

HIGH COURT OF AUSTRALIA.

COURT COPY.

(pp 1 to 5)

1/1929

PARKER V CORKHILL

JUDGMENT.

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MR JUSTICE ISAACS.

Delivered 12.9.1929

PARKER v CORKHILL.

JUDGMENT.

...

ISAACS J.

About 7 o'clock in the morning of June 7, 1928, a collision occurred on the Cotter Road Canberra, between a motor cycle ridden by the plaintiff and a motor car driven by the defendant.

The plaintiff sustained severe injuries owing as he says to the defendant's negligence in travelling on her wrong side of the road. The defendant denies negligence.

The case was very ably and fairly presented on both sides. The plaintiff's story in brief is this. He says he was travelling from Canberra to Mount Stromlo, with a friend named Prior riding pillion behind him.

The road was formed for a width of about 17½ feet, having a sort of rise at the edge of the formation, varying from 6 inches to 2½ feet in height and beyond the edge of the formation there was loose or rough ground. He says he was travelling well on his proper side about 2 or 3 feet from the edge of the formation. The morning everyone agrees was very foggy which lessened visibility with respect to approaching traffic. While travelling along a straight portion of the road the plaintiff says, he suddenly saw a motor car approaching him at a ~~sixty~~ distance of say 50 feet. It was directly in front of him, that is on its wrong side, about 2 or 3 feet from the edge of the formation.

Having regard to the nature of the ground, and the fact of a ^{passenger} ~~passenger~~ behind him, the plaintiff considered it practically impossible to turn to his left, and, as to continue straight ahead appeared ^{to court} certain disadvantages.

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disaster, his only reasonable course was to move over to the centre of the road. As he did so, the motor car did the same thing, and then the plaintiff tried to get back to the left, but was struck by the defendant's mud-guard and continuing his course the length of the car, his right leg jammed between the cycle and the running board of the car. The cycle fell over. Prior was precipitated over the plaintiff and the plaintiff was rendered insensible and his right leg was fractured. Prior corroborated the plaintiff in saying the car was on the wrong side.-----

The defendant's account is quite different, and is substantially as follows. She with her sister and some infant members of her family were proceeding towards Canberra. She travelled strictly in the centre of the road. She first observed the motor cycle at a distance which I take to be about 50 feet away. It was then travelling in the centre of the road running straight towards her. She pulled to her left, her own side. A little after, the cycle altered its course by turning towards her. She jammed her brakes on and practically stopped. At this point the plaintiff's cycle crashed into her mudguard and the damage ensued. When the crash occurred, which was while the car was still on the formation and as ~~xxxx~~ far as she could go ^{on} the defendant's proper side of the formation, her sister got out, the brakes were released and the car went gently over the formation for a few yards. The defendant says, when she got to them, she asked Parker and Prior what they did it for, and Parker replied that he did not see her. That is the defendant's story and if true it absolves her. Her sister corroborates her as to the position on the road. Constable Bresnan who visited the spot about 3 hours later ~~xxxxxx~~ ~~xxxxxx~~

found what I accept as her tyre marks after she jammed on the brakes and, with a ^{hiatus,} / when she went over the edge of the formation. All other marks were then obliterated. The plaintiff denies the conversation mentioned. If I had to determine the matter in the absence of the evidence of the evidence of Anderson and Tweedley I should in the circumstances feel great difficulty in adopting the defendant's version in preference to that of the plaintiff.-----

~~As a result of the above conversation the defendant is under some~~

~~misapprehension.~~

The probabilities seem to me even in that case to rest strongly with the plaintiff. With respect to the contested conversation I feel sure the defendant is under some ^{mis}apprehension. The plaintiff's version ^{taken together} is intelligible, once it is conceded that both he and the defendant were travelling on the road in the positions he gives. And I may add that in that event his conduct was reasonable. But in the defendant's ~~xxxx~~ account I find it difficult to assign any intelligible cause for the extraordinary act of the plaintiff in turning towards the defendant's car. Even if she had not deviated from her course, there was ample room for him on his proper side. As she did turn to ~~the plaintiff~~ ~~xxxx~~ her left he had still more room increasing up to about 10 feet on her right. Why if he saw her should he do the one senseless thing that almost inevitably meant disaster? Again if he did not see her and was already in the centre of the road which the defendant says was safer because better, why should he without apparent reason suddenly turn to his wrong side?

The constable's evidence settles very little. It leaves still open for inference and conjecture the question how the defendant got into the position in which she was when the brakes were put down hard, and where she was travelling previously. But in truth the evidence of Anderson and Tweedley to my mind, as a judge of fact, places the matter beyond any doubt. These two men are workmen, and were proceeding the same morning from Canberra to Stromlo to their work. Shortly before 7/15, ~~xxx~~ that is within a very few minutes after the accident they came along in a small car and observed the plaintiff's cycle. They removed it to fence at the the/side of the road some distance from the formation. Whether, as they say, it was on the formation or as the plaintiff and her sister say it was off the formation before they removed it I do not stop to determine. I accept them as reliable dependable witnesses in every way. They were disinterested observers. They could see there had been an accident of some kind. They were not agitated but investigated carefully. They both saw distinct fresh marks of the motor car on the wrong side, the right hand wheel of ~~the car being~~ ^{the car being} about 3 feet on the wrong side. One of them saw not only the motor car tracks in the position stated but also found the plaintiffs cycle tracks in accordance with the plaintiffs own description of his course. I regard these two witnesses as confirming the plaintiff's version and precluding any hesitation that I might otherwise have had. The defendant and her sister were I think extremely agitated from the moment they perceived the peril and their minds became confused and have registered erroneous impressions

impressions as to some of the crucial events of that morning. On the whole I accept the account given by the plaintiff and his witnesses, and I arrive at the conclusion of fact that on that foggy morning when it was especially necessary to keep carefully to her own side of the road, the defendant was negligently driving on her wrong side, and that this negligence was the effective cause - that is it was the cause - of the accident and the plaintiff's resultant injuries. There was no contest as to the damages. The plaintiff was terribly hurt. For a considerable time he suffered great pain, and though Dr Alcorn did his best to save the plaintiff's right leg above the knee, that is now found to be impossible. In addition to all the suffering he has undergone, another amputation will be necessary leaving him a stump of his thigh. Some special damages has been proved in the shape of Doctors' fees and hospital charges. More will have to be incurred. There has been a considerable loss of wages, amounting to hundreds of pounds, and the plaintiff's earning capacity has been sensibly diminished. He is only 35 years of age. On the whole I think the damages claimed are by no means extravagant and I accordingly award him £2,000.

There will be judgment for the plaintiff for £2,000
with Costs.

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