

the action, which was brought to recover damages for injury and loss sustained by the plaintiff in a collision between his motor-cycle and the defendant's automobile, upon a highway, by reason of the defendant's negligence, as the plaintiff alleged.

The appeal was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., LATCHFORD, J., and FERGUSON, J.A.

J. P. MacGregor, for the appellant.

H. H. Dewart, K.C., and G. W. Mason, for the defendant, respondent.

HODGINS, J.A., in a written judgment, said that the collision occurred at the corner of Bernard avenue and Spadina road, in the city of Toronto.

The jury answered questions as follows:—

(1) Has the defendant satisfied you that the occurrence was not caused by his negligence? A. No.

(2) Did the plaintiff contribute to the concurrence by his negligence? A. Yes.

(3) If so, in what did that negligence consist? A. Excessive speed.

(4) Could the plaintiff, by exercise of reasonable care, have avoided the accident? A. Yes.

(5) If so, how? A. Driving slower.

(6) Damages, if any? A. \$3,500.

(7) If you find that the negligence of the defendant caused this accident, state fully in what the negligence consisted? (Not answered.)

(8) Notwithstanding the negligence of the plaintiff, could the defendant, by the exercise of reasonable care, have avoided the accident? A. Yes.

9. If so, how? A. By stopping his car.

10. Notwithstanding the negligence of the defendant, could the plaintiff, by the exercise of ordinary care, have avoided the accident? (Not answered.)

11. If so, how? (Not answered.)

The learned Judge of Appeal said that the findings of the jury amounted to these: that the appellant's speed was excessive, and that he could have avoided the collision if he had maintained a slower speed; and that the respondent, notwithstanding that fact, could have avoided the collision by stopping his car.

But for the form of the questions, no difficulty would have presented itself, as the answers of the jury indicated that each party was to blame; and their comment seemed to be that recklessness