ABRAHAM TOFE -V- DANTE TEIOLI

High Court of Solomon Islands
(Muria, CJ.)
Civil case No. 331 of 1992
Hearing: 5 August 1994
Judgement: 30 September 1994

J.C. Corrin for the Plaintiff
J. Remobatu for the Defendant

MURIA CJ: The Plaintiff claims damages in respect of a motor vehicle Reg. No. A-1874 driven by the defendant on 16 July 1992 and which was damaged following a collision with the Bonege Bridge on West Guadalcanal. That collission was said to be caused by the negligence of the defendant.

It is not in dispute that the defendant was driving the said vehicle at the material time. It is further not in dispute that he collided with the Bonege Bridge and that the vehicle was badly damaged. The defendant also agreed he pleaded guilty to charges of unauthorised use of vehicle and careless driving, both charges arising out of the said incident. The defendant has now stated that he was permitted by the plaintiff to drive the vehicle at the material time and it was the plaintiff who told him to plead guilty to the charge of unauthorised use of vehicle in order to enable the plaintiff to obtain another vehicle for their business. This allegation was denied by the plaintiff.

The defendant's wife gave evidence. She stated that having been asked by the defendant to obtain permission from the plaintiff to use the vehicle on the night of 15 July 1992, she went to the plaintiff that evening and asked the plaintiff for the use of the vehicle. She said that the plaintiff gave the permission to the defendant to use the vehicle. She said she then drove the vehicle from the plaintiff's place to her house.

Following the incident, Mrs Teioli was interviewed by the Insurance Chartered Loss Adjuster, Mr. Conwell who produced a report. Mrs Teioli reported to the Loss Adjuster that her husband (the defendant) was under the influence of liquor that night in question. She told the Loss Adjuster that the vehicle was parked outside the plaintiff's house that night before she went to get it. In Court she stated that she went to the plaintiff's house on the evening of 15 July 1992 to ask the plaintiff for the vehicle and that having been given permission drove the vehicle to her house.

In cross-examination, the plaintiff agreed that on the 15 July 1992 he took the vehicle to his house. The plaintiff also stated that in the evening of that day, the defendant's wife came to his house and asked for the vehicle. He also agreed that his son drove the vehicle to the defendant's place.

On balance I am satisfied that the said vehicle was on that day taken to the plaintiff's house and that in the evening Mrs Teioli went to the plaintiff to ask for permission to use the vehicle under instruction from the defendant. I am also satisfied that permission to use the vehicle was given by the plaintiff to the defendant (through the defendant's wife) to use the vehicle to drop off the boys who were working for the defendant. Having given permission, the plaintiff's son took the vehicle to the defendant's house and then the defendant's wife dropped the plaintiff's son back to the plaintiff's house and took the vehicle back to her house.

It is however clear that the permission given by the plaintiff was for the defendant to use the vehicle that night. The defendant then used the vehicle to drop off his boys and then proceeded to Aruligo to get spare parts for his car which was under repair. I find the permission to use the vehicle granted by the plaintiff to the defendant was a general one and the defendant's use of the vehicle that night of 15 July 1992 was within that express general permission.

Even if I were to find that no express permission was given, I would still have concluded that there was inferred permission in this case given to the defendant and his wife to use the said vehicle. This implied permission can be seen from the facts that the plaintiff, the defendant and defendant's wife were all involved in the loan appraisal and other arrangement with the bank for the purchase of the vehicle although it was clearly registered in the plaintiff's own name; the defendant and plaintiff are relatives; the plaintiff used the defendant's house as his office; the defendant helped the plaintiff in some of his (plaintiff's) business matters; the defendant's wife was employed by the plaintiff; the vehicle was always parked outside the defendant's house; the spare-key was given to the defendant's wife; the admission by the plaintiff that he sometime gave permission to the defendant, and the admission by the plaintiff that the defendant's wife sought permission from him resulting in the vehicle being driven to the defendant's house that night. Those facts are clearly sufficient to infer a reasonable implication that permission was granted to the defendant and his wife to use the vehicle, if not generally, certainly that evening of 15 July 1992.

As to the ownership of the vehicle, the evidence is all one way. The documentary evidence shows that the vehicle was registered and insured in the plaintiff's name. Unless

there is sufficient evidence to the contrary, I am entitled to conclude and I do so, that the vehicle belonged to the plaintiff. The assertion by the defendant that it was a partnership asset is not supported by the evidence.

On the question of driving under the influence of liquor, the defendant denied having had any alcohol that day. In Court, however, he agreed he had some beer late in the afternoon of 15 July 1992 before returning to the house from his place of work.

It is also to be noted that in his answer to Question 11 of the interrogatories, the defendant stated that he consumed liquor approximately 13 hours before the collision. In his answer to Question 12, the defendant stated that he consumed alcohol between 4.00 pm and 5.00 pm on 15 July 1992 and that he drank only three (3) cans of beer.

Interesting to note further, that the defendant was interviewed by the Loss Adjuster after the incident and he stated that he finished work at 4.00 pm on 15 July 1992 and then consumed five (5) cans of beer with his friends at the wharf area after which he went fishing, returning about 10.00 pm.

The defendant's wife who was also interviewed by the Loss Adjuster said that the defendant came home that evening about midnight and that he was in a state of drunkenness. However, in Court, she denied that the defendant had any alcohol in their house but she did not say anything about the defendant coming home late at night intoxicated.

On balance I am satisfied that the defendant had been drinking that evening of 15 July 1992 and that when he came home at about midnight, he was under the influence of liquor. It is not clear on the evidence before this Court that the defendant was still under the influence of liquor when he set out in the vehicle to Aruligo and back, although there is some evidence to suggest that he night have been still affected by alcohol at the time. However, I am unable to make any firm conclusion that the defendant was under the influence of liquor when he was driving the vehicle that night.

Counsel for the plaintiff has asked this Court to accept the convictions of the defendant by the Magistrate Court for the offences of Careless Driving and Taking and Driving away a motor vehicle without authority in support for the liability of the defendant. It must be noted, however, that the defendant pleaded guilty to the two charges before the Magistrate Court and that he now raises a challenge that those guilty pleas were forced on him by the plaintiff.

This Court has no way of knowing whether the challenge now raised by the defendant has any merit or not. That can only be ascertained if those charges are re-looked into. But this is not the case to do that.

However the rule in *Hollington -v- Hewthorn* [1943] KB 587 is that a conviction on a charge of driving without due care and attention is not even prima facie evidence against the defendant in a subsequent civil proceedings. Lord Goddard said at page 594:

> *"The Court which has to try claim for damages knows nothing of the evidence that was before the criminal court. It is admitted that the conviction is in no sense an estoppel but only evidence to which the Court can attach such weight as it thinks proper, but it is obvious that once the defendant challenges the propriety of the conviction the Court would have to retry the criminal case to find out what weight ought to be attached to the result. It frequently happens that a bystander has a complete and full view of an accident... he may inform the Court of everything that he saw but he may not express any opinion on whether either or both of the parties were negligent .. because his opinion is not relevant .... So on the trial of the issue in the civil Court the opinion of the criminal court is equ*ally irrelevant."

The rule in *Hollington -v- Hewthorn* was largely abolished in civil proceedings by the Civil Evidence Act, 1968 (UK) and continued to apply only in criminal cases. However the Criminal Evidence Act of 1984 (UK) also largely, but not entirely, abolishes the rule in *Hollington -v- Hewthorn* in criminal proceedings.

The case of *Hollington -v- Hewthorn* had been severely criticised by the Courts since then resulting in the passing of the two Acts in 1968 and 1984 respectively. In *Goody -v- Odhams Press Ltd.* [1966] 3 All. E.R 369, Lord Denning MR, with whom the other members of the Court agreed, that the decision in *Hollington -v- Hewthorn* was wrong.

Again in *McIlkenny -v- Chief Constable*, [1980] 2 All E.R 227 Lord Denning Mr criticized the decision in *Hollington -v- Hewthorn* as wrongly decided. It was said that *Hollington -v- Hewthorn* ignored earlier authorities such as *Hill -v- Clifford* [1907] 2 ch 236 and *In the Estate of Crippen* [1911] P 108 which held that a certificate of conviction is admissible not merely as proof of the conviction, but also of the commission of the crime against the person convicted in civil proceedings.

The Evidence Act, 1851 provide that previous conviction can be proved by certified copy of the record of the conviction. See section 13 of the Act which applies by virtue of Order No. 1230 of 1909 made under the Evidence (Colonial Statutes) Act 1907 and which extended to Solomon Islands by Order No. 1418 of 1922. Both Orders are reprinted in the 1971 Laws of Solomon Islands.

In my judgement, the rule in *Hollington -v- Hewthorn* is inconsistent with the statutory provision of the Evidence Act 1851 which is applicable in Solomon Islands and therefore should not be followed. That being the position, I feel the case of *In the Estate of Crippen* reflects the position more consistent with our law on evidence and should be adopted. I do so.

In the present case, the defendant pleaded guilty and was convicted of Careless Driving and Taking and Driving away a Motor Vehicle without consent. In so far as those convictions relate to the issue now before the Court, only the conviction on the charge of careless driving is relevant. That conviction is therefore admitted as evidence against the defendant that he was driving without due care and attention at the time of the incident. That is clear evidence of negligence on the part of the defendant.

I have found that on the evidence before the Court in this case, the plaintiff gave the defendant permission to drive the vehicle that night of the incident. But the plaintiff's claim does not depend on whether the defendant was at the time driving the vehicle without permission. The conviction on the charge of Taking and Driving away a motor vehicle without consent is irrelevant and therefore inadmissible against the defendant in this action.

On the evidence, I am not satisfied that the defendant was driving under the influence of alcohol when he collided with the Bonege Bridge. I am not surprised that the police did not press any charge against him for driving under influence of liquor.

The defendant was travelling at a speed of 60 to 80 Kmph on Gear 5. The night was dark and foggy. Upon coming to the bend, 30 metres from the bridge, the defendant was "shocked" that the bridge was just in front of him. He suddenly applied the brakes but he lost control of the vehicle because of the high speed he was travelling at. It resulted in him colliding with the bridge. His action was clearly one that falls below that of a reasonable and prudent driver.

His evidence in Court and his statement to the police together with his conviction on careless driving, have satisfied the Court on the balance of probability that the collision between the vehicle Reg. A-1874 and the Bonege Bridge after midnight on 16 July 1992 was caused by the negligent driving of the defendant. Consequently the plaintiff is entitled to his claim for damages.

There will be judgement for the plaintiff in the sum of $71,400.00 together with interests and costs.

(G.J.B. Muria)
CHIEF JUSTICE