAMAICA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH JULY, 1920.

Present at the Hearing :

LORD BUCKMASTER.

LORD ATKINSON.

MR. JUSTICE DUFF.

[*Delivered by* LORD BUCKMASTER.]

The appellants in the principal appeal are the West India Electric Company, Limited, who own and operate a series of tramways in Kingston, Jamaica.

On the 12th September, 1917, between the hours of 7.30 and 8 in the evening, the respondent was injured, owing to one of the appellants' tramcars overtaking and colliding with the vehicle in which he was riding. He sued the appellants for damages for the serious injuries that he sustained, and on the 23rd November, 1918, he obtained a verdict in his favour for the sum of £6,279. Against that verdict the appellants brought an appeal to the Appeal Court of the Supreme Court of Judicature of Jamaica, alleging,

first, that the verdict of the jury was against the weight of the evidence, and secondly, that the damages were excessive. The first of these grounds was rejected by the Court of Appeal, but the second was approved, and an order was made that there should be a new trial on the question of damages alone. From the first part of this judgment the present appeal is brought, and from the latter the cross-appeal by the respondent, who seeks to restore the verdict of the jury.

In their Lordships' opinion, both appeals must fail. With regard to the first, it is unnecessary to do more than to recount a few of the simple circumstances of the accident, as shown by evidence which in fact was uncontradicted. The night was dark and the plaintiff was being driven in a one-horse, four-wheeled vehicle. He was on his right side of the road near the tram lines, and at the time of the accident the vehicle was passing a horse on its off side. The driver of the car rang his bell, but this the driver of the vehicle said he did not hear. The car passed by the hind wheel of the vehicle, but struck the fore wheel and thereby caused the accident. These facts unless answered are sufficient to establish a reasonable ground for holding that the driver of the tramcar was negligent. He was either proceeding at a pace too fast to enable him to pull up in time, or he thought that the vehicle in front and dangerously near would keep clear of his way and that he was, therefore entitled to continue his course. But the driver of a tramcar whose course is fixed when overtaking another vehicle on the high road must not proceed upon the hypothesis that when once he has rung his bell and given warning, a vehicle close to his near side which he is about to pass will keep itself clear of his path. The driver of the tramcar, however, alleges that the driver of the vehicle swerved suddenly in front of him and that it was this which was the cause of the accident. If this were true it might afford an answer, but the probability of truth as between the two stories is eminently a question for the jury's consideration. No complaint is made as to the summing up of the learned Judge, and, in their Lordships' opinion, it is impossible to contend successfully that the jury's verdict was perverse and unreasonable in reaching the conclusion that they did, attributing negligence to the driver of the car.

So far as the cross-appeal is concerned, it is more difficult to determine. The respondent has undoubtedly suffered serious and permanent injury and for some time endured considerable physical suffering. He has lost a substantial and valuable post by reason of the accident and there was uncontradicted evidence to show that he will be seriously impeded in the future conduct of his profession. It is not possible in cases such as this to lay down any fixed standard by which to measure the damages sustained. In a certain sense they are incalculable, for no pecuniary recompense can be regarded as equivalent to loss of health or the free use of limbs and faculties. Nor again can any exact rule determine the prospective loss that a man may be caused in the pursuit of his profession. Such a calculation may vary from time to time

and from place to place. Where occupation is difficult to obtain, the damages may be higher than where there is a great demand for such services as the injured man can offer. Local conditions affect and qualify the amount that the Courts would regard as reasonable as recompense for loss in business or in profession. The Court of Appeal in this case, with the knowledge of these conditions that this Board cannot possess, regard the amount awarded as so excessive that the appellants are entitled to have the matter reconsidered, and their Lordships can find no firm ground on which to disagree with such a judgment.

They have only to add that without further explanation the statement contained in the judgment of the Appeal Court, that the verdict as to damages was a verdict of the majority, is not a consideration that ought to have weighed with the Court. It may be that the minority were in favour of even a larger sum, but whether this be so or not, the verdict of the majority must, by the law which permits it being accepted in the place of unanimity, be regarded as equal in weight and value to one that is unanimous. The Court of Appeal appear to have formed their judgment independently of this consideration, and it cannot, therefore, be said that this argument, which their Lordships regard as unsound, was the basis upon which the judgment appealed from stands. Their Lordships will therefore humbly advise His Majesty that both these appeals should be dismissed and that no costs should be awarded to either side.

In the Privy Council.

THE WEST INDIA ELECTRIC COMPANY, LIMITED

vs.

ALAN D. ROBERTS.

ALAN D. ROBERTS

vs.

THE WEST INDIA ELECTRIC COMPANY, LIMITED.

(*Consolidated Appeals.*)

DELIVERED BY LORD BUCKMASTER.