[2014] UKPC 25
Privy Council Appeal No 0023 of 2013

JUDGMENT

TLM Company Limited (Appellant) *v* Bedasie and another (Respondent)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Mance
Lord Kerr
Lord Sumption
Lord Reed
Sir David Lloyd Jones

JUDGMENT DELIVERED BY

Sir David Lloyd Jones

ON

29 July 2014

Heard on 26 June 2014

Appellant
Hendrickson Senuath

(Instructed by Bankside Commercial Ltd)

Respondent

(Instructed by Messrs Dipnarine Rampersad and Co)

Respondent

(Instructed by Girwar and Deonarine)

SIR DAVID LLOYD JONES:

1. On 26 November 2005, Ryan Gary Bedasie was driving a motorcycle east along Guapo Road, Fyzabad, Trinidad and Tobago, in the direction of Siparia. Leah George was a passenger on the motorcycle. Trevor Bhagwansingh was driving a truck on the same road in the opposite direction. The two vehicles collided. Ryan Bedasie was killed in the accident and Leah George was seriously injured.

2. Lisa Bedasie, Ryan Bedasie's widow, brought proceedings against TLM Company Limited ("TLM"), the owner of the truck, Trevor Bhagwansingh, its driver, and New India Assurance Company (Trinidad and Tobago) Limited, the insurer of the truck, alleging that the accident occurred as a result of Mr Bhagwansingh's negligence in driving onto the wrong side of the road and colliding with the motorcycle in the eastbound lane. The defendants alleged that the accident occurred as a result of Ryan Bedasie negligently attempting to overtake a car when it was unsafe to do so and hitting a hump in the road which threw the motorcycle up into the air and caused it to land on the right front of the truck which was in its proper lane, the westbound lane.

3. Following a trial, on 17 December 2008 the Hon. Madam Judith Jones delivered a judgment in which she found that the collision was caused by Trevor Bhagwansingh driving into the wrong lane and colliding with Ryan Bedasie's motorcycle. Judgment was entered for the Claimant against the Defendants.

4. TLM appealed to the Court of Appeal of Trinidad and Tobago, where it attempted to challenge the findings of fact made by the trial judge. On 29 May 2012 the Court of Appeal (Madam Justice of Appeal Soo Hon, Justice of Appeal Stollmeyer and Justice of Appeal Smith) unanimously dismissed TLM's appeal. TLM now appeals to their Lordships' Board seeking to advance the same challenges to the findings of fact of the trial judge and complaining of the failure of the Court of Appeal to give more detailed consideration to its submissions.

5. The appellant is faced with the concurrent judgments of two courts on issues which are pure issues of fact and which are directly related to the final decisions of those courts. The practice of this Board is to decline to review the evidence for a third time, unless there are some special circumstances which would justify a departure from this practice. In *Devi v Roy* [1946] A.C. 508 the Board reviewed its earlier decisions on the point and restated its practice. It applies to all of the judicatures whose final tribunal is the Board. It applies to the concurrent findings of fact of two courts and not to concurrent findings of the judges who compose such courts. Accordingly a dissent or a difference in reasons which brings judges to the same finding of fact does not obviate the practice. The Board continued, at p 521:

> "That, in order to obviate the practice, there must be some miscarriage of justice or violation of some principle of law or procedure. That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding is such a question of law."

The Board went on to state that the question of admissibility of evidence is a proposition of law, but it must be such as to affect materially the finding; the question of the value of evidence is not a sufficient reason for departure from the practice. It stated that the justifications for departure from the practice which it identified were illustrative only and there may occur cases of such an unusual nature as will constrain the Board to depart from the practice.

6. The appellant, in his Case, has made no attempt to address these stringent requirements and has simply sought to advance a multiplicity of detailed complaints against the findings made by the trial judge. When invited by the Board to identify any considerations which might take the issues in the present appeal out of the scope of the practice, Mr Hendrickson Seunath SC drew attention to a number of matters which he submitted constituted exceptional circumstances. These may be addressed briefly.

7. First, Mr Seunath drew attention to the state of the evidence at trial relating to the position of the collision in relation to a bridge in the vicinity and whether there was a hump in the road at the western end of the bridge. He complained that the judge had failed to make a finding as to the precise position at which the collision occurred and submitted that the judge failed to give sufficient weight to the drawings of the location and other evidence supportive of the existence of such a hump in the road. In her judgment, the judge considered, on the basis of photographs which had been put in evidence by consent, that the bridge was nothing more than an extension of the roadway and was marked as a bridge only by the existence of railings on each side. This led her to observe that it was little wonder that witnesses had difficulty in identifying the position of the collision by reference to the bridge. She was entitled to conclude that the precise position of the collision in relation to the bridge did not need to be determined, in particular in the light of her firm conclusion that the collision took place in the eastbound lane into which the truck had crossed. Moreover, she found, and was entitled to find, on the basis of the evidence of the photographs and the evidence of Leah George that there was no hump but "at most a slight and gradual rise". The evidence of the plans

to which we were referred does not contradict that and the photographs were not produced before the Board.

8. Secondly, Mr Seunath complained of the failure of the judge to address in her judgment the relevance of a piece of bone, alleged to be a part of the thigh bone of the deceased, allegedly found lodged below the front windscreen of the truck. He submitted that this evidence demonstrates that the collision occurred in the manner alleged by the appellant. It is, however, unclear precisely what evidence there was in relation to this aspect of the case. The respondent's submissions to the Court of Appeal state that this issue was first raised by counsel for the appellant in submissions at the trial and that it was not explored in any form of cross examination. In any event, the theory which Mr Seunath sought to advance is pure speculation. There was no evidence at trial from an accident reconstruction expert as to whether the presence of a piece of bone was more likely to be consistent with the appellant's or the respondent's case. The judge was entitled to attach no weight to this matter and was not required to address it in her judgment.

9. Thirdly, complaint was made that the judge failed to conclude, on the basis of the evidence of two witnesses, that the deceased was travelling at high speed and failed to attach any significance to this matter. The judge did observe that there was "some suggestion of speed on his part". However, she concluded that this could not have contributed to the accident because, given the manner in which the collision occurred and the vast difference in sizes between the two vehicles, the deceased would not have been in a position to take evasive action. The judge was clearly entitled to conclude that speed was not a contributory cause.

10. Fourthly, Mr. Seunath complained that the judge's reasons for rejecting the evidence of Bridgnath Raghoobar, a witness called for the defence, were insufficient. In fact the reasons given by the judge for her conclusion that he was not a credible witness were detailed and comprehensive. The judge had the advantage of observing him give his evidence and considered that neither his manner nor his demeanour inspired confidence. He gave the impression that he had learned by heart what he had come to say. In his witness statement he failed to disclose that Trevor Bhagwansingh and his father were known to him. His explanation for not remaining at the scene of the accident was considered incredible. These were all proper reasons for rejecting his evidence.

11. Fifthly, Mr. Seunath complained that the judge failed to take account of the evidence of the alcohol level in the deceased's blood. In fact the judge ruled this evidence inadmissible and there has been no appeal against that ruling. This would explain why it appears that the matter was not canvassed before the trial judge and only oblique reference was made to it before the Court of Appeal.

12. Finally, an attempt was made to challenge the finding that the collision occurred because the truck entered the eastbound lane. Mr. Seunath submitted that of the two witnesses who gave evidence to that effect, one, Leah George, placed the site of the collision much further east (particularly by reference to a parked car from behind which she said the truck had pulled out) than the other, Hesper Ali-Darsoo, who placed it at the eastern end of the bridge. However, it is perfectly possible for a witness to be mistaken as to one aspect of his or her evidence while being an accurate witness on other matters. The judge was entitled to accept the clear evidence of these two witnesses that the collision was in the eastbound lane which was, moreover, corroborated by the evidence of the debris recorded in the police report.

13. None of these matters can possibly be considered as falling within the exceptions to the practice stated in *Devi v Roy*. There is nothing here to suggest that there had been any miscarriage of justice or violation of some principle of law or procedure in the sense in which those terms are used in this context. There was, in each instance, ample evidence on which the trial judge was entitled to arrive at her findings. Mr. Seunath's submissions before us amounted to no more than an attempt to question the value of certain evidence and to reargue issues of fact on which the appellant had lost at trial. Considered individually or cumulatively, they do not disclose any reason for departing from the stringent requirements of the Board's practice in this regard. Nor are there any circumstances of such an unusual nature as could justify a departure from this practice.

14. The Court of Appeal in dismissing the appeal gave very brief reasons for its decision in the ex tempore judgment of Stollmeyer JA, while reserving the right to expand on those reasons should the need arise. Given the nature of the appeal and the grounds relied on by the appellant this was not inappropriate. The Court of Appeal rightly concentrated on what it considered to be the central issue, namely in which lane the impact occurred, and concluded that the police report and the evidence of the claimant's witnesses supported the conclusion that the truck was on the wrong side of the road at the moment of impact. The Court of Appeal directed itself correctly as to the applicable test by asking whether the trial judge was plainly wrong in making this finding (*Harracksingh v Attorney General of Trinidad and Tobago* [2004] UKPC 3) and came to a conclusion which was clearly open to it.

15. For these reasons the appeal will be dismissed.