

ORIGINAL
IN THE HIGH COURT OF AUSTRALIA.

15

Pattinson

V.

*The Commonwealth of
Australia*

REASONS FOR JUDGMENT.

Delivered at

Sydney.

on

Monday 10th December, 1945

40358

A. H. PETTIFER, ACTING GOVT. PRINT.

PATTINSON

v.

THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

McTIERNAN J.

PATTINSON

v.

THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

MCTIERNAN J.

This is a claim for damages for injury alleged to have been sustained by the plaintiff in consequence of negligence alleged on the part of the driver of a military truck, the property of the Commonwealth, or, in the alternative, of the negligence alleged on the part of that driver and the driver of a truck the property of the Commonwealth used in connection with work carried out under the National Security (Allied Works) Regulations.

The defendant by its statement of defence put in issue all the allegations in the statement of claim necessary to be sustained to establish the negligence alleged, but subsequently for the purposes of the case the defendant made a number of admissions. These were that at the time of the accident the plaintiff was travelling in the truck used in connection with such works and that it was the property of the Allied Works Council and of the Commonwealth and that it was driven by J. Parry. It was further admitted that the military truck was the property of the Commonwealth and that it was being driven by a servant or agent of the Commonwealth. There is no similar admission with respect to Parry or the business upon which he was engaged when the plaintiff was travelling in the truck. It is established that this truck collided with the military truck when it was travelling from Macrossan to Charters Towers ^{on 26th April 1944} and that the plaintiff, who was a passenger, was injured in the collision. He suffered

abrasions and sprain to his left knee. *The evidence establishes that he has not yet recovered from the injury: it still causes him discomfort and needs further medical attention.* The evidence adduced on the issue of negligence is

that of the plaintiff and a lady passenger who was in the truck in which the plaintiff was travelling. It is convenient to refer to it as "the A.W.C. truck". Their evidence is that Parry was driving this truck at a moderate speed on the correct side of the road and that the military truck came from the opposite

direction at a high speed on the wrong side of the road and ran into the A.W.C. truck. The collision occurred between 6.30pm. and 7pm. and the headlights of all the vehicles on the road were then on. These witnesses were confused in their recollection of the direction in which the trucks were travelling. For the Commonwealth three witnesses were called, the driver of the military truck, a military officer, who was a passenger in this truck and a civilian who was driving behind it in a utility truck. Their evidence is a consistent body of testimony and the account which they give of the way in which the accident happened is at variance with that of the plaintiff and his witness.

The evidence called for the Commonwealth proved that the military truck was on its right side of the road and that it was travelling up a hill, when the accident happened, and at a moderate speed. The plaintiff and his witness said that the military truck was running down the hill. These witnesses for the defence also proved that the A.W.C. truck was being driven on its wrong side of the road at a high speed and abreast of another truck and that it ran into the military truck, stripping material from the side of that truck; and this material was thrown over the utility truck by the force of the impact and caused injuries to its civilian driver. The driver of the military truck had succeeded in pulling his truck to some extent off the road, but by this manoeuvre he did not succeed in getting his truck clear of the A.W.C. truck. I do not say that the plaintiff and his witness are not honest witnesses: but their recollection of the circumstances is plainly faulty. The witnesses for the Commonwealth are in my opinion intelligent witnesses and have a clear and accurate recollection of the facts to which they depose. Each of them impressed me as being a truthful witness. Accordingly, the plaintiff's case in so far as it depends upon establishing negligence against the driver of the military truck fails. The evidence establishes, however, that Parry was guilty of negligence in driving the A.W.C. truck and that his negligence caused the

injury /

injury to the plaintiff's left knee.

The Commonwealth disputes that it is answerable for Parry's negligence because, at the time of the accident he was not driving in the course of any employment as a servant or agent of the Commonwealth. It appears that at the time of the accident he was a member of the Civil Constructional Corps established under the National Security (Allied Works) Regulations. It is admitted that the A.W.C. truck was the property of the Commonwealth. The truck was in fact marked "A.W.C.". But it is contended on behalf of the Commonwealth that Parry was a servant, not of the Commonwealth, but of the Public Works Department of Queensland, or, in other words, of the Executive Government of that State. Before and on the date of the accident members of the Civil Constructional Corps and of the staff of the Public Works Department of Queensland were engaged in building stores for the Air Force at a military aerodrome about twelve miles from Charters Towers. Parry was working on this job as a driver of a truck. The plaintiff, who joined the Corps on 26th August 1942, was working on this job as a builder's labourer. The Authorities of the Corps at Townsville, who were Commonwealth officers, engaged members of the Corps at Townsville to work on the job and sent them to the Foreman. He asked those Authorities to send workmen to the job but sometimes they engaged workmen and sent them to the job without any requisition from the Foreman. He also requisitioned the same Commonwealth Authorities for trucks, material and plant needed on the job. The plaintiff and Parry and other workmen on the job worked under the Foreman's orders. He had charge of the trucks sent on to the job.

The contention is raised on behalf of the Commonwealth that the Public Works Department was, in respect of this job, an independent contractor: that the Foreman, who belonged to the staff of that Department, had the right to control and did control the members of the Commonwealth Corps working on the job: and

therefore /

therefore quoad this job they were servants of the Executive Government of Queensland and not of the Commonwealth. The evidence of the relationship of the Public Works Department of Queensland to the Commonwealth in respect of the job is not satisfactory. For the plaintiff it is contended that it does not substantiate the contention made on behalf of the Commonwealth. There is evidence that the Federal Department of the Interior gave instructions to the Foreman, Mr. Watt, as to the sites of buildings, that the Federal Department gave him specifications for the job and that the job was visited by the inspecting officers of the Department of the Interior and the Director-General of Allied Works. An architect/^{who} was a member of the A.W.C. gave evidence that he was "in control" of the building of these stores "to co-ordinate the work". He also said in evidence that the "P.W.D. were carrying out the building". He was asked this question: "You say you were in charge of the whole project". His answer was: "Yes, as for general supervision". Mr. Watt, the Foreman, was asked this question: "With regard to anything in the nature of inspection or in the nature of specifications, alterations to plans, alterations to sites, anything like that, your instructions came from the Department of the Interior". His answer was: "That is correct". This witness in explaining his position said he was working for the Public Works Department of Queensland when war came and then he went on to defence projects. He added that since the war situation ended he went back to his ordinary work with the Public Works Department in Queensland. It would be unsafe to draw the inference from this evidence that the Public Works Department of Queensland was carrying out this job as an independent contractor rather than the inference that it had agreed to observe the directions of the Commonwealth in carrying out the work and that its officers on the job should work under the directions of the officers of the Department of the Interior and the Director-General of Allied Works. But however the case stands in regard to that point, the accident did not happen while Parry was driving the truck on the job or in connection /

connection with the job. His work as a driver on the job ended at 5.30pm. The evidence proves the circumstances in which he was driving the truck at the time of the accident. There is no basis for any suggestion that he was driving on a frolic of his own, or in breach of orders or without permission. All the evidence is to the contrary.

The members of the Civil Constructional Corps live in a camp at Macrossan. They were driven to this camp when they finished work each day at 5.30pm. The camp was $1\frac{1}{2}$ miles from the job. When the trucks came off the job at the end of the day's work "they came up at the front of the camp". The camp was under the supervision of a "Personnel Officer" appointed by the "Allied Works Council". No member of the Corps could go beyond a mile from the camp without leave of one of these officers. These officers were independent of the Foreman's authority. The "Allied Works Council", the name given to the Commonwealth Authorities supervising the camp, provided nursing and hospital facilities for the people living in the camp. They included wives and children of the members of the Corps. This Authority also ran the canteen at the camp. It controlled the discipline of the camp and attended to the amenities of the camp. One of the amenities was going to the pictures at Charters Towers. This was not within walking distance. In order to enable the people of the camp to go to the pictures, arrangements were made for their transportation. The A.W.C. trucks were used for this purpose and the members of the Corps drove them voluntarily and made no charge for their services. For a period of two months before the accident the Personnel Officers had been permitting men and women and children living in the camp to go to the pictures on Wednesday and Saturday of each week. It is established that those who went to the pictures on these nights were conveyed there and back to the camp in A.W.C. trucks. Mr. Watt, the Foreman of the job, was asked these questions and gave these answers: (Mr. Ferguson) "Q: If anybody wanted to go into

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Charters Towers, for instance, what would happen? Would you allocate a lorry? A: No, I would not personally do so unless in the case of an accident or anything like that, when I would send a truck in straight away. But on two nights of the week, Wednesdays and Thursdays (sic.), there was allowance made under the amenities of the C.C.C. for trucks to proceed to town or take in any member of the C.C.C. to the township and to bring him out again. Q: Who used to allocate those lorries? -

Personnel. A: The officers would come to me and ask could I take the truck in tonight. Of course we had eight or nine or sometimes ten trucks and there might be two or three allotted to go in. I could not instruct them to take them but I might say 'You can take one, and you can take one, and you can take one'. Q: The position was you allowed a truck to be used for that purpose? A: Yes, on Wednesday nights and Saturday nights.

Q: Was any payment made to these people for driving? A: Not

by our authority. Q: Do you know how they were paid? A: I understand the only payment they got might be a few shillings thrown in by the people who travelled on the truck, for the benefit of the driver. Q: You have no recollection yourself

on that particular night of directing Parry to do anything for you? A: No. ^{His Honour} Q: What day of the week did this accident occur?

A: On a Wednesday. Mr. Ferguson Q: When you were asked by a driver as to whether he could take a truck you would say whether he could go or not? A: Yes." There are these further questions and answers in Mr. Watt's evidence. "As to these A.W.C. trucks, they had a distinguishing mark, did they not, A.W.C. and a

number? A: Yes. Q: Has the P.W.D. Queensland a distinguishing mark for its trucks? A: They have a Q.G. on them indicating Queensland Government. Q: As far as the trucks which were used to take the people into Charters Towers were concerned, the visits to Charters Towers had been going on for quite a considerable time? A: Yes. Q: They were part of the amenities provided

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on the job, like the canteen? A: Correct. Q: I take it before a truck could go into Charters Towers to the pictures they would have to get leave? A: The driver was expected to get leave from the Personnel Officer. Q: Not from you? A: No. Q: It was not permitted that they should go and pick up an A.W.C. vehicle and drive it away, was it? A: No. Q: They had to have a vehicle allotted to them? A: Yes." Another set of questions and answers is important@ "Mr. Ferguson: On this particular night (the night of the accident) do you remember whether Mr. Parry asked you whether he could take a vehicle? A: Yes. Q: He did ask you? Q: Yes, he did ask me. Q: And you said he could? A: As the other trucks were overloaded he could. Q: A truck had been allocated? A: Yes. Q: A truck had been allocated to take the people to the pictures? A: Yes. His Honour: Allocated by whom? A: By me, myself. Mr. Ferguson: Did Mr. Parry come up to you and ask you whether he could take the vehicle? A: As they were overloaded, yes. Q: And you said, 'Yes'. A: Yes. Q: By the way, was there any documents that had to be signed by people who used these picture trucks before they were allowed to use the truck? A: Not to my knowledge, it was in the Personnel Officer's hands, that is who they had to report to. Q: To your knowledge nothing had to be signed? A: No. His Honour: Report when, at the beginning of the journey or the conclusion? A: The Personnel Officer was quartered on the camp. There were two really in our camp and they had to report to them if they were going to town, and if they did not there was no coverage. Q: You do not know whether there was any document that had to be signed? A: No, I never had to do it personally." Mr. Watt's answer to another question on page 46 of the transcript makes it clear that the driver of the truck could take it with the authority of the Personnel Officer in order to drive people from the camp to the pictures and back. The evidence proves that on the night of the accident the plaintiff boarded the truck at the usual place for the departure of trucks allocated for taking people to the

pictures: that the truck had the sides up and was provided with some seating accommodation. The passengers in the truck were a woman and two children and a man, all of whom sat in the driver's cabin and the plaintiff and other men who sat on the seats provided in the open part of the truck. Parry was the driver of the truck. This was the truck which collided with the military truck in the course of the journey to the picture show. These facts do not establish that Parry was a bailee of the truck for the evening, the suggested bailor being either the Commonwealth Allied Works Council or the State Public Works Department: nor that any passenger in the truck was such bailee or that Parry drove under the control or direction of any passenger. The facts do not establish that any passenger rode with Parry's permission. On the contrary, the facts establish that the passengers travelled in the truck with the permission of a Personnel Officer. I think that the proper inference from the facts is that Parry was authorised and permitted by the Personnel Officer to leave the camp in the truck and that he was driving the truck on the business of the Commonwealth. It was its interest as a matter incidental to the establishment of the camp to provide opportunities for the recreation and amusement of the people living in it and to assist them to obtain transportation to go to Charters Towers where opportunities existed for their recreation and amusement. I find that Parry drove the A.W.C. truck on the occasion in question on the business of the Allied Works Council, and that the Personnel Officers of that Authority permitted and authorised him to drive the truck on that occasion. The journey which Parry was making when the accident happened was under their control. A duty to drive carefully was owed to the plaintiff. The Commonwealth is answerable to the plaintiff for Parry's negligence.

I think that upon the whole of the evidence relevant to the question of damages that I should award the plaintiff the sum of £400. There will be judgment for the plaintiff for £400 with costs.