

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA.

Moses

V.

*The Commonwealth of
Australia*

REASONS FOR JUDGMENT.

Delivered at

Sydney

on

Tuesday, 3rd August, 1945

40358

A. H. PETTIFER, ACTING GOVT. PRINT.

JUDGMENT.

RICH. J.

In an action for negligence the jury returned a verdict for the respondent. The accident which caused the injury took place at a very dangerous intersection and the question before the Supreme Court and before us is whether it was proper for the learned trial Judge to leave the issue of contributory negligence to the jury.

I lay out of consideration the regulations and also the "last chance" doctrine. The facts were before the jury and it was open to them to find that the plaintiff (conductor) should not have given a signal to the tram driver to move off as he knew that this particular intersection was a dangerous spot and also knew that the lorry was approaching close to the tram. It was competent for the jury to find it was his duty, either not to start the tram or to give some warning, as he knew the lorry driver was approaching a dangerous spot, and might not realise how or where the tram would proceed.

The facts in the case amount to contributory negligence and the jury were entitled so to find.

I think for these reasons the Full Court was fully justified in refusing to discharge the verdict and the appeal should be dismissed with costs.

STARKE J.: In my opinion there was ample evidence of want of care on the part of the plaintiff contributory to the accident.

ORAL JUDGMENT

DIXON J.

I agree.

The circumstances of the case cannot be regarded as either usual or typical. The place where the accident happened seems to be ~~regarded~~ particularly dangerous. Perhaps it is another peculiarity in the case ^{that} the jury found in favour of the Commonwealth in an action for personal injuries in a street accident.

The appeal is confined to the question whether there is evidence of contributory negligence. The learned Judge left contributory negligence to the jury upon a view of the facts which I think is sufficient to support a finding of contributory negligence, if the jury made one. The facts His Honour particularly mentioned include the knowledge of the conductor of the tram of the dangerous nature of the place and the proximity of the motor truck. The evidence of the proximity of the motor truck, which the jury were entitled to believe if they so chose, brought it very close to the tram indeed. In fact, it placed it alongside. If that was its position, it was open to the jury to find that the conductor was in a position when he should, as a reasonable man, have been aware that the driver of the truck was likely to be under some misapprehension as to the direction the tram would move. These circumstances would throw upon the conductor the duty of giving warning for the purpose of saving the tram and himself from harm.

I think that the evidence of contributory negligence was enough and the Judge was right to leave it to the jury. Therefore the appeal should be dismissed.

MOSES v. THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

McTIERNAN J.

I agree. The conductor, having the management of the starting of the tram, had the duty to take reasonable care to avoid a collision between the tram and the motor vehicle and I think there is ample evidence upon which the jury could find that he neglected that duty.

MOSES v. THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

WILLIAMS J.

I also agree. It seems to me that in the special circumstances of the case, by which I mean that the tram was about to turn a corner where the lines converged on to the footpath to such an extent that there was no room for the lorry between the tram and the kerb, there was sufficient evidence of contributory negligence on the part of the conductor in not giving a warning to the lorry driver for the learned Judge to leave this issue to the jury.
