ORIGINAL (13

IN THE HIGH COURT OF AUSTRALIA.

Croft

v.

Short

REASONS FOR JUDGMENT.

Delivered at Sydney

on 10th December 1945

40358 A. H. PETTIFER, ACTING GOVT. PRINT.

CROFT V. SHORT.

10th DECEMBER, 1945.

LATHAM C.J.: JUDGMENT:

In this case the plaintiff, the widow of a man who was injured and died as a result of the injury, sued under the Compensation to Relatives Act. The plaintiff depended in effect upon the evidence of the defendant himself, the driver of the motor car alleged to have caused the injury. There had been a coronial enquiry and the defendant had been interviewed by a constable. The evidence for the plaintiff in substance consisted of the answers made by the defendant at the coronial enquiry and of statements made by him to the Police Constable. There was also medical evidence with respect to the nature of the injuries of the deceased and the probable causation of those injuries.

The defendant was driving a car on a dark rainy night along a road, as to the presence of other traffic on which there is no evidence. His statements were to the effect that he was presented with a sudden emergency, had to act, may have gone wrong, but did his best.

The jury found for the plaintiff. Upon appeal the Full Court set aside the verdict of the jury and entered judgment for the defendant upon the ground that there was no evidence that any negligence of the defendant caused the accident. The jury was entitled to accept part of the evidence of the defendant and to reject other part, and it was within the province of the jury to accept an admission and reject an excuse; but the jury was not entitled to construct an explanation of the occurrence which there was no evidence to support.

The first question is whether there was evidence of negligence on the part of the defendant. The evidence is he saw a dark object in the road, there was a depression in the road and it was foggy. The object was not person standing or walking but was something lying on the road. His headd lights disclosed the object when he was 20 feet away. He was confronted with an unexpected emergency so that he had to make up his mind very suddenly as to what he should do. Considering the matter after the event it would appear that he might have stopped the car and avoided the

altogether, possibly he might have gone round it without hitting it. He did not know at the time what it was; he thought it was a dog; he was not able to see it was a man. In fact it was the body of a man already injured as subsequent investigation showed, as there was congealed blood on his body.

We must determine his duty in relation to the circumstances as known to him, or to the circumstances which he ought to have known. In my opinion the defendant adopted what was a reasonable course in the circumstances of the case. He did what in the fraction of a second he determined was the best thing to do in order to avoid striking the object. In my opinion there was not evidence from which a jury could reasonably conclude there was negligence, in the circumstances, on the part of the defendant, and upon this ground, in my opinion, the order of the Full Court should be affirmed.

The alleged negligence of the defendant was failure to keep a look out, improper speed and failure to stop the car. It was argued for the appellant that even if such negligence were proved there was no evidence that it caused the accident. - ie. no evidence that the defendant's car struck the deceased. In my view, there was evidence from which the jury were at liberty to conclude that there was contact with the second car and that this was the cause of the death of the deceased. Upon the view which I take of the first point this question does not arise.

In my opinion the appeal should be dismissed.

ORDER: Appeal dismissed. No order as to costs.

CROFT v. SHORT

JUDGMENT. RICH J.

In my opinion there was evidence to support the jury's finding both on the issue of negligence and on the issue under the Compensation of Relatives Act, of causation. On the first issue the jury was entitled to adopt the admissions showing that the undercarriage of the car ran over the prostrate body of the man and to reject the explanations by which the defendants ought to show that there was no fault.

CROFT v. SHORT

JUDGMENT STARKE J.

I agree with the Supreme Court that there is no evidence whatever of any negligence on the part of the defendant.

JUDGMENT. DIXON J.

I am unable to adopt the same view. In my opinion the appeal should be allowed.

This appears to me to be a case in which the question for the jury was how much of the defendant's explanation it could accept. If that explanation is accepted in full I should be disposed to agree that the Supreme Court was right. But in a case of this description it does not seem to me that it is the correct approach to take the defendant's statement made in the Coroner's Court, which has been put in against him, and treat it as necessarily stating the full facts in relation to the accident, and as stating them correctly. Here it appears to me that the jury were entitled to take from that statement the admitted fact that the defendant's car was driven over the body of the man, and to begin with that admitted fact and the medical evidence, which showed that the act of driving the car over the body of the man probably caused his death. The jury were then at liberty to look at the general circumstances of the case and draw their inferences from the contents of the statement, from the nature of the case and from the probabilities as to what did happen. The headlights of the car were said to be good and bright and to illuminate the road. There was some evidence from the Constable that the visibility was very bad or bad. What he said varied in the degree of bad visibility he attributed to the place. Then he gave an explanation as to why it was bad at that particular point.

Taking that explanation, the jury were in my opinion at liberty to regard the visibility as not so grossly bad as to make it inevitable that the appearance on the roadway of a body of a man would be so near and so sudden as to disable a driver with good headlights from avoiding it. The body was shown to be slightly on the defendant's wrong side of the road, about 2 feet, and he himself was travelling on the crown of the road. That is a circumstances which the jury were entitled to take into consideration. It is one of the conditions affecting the defendant's

probable chances of avoiding the object, had he seen it, by swerving. It was for them to judge what was the distance which would enable him to do so.

It is a commonplace in accidents at night, though it usually arises on issues of contributory negligence, that when the headlights are good the defendant or person driving the car may be called upon to explain why he did not see the object in time to avoid it, because in the absence of explanation it may be inferred that he was either not keeping a good look-out or that his speed was too great. If the conditions reduce the distance his headlights illuminate the road, it may be considered negligence if he does not reduce his speed commensurately.

On issues of contributory negligence when the jury has found for the plaintiff we have been accustomed to say that the dilemma between a bad look-out and speed greater than is justified by the means of illumination cannot be treated as conclusive. It is quite a different thing, however, when the same reasoning is employed in dealing with an issue of primary negligence, where the jury have found there is primary negligence and the question is whether they were at liberty so to find. In my opinion this is a typical case of that sort.

A tribunal of fact is confronted with three variable factors - speed, visibility and the car's illumination. To these may be added the size of the object on the road and the position on the road it occupied. It appears to me that it was open to the jury in the use of their worldly knowledge and in the exercise of their common sense to examine the probabilities of the defendant's explanations. The evidence appeared to affirmatively exclude insufficiency of the headlights as a cause, and it came down to excessive speed or the prevailing conditions or inadequacy of the look-out. I think it is impossible to say the jury were bound to believe the defendant's story when he said he was driving at 20 to 25 miles an hour and yet that the light was so bad that he was unable to see the object in time to avoid the accident.

I /

I think that there was evidence of negligence. I have felt more difficulty on the question whether the jury were entitled to infer that, notwithstanding that the deceased had probably been knocked down by a previous car and was lying injured and unconscious on the road, he would have survived and been able to contribute to the support of his wife and family had not the defendant's car inflicted the injuries which proved mortal. But on the whole I think that the medical evidence enabled the jury to take such a view of the probabilities.

For those reasons I think it is a case which it was proper to submit to the jury and that the jury's verdict ought not to have been set aside.

CROFT V. SHORT

10th DECEMBER, 1945.

WILLIAMS J. JUDGMENT:

In my opinion there is no evidence that the defendant in this case was driving at excessive speed or was not keeping a proper look out, or that in all the circumstances he was not acting reasonably.

Generally speaking, I agree with the effect of the judgment delivered by the Chief Justice of this Court and I also agree with my brother Starke that the view of the Supreme Court which is to the same effect should be accepted.

In my opinion the appeal should be dismissed.