NKHATA AND FOUR OTHERS v THE ATTORNEY-GENERAL OF ZAMBIA (1966) ZR 124 (CA)

COURT OF APPEAL

BLAGDEN CJ, DOYLE JA, EVANS J

16th NOVEMBER 1966

Flynote and Headnote

[1] Evidence - Factual Findings by trial judge sitting without a jury - Conditions for the reversal of.

A trial judge sitting alone without a jury can only be reversed on questions of fact if (1) the judge erred in accepting evidence, or (2) the judge erred in assessing and evaluating the evidence by taking into account some matter which he should have ignored or failing to take into account something which he should have considered, or (3) the judge did not take proper advantage of having seen and heard the witnesses, (4) external evidence demonstrates that the judge erred in assessing manner and demeanour of witnesses.

[2] Civil procedure - Factual findings by trial judge sitting without a jury - Conditions for reversal of.

See [1] above.

Mitchley, for the appellant

Judgment

By the court: This is an appeal against the decision of the High Court, Lusaka, dismissing the appellant's claim for damages in respect of a traffic accident.

At about 4 p.m. on the 15th April, 1965, the appellant, accompanied by his wife, and three of their infant children, all of whom were joined as co - plaintiffs in the action, was driving his Taunus motor - car from Chembe Ferry to Fort Rosebery, when he came into collision with a Government - owned Jeep proceeding in the opposite direction at a point some forty miles south of Fort Rosebery. The Taunus was considerably damaged and all of the occupants sustained injuries and shock, fortunately none seriously.

Each party claimed that the accident was entirely due to the negligence of the other. The appellant and his wife gave evidence on one side and the driver of the Jeep and his passenger gave evidence on the other. The learned trial judge described the evidence of these four witnesses as 'clear and straightforward' and he went on to say:

' . . . and as both sides flatly contradict each other I would, were it not for other evidence, find it difficult to assign responsibility for the accident.'

The other evidence to which the learned trial judge referred was that of two sons of the appellant, who arrived on the scene in another vehicle within a few seconds of the accident but did not see it actually happen; and that of a police inspector who visited the scene some

three hours later and made various observations with regard to the positions of the two vehicles, the damage they had sustained, the presence of skid marks and broken glass on the road and like matters.

The resolution of the issue of liability in this case was purely a question of fact to be determined by the learned trial judge on the evidence before him. He resolved that issue in favour of the respondent. He found that at the time of the accident the appellant was on his wrong side of the road; that he had totally failed to establish his claim; and that the respondent was in no degree responsible for what happened.

[1] [2] By his grounds of appeal the appellant, in substance attacks certain of the learned trial judge's findings of fact. A trial judge sitting alone without a jury can only be reversed on fact when it is positively demonstrated to the appellant court that:

(a) by reason of some non-direction or mis - direction or otherwise the Judge erred in accepting the evidence which he did accept; or

(b) in assessing and evaluating the evidence the judge has taken into account some matter which he ought not to have taken into account, or failed to take account some matter which he ought to have taken into account; or

(c) it unmistakably appears from the evidence itself, or from the unsatisfactory reasons given by the judge for accepting it, that he cannot have taken proper advantage of his having seen and heard the witnesses; or

(d) in so far as the judge has relied on manner and demeanour, there are other circumstances which indicate that the evidence of the witnesses which he accepted it is not credible, as for instance, where those witnesses have on some collateral matter deliberately given an untrue answer.

None of these conditions obtain here and in consequence the judge's findings cannot be disturbed.

Mr Mitchley has been to great pains to analyse the evidence in an attempt to show that the learned trial judge could not or should not have come to the conclusions to which he did. This court is in as good a position as the learned trial judge to draw inferences from accepted facts and we can only say that the inferences which the learned trial judge drew here accord entirely with our own view of the case.

This appeal is dismissed with costs.

Appeal dismissed