

It appears as though the man James Joseph who was riding outside the bus had hopped onto the bus while it was in motion and he was not seen by the conductor, but a passenger who saw him called the conductor's attention to him. Before the conductor could stop the bus, the accident had already happened. The trial judge found that none of the particulars of negligence pleaded had been established and no attempt has been made to challenge his findings. He said in his judgment at page 27 of the record as follows:

"From my analysis of the testimony I find that Adonia Ross received her injuries because of an act done by James Joseph, the person who stood on the running-board of the bus "Harmony" whilst it was in motion. He was in the position of an independent wrongdoer and his relationship with the driver is not comparable to that of an overhanging part of the vehicle or any overhanging load."

He thus found that no blame could be attached to the driver - a finding ... which I agree.

It is to be noted that the conductor was not joined as a defendant and therefore the question as to whether or not he was negligent did not fall for decision. Before this Court counsel for the appellant attempted to impute negligence to the driver not on the grounds pleaded but because, as he contended, he was guilty of a breach of the Motor Vehicles and Road Traffic Regulations, S.R.& O. No.151. Regulation 26 specifies a code of rules to be observed by drivers of motor vehicles, and paragraph (17) of this regulation deals with persons riding outside vehicles. The material part of this paragraph, omitting the proviso which is not relevant, reads as follows

"He (i.e. the driver) shall not allow any person to ride otherwise than inside the motor vehicle: Provided"

It was contended for the appellant that the driver was guilty of negligence in that he allowed James Joseph to travel on the running-board of his vehicle in breach of this statutory provision. The answers to this are two-fold: (a) a breach of the statutory duty was not pleaded, and (b)

a driver cannot be said to allow a person to ride otherwise than inside the vehicle, unless he knows that he is so riding and despite such knowledge he permits him to continue doing so. The evidence however does not disclose that the driver had any knowledge of James Joseph's presence on the running-board of the vehicle and in such circumstances it cannot be contended that he allowed him to ride on the vehicle in breach of the provisions of regulation 26(17).

For these reasons I would dismiss the appeal with costs here and in the court below.

CECIL LEWIS
ACTING CHIEF JUSTICE

ST. BERNARD, J.A.

I agree.

E.L. ST. BERNARD
JUSTICE OF APPEAL

PETERKIN, J.A. (Ag.)

I agree.

N. PETERKIN
JUSTICE OF APPEAL (AG.)

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