

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA.

Blandford

v.

Fox

REASONS FOR JUDGMENT.

Delivered at

Sydney

on

31st July 1945.

JUDGMENT.

RICH J.
STARKE J.
DIXON J.
WILLIAMS J.

We agree with the Chief Justice that sec. 30(2)(a) of the Act creates a new cause of action and that four conditions must be fulfilled: (1) There must have been death or bodily injury arising out of the use of a motor vehicle; (2) This must have occurred in such circumstances that the plaintiff could have enforced a claim for damages against the owner or driver in respect of the death or injury; (3) There must have been due inquiry and search to identify the vehicle and (4) This must have failed to establish its identity.

In the present case there was evidence upon which the jury could reasonably find that the first two conditions were fulfilled, and the question is whether there was evidence on which it could reasonably find that the third condition had been fulfilled.

The accident occurred on 16th May, and although the plaintiff did not realise on that date that he had been injured he knew that he had suffered bodily injury on 17th May. The writ was issued against the nominal defendant on 21st June. The particulars of due inquiry and search only referred to a letter written to the police on 14th June to which a reply that the accident had not been reported to them was not received until 24th June. The letter of 14th June, which had not been answered at the date of the writ, could not constitute due inquiry and search which had failed to identify the vehicle prior to the institution of the action.

But at the trial the solicitor for the plaintiff gave evidence that he had made a verbal inquiry of the police early in June and had received an answer that no accident had been reported. Assuming that the conduct of the case was such that this evidence can be relied on although it is outside the particulars, in the circumstances it would not be likely that the accident would have been reported to the police and it is obvious that inquiries should have /

have been made in other directions. Due inquiry and search means such inquiry and search as would be reasonable in the circumstances. No general definition can be given as this would vary with the facts of each case. But the phrase indicates that the inquiry and search must be prompt and made in such directions as under the circumstances might reasonably be expected to bring success. In the present case the action taken on behalf of the plaintiff fell far short of those steps which the jury as reasonable men could hold satisfied the condition. The appeal therefore fails.