[SUPREME COURT]

Freetown
January 25, 1963

Marke J.

MODU SELINA BRIGHT AND ADJAYI B. BRIGHT . . *Plaintiffs*

v.

EMILE V. CARR AND AHMED TOUFIC . . . . . *Defendants*

[C.C. 159/59]

Tort—Negligence—Motor vehicle accident—Ownership of motor vehicle—Damages.

On April 13, 1958, while first plaintiff was a passenger in a car driven by first defendant, she sustained injuries when the car somersaulted and landed in a ditch beside the road. She and her husband brought suit for negligence against first defendant and second defendant (the owner of the car).

First defendant testified that the accident was caused by a third car colliding with the car he was driving, but he called no witnesses to corroborate this. He also testified that he had borrowed the car from second defendant. Second defendant testified that he had sold the car to first defendant before the date of the accident, although he admitted that it was still registered in his name.

Held, for the plaintiffs against first and second defendants jointly and severally, (1) the accident was caused by the negligence of first defendant.

(2) Second defendant was the owner of the car at the time of the accident.

(3) First plaintiff was entitled to recover £900 in general damages and £47 17s. in special damages.

(4) Second plaintiff was entitled to recover £50 for loss of consortium.

Cyrus Rogers-Wright for the plaintiff.

Freddie A. Short for the first defendant.

Miss Frances C. Wright for the second defendant.

R. B. MARKE J. The first plaintiff in this action claims damages for injuries she sustained through the negligent driving of the first defendant. The second defendant has been made a party to these proceedings as he is alleged to have been the owner of the car.

The facts are that on April 13, 1958, while the first plaintiff was a passenger in the car driven by the first defendant, she sustained injuries by the car somersaulting and ending in a ditch by the side of the road.

The first defendant said that he was driving car F.7589, which he had borrowed from the second defendant, along the road from Waterloo to Freetown when he saw another car approaching him. He said that though he tried to avoid it, the approaching car collided with his car; that his car somersaulted and he was thrown out unconscious; that when he regained consciousness he did not see the approaching car. According to the first plaintiff: "On the way as we passed the building of the Seventh Day Adventists (near Waterloo) the car braked and dust filled the car. After that I did not know what happened. I regained consciousness on April 16, at Connaught Hospital." Travelling in the car at the same time with the first plaintiff were a Mrs. Saday Hamilton and a girl, Aina Cole, both of whom were alive at the time of the hearing but neither of whom was called by Carr (the first defendant) to corroborate his story of this approaching car having collided with his car. It is not too much to say that any of the passengers in the car driven by the first

defendant should have seen the other car approaching the car driven by the first defendant if in fact there was such an approaching car.

I do not believe the evidence of first defendant as to an approaching vehicle having collided with his car. I feel that his car somersaulted through no other agency than his own, and that the fact of his car having somersaulted was evidence of his lack of care in driving his car.

On the question of damages, two points emerge: (1) Who at the material time was the owner of the car F.7589? and (2) What special damages have been proved?

As regards the first point, the first defendant said in evidence that he had an accident with his own car, which was numbered F.6313, on March 13, 1958, and that the second defendant loaned to him the car F.7589. He said that when he had an accident with F.7589 he arranged to pay to the second defendant what he received from the insurance company for his own car F.6313. He said that on the day of the accident in this case, F.7589 was the property of the second defendant and was not his property. The second defendant said that he had sold F.7589 to the first defendant though he did not inform the police or the insurance company of this fact. He admitted that the salvaged car F.7589 was with him and that he had a long experience in car transactions. Though he said that he had transferred to the first defendant the ownership of F.7589 he admitted that F.7589 was still registered in his name.

I carefully observed the demeanour of this witness as he gave evidence; and he did not impress me as a truthful witness, and I do not accept his evidence that he sold and did not loan the car F.7589 to the first defendant. I accept the evidence of the first defendant that on the date of the accident the second defendant and not himself was the owner of car F.7589.

As to the special damages, though the first plaintiff suffered some injuries and was as a result an in-patient at Connaught Hospital from April 13, 1958, to June 4, 1958, yet no doctor gave evidence on her behalf in this case. Mr. Shaw, a surgeon at Connaught Hospital, who saw her on April 13, 1958, had left the country before hearing of this action and by consent Mr. Shaw's report was admitted in evidence. In that report he confirmed that the first plaintiff was admitted to Connaught Hospital on April 13, 1958, and discharged on June 4, 1958. As regards her injuries, he stated:

"(1) Wound of forehead with loss of scalp tissues down to bone. There is now a scar of approximately two inches by two inches in size. (2) Wound of bridge of nose of half-inch long now well healed. (3) Wound of upper lip from lip margin to nose. This has healed with deformity of lip and patient states the scar is painful. (4) Dislocation of the right acromio-clavicular joint. This has left a deformity but is now painless and function of the shoulder is normal."

Dr. Lahai Taylor also furnished a report which also was by consent admitted in evidence though Dr. Lahai Taylor was still in Freetown.

Dr. Lahai Taylor, in his certificate, stated that he admitted the plaintiff on April 13, 1958, after an accident, to Connaught Hospital, and on examination she was found to have the following injuries:

"(1) Star-shaped laceration on the right side of the forehead. (2) Deep laceration—$\frac{1}{2}$ inch × $\frac{1}{2}$ inch × $\frac{1}{4}$ inch—in middle of upper lip in the cleft. (3) Laceration on the right (?)nare. (4) Laceration on left side of lower jaw.

(5) Four broken teeth in upper part and one in lower part. (6) Laceration on the posterior part of right shoulder joint—5 inches × 3 inches × ½ inch. (7) Fracture of right acromio-clavicular junction. (8) Laceration on lower end of left buttock and small one on the right buttock."

She was operated on twice while in hospital: the first time on April 15, 1958. For two weeks the patient was on intravenous drugs.

The percentage permanent disability was 40.

I must say at once that this certificate given on November 14, 1961, did not help me very much in forming an idea of the extent of the injuries which the first plaintiff sustained on April 13, 1958. Even counsel for the first plaintiff was unable to explain in ordinary language some of the medical expressions used in that report.

The first plaintiff, who was not a very satisfactory witness, stated in evidence that she was 44 years of age and married, and the mother of five children, the youngest of whom was seven years of age. In cross-examination, however, she admitted that on August 22, 1959, she gave birth to a child and that the labour was easy.

Of her injuries she more or less substantiated the medical reports. She still carried the scar on her forehead, and said that she still had headaches. She said nothing about the five broken teeth, nor whether she had to get any dental treatment for them. There is a deformity of her hip and a deformity of her right shoulder. The first plaintiff was unconscious the first two days she was in hospital and must have suffered considerable pain. There is no doubt that if the medical evidence had been given in the way it should have been given, the general damages should have been considerably more than I am about to award. In the statement of claim, it is averred that the first plaintiff had to receive skin grafting treatment for her forehead, but no evidence on this was led. As the evidence stands I assess the general damages at between £800 and £1,000 and award the first plaintiff £900 general damages.

As to the special damages the evidence is perhaps more unsatisfactory than it was for general damages.

As regards the hospital expenses the husband of plaintiff did not seem to remember what he paid. However, on the evidence, I allow £31 4s.

I allow Mr. Shaw's bill of £5 5s.

Under the head of special food and medicine, the evidence is again very unsatisfactory. There is no doubt that she must in her early days in hospital have had some special food: but the evidence is too nebulous for me to allow anything under this head.

As regards taxi fares I allow 7s. for each return journey from first plaintiff's house to Connaught Hospital from June 14 to August 12, which I make 12 weeks. She attended hospital twice a week; this will bring the amount spent in fares to £8 8s.

The first plaintiff admitted that she travelled to Conakry by road and returned in the same manner, and that at Conakry she consulted, not a registered practitioner, but someone she described as a dispenser. I allow nothing under this head.

There is no evidence of medical attention in Freetown after the first plaintiff had left attending Connaught Hospital in Freetown, and also no evidence that she paid anything extra when attending hospital between June and August 1958.

I allow nothing under this head. The several sums I have allowed under special damages are:

£31	4s. 0d.
£5	5s. 0d.
£8	8s. 0d.
£44	17s. 0d.

This amounts to £44 17s.

The second plaintiff claims for loss of the society of the first plaintiff. The second plaintiff is no doubt entitled to the consortium of his wife. This he lost for eight weeks, and I assess this at £50 and award that sum under this head.

Having already found as a fact that the first defendant was negligent while driving the second defendant's car, the order of the court is:

(1) I award the first plaintiff £900 by way of general damages and £44 17s. by way of special damages.

(2) I award the second plaintiff £50 for loss of consortium.

(3) I order that first and second defendants jointly and severally pay the first plaintiff £944 17s., and

(4) pay the second plaintiff £50.

(5) I order that the first and second defendants jointly and severally pay the costs of the first and second plaintiffs.

Costs to be taxed.

Freetown
February 11, 1963
Dobbs Ag.J.

[SUPREME COURT]

REGINA *v.* S. C. B. MACAULAY

[Information No. 11/63]

Criminal Law—Causing death by dangerous driving—Objective test—Road Traffic Act (*Cap.* 132, *Laws of Sierra Leone*, 1960), *s.* 40.

Accused was charged on two counts of causing death by driving his motor car in a manner dangerous to the public. On September 28, 1962, at about 9.30 p.m., accused was driving his motor car towards Bo on the Freetown–Bo road. While negotiating a right-hand curve at Manema village, the car left the road on the left-hand side, struck and killed two people in the forecourts of some houses and came to rest in a bush about 250 feet from the point of leaving the road. At the time, there was a lorry standing with its headlamps lit on the wrong side of the road facing accused's car.

In his statement before the committing magistrate, accused said:

". . . it was impossible for anyone to see beyond the headlights of the opposite vehicle, which was right well in my path. I was driving very near my proper side of the road. . . . I realised . . . that I could not swerve with safety to my right, which would have been the wrong side for me to drive. I could not with safety come to a standstill as I could not have foretold whether the headlights of the vehicle in my path were moving towards me. I therefore decided that the only alternative was to apply my brakes and swerve to the left to avoid a head-on collision. . . ."