

SBS Transit Ltd v Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)
[2007] SGCA 7

Case Number : CA 67/2006
Decision Date : 30 January 2007
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Lee Seiu Kin J; Andrew Phang Boon Leong JA
Counsel Name(s) : Anthony Wee (United Legal Alliance LLC) for the appellant; Lynette Chew Mei Lin and Sharmini Selvaratnam (Harry Elias Partnership) for the respondent
Parties : SBS Transit Ltd — Stafford Rosemary Anne Jane (administratrix of the estate of Anthony John Stafford, deceased)

Tort – Negligence – Contributory negligence – Motorcyclist and bus colliding in intersection – Motorcyclist killed in collision – Whether motorcyclist contributorily negligent by proceeding straight across intersection even though traffic light green in his favour – Whether motorcyclist's blood alcohol concentration of 68mg/100ml rendering him unfit to ride at time of accident

30 January 2007

Judgment reserved.

Lee Seiu Kin J (delivering the judgment of the court):

Introduction

1 This is an appeal by SBS Transit Ltd ("SBS" or "the Appellant") against the decision of Kan Ting Chiu J ("the trial judge") delivered on 11 May 2006 in Suit No 430 of 2004 ("Suit 430"): see *Stafford Rosemary Anne Jane v Goo Tong Sing* [2006] 3 SLR 277. Suit 430 was an action for damages under: (a) s 20 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") for the benefit of the dependants of Mr Anthony John Stafford ("the Deceased"); and (b) s 21 of the CLA in respect of damages for bereavement for the benefit of the Deceased's wife, Rosemary Anne Jane Stafford. Rosemary Anne Jane Stafford is also the administratrix of the Deceased's estate and in that capacity, she was the plaintiff in Suit 430 and the respondent in the present appeal.

2 Suit 430 arose from a road traffic accident involving the Deceased, who was riding his motorcycle, and a double-decker SBS bus at the intersection of Clementi Road and Commonwealth Avenue West ("the Intersection"). The Deceased died on the spot from injuries suffered in the accident. The plaintiff brought the action against the bus driver as the first defendant, and his employer, the Appellant, as the second defendant. The bus driver subsequently pleaded guilty to a charge under s 304A of the Penal Code (Cap 224, 1985 Rev Ed) for causing the death of the Deceased by a negligent act not amounting to homicide, namely, by failing to give way to the Deceased's motorcycle. However, he died (from a cause unrelated to the accident) before the hearing of the action. Suit 430 thus proceeded solely against the second defendant, the Appellant in this appeal.

3 The issue in Suit 430 was one of negligence on the part of the bus driver and/or contributory negligence on the part of the Deceased. The trial judge found for the plaintiff (the respondent in the present appeal) and held the bus driver wholly responsible for the accident.

4 In this appeal, the Appellant relies on a single issue, *ie*, whether the Deceased was contributorily negligent. The Appellant contends that the Deceased ought to have exercised greater

care in proceeding across the Intersection as he ought reasonably to have apprehended the danger involved in the circumstances of that unfortunate evening.

The facts

5 The accident took place on the night of 12 January 2002 at about 8.09pm The Deceased was riding his Harley Davidson motorcycle along Clementi Road heading towards the Intersection in the direction of Upper Bukit Timah Road. The SBS bus had come from the opposite direction along Clementi Road, and was making a right turn into Commonwealth Avenue West towards Boon Lay. The collision occurred inside the Intersection while the Deceased was proceeding across it and the bus was making a right turn.

6 Clementi Road and Commonwealth Avenue West intersect at almost right angles. Entering the Intersection, there were four lanes on Clementi Road in the direction of Ayer Rajah Expressway (the direction the bus was taking). The traffic layout and signalisation sequence have since been changed, but at the time, the right-most lane (*ie* lane 1) was exclusively for vehicles turning right. The lane next to it (*ie* lane 2) was for vehicles turning right or going straight. There were right-turn pockets marked for those two lanes. Lanes 3 and 4 were for vehicles going straight.

7 In the opposite direction and heading towards Upper Bukit Timah Road, which was the direction the Deceased was heading, there were also four lanes. Lane 1, the right-most lane, was for vehicles turning right and lane 2 was for vehicles turning right or going straight. Lanes 3 and 4 were for vehicles going straight. There were no turning pockets for any of the right-turn lanes. In both directions, about 30m or so before the Intersection, lane 4 also led to a slip road for vehicles turning left into Commonwealth Avenue West.

8 The traffic signalisation sequence at the Intersection which was in operation at the material time in relation to vehicles approaching from Clementi Road was as follows. There was a green light for traffic proceeding straight along Clementi Road in either direction, followed by an amber light preceding the red light. When the light turned red, the green right-turn arrow would light for traffic to turn right in both directions. Since there was no red right-turn arrow light prohibiting a right turn during the green phase, this meant that vehicles along Clementi Road in either direction could turn right at the Intersection if it was safe to do so. There is no dispute that traffic proceeding straight along Clementi Road had the right of way during the green phase.

9 At the time of the accident, the traffic flow was moderate, the weather was fine, the road surface was dry, the Intersection was well-lit and visibility was clear. The Deceased died from the multiple injuries suffered in the accident and was found to have had a blood alcohol concentration ("BAC") of 68mg/100ml at the time of the accident.

The evidence

10 Low Chong Eng ("Low") witnessed the accident and he gave evidence at the trial below. Low's evidence was accepted by the trial judge, who found him to be a careful witness whose evidence could be relied upon.

11 Low's evidence was as follows:

(a) Both Low and the bus driver were travelling along Clementi Road in the direction of Ayer Rajah Expressway. They had both stopped at the Intersection with the intention to turn right into Commonwealth Avenue West in the direction of Boon Lay. Low's car was at lane 2 and the bus at

lane 1, to Low's immediate right.

(b) When the traffic lights turned green, both vehicles moved into their respective right-turn pockets to await clearance of oncoming traffic before turning right into Commonwealth Avenue West.

(c) At one point, Low noticed the bus inching forward out of its right-turn pocket. He described it as moving at a constant speed "slightly faster than walking pace". Low was about to follow suit, but when he looked at the traffic light, he saw that it was still at the green phase. At that instant, he saw a motorcycle approaching the Intersection from the opposite direction.

(d) When Low first observed the motorcycle, the bus had reached the middle of the Intersection. The motorcycle was approaching from lane 4, *ie*, the left-most lane. Low noticed that the bus continued inching forward although the light for traffic going straight was still green and the green right-turn arrow light had not come on. In Low's words, the bus then "hesitated, it slowed down, then it decided to complete the right turn". The motorcyclist entered the Intersection at a constant speed, without slowing down, and the collision occurred.

12 The sketch plan prepared by the traffic police showed the bus at a position 2m from the edge of the yellow-box intersection, that is to say it had blocked all but 2m of the left-most lane of Clementi Road on which the Deceased was travelling. However, this merely showed the final position of the bus *after* the accident; this might not have been the position of the bus at the moment of collision.

13 There were glass and other fragments on the road at the front right corner of the bus, but there were no skid marks, scratch marks or brake marks at the scene of the accident. The police investigation officer confirmed that a person travelling in the direction taken by the deceased would have seen the Intersection clearly from a distance of 150m, and that there was a slight downward slope along that stretch of the road. This was corroborated by Low who said that he could see about 100m ahead.

14 As regards the alcohol in the Deceased's body, evidence regarding its possible effect(s) on the Deceased at the time of the accident was furnished to the court by two expert witnesses – Dr Lim Yun Chin ("Dr Lim") for the Appellant and Prof Edmund Lee ("Prof Lee") for the respondent.

15 Dr Lim was of the view that *some* impairment of judgment would be present even at BACs of less than 50mg/100ml, and hence, with a BAC of 68mg/100ml, the Deceased would have suffered a significant impairment of his driving ability at the time of the accident.

16 Prof Lee's position was that any individual with a BAC of 68mg/100ml would have a significant degree of impairment of co-ordination and motor skills, but the precise level of impairment for any particular individual remained fairly speculative.

17 The Deceased's colleague and friend of more than 20 years, Mr Michael Andrew Negus ("Negus"), was the last person to see the Deceased prior to the accident. He gave evidence that the Deceased had consumed two glasses of beer at a bar from about 7.15pm to 8.00pm. Negus said that when the Deceased left the bar at 8.00pm, some ten minutes before the accident, he did not appear flushed, drunk or intoxicated.

The decision below

18 At the trial, the Appellant contended that the Deceased had entered the Intersection against red traffic lights. The bus driver had stated in his police report that the Deceased had ridden into the Intersection after the traffic light had turned red and the green right-turn arrow light had come on. In contrast, in his affidavit of evidence-in-chief, the bus driver had said that the red light had come on, but he was not sure if the green right-turn arrow light had come on yet when he saw the motorcycle. The bus driver had died before the trial and was therefore not cross-examined. The trial judge accepted Low's evidence that the bus driver made the right turn while the traffic lights were green in the Deceased's favour and before the green right-turn arrow came on.

19 As to the manner in which the Deceased was riding his motorcycle, except for the account given by the bus driver, there was no direct evidence showing that he was doing it in a reckless or negligent manner. In his affidavit of evidence-in-chief, the bus driver said that the motorcycle was travelling at a fast speed. However, he made no mention of speed in his police report. Low gave evidence that he did not notice the Deceased slowing down as he entered the Intersection, but he was not asked whether the Deceased was travelling at a fast speed. Although experts were called to give evidence of the speed at which the Deceased's motorcycle was travelling, their evidence was inconclusive and both parties did not rely on such evidence.

20 The trial judge stressed that the duty of a reasonable road user to act on the basis that there might be negligence and incompetence on the part of others ought not to be overstated. Citing the case of *Ong Bee Nah v Won Siew Wan* [2005] 2 SLR 455, the trial judge stated that in the absence of clear and compelling circumstances to the contrary, there was no legal duty on a driver to slow down automatically each time he or she approached a junction with no stop sign or if the lights were in his or her favour where traffic lights were present. The trial judge went on to hold that the Deceased was entitled to assume that the bus which had stopped in the turning pocket would not move again while the lights remained green in his favour.

21 A major contention of the Appellant at the trial was that the Deceased was unfit to ride the motorcycle because of the alcohol he had consumed and therefore he had contributed to the accident. However, the trial judge found that the evidence furnished by the expert witnesses did not establish that a BAC of 68mg/100ml would affect *all* persons such that they would not be able to ride properly. Additionally, he found that Dr Lim's evidence merely established that there would be *some* impairment of judgment, but did not demonstrate that it would be such impairment as to render a person unfit to drive or ride. The trial judge held that while a BAC of 68mg/100ml *could* have affected some people's ability to drive, there was no evidence that the alcohol had affected the Deceased such that he was unfit to ride and, consequently, had contributed to the accident. There was also no evidence that the Deceased was not riding properly when the accident took place.

22 The trial judge held that the bus driver was wholly to blame for the accident and that the Appellant had failed to make out any case of negligence and/or contributory negligence against the respondent.

Arguments raised in the appeal

The Appellant's case

23 On appeal, the Appellant did not dispute that the bus driver had made the right turn while the traffic lights were green in the Deceased's favour and before the green right-turn arrow came on. However, counsel for the Appellant, Mr Wee, argued that in the circumstances that the Deceased was in, he should have had a reasonable apprehension that the bus driver was about to do something unusual. The failure of the Deceased to react to the situation appropriately showed that he had not

exercised due care when he proceeded across the Intersection and he was thereby contributorily negligent.

24 Mr Wee stressed that the double-decker bus was a “behemoth” of a vehicle and it was not stationary at the material time. The Deceased ought to have slowed down as he proceeded through the Intersection as the bus had already blocked off more than half the junction. As an aside, it was also Mr Wee’s submission that the trial judge was wrong to have held that the bus had *stopped* in the turning pocket, since Low’s evidence was that the bus was constantly moving at a speed slightly faster than walking pace. Thus, the trial judge should not have deduced that it was reasonable for the Deceased to assume that the bus was going to give way to him.

25 Mr Wee asserted that the Deceased’s course of action could only be explained by the effect of alcohol on him, which Mr Wee claimed must have affected the Deceased’s judgment on the road. Mr Wee quoted from Prof Lee’s evidence regarding the concept of “Dutch courage”, which describes the false bravado of a person who has consumed alcohol, and submitted that it was this “false bravado” that had caused the Deceased to take the risk of proceeding straight on along the Intersection despite the danger ahead of him.

26 It was further argued by Mr Wee that the trial judge should not have disregarded the experts’ evidence in favour of Negus’ unsubstantiated and “unscientific” evidence. Mr Wee cited the case of *Saeng-Un Udom v PP* [2001] 3 SLR 1 at [25] to [27] in support of his proposition that the issue of the effect of alcohol on the Deceased was outside the learning of the court, and since both the experts’ evidence was not in conflict generally, the trial judge was not entitled to substitute the experts’ opinion with his own opinion on the matter.

27 Mr Wee submitted that the burden of proof required by the trial judge was impossible to satisfy since there was no way of proving the specific degree of impairment which the Deceased was suffering from at the time of the accident as a result of the alcohol intake, even if he were still alive. As such, on a balance of probability, the experts’ evidence that any individual with a BAC above 68mg/100ml would suffer significant neurological impairment should be taken as sufficient evidence of the Deceased’s unfitness to ride. There was no reason to assume that the Deceased would fall outside the sample population.

The respondent’s case

28 In reply, counsel for the respondent, Ms Chew, submitted that the trial judge did not decide on the basis that the bus had *stopped* at the turning pocket. She quoted the following passage from the decision of the trial judge (see *Stafford Rosemary Anne Jane v Goo Tong Sing* ([1] *supra*) at [28]):

Low’s evidence was that the bus had stopped in the turning pocket, but *when it moved further into the intersection* when the lights were still in favour of the deceased, the accident happened. [emphasis added]

29 Ms Chew argued that there was no reasonable apprehension of danger from the perspective of the Deceased since, from Low’s evidence, what was indisputable was that the bus did indeed *hesitate and slow down* before executing the turn at the Intersection. That would be sufficient to give the Deceased the impression that the bus was going to give way to him and that it was safe for him to proceed across the Intersection without stopping.

30 Furthermore, it was impossible for the Deceased, upon approaching the Intersection where

the bus was, to react to the bus driver's sudden decision to complete the right turn. Ms Chew brought to the court's attention the fact that the front portion of the motorcycle did not suffer any damage, while the main damage was to the middle-right side of the motorcycle. The damage to the motorcycle showed that the Deceased had initially managed to clear the path of the bus before the front-right part of the bus collided into the middle-right side of the motorcycle. Hence, Ms Chew submitted that the collision was the result of a sudden movement of the bus which could not have been anticipated by the Deceased, and consequently, the Deceased could not be held to have contributed to the cause of the accident or the extent of his injury.

Our decision

The circumstances surrounding the accident

31 This case had the benefit of an independent eyewitness, *ie* Low, who was able to describe the crucial events just before the collision. His evidence conclusively establishes that the Deceased had the right of way. The burden of proof therefore rests on the Appellant to show that the circumstances were such as would render the Deceased partly at fault for the accident.

32 Before considering the evidence as to what those circumstances were, we would like to expand on the following paragraph in the trial judge's decision:

27 When one travels on the roads, one cannot assume perfect road manners from the other road users. The reasonable road user must act on the basis that there may be negligence and incompetence on the part of others, and he has to make allowance for them. However, this duty cannot be overstated; he is not required to regard other road users as threats to him against whom he must protect himself, and he must be allowed to go about with a degree of calm and confidence necessary for the orderly movement of traffic. With reference to a person in the position of the deceased, I only need to quote and concur with the statement that:

[T]here is – in the absence of clear and compelling circumstances to the contrary – *no* legal duty on a driver to slow down *automatically* each time he or she approaches a junction if there is no stop sign or (as is the case here) the lights are in his or her favour at a junction where traffic lights are present. [emphasis in original]

per Andrew Phang Boon Leong JC (as he then was) in *Ong Bee Nah v Wong [sic] Siew Wan* [2005] 2 SLR 455 at [95].

33 We fully agree with the learned judge that the law requires the motorist to act on the basis that there may be negligence and incompetence on the part of other road users and to make allowance for them, but without having to contemplate possibilities that are remote. As Lord Macmillan had observed in *Fardon v Harcourt-Rivington* [1932] All ER Rep 81 at 84:

[T]he user of the road is not bound to guard against every conceivable eventuality, but only against such eventualities as a reasonable man ought to foresee as being within the ordinary range of human experience.

34 The crux of the issue is what a reasonable person would apprehend in a particular set of circumstances. At one extreme is a driver of a car on an open road in dry weather and perfect visibility. He may drive at whatever speed his car can permit him safely to attain – subject to the legal speed limit – if he does not see any vehicle, person or animal that may obstruct his path. However, once there is other traffic on the road, or there are pedestrians or animals at the roadside,

or there are obstructions to his view, he must contemplate the possibility that any of these may impinge upon his path and must adjust his speed accordingly to one at which he can effectively stop or otherwise avoid a collision. If the road is wet, then he must slow down even further because his braking distance is increased. If visibility is low, then he must proceed at a speed at which he can stop the car the moment an obstruction comes into view. If there are children walking alongside the road, he must contemplate the higher possibility of a child suddenly dashing across his path as compared to adult pedestrians. All these are essentially matters of common sense. Further, the driver must be aware at all times that his motor vehicle is, by reason of its mass and speed, a potentially dangerous weapon. The law requires that he handles it with good sense and common decency.

35 It is from this perspective that the analysis must proceed as to whether the Deceased had negligently ridden his motorcycle into the Intersection. The first factor that we consider is his speed. Unfortunately, there is not much evidence in this regard. Although each party called its own expert witness on this issue, counsel agreed not to rely on their evidence due to shortcomings in the opinions rendered. Low, the sole eyewitness, was not questioned as to whether the Deceased was travelling at a fast speed. All he was asked was whether the Deceased slowed down as he approached the Intersection, to which he answered in the negative. There was, therefore, no evidence of the speed at which the Deceased was travelling.

36 We next consider what the Deceased was faced with as he approached the Intersection. The traffic light was green in his favour. He could see the bus moving at a speed "slightly faster than walking pace" as he neared the Intersection, travelling on the left-most lane. The learned trial judge had stated in his decision at [29] that:

The deceased had proceeded into the intersection along the left-most lane. *He was entitled to assume that the bus which had stopped in the turning pocket will not move on again while the lights remained green in his favour.* The photographs and sketch plan showed that the bus had cut into his path, and save for the uncorroborated and untested accounts given by the bus driver, there was no indication that he was riding at an excessive speed, or riding without due care, or had failed to do anything to avoid the collision. Unless it can be inferred from the fact that a collision had taken place in such circumstances that the deceased was somehow negligent, and there is no basis for that in law or on the facts, there was no evidence of negligence on the part of the deceased. [emphasis added]

37 With respect, we do not agree that any motorist or motorcyclist in the position of the Deceased was entitled to assume that the bus would not move on while the lights remained green in his favour. To so hold would mean that the Deceased could proceed at a speed that did not take into account a mistake or error of judgment on the part of the bus driver, either in failing to observe that a motorcycle was approaching the Intersection or in adjudging it possible for the bus to make the turn before the motorcycle reached it. Such an assumption is certainly a wholly unsafe one to make. An intersection is that part of the road where a vehicle may cut across the path of other vehicles. When a motorist approaching an intersection sees a vehicle poised to make a turn across his path, the first thing that he must prepare for is the possibility that the other driver will make the turn before he clears the intersection. He must watch out for any indication that the driver might do so. Above all, he must drive his vehicle at a speed that enables him to react appropriately should this occur. The last thing that he should assume is that the vehicle will definitely wait for him to pass merely because he has the right of way according to road traffic rules. One must bear in mind that these rules are enacted for reasons of safety and to facilitate the smooth flow of traffic. Road users are entitled to assume that such rules will generally be followed, and indeed any person who fails to comply with any of these rules and breaches the law as a result may find himself charged with an offence and punished accordingly. But this assumption must be tempered with the realisation that, as in any

activity, human failings and weaknesses always exist. These range from matters beyond the control of the individual to honest errors of judgment to intentional breaches of the law. An example of the first category is vehicle failure, such as brake or engine failure. Examples of honest errors of judgment are mistakes as to the law (eg, whether a U-turn is permitted) or mistakes as to physical factors (eg, the speed of oncoming traffic). The other extreme, intentional breaches of the law, would include speeding, illegal U-turns and running a red light. In between these extremes are instances such as inattention, or being distracted by the radio or a passenger or a mobile phone. The law requires every motorist to be aware of such realities and adjust the manner in which he uses his vehicle on the road to take these into account. It is a tragic fact that too many serious accidents have occurred under such circumstances, particularly in cases where the vehicle proceeding straight is a motorcycle (due no doubt to the fact that they are smaller and therefore it is more difficult to see them or judge their speed).

38 Therefore, if the Deceased had ridden into the Intersection at a speed that did not countenance the possibility that the bus would make the turn before he could clear the Intersection, we would have no hesitation in holding that the Deceased was contributorily negligent. As we had noted earlier (at [35] above), there is no evidence of the speed at which the Deceased approached the Intersection. However, there is physical evidence of the point of impact. From the evidence at the trial, the damage to the motorcycle was not to the front wheel or bumper. Damage there would have indicated that the bus had cut across its path and that the Deceased had failed to stop in time. Instead, damage to the motorcycle was primarily in the middle and on the right – the right side of the fuel tank showed a big dent. Damage to the bus was at the front-right edge from the bumper to the level of the headlamp, with the headlamp itself undamaged. This indicated that the right corner of the bus had rammed into the mid-section of the motorcycle.

39 When this physical evidence is superimposed over the evidence of Low, the sole eyewitness, the following picture emerges. As the Deceased rode into the Intersection, the bus suddenly moved forward (Low testified that the bus driver “hesitated, ... slowed down, then ... decided to complete the right turn”: see [11] above) and hit the side of the motorcycle before it could clear the path of the bus. There are two possibilities as to the frame of mind of the Deceased as he entered the Intersection: (a) he had assumed the bus would not move before he passed it, or (b) he had not made that assumption. There is no evidence as to how fast the motorcycle was going at that moment, but certainly, if the Deceased had proceeded at a greater speed, he would have escaped injury. This would suggest that he was not travelling fast rather than the other way round, which in turn indicates that he had not assumed that the bus would not move forward before he cleared the Intersection. In any event, the burden was on the Appellant to prove that the speed at which the Deceased entered the Intersection was too fast in the circumstances and this burden was not discharged. In our view, the fact that the bus had, as it made the turn, collided with the mid-section of the motorcycle shows that in all likelihood, the bus driver had misjudged the rate at which the motorcycle could get out of his path when he stepped on the accelerator to “complete the right turn”.

40 We therefore agree with the trial judge that there was no evidence that the Deceased was riding his motorcycle in a negligent manner.

Deceased’s blood alcohol level

41 Mr Wee argued that the trial judge should not have rejected the experts’ evidence and concluded that the Deceased’s ability to ride was not impaired by alcohol. It is first of all necessary to determine what exactly was the experts’ evidence and the extent to which their opinions were in agreement. The Appellant’s expert, Dr Lim, was of the view that the Deceased would have suffered

significant impairment on account of his BAC of 68mg/100ml. He cited a study by Dr Danny Lo Siaw Teck and Dr Rasiah Gunasegaram reported in their paper entitled "Alcohol: facts you should know before your first drink" Scientific Review 1991; 3(2) at 1-3 published by the Institute of Science and Forensic Medicine where the authors stated at 3:

It must be emphasized that different people may be affected differently at the same blood alcohol level. As far as drinking and driving is concerned, two separate studies conducted on experienced drivers seem to suggest that there was no 'safe' blood alcohol level because even at very low levels (below 50 mg per cent), some impairment of judgment was noted.

42 However, the respondent's expert, Prof Lee, was of the view that the response of different individuals varied considerably. While he would say that a BAC of 68mg/100ml would have a significant degree of impairment of coordination and motor skills in any individual, he pointed out that it was not possible to state the precise level of impairment which such a BAC had on the Deceased. The trial judge noted at [32] of his judgment that this followed from the first sentence of the quotation above (at [41] *supra*) from the paper of Dr Lo and Dr Gunasegaram. The trial judge pointed out that the Legislature, in making it an offence under s 67 of the Road Traffic Act (Cap 267, 1997 Rev Ed) to drive with a BAC in excess of 80mg/100ml, would have given careful consideration to the issue of the permissible blood alcohol concentration for motorists. The trial judge did not accept the Appellant's contention that the experts' evidence had proved that a BAC of 68mg/100ml by itself would render any person, and therefore the Deceased, unfit to drive or ride a motorcycle. We agree with his analysis of the experts' evidence.

43 The trial judge went on to consider the evidence of the Deceased's long-time friend, Negus, that the former had two glasses of beer and was a person who could hold his liquor. He noted that the Appellant had not challenged this aspect of the evidence. The trial judge concluded at [40] of his judgment:

What is the evidence on the deceased's fitness to ride his motorcycle? There is evidence that the blood alcohol concentration in his blood was at a level that could have affected some people's ability to drive, but there is no evidence that the alcohol had affected him so that he was unfit to ride, and no evidence that he was not riding properly when the accident took place.

44 We find the approach of the trial judge to be sound. The manner in which the Deceased had ridden his motorcycle is a question of fact to be determined from the entirety of the evidence, of which the experts' evidence is just one aspect. The burden of proof rests on the Appellant to show that the Deceased had been contributorily negligent. In view of the evidence on the manner in which the collision occurred as discussed above, we are in agreement with the conclusion of the trial judge.

45 We accordingly dismiss the appeal with costs.

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