IN THE HIGH COURT OF AUSTRALIA.

YELLOW CABS (S.A.) LIMITED & ANOR.

V.

SANDLAND

REASONS FOR JUDGMENT.

Judgment delivered at MELBOURNE

on 3rd March, 1947.

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

C.2774

YELLOW CABS (S.A.) LIMITED & ANOR.

v.

SANDLAND

REASONS FOR JUDGMENT. LATHAM C.J.

This is an appeal from a judgment of the Supreme Court of South Australia in favour of the plaintiff in an action for damages for negligence. The plaintiff was knocked down by a motor car driver (the defendant Schermer) who was employed by the other defendant - Yellow Cabs (S.A.) Ltd..

The accident to the plaintiff happened on a dark night on a suburban road in Adelaide. The ordinary allegations were made against the defendant of driving at an excessive speed with an insufficiently lighted vehicle, failure to look out and the like. There was no finding that the car was not sufficiently lighted. The findings of His Honour were that the plaintiff, who stepped off the footpath and was run into by the motor car, did look to his right before stepping off the footpath but did not see the approaching car and thought that it was safe to cross the road, it was found But / "that his look was not a proper one and that he should have seen the approaching car, and that he was negligent in failing to do so". Accordingly there is an initial finding that the plaintiff stepped on to the road when a car which was sufficiently lighted was approaching and that by reason of his own negligence he failed to see the car. His Honour of course need not necessarily have made that finding, but it is quite impossible for us to disturb a finding of that character. It substantially depends upon the learned trial judge's opinion as to the credibility of the plaintiff. Then, His Honour proceeded, the plaintiff being guilty of negligence, the question was whether the defendant (the driver of the car) by the exercise of due care, could and should have avoided the consequences of the plaintiff's negligence.

His Honour makes two important findings in respect to that matter. One is that a light which was over the middle of the road at about the point where the accident took place created a pool of

light into which the plaintiff stepped when he stepped off the footpath. It was a wet night and it is common knowledge that there is not as large a pool of light on a wet night as on a dry night. But His Honour saw the place, though, it is true, in daylight. That some correction should be made for viewing in daylight is obvious, but His Honour found, and there was evidence upon which he could find, that the plaintiff would become visible practically as soon as he stepped off the footpath, notwithstanding certain overhanging trees which were at the spot.

A further finding of His Honour which is important on this aspect of the case is that the defendant looked too long at a side street on the right which he was approaching and which was opposite to the place where the accident took place. Sec. 131 of the Road Traffic Act 1934-36 creates an obligation to look out for traffic on the right at intersecting roads. It was the duty of the driver in this case to look to the right. The learned judge found that he more than looked to the right - that he allowed his vision to dwell for too long a period upon the street on the right and that owing to this fact he failed to see the plaintiff. The result was that His Honour found that both the plaintiff and the defendant driver were negligent, but that it was the defendant driver who, by his negligence in looking for too long a period to his right and not sufficiently to his front, created the situation of which the accident was the inevitable result. Upon those findings there is full support for the decision reached. The question as to whether the driver looked for too long to his right raises the question in another form which occurs in very many motor collision cases. The avoidance or occurrence of a collision may depend upon almost instantaneous action. His Honour's finding that a momentary glance to the right would have been sufficient in the circumstances which existed is one which this court cannot disturb. The learned judge has found that the defendant disabled himself by negligence from avoiding the accident. The case is on the borderline. It might have been decided the other way. His Honour might have taken a different view of the evidence. But I

can find no justification for setting aside the judgment, based as it is upon the findings of fact to which I have referred, which findings there was evidence to support.

In my opinion the appeal should be dismissed.

JUDGMENT. RICH J.

In my opinion there is evidence to support the trial judge's findings and Mr. Brazel's able argument has not satisfied me that we are justified in disturbing His Honour's conclusion. I agree that the appeal should be dismissed.

YELLOW CABS (S.A.) LIMITED & ANOR.

v.

SANDLAND.

JUDGMENT.

STARKE J: I agree that the appeal should be dismissed.

DIXON J: I agree.

WILLIAMS J: I also agree.

ORDER.

Appeal dismissed with costs.