17-07-07

Civil Appeal No. 30 of 2006
Grand Court Cause No. 251 of 2005

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

BETWEEN:

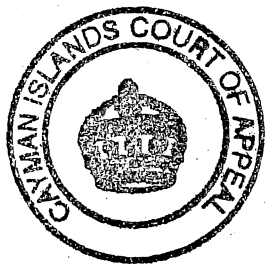
HUGH GERALD AUBRECHT

RESPONDENT
(Plaintiff)

AND:

RUPERT GEORGE ANGEL

APPELLANT
(Defendant)



BEFORE: The Right Hon. E. Zacca, P.
The Hon. M.R. Taylor, J.A.
The Hon. I. Forte, J.A.

Anthony Akiwumi of Stuarts for the Appellant (Defendant)
Kirsten Houghton and Shaun McCann of Campbells for the Respondent (Plaintiff)

Heard and Decided: April 24, 2007 Reasons Released: 17th July , 2007

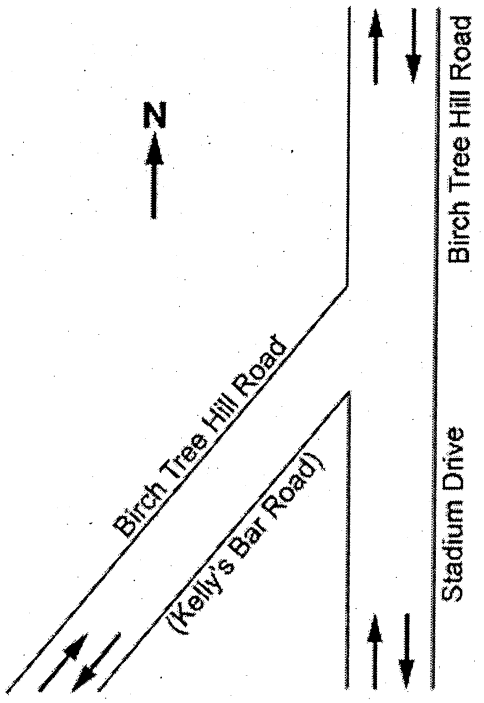
REASONS FOR JUDGMENT

TAYLOR, J.A.

The following are our reasons for dismissing this appeal against findings of fact that resulted in the Appellant, Rupert Angel, being held solely responsible for an intersection collision four years ago in the West Bay area of Grand Cayman between a van he was driving and a motorcycle ridden by the Respondent, Hugh Aubrecht.

The outcome of the action turned on resolution by the trial judge of a conflict between the evidence of an independent eyewitness who testified that the Appellant's van turned right at the intersection, without giving any signal, into the path of the oncoming motorcyclist, and that of the Appellant and his wife, neither of whom saw the motorcycle before the accident and both of whom testified that their vehicle was in fact proceeding directly ahead on the main thoroughfare through the intersection. It was contended for the Appellant that the motorcycle must have come out of the side road, without stopping at a stop-sign, into the right front corner of the van. The Respondent suffered head injury in the accident and had no recollection of what happened for more than a year thereafter, but claimed to have in part regained his memory before trial after reading statements of others. The judge rejected his evidence as unreliable, noting that persons who suffer memory loss are vulnerable to suggestion.

The key witness for the Respondent was a cyclist, Sasha Nicola Davis, who was making her way to work north on Stadium Drive at about 7:30 a.m. on a clear morning, approaching the intersection of Stadium Drive and Birch Tree Hill Road. Viewed from the south, the junction takes the form of an inverted "Y":



At the junction Stadium Drive becomes Birch Tree Hill Road, the two together forming a through road. Southwest from the intersection Birch Tree Hill Road is a side-road known also as "Kelly's Bar Road". Ms. Davis testified that as she was riding north on Stadium Drive she was overtaken by the Respondent on his motorcycle and saw the Appellant's van approaching from the opposite direction. She said the van turned right at the intersection, as if to enter Kelly's Bar Road, into the path of the motorcycle ahead of her, without making any signal. This evidence was in part supported by that of a pedestrian standing close to the intersection.

It is most unlikely that Ms. Davis could have been mistaken as to the road on which she was riding when overtaken by the motorcyclist, and she had reason to take

note of the movements of the oncoming van, which she was herself approaching. Her evidence that the van gave no turn signal was, to that extent, consistent with the Appellant's. The trial judge accepted her evidence, which he found unshaken on cross-examination, in preference to the evidence of the Appellant and his wife that they were continuing south along Stadium Drive, and rejected the Appellant's contention that the Respondent must have entered the intersection from Kelly's Bar Road without stopping. The judge found the Appellant wholly liable for the Respondent's damages, rejecting the Appellant's plea of contributory negligence.

Notwithstanding the straightforward nature of the evidentiary conflict, and the fact that its resolution turned on the judge's assessment of the credibility of witnesses, 18 grounds of error were advanced for the Appellant, elaborated in 36 pages of written submission and forcefully pressed in oral argument.

In dealing with these grounds it is necessary throughout to have in mind the evidence of the independent eyewitness Sasha Davis.

If the evidence of Ms. Davis were accepted, as it was, as honest and accurate, the accident could not have been caused otherwise than by the negligence of the Appellant. Unless the Appellant could establish on the evidence that the Respondent ought to have been able to take timely evasive action, the Appellant would be unable to discharge the onus of demonstrating contributory negligence.

(a) The Judge's Reasons

At the beginning of his oral reasons, given four days after conclusion of the trial, Mr. Justice Henderson deals with the evidence of the Respondent (to whom we shall in this context refer as the Plaintiff), rejects it as unreliable and gives reasons for also rejecting in its entirety the evidence of the police officer who attended the scene of the accident, whose work he found "slipshod" and "unreliable", particularly with respect to her failure to record in any contemporaneous note alleged statements of the Defendant's wife, Christine Angel, a matter of importance in the trial.

The judge goes on to deal with the evidence of Sasha Davis, observing that she may have been interviewed more often than necessary for the Plaintiff but that there was no suggestion that the account she gave in evidence differed in any way from that given by her on the day of the accident, or at any other time. The judge was impressed by the demeanour of Ms. Davis, and says: "I accept her evidence as credible and reliable". The Appellant's submissions before us were directed to demonstrating, in 18 different but sometimes similar ways, that the judge erred in making – or in failing more fully to explain – his preference for the evidence of Ms. Davis.

The judge deals with transcribed evidence from earlier Summary Court proceedings on a traffic charge of the second eyewitness, Delgardo Richards, who was no longer in the Islands. In those proceedings Mr. Richards was cross-examined by counsel

for the present Appellant on essentially the same issues as those in the present action and for this reason the judge accepted his hearsay account as evidence that should be given some weight in association with the *viva voce* evidence. Mr. Richards said he was standing in a phone booth close to the intersection when he observed the motorcycle going north on Stadium Drive and the van heading south, and saw that the van "swerved to the right as if he was going on Birch Tree Hill". The van was about 12 feet from the motorcycle, he said, when it started to swerve. The evidence of Mr. Richards was inconsistent in that he said he heard the accident about 35 to 45 seconds after he first saw the motorcycle, and that the motorcycle was "almost stationary beside me". The judge observes that while some evidence given by Mr. Richards seemed improbable, or in conflict with the evidence of Ms. Davis, this was not unusual in the evidence of honest witnesses recounting events of a considerable time ago.

In dealing with the evidence for the defence, the judge finds he can draw no conclusions from its expert report, other than that the expert thought the accident involved vehicles approaching from opposite directions. With respect to the evidence of the Appellant himself, the judge notes that Mr. Angel said he was taking two of his children on the way to school, intending to drop off his daughter at a bus stop and take his son to West Bay Primary School, and that in order to get to that school "one would ordinarily take Kelly's Bar Road", but that Mr. Angel had said that he planned to take his daughter first to the bus stop, and for this purpose would have no reason to turn right at Kelly's Bar Road. Mr. Angel testified that the first he knew of the motorcycle was when

he heard an "explosion" as it hit his vehicle; he denied that Ms. Davis was present at the scene of the accident. The judge was "not impressed by the evidence or demeanour of the Defendant" and concludes that "where his evidence conflicts with other reliable evidence in the case, I do not accept it".

The judge deals finally with the evidence of the Appellant's wife, Christine Angel, an aspect of the trial on which counsel for the Appellant placed particular importance before us. Ms. Angel was called by the Plaintiff, apparently in the hope that she would testify that her husband was turning right at the intersection. Ms. Angel was said by the police officer who attended at the scene to have at first given this account when interviewed there. When Ms. Angel gave evidence to the contrary, counsel for the Plaintiff was successful, following a *voir dire*, in being allowed to put two alleged oral statements to her and to cross-examine her on these statements. In making this ruling, the judge gave the opinion that Ms. Angel was an adverse or hostile witness with which we will deal in reviewing the Appellant's grounds of appeal.

As a result of subsequent evidence in the trial itself, the judge ultimately concluded that he was not satisfied that Ms. Angel made either of the alleged statements, these having been written down by the officer 10 days after the event without contemporaneous notes. The judge nevertheless rejected Ms. Angel's evidence that her husband was proceeding straight ahead, rather than turning to the right. The judge noted

that Ms. Angel had "a potential bias in the case" and "there were aspects of her demeanour which I found less than favourable". The judge said:

> I am satisfied on a balance of probabilities that the evidence of Sasha Davis is accurate. It is corroborated by the hearsay evidence of Delgardo Richards. The evidence of Christine Angel is not sufficient to permit a contrary conclusion.

The judge found that the Defendant turned suddenly to the right, as if to go down Kelly's Bar Road, that he failed to keep a proper lookout for the Plaintiff and to give the Plaintiff the right of way, and that this negligence caused the accident.

The judge found no evidence that would permit a finding of contributory negligence against the Plaintiff, thus holding the Defendant 100 per-cent liable for the Plaintiff's damages, to be assessed.

(b) The Credibility Findings

Recurrent through the Appellant's many grounds of appeal is the complaint that the judge failed to give adequate reasons for his findings of credibility, and particularly so with respect to that of the Appellant and his wife.

We have found nothing in the authorities cited to support counsel's contention that a judge faced with a conflict in the evidence of witnesses that must be resolved on the basis of the impression as to honesty and reliability which each makes is obliged to give

reasons for preferring that of one to that of another. There are cases in which an evidentiary conflict can be resolved by reference to the reasonableness of the evidence given in the context of the evidence as a whole and in such cases a judge may be able to give a logical explanation for findings of credibility, and an appeal court may then review the reasoning process involved. In other cases, of which the present is an example, the only basis on which credibility can be assessed is the manner in which the witnesses have given their evidence, and the impression that this has left on the judge. To the extent that the judge's view in such a case can be said to result from aspects of 'demeanour' – such as hesitation, uncertainty, confusion or contradiction – these may appear to the reader equally consistent with the manner of an honest and reliable witness as with that of an unreliable witness, or one seeking to mislead. Often the impression created cannot be attributed to a particular identifiable characteristic.

In *Clarke v. Edinburgh & District Tramways Co. Ltd.* 1919 S.C. (H.L.) 35, cited for the Respondent, Lord Shaw of Dunfermline says (at p. 36):

> Witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page.

Lord Justice Henry puts the matter succinctly in *Flannery v. Halifax Estate Agencies Limited* [2000] 1 WLR 377 when he says (at p. 382):

> Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarized the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say.

Counsel for the Appellant did not suggest how a judge can be expected usefully to describe the manner of a witness who impresses by his or her demeanour, or that of another who does not. We rejected the suggestion that the present case can be equated with cases in which a trial judge is able to assess conflicting expert or other evidence on the basis of reasonableness or unreasonableness having regard to other oral evidence, documents, agreed facts or some course of conduct.

For these reasons we did not accept the assertion in the Appellant's Ground 1 that the judge ought to have said why he found the Appellant's demeanour "unimpressive", or in Ground 3 that reasons should have been given for the judge's finding with respect to Ms. Angel's demeanour. With respect to Ground 2, the judge's statement that he considered Ms. Angel "to have a potential bias in the case" properly identified her as a person with a possible interest in the outcome, a factor conventionally considered in assessing credibility, or instructing juries how to do so. For the same reason we rejected Ground 4, by which it is contended that the judge erred "in finding that the evidence of the Appellant and/or Christine Angel was respectively 'unimpressive' or 'biased' and 'unfavourable'", and asserted also that the judge should instead have found their evidence to be "fully credible and reliable".

The Appellant reverts to this theme in Ground 7, going so far as to describe the decision of the trial judge as "perverse", in that "no reasonable Court could properly have concluded that the alleged demeanour of such witnesses was such that their evidence should properly be wholly disregarded or disregarded to the extent that it conflicted with other evidence". The evidence of Mr. and Mrs. Angel was not disregarded but was in fact considered by the judge, and weighed alongside the evidence of independent witnesses which the judge in the end preferred.

(c) The Section 4(1) Issue

By Grounds 5 and 6 it is contended that the decision of the judge to declare Ms. Angel an adverse witness and permit Plaintiff's counsel, who had called her, to put to her alleged previous inconsistent statements regarding the direction in which the van was going and cross-examine her on that aspect of her evidence, was not only in error but wrongly and indelibly marked her as a witness lacking in credibility.

On being called by the Plaintiff, Ms. Angel embarked with little encouragement on a detailed account of the collision and the scene that followed. When she testified that her husband was proceeding straight ahead through the intersection, counsel for the Plaintiff asked that she be shown a police report recording a contrary statement, said by the attending officer to have made by her at the scene, that her husband was in fact turning right into Kelly's Bar Road, and also a later statement said by the officer to have

been made by Ms. Angel that she was unsure what route her husband was taking. Neither had been written or signed by Ms. Angel. A discussion followed, in the absence of the witness, directed to the words of s. 4(1) of the *Evidence Law*, 2006:

> 4. (1) A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness, in the opinion of the Court, proves adverse, contradict him by other evidence, or by leave of the Court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

This provision follows s. 3 of the English *Criminal Procedure Act*, 1865 (Lord Denman's Act). It extends the discretion given to a judge at common law to permit cross-examination by a party of that party's own witness, including cross-examination as to any previous inconsistent statement, where the court is of opinion that the witness appears 'adverse' – meaning 'hostile', or not desirous of giving a truthful account at the instance of that party – by providing that the judge may in such circumstances, should the witness deny having given the alleged earlier inconsistent statement, permit evidence to be called to prove that the witness did in fact make it.

Counsel for the present Appellant (the then Defendant) successfully urged that Ms. Angel be stood down, without the alleged statements being put to her, and that the police officer be called on a *voir dire* to establish whether, on the balance of probabilities,

the witness had made the alleged statements, a procedure about which the judge expressed some misgivings. As a result of this *voir dire*, the judge found on the balance of probabilities, the test urged on him by counsel for the Defendant, that Ms. Angel had made the two inconsistent statements. Counsel for the Plaintiff then argued that the inconsistent statements should be taken into account "when considering whether or not Ms. Angel is now or may at some time be an adverse witness to us", conceding that the witness had so far demonstrated no hostility in her evidence and noting, to the contrary: "Her demeanour in the witness box is outwardly, I have to say, helpful". Counsel for the Defendant contended that the judge should not take into consideration the evidence that had been given on the *voir dire* in deciding the question of adversity, but decide that issue solely on the evidence that Ms. Angel had previously given. The judge took into account the statements attributed to Ms. Angel by the police officer, concluding that the decision of the Court of Appeal in *R. v. Prefas and Pryce* (1988) 86 Cr. App. R. 111 brought about a relaxation of the rule as previously understood, and finding that case on all fours with the case before him. The judge held that Ms. Angel should be treated as adverse for the purposes of being cross-examined on the statements even though there was "nothing in her demeanour to suggest overt hostility". The alleged statements were then put to Ms. Angel, who denied making them and gave the rest of her evidence.

The police officer later gave evidence for the Plaintiff from which it emerged that the officer had a notebook dealing with the investigation but no note of the interviews she described with Ms. Angel. As a result of the evidence of the officer as a whole, including

evidence of her examination of the accident scene and of her suggested location of the point of impact, the judge concluded that the investigation had been "slipshod" and that the officer's evidence was unsatisfactory. On the basis of the evidence as a whole the judge was no longer prepared to find that Ms. Angel had made either of the alleged prior inconsistent statements.

In his conclusion regarding the credibility of Ms. Angel, the judge refers to a potential bias and to "aspects of her demeanour which I found less than favourable", and on these grounds rejects her evidence in favour of the independent evidence of Sasha Davis and Delgardo Richards, which he finds that he prefers.

The report of the Court of Appeal decision in *R. v. Prefas and Pryce* does not explain fully the basis on which the trial judge in that case came to the conclusion that the prosecution should be permitted to cross-examine its own witness as 'hostile' – whether on the basis of a report of the alleged prior inconsistent oral statement, or counsel's account of the statement, by reference to the manner in which the witness had so far given evidence, or a combination of these. The view of the law adopted in that case contemplates the putting of an alleged inconsistent prior statement to a party's own witness as part of a cross-examination of the witness, where that is permitted by the trial judge in the exercise of the common-law discretion, and a decision being made thereafter by the trial judge whether to permit evidence to prove the prior statement, in the event the witness denies having made it. But the common-law discretion to permit such cross-

examination is itself dependent on the judge having first concluded that the witness appears to be adverse, that is to say 'hostile'. In *R. v. Prefas and Pryce* the procedure urged on the trial judge in the present case was not followed – that is to say, interruption of the evidence-in-chief of the witness sought to be contradicted without the alleged statements and the circumstances of their making having yet been put to her, for the holding of a *voir dire* in which the making of the statements was sought to be proved or disproved. There is authority supporting the holding of a *voir dire* in this context in a criminal jury trial – see *R. v. Honeyghon* [1999] Crim. L.R. 221, but the issue under consideration in that case was different. Although a finding on the balance of probabilities was made by the judge as part of the ruling in the present case, the ruling was one made on part only of the evidence; the question whether Ms. Angel in fact made the alleged inconsistent prior statements was one that remained to be decided after all of the evidence, including her own, had been heard.

In Stephen's Digest of the Law of Evidence, referred to by the Court of Appeal in *R. v. Prefas and Pryce*, it is said (13th ed. at pp. 224-6) that ss. 3, 4 and 5 of the 1865 Act are ill-arranged, that the first part of s. 3 mis-states the law, that the law regarding hostile witnesses has developed in a way that leads to confusion, and (at p. xxii-xxiii) that statutes relating to the law of evidence cannot be understood without an understanding of the common law rules with which they have taken their place. The scope or purpose of the rule permitting cross-examination by a party of that party's own witness as to an alleged previous inconsistent statement appears to have broadened since Stephen's time,

but its application cannot require proof being first given that the inconsistent statement was in fact made. The common-law rule long predates the statutory provision that permits such proof to be given. The change effected by what is now s. 4(1) of the Cayman statute permits such proof to be given and contemplates that the question whether the alleged previous statement was made will be decided after all of the evidence, including that of the witness in question, has been given.

In *R. v. Jobe* [2004] EWCA Crim. 3155, the Court of Appeal refers (at Paragraph 66) to *R. v. Prefas and Pryce* and other cases as authority for the proposition that 'adversity' – meaning 'hostility' – for the purposes of s. 3 of the *Criminal Procedure Act* 1865, may be demonstrated *either* "by the witness's manner and demeanour alone" *or* by "inconsistency between the witness's evidence and a prior statement". In *Jobe* it was conceded that there had been nothing hostile about the tone or demeanour of the Crown witness concerned. It was only after the witness had given important evidence favourable to the accused which was not contained in his witness statements that the prosecution successfully sought to put the prior statements to the witness, and cross-examine on them. The statements in question in that case appear to have been signed statements, whose authenticity was not in issue.

Where, as in the present case, the making of the alleged prior inconsistent statement is in issue, and the basis for the assertion of 'adversity' is the inconsistency intended to be so demonstrated, the ruling of the judge on the application of the party

calling the witness to prove the prior inconsistent statement must necessarily be made before any conclusive decision on the authenticity of the statement can be made. It is only *after* such opinion has been given by the judge, and the making of the statement has been denied by the witness, that the section contemplates that evidence will be called to establish that the statement was in fact made. If the judge decides to hold a *voir dire* for the purpose of hearing evidence regarding the making of the alleged statement and the circumstances in which it is said to have been made, before ruling on an application to cross-examine or thereafter to prove the statement under s. 4(1), the 'opinion' so given is no more than an interim procedural or evidentiary ruling.

It becomes apparent from the authorities that the discretion to permit cross-examination by a party of that party's own witness on a prior inconsistent oral statement may be exercised on the basis of counsel's instructions that the witness has made the oral statement, or of a written report of the statement, and this will be so also with respect to any later exercise of discretion to permit proof of such a statement under s. 4(1) where the witness denies having made it. While a *voir dire* may in some circumstances be necessary, particularly in a criminal jury trial, this is not always required.

The above references to the record, the judge's reasons and the authorities are necessary in order to deal with the Appellant's Grounds 5 and 6. By Ground 5 the Appellant contends that the judge erred in forming the opinion that Ms. Angel was "in fact 'hostile', within the meaning of s. 4 of the *Evidence Law*, when nothing in her

conduct or answers at the material time warranted such a declaration or finding". By Ground 6 the Appellant asserts that the judge's view after the *voir dire* – that Ms. Angel had probably made the statements in question – "resulted in a material irregularity in the conduct of the trial", although it was because of adoption by the judge of a procedure urged on him by counsel for the present Appellant –a *voir dire* for proof of the statements on a balance of probabilities – that the ruling was made.

Counsel for the Appellant contended before us that the later contrary finding by the judge, based on the whole of the evidence, could not suffice to remove the previous finding from his mind when ultimately assessing Ms. Angel's credibility – a challenge that counsel contended would call for "mental gymnastics". The exercise called, in our view, for no more than the ordinary discipline that judges bring to the task of weighing and re-weighing evidence in the course of trials, and excluding whatever in the end appears irrelevant or incorrect. The earlier ruling, being procedural in nature, was readily capable of reconsideration when all the evidence was in.

For these reasons we rejected the Appellant's Grounds 5 and 6.

(d) The Remaining Grounds

By Ground 8 the Appellant asserts that the judge ought not to have given weight to hearsay evidence of Delgardo Richards, citing the *dicta* of Baroness Hale in *Polanski v. Conde Nast Publications Ltd.* [2005] 1 WLR 637.

Baroness Hale there makes the following observations in regard to hearsay evidence (at p. 653): (i) that there are safeguards available to "reduce the prejudice caused to an opposing party *if he is not able to cross-examine the maker of the statement*"; (ii) that the principal safeguard is "reduced – even to vanishing point – weight to be given to a statement which *has not been made in Court and subject to cross-examination in the usual way*"; and (iii) that the court "is to be trusted to give the statement such weight as it is worth in the circumstances of the case". [Emphasis added] These statements of law do not, as counsel contends, suggest that weight given to the account of Delgardo Richards should be reduced "to the vanishing point". To the contrary, they show that the judge was entitled to give considerable weight to evidence given in earlier proceedings in which Mr. Richards was cross-examined by counsel for the present Appellant. The judge clearly acted within the scope of his discretion in accepting this evidence in support of that of Ms. Davis.

Grounds 9, 10 and 11 are concerned with the trial judge's failure to designate the point of impact, and to deal more fully with the Defendant's expert evidence. It is

impossible to fault the judge for failing to locate the place where the collision occurred, having rejected the police evidence on the point as unreliable, as he was entitled to do, and the expert being unable to say where it occurred. The judge drew no conclusions from the expert evidence because the expert reached none.

By Ground 12 the Appellant contends that the judge made a finding that the Appellant would normally have taken the Kelly's Bar Road. That was not, however, the judge's finding. The judge concluded that *one* – that is to say *a person* – would normally take that route if going to one of the two destinations to which the Appellant was taking his children – a relevant factor in assessing the reasonableness of the Respondent's theory that he was turning into Kelly's Bar Road at the time of the accident. By Ground 13 the Appellant asserts that where a party calls two equally-credible witnesses who directly contradict each other on a material point, the evidence of both on that point should be rejected, a proposition that has no relevance in this case for the reason that the evidence of Ms. Davis and Mr. Richards was found credible and that of the Appellant and Ms. Angel found not credible. By Ground 14 it is contended that the Respondent failed to discharge the onus on him as Plaintiff, a plainly untenable proposition in light of the independent eyewitness testimony accepted by the judge, on which the Plaintiff's case rested. Ground 15 says that the judge erred in correcting the transcript of his oral reasons so as to change the time of the accident from 7:28 a.m. to 7:30 a.m., which he was clearly entitled to do. Ground 16 is that the above grounds, taken individually or cumulatively,

establish procedural irregularities on the basis of which the judgment should be set aside. For reasons already stated we do not agree.

By Grounds 17 and 18 the Appellant contends that the judge erred in failing properly to consider whether the Respondent was contributorily negligent. The Appellant here relies on a statement by the Respondent that he thought the Appellant's van was being driven dangerously, but this is evidence which the judge rejected as unreliable. We were directed to no evidence that could have satisfied the onus that lay on the Appellant to show that the Respondent ought to have been able to take effective evasive action after he could first see that the Appellant was turning into his path.

(e) Disposition

None of the grounds raised on appeal in our view casts doubt on the correctness of the judge's reasoning or conclusions. We accordingly dismissed the appeal and affirmed the decision below. We directed that the Respondent's costs be paid by the Appellant forthwith, to be taxed forthwith if not agreed.

E. Zacca, P.

M.R. Taylor, J.A.

I. Forte, J.A.