JALLOH v BANGURA

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COURT OF APPEAL FOR SIERRA LEONE, Civil Appeal 44 of 1977, Hon Mr Justice S Warne, Hon Mr Justice M Cole JA, Hon Mr Justice M Turay JA, 14 February 1980

[1] Negligence – Contributory negligence – Ingredients necessary to establish contributory negligence – Contributory negligence must be pleaded

[2] Negligence – Inevitable accident – Ingredients necessary to establish defence of inevitable accident – Fact of accident established presumption of negligence

[3] Negligence – Personal injury – Damages – Whether excessive – Whether regard could be had to damages awards outside Sierra Leone – Effect of inflation on awards – Necessity to look at contemporary conditions

On 25 November 1975 the appellant injured the respondent in a motor vehicle accident. The respondent suffered various injuries and her permanent disability was 12 per cent. The appellant appealed against the trial judge's award of damages on the basis that the accident was inevitable, but did not plead contributory negligence. The appellant also claimed that the damages awarded were too high.

Held, per Turay JA, dismissing the appeal:

1. It was an elementary principle of law that contributory negligence, to be successful, must be pleaded and proved. In order to establish contributory negligence, one must prove, firstly that a plaintiff failed to take ordinary care which a reasonable man would take for his own safety and secondly that his failure to take care was a contributory cause of the accident. In this case the appellant never pleaded contributory negligence but rather pleaded inevitable accident. *Lewis v Denye* [1939] 1 KB 540 followed.

2. The defence of inevitable accident was open to a defendant under a plea of no negligence. But to sustain this defence a defendant must show: (i) the cause of the accident; (ii) that the result of that cause was inevitable; (iii) all possible causes, one of which produced the effect; and (iv) with regard to any one of these causes that the result could not have been avoided. *Rumbold v LCC* (1909) 25 TLR 541, *The Merchant Prince* [1892] P 179 and *Raouf Jacob v Francis Bandoe* [1955] 16 WACA 3 applied.

3. It was clear from the evidence that the driver was not speaking the truth when he said that the vehicle was driven at 10 miles per hour at the time of the accident. Even accepting the evidence of the driver that he was proceeding at 10 miles per hour there was negligence on his part in not having a proper lookout on a busy road and for not applying the brakes at the material time to avoid this accident. Moreover, the evidence showed that the appellant was negligent in driving the car in a zig-zag manner and knocking down the respondent whilst standing by the edge of the road. The fact of the accident raises a presumption of negligence for which the appellant was responsible and if there were facts inconsistent with negligence, it was for the appellant to establish them. This, according to the evidence, he failed to do. Therefore the appellant was negligent and as a result of his negligence the respondent suffered serious personal injuries. *Sesay & Anor v Bulk Transport Co* [1970-71] ALR (SL) 104 referred to.

4. The amount awarded by the trial judge was not excessive. The approach taken by the Court of Appeal in *Sierra Leone Syndicate Ltd v Amadu Conteh* (1960 unreported), that

in assessing general damages the court should do so as if Sierra Leone was the only country in the world that in Africa damages awarded for injuries of this sort were less than those awarded in England was no longer justified. It was obvious that the court did not have in mind continuing inflation and its effect on awards. Law is a social science and any valid judicial system based upon justice which exists in entire disregard of contemporary conditions would pretty soon find itself consigned to the dustbin of utopian dreams.

[General Editor's note: see also the decision of Ken During JA in the Court of Appeal on 8 March 1974 in *Jalloh v Samura (an infant)* [1974-82] 1 SLBALR 1, above].

Cases referred to
Cookson v Knowles [1979] AC 556
Lewis v Denye [1939] 1 KB 540
Merchant Prince, The [1892] P 179
Mills v Armstrong: The Bernina (1888) 13 App Cas 1
Raouf Jacob v Francis Bandoe [1955] 16 WACA 3
Rumbold v LCC (1909) 25 TLR 541
Sesay & Anor v Bulk Transport Co [1970-71] ALR (SL) 104
Sierra Leone Syndicate Ltd v Amadu Conteh (1960, unreported)

Other sources referred to
Salmond on Jurisprudence

Appeal
This was an appeal by Alpha Umaru Jalloh against the decision of a trial judge who awarded damages against him for negligence which caused serious personal injuries to the respondent, Adama Banhura. The facts appear sufficiently in the following judgment.

Mr E A Thomas for the appellant.
Mrs S Bash-Taqi for the respondent.

TURAY JA: The action with which this appeal is concerned arose out of an accident which occurred along Goderich Street, Freetown, on the 25th November 1975, and which resulted in serious personal injuries to the respondent. It is unnecessary, in view of the course the court proposes to take, to go into the facts of the case at any length.

There was conflict in the evidence of the appellant on one hand and the respondent on the other. It was however, agreed by the parties that the accident did take place on the 25th of November 1975 along Goderich Street.

Normally this court would not interfere with the finding of facts by trial judge but in this case, the learned trial judge, with respect, misdirected himself on the law of contributory negligence which was not pleaded but considered by him. Admittedly, contributory negligence comprises one of the most difficult branches of the law of tort. Indeed, as *Salmond on Jurisprudence* points out, an undergraduate once got high marks for writing in an examination paper: "Every judge whom I have met assures me that the law of contributory negligence is perfectly simple, but I notice that they are all reversed on appeal".

It is an elementary principle of law that contributory negligence to be successful must be pleaded and proved. In order to establish contributory negligence, one must prove, firstly that a plaintiff failed to take ordinary care which a reasonable man would take for his own safety and secondly that his failure to take care was a contributory cause of the accident: *Lewis v Denye*

[1939] 1 KB 540. In this case the appellant never pleaded contributory negligence but rather pleaded inevitable accident. However, the learned judge in his judgment dealt with the matter partly from the angle of contributory negligence thereby depriving the respondent of all the fruits of her labour. Evidently the trial judge must have averted his mind, mistakenly with respect, to the conduct of PW2, Lamin Bangura, and so identified him with the respondent. The doctrine of identification was laid to rest by the House of Lords in *Mills v Armstrong: The Bernina* (1888) 13 App Cas 1. The defence of inevitable accident is open to a defendant under a plea of no negligence: *Rumbold v LCC* (1909) 25 TLR 541. But to sustain this defence a defendant must show, in the words of Fry LJ in *The Merchant Prince* [1892] P 179:

1. the cause of the accident;
2. that the result of that cause was inevitable;
3. all possible causes, one of which produced the effect; and
4. with regard to any one of these causes that the result could not have been avoided.

These principles were referred to with approval by the West African Court of Appeal in *Raouf Jacob v Francis Bandoe* [1955] 16 WACA at page 3.

The sketch plan which was prepared by the police in which the relevant points at the scene were marked was produced in evidence and marked Exhibit "A". A cursory glance at the plan admitted by the driver to be correct clearly shows that the driver was not negligent but was in fact not speaking the truth when he said that the vehicle was driven at 10 miles per hour at the time of the accident. Indeed, the learned judge who had the unique opportunity of seeing and hearing the parties had this to say: "The driver must have been driving too fast or not keeping a proper lookout". Even accepting the evidence of the driver that he was proceeding at 10 miles per hour there was negligence on his part in not having a proper lookout on a busy road and for not applying the brakes at the material time to avoid this accident. Moreover, according to the evidence which was accepted by the trial judge, he was negligent in driving the car in a zig-zag manner and knocking down the respondent whilst standing by the edge of the road: *Sesay & Anor v Bulk Transport Co* [1970-71] ALR (SL) 104. The fact of the accident raises a presumption of negligence for which the appellant/defendant is responsible and if there were facts inconsistent with negligence, it was for the appellant/defendant to establish them. This, according to the evidence, he failed to do. For these reasons, among others, we hold that the appellant was negligent and as a result of his negligence the respondent suffered serious personal injuries.

The respondent claims both special and general damages. Dr Akabi Davies, who treated the respondent, in his evidence referred to injuries on the respondent after referring to the various injuries following his extensive examination of the respondent, he had this to say:

"My examination showed –

(1) She (respondent) was suffering from shock.

(2) Multiple abrasions face and lacerations.

(3) Right collar fractured.

(4) Right tibia plateau. Radiological examination confirmed my findings. In my opinion the wound in her knee joints will stay reduced. There is a shortening of the left leg and therefore restricted movement. Her permanent disability was 12 per cent".

This testimony of Dr Akabi Davies was not shaken under cross-examination as indeed it could not have been.

It now remains for me to consider whether the amount awarded by the trial judge was "too high". It was held by the Court of Appeal in *Sierra Leone Syndicate Ltd v Amadu Conteh* (1960 unreported), that in assessing general damages the court should do so as if Sierra Leone was the only country in the world and because this is Africa where, by some strange reasoning, damages awarded for injuries of this sort are less than those awarded in England. This approach, with respect, may well have been justified in the 1960s. At the time inflation did not stare us in the face. And it is obvious that the court had not in mind continuing inflation and its effect on awards: *Cookson v Knowles* [1979] AC 556. Furthermore, law is a social science and any valid judicial system based upon justice which exists in entire disregard of contemporary conditions would pretty soon find itself consigned to the dustbin of utopian dreams.

Taking into account all the circumstances, I will, dismiss this appeal and would therefore vary the award by substituting the sum originally awarded by the trial judge with costs. Such costs to be taxed.

Appeal is therefore dismissed.

Reported by Anthony P Kinnear