IN THE HIGH COURT OF AUSTRALIA.

MORRIS

v.

WHITE

REASONS FOR JUDGMENT.

Judgment delivered at MELBOURNE

on 23rd February, 1944.

H. J. Green, Govt. Print., Melb.

C.2774

MORRIS v. WHITE.

REASONS FOR JUDGMENT. LATHAM C.J.

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This is an appeal from a judgment of Mr. Justice Richards of the Supreme Court of South Australia given In an action brought by a cyclist against a motorist for damages for negligence. His Honour gave judgment in favour of the plaintiff, finding that the cause of the accident which happened was the negligence of the defendant, and that there had been no contributory negligence of the plaintiff.

The plaintiff was riding a cycle at dusk, not in darkness, in a southerly direction down a street known as Second Avenue (Royston Park). This street ran into Lambert Road, which ran east and west. Almost, but not quite, opposite Second Avenue (Royston Park) was Second Avenue (Joslin) which the cyclist intended to enter after crossing Lambert Road. The motorist was driving in a westerly direction along Lambert Road, approaching that part of the road which was entered from Second Avenue (Royston Park) and Second Avenue (Joslin). Each party was on his proper side of the road. The learned judge found, and there was ample evidence to support the finding in the admissions of the defendant himself, that the defendant was negligent, in that he did not keep a proper look-out as he approached the intersection. Further, His Honour found that the defendant infringed sec. 124 of the Road Traffic Act in not following a course as near as practicable to the left-hand side of Lambert Road along which he was driving. The defendant's offside wheel, His Honour found, and the evidence supports the finding, was about on the centre line of the road. His Honour was of opinion that there had been no breach of sec. 131 of the Act, which deals with the approach of vehicles to intersections in circumstances when there is a possibility of danger. Without absolutely deciding the matter, I think that there is a very great deal to be said for the contention that there was also a breach of this provision. But, in any case, the other negligence to which I have referred - not keeping a proper look-out, and a breach of sec. 124, that breach being prima

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facie evidence of negligence - is established. In the absence of this negligence on the part of the defendant (probably of either part of that negligence) the accident would not have happened. There was not a collision between the cyclist and the car, but the plaintiff's case is that the car was so driven as to place the plaintiff in such a position of danger that he had to act in an emergency. He did his best in the emergency in endeavouring to avoid the car, and unfortunately ran into the kerbstone, was thrown off his bicycle, and broke his leg. Some negligence on the part of the defendant is therefore established, and this negligence had a direct relation to the series of events which constituted the accident, because that negligence placed the plaintiff in the position of danger which I have described, in which he had to make up his mind suddenly how he should act.

There was, in my opinion, as the learned judge has found, no negligence in the plaintiff acting as he did when both parties had become aware of the emergency. He endeavoured to avoid the car. It was possible that he might have avoided injury if he had adopted another course, but it is quite impossible, in my opinion, to say that that is certainly the case, and still less possible to say that it was obviously the case to him, from his point of view, upon the actual occasion.

On the other hand, for the defendant it is said that the plaintiff was negligent himself in not keeping a proper look-out, and that if he had done so, he could have avoided the accident. Speaking for myself, I agree with this argument. I agree that the evidence shows that the plaintiff did not look out until after he had entered Lambert Road, and he was lacking in due care for his own safety in riding into Lambert Road without looking out towards his left. He did look out towards the right and ahead, but only looked towards his left when he had already reached Lambert Road. Although it was the duty of traffic on his left to give way to him, that, in my opinion, does not relieve him from the duty of taking some degree of care for his own safety when he is crossing an intersection. He is not entitled as of course to assume that everybody else will act 100% correctly.

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I was at first impressed by Mr. Abbott's argument that there were these two sets of negligence - that of the plaintiff and that of the defendant - and that they were contemporaneous, that they continued up to the moment of the emergency and that the emergency was therefore created by the contemporaneous negligence of both parties. If that were the case, then, in my opinion, the result would be that it would be impossible to say that the defendant's negligence was the sole cause of the accident - that there had been no contributory negligence on the part of the plaintiff. But an examination of the evidence, I think, shows (I think Mr. Hogan demonstrated it) that the emergency was not created by the contemporaneous negligence of both parties. The evidence shows that the plaintiff saw the defendant, or, as it has been put in argument, "waked up" when the defendant's car was some 20 yards away. The plaintiff then did his best to avoid any accident, but the defendant did not see the plaintiff until the defendant put on the brakes on his car. It is proved by the skid marks, and the action of the plaintiff in swerving to get out of the way of the car before the skid began, shows, that the defendant waked up later than the plaintiff waked up. If the defendant had waked up as soon as the plaintiff waked up, then there is no reason to suppose that the accident would have happened. But the defendant put on the brakes, as is shown by the skid marks, when he, the defendant, was only some 10 feet away from the line of the plaintiff's course and when the plaintiff's swerve had brought him in front of the car. Accordingly, in my opinion, the plaintiff was not guilty of negligence after he saw the defendant. The defendant was guilty of negligence after the plaintiff's negligence had ceased to operate. If the defendant had seen the plaintiff when the plaintiff saw the defendant - when the defendant was some 20 yards away from the plaintiff - the defendant could have prevented the accident. I therefore agree that upon a full analysis of the evidence there is no evidence of contributory negligence on the part of the plaintiff. There is evidence of negligence on the part of the defendant and I agree with what His

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Honour Mr. Justice Richards said - "The real cause of the accident was failure by the defendant to keep a proper lookout for traffic which might emerge from Second Avenue Royston on his right." In my opinion, therefore, the judgment for the plaintiff was right and the appeal should be dismissed.

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JUDGMENT. RICH J.

I agree.

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JUDGMENT. STARKE J.

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I agree. In my opinion there was ample evidence of negligence on the part of the motorist, but there was no evidence in this case of any contributory negligence on the part of the plaintiff in any relevant sense. Of course, citizens who use public highways must proceed with reasonable care and skill - just the same as motorists who drive on these highways must also proceed with reasonable care and skill. But what the plaintiff did in this case was to ride his bicycle at a comparatively slow rate into Lambert Avenue, and, when he got about 5 feet or so past the corner, he looked and saw a motorist coming along on the left side of that Avenue. And, noticing that, he became apprehensive of a collision, and gave way in order to avoid a collision if possible. It is quite hopeless, in my opinion, to say that because he did not look until he was 5 feet or so inside Lambert Avenue that he was guilty of negligence and thereby contributed to the accident or that his decision had any influence whatever upon the accident that actually happened. It is for these reasons that I think the appeal should be dismissed.