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IN THE HIGH COURT OF NEW ZEALAND  
WHANGAREI REGISTRY

A.74/84

**NOT  
RECOMMENDED**

NZLR

1458

BETWEEN HIKURANGI CO-OPERATIVE  
DAIRY COMPANY LIMITED  
a duly incorporated  
company having its  
registered office at  
Whangarei, Dairy  
Producers

Plaintiff

AND LESLIE ROBERT THOMAS  
of Raymond Street,  
Kawakawa, Driver

Defendant

Hearing: 2 & 3 October 1986

Counsel: Mr H. Drummond and Mr W. Sowerby for Plaintiff  
Mr A. Fairley for Defendant

Judgment: 3 October 1986

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ORAL JUDGMENT OF WYLIE, J.

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On 2 February 1984 at about 11.00 a.m. two trucks collided in Paiaka Road, Hikurenui, one an Isuzu tractor and semi trailer being a milk tanker owned by the plaintiff and driven by Mr Houston one of the plaintiff's employees. The other was a Mack truck and trailer owned and driven by Mr Thomas. For convenience I will refer to the two sets of vehicles simply as the Isuzu and the Mack.

The Isuzu was being driven in the course of its daily milk collection round in a southerly direction in Paiaka Road and at the time of the accident only one pick-up had

been made and the tanker contained only about 2,000 litres of milk, a very light load. On the other hand the Mack was fully laden with a load of lime. It was being driven in a northerly direction.

Unfortunately, the two vehicles coincided in their journeys at a bend in the road known locally and perhaps appropriately as the "Big Bend". They collided on this bend and substantial damage was suffered by both vehicles. This has resulted in the claim and counter-claim the subject matter of this action. There is now no dispute between the plaintiff and the defendant as to the essential factors involved in the collision other than the question of fault or as to the quantum of damages suffered by each party.

It was agreed at the outset of the hearing that the plaintiff's loss for repairs and incidental matters was \$15,699.26 and the defendant's loss, \$19,841.60.

As I have indicated the only issue before me is one of fault and I proceed now to consider that question. There are the usual allegations of negligence by each party against the other with the usual particulars of negligence to be found in these cases, namely failure to keep to the left, driving on the incorrect side of the road, excessive speed, failure to keep a proper look-out, failing to stop, steer clear of or avoid an accident, driving without due care and failing to keep under proper control.

Paiaka Road is a relatively narrow winding country road. It is not sealed, but is metalled, at any rate in the relevant area.

A plan prepared by a surveyor was produced in evidence which showed the bend and its surroundings in some detail. Before one approaches the bend the metallised surface is 4.7 metres wide, but this widens to a maximum of 6.5 metres just on the south side of the bend. On the bend itself the width is 5.9 metres. In addition at the outer curve of the bend there is a clay surface at the edge of the metal and level with the metal surface about half a metre in width. However, I discount that as being usable roadway in ordinary circumstances such as faced the drivers here because both drivers said that it would not be good driving practice to take a very heavily laden truck on to that clay edge because of its proximity in turn to a bank which falls away from that side of the roadway, and I think it was implicit in the admission to that effect by Mr Houston the driver of the Isuzu, that a vehicle so heavily laden as the Mack could not have safely ventured on to the clay surface. Beyond that clay surface there is a few feet of rough grass surface before the ground falls away to the bank which I have mentioned, which is about a metre to a metre and a half deep. On the inner curve there is a sloping bank rising over two metres almost immediately from the metallised edge of the road. There is a slight camber on the bend, that is the outer curve is higher than the inner curve, but the slope is not significant.

This survey plan was prepared only on 25 September this year and thus it shows the area as it is now whereas the accident occurred two and a half years ago, but there is no evidence to suggest that there had been any material alteration to the roadway during that two and a half years

which might have resulted in any of the essential features which I have described being materially different from what they were at the time of the accident. At the most there has been some grading in the ordinary course of maintenance and some scrub clearance from the banks which have not made any significant difference to the scene.

Both the vehicles are large. The Isuzu with its trailer is 12.9 metres long and 2.48 metres wide excluding its side mirrors. The Mack is a little over 18 metres long and two and a half metres wide. The surveyor who prepared the plan gave evidence that given two vehicles of those dimensions passing on the bend the amount of spare metal roadway would vary from .4 to .9 of a metre, depending at which point of the bend one was taking the measurement. I make immediately the comment that with that margin of spare roadway with two trucks of such dimensions it was obviously a fairly tight fit and it was certainly not a bend to be negotiated with either nonchalance or speed.

Both drivers gave evidence. They were both very experienced and familiar with the road. Mr Houston said that the bend was not a bad one. He had frequently met other vehicles, including trucks and had had no difficulty. This seemed in a general way to agree with the evidence of Mr and Mrs Allen, neighbouring farmers who were not aware of any other accidents on the bend and they had lived there for some 30 years. Mr Houston said that as he approached the bend he was well to his left-hand side and his truck was running virtually on the edge of the metal by which I mean, the left-

hand side of his truck. The defendant does not agree with that and says that the Isuzu had about a meter between its left-hand side and the edge of the metal. Mr Houston says that he first saw the defendant when the defendant's truck was only 10 or 15 feet away. He says he could see it was well on its wrong side of the road and that there was bound to be a collision. He estimated that when he first saw it the Mack had about six feet between its left-hand side, looked at travelling in its direction from south to north, between its left-hand side and the edge of the metal roadway. Mr Houston estimated his own speed at that time at about 45 kmph, certainly no more, perhaps a little less. He was unable to give any estimate of the speed of the Mack. He applied his brakes immediately and pulled hard to his left with the intention of running up the bank in an endeavour to avoid the collision. He is very positive in asserting that the first point of impact occurred when the cab of the Mack struck his own cab and he says that the Mack then ricocheted off his cab and struck again at the rear axle area of the Isuzu. At about the same time the trailer unit of the Mack in turn struck the Isuzu's cab. At this point Mr Houston had quickly moved from his driving seat to the passenger's seat as he saw the trailer coming towards him. He said that the Isuzu had almost stopped at the point of impact as a result of his having applied his brakes. He said that the impact of the trailer on the cab of the Isuzu directed the Isuzu backwards for several metres. After the collision he says that the defendant came to his passenger door to see if he was all right and he, Mr Houston, said to the defendant, "What

are you doing on this side of the road?" to which the defendant replied with words to the effect that he was trying to avoid a dip in the road. That statement is strenuously denied by the defendant and his denial is supported by the evidence of Mrs Blakeman who was accompanying him in the Mack and who got out and accompanied the driver of the Mack and engaged in discussion with Mr Houston near the front of the Isuzu after the accident.

I think there is some doubt as to whether Mrs Blakeman was at all times in a position to hear everything said by Mr Thomas and by Mr Houston and although I am satisfied that she is truthful when she says that she did not hear those remarks I am by no means satisfied that they were not in fact made, but I do not place any particular<sup>e</sup> reliance on that possibility in the conclusions I later reach.

The defendant in his evidence said he was about 15 to 20 feet from the Isuzu when he first saw it. He claims that he approached and rounded the bend with his truck as close as practicable to the outer edge of the metal. He thought at first that there was room for him to go straight alongside the Isuzu and to pass safely, but almost immediately realised that he could not do so and applied his brakes. He claims that his cab did pass the cab on the Isuzu without striking it and that the first point of impact was at the rear axle area of the Isuzu. He says that because of his hard braking the trailer on his vehicle slid across the road down the camber or slope of the roadway towards the Isuzu's side of the roadway and he also claims that the impact pushed

the Isuzu over against the bank on the inside of the bend. He says that while Mr Houston was away making a telephone call for assistance he endeavoured to manoeuvre his truck and trailer out of the position it finished up in so as to clear the road and to enable him to unhook his trailer. In the course of that manoeuvre he says that the trailer slid further across the road to the Isuzu's side because of the camber and because of his inability to steer his truck as he was moving backwards and forwards in this manoeuvre. He said that all of this occurred before some photographs were taken by Mrs Allen, the farmer's wife whom I mentioned earlier. That evidence is supported by Mrs Blakeman who said that the trailer moved across the roadway quite some distance during the course of these manoeuvres, but she was not asked and did not put a particular distance on the extent of that movement. Mr Houston on the other hand says that the position of the vehicles had not changed when he returned from making his phone call. On the other hand he does not deny the possibility of the manoeuvres described by the defendant having taken place, but he did not think that the camber of the road was sufficient to have caused the trailer to move across in the way suggested, especially as it was so heavily laden. Mrs Ogle's evidence referred to manoeuvres of this kind about an hour later, but I think it is clear that her evidence related to a later stage when the defendant ultimately did back the trailer further south down the road to unhook it.

Mrs Allen produced photographs which she took shortly after the collision and they show the position of the Mack

trailer to be very much on the wrong side of the road looked at from the point of view of the Mack's course of travel. Indeed the photographs show the trailer to be very close to the inner edge of the bend. The photographs also show that the Isuzu truck unit was almost halfway off the road and partly into the bank or up the bank on the inner side of the bend.

It is notoriously difficult to reconstruct the details of an accident from the position of the vehicles after it has occurred. Nevertheless in my view the photographs produced do tend strongly to support Mr Houston's evidence that the Mack as it came round the bend was not as close to the left-hand side of the road as it should have been and I say that at this stage that in that respect I accept Mr Houston's evidence and consequently find that the Mack was not as close as practicable to the left-hand side of the road as it negotiated the bend. Notwithstanding the support given by Mrs Blakeman in her evidence I am not satisfied by the defendant's evidence that the effect of the manoeuvres he described were sufficient to have moved the trailer so far to the inner side of the bend as the photographs indicate. There may well have been some slight tendency in that direction, but not to the extent claimed so as to explain the position of the trailer when the photograph was taken.

I do not overlook the evidence of Mr Cotterill the salvage operator who spoke of wheel marks which commenced some little distance south of the bend at the edge of the metal and which moved inwards to a point about half a metre from the edge of the metal at the bend itself. He was unable



to say positively that they were the marks of the Mack vehicle. The defendant says that there were some 24 wheels on his vehicle and trailer although obviously only 12 of them would be on one side and although he accepted that the marks might have been those of his vehicle I regard the evidence on that point as inconclusive either for or against the defendant.

There was a good deal of evidence and just as much dispute as to what the first point of impact was, whether it was cab to cab or at the rear axle area of the Isuzu and an assessor called for the defendant was firm in his view that the two cabs had not collided, not at any rate with a major impact. He relied on his inspection of the Mack and his impressions gained from a photograph of the Isuzu and also from the absence on the Mack of any signs of paint from the Isuzu, but I think under cross-examination that he conceded the possibility of there having been some slight impact. Mrs Blakeman supported the defendant's assertion that there was no such impact.

I find this matter difficult to resolve, but I do not find it necessary to determine it. It does not seem to me to be crucial to the issue that I have to decide and I do not think that it is possible in these situations to at any rate for laymen to try to calculate the various forces and effects of impacts at different positions of either or both of the vehicles. I do not regard the difference between the witnesses as impinging on their credibility. In these situations events happen so quickly that impressions may be mistaken or may be wrongly, but quite innocently,

reconstructed after the event.

I was impressed with the evidence of Mrs Blakeman. She was very fair and very frank in all that she said, but I think she overstated the position when she said that in effect both trucks were at fault because the road was simply too narrow to take the both of them at this point. That I think is contradicted by the rather more expert evidence of the surveyor, supported as it is by the measurements which he took, although in saying that I do not detract from what I said earlier, that it was obviously a tight fit and a situation to be negotiated carefully. As I have indicated, I accept as a fact that the defendant did drive negligently in that he failed to keep as close to the left of the metalled roadway as he should have done as he approached the bend and I regard that as a major contributing cause to the accident. On the other hand I consider that on his own admission of his speed as he approached the bend, that Mr Houston was driving too quickly. He admitted that it was in effect a blind corner and in my view with a vehicle the size of the Isuzu and with the awareness which Mr Houston admitted to having of the likelihood of meeting other vehicles on this country road including trucks, his speed was excessive. I am not sure that he may have even over-estimated his speed a little. There was not a great deal of difference between the defendant and Mr Houston as to their estimates of the distance between the vehicles when they first saw each other. Ten to fifteen feet on the part of Mr Houston, fifteen to twenty feet on the part of Mr Thomas. I think probably that those were under-estimates, but in any event, I find it

difficult to believe that the Isuzu could have come almost to a stop and have then been pushed backwards, if the distance were as short as that and the speed were as high as that admitted by Mr Houston. However, I think I must be bound by the only evidence there is as to Mr Houston's speed and I repeat that in my view that speed or even something approaching it was excessive in the circumstances and that too contributed to the accident.

I must, therefore, assess the relative contribution to the accident. I think that a major factor, indeed the major factor, was the failure of the defendant to keep to the left. I am satisfied that the Isuzu was as close as reasonably possible to its left-hand side and given the evidence of the surveyor, the accident might have been avoided had the Mack been as close to its left-hand side as was possible.

I assess the degree of contribution of the defendant at 70 per cent and that of the plaintiff in respect of his excessive speed at 30 per cent. Consequently there will be judgment for the plaintiff on the agreed amount of his damages less 30 per cent and for the defendant on his counter-claim for the agreed amount of his damages less 70 per cent. I have not calculated the figures, but counsel will be able to do that. The question of costs shall be reserved and I shall receive a memorandum from counsel thereon.

Solicitors: Rishworths, Whangarei for Plaintiff  
Johnston Prichard Fee & Ptnrs, Auckland for Defendant