IN THE HIGH COURT OF AUSTRALIA

HART

V.

YOUNG

REASONS FOR JUDGMENT

Judgment delivered at HOBART

on TUESDAY 15/2/1955.

J. J Gourley, Govt. Print., Melb.

C.7163/51

HART v. YOUNG

ORDER

Appeal dismissed with costs.

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33 folios
11/-

HART v. YOUNG

JUDGMENT (ORAL)

DIXON C.J.
FULLAGAR J.
KITTO J.
TAYLOR J.

HART v. YOUNG

This is an appeal from a judgment of the Chief Justice of Tasmania pronounced for the defendant in an action to recover damages for personal injuries caused by negligence. The action arose out of an accident which occurred as long ago as 6th August 1949. The plaintiff sustained his injuries while engaged as a cyclist in a road race. At the time he was a youth and he delayed bringing the action because he was not of age. The race was run on a course which terminated on a piece of road which had a bitumen surface and was straight for a very considerable length. The race was 50 miles in length and there were a number of competitors. The plaintiff who was injured was one of two scratch men and the greater body of the competitors had passed the finishing line before the events which led to the injury of the plaintiff took place.

A road race is, of course, a familiar thing but the law does not look upon it with any particular favour because it is not a usual or natural use of the highway. In this case those organising the cycle race apparently obtained the help of the police. There is a section in the Traffic Act 1925 of Tasmania (sec. 38) which enables a police officer to "close any street for traffic during any temporary obstruction or danger to traffic or for any temporary purpose, and may prevent the traffic of any vehicle or horse in any street closed to traffic under the authority of this or any other Act". Apparently reliance was placed by the police upon that provision either instinctively or with actual knowledge of it. There is also a regulation made under the Traffic Act (reg. 121 XII) which requires people upon roadways to comply with directions given by the police.

Two police constables came to the scene of the road race, Senior Constable O'Hara and Constable Aitken. Senior Constable O'Hara saw the road race begin and both constables were

posted at the finishing place. The direction of the road race was towards Glenorchy, that is to say towards Hobart. Constable Aitken was about 200 yards on the Glenorchy side of the finishing line, the Senior Constable himself remaining near the finishing line and on the Glenorchy side of it. It was intended that Constable Aitken should stop traffic coming from the direction of Glenorchy when competitors were approaching or about to approach the finishing line and that Senior Constable O'Hara should signal to him when they came into view. The defendant was driving a van from Glenorchy, that is to say in the opposite direction to that of the competitors in the road race. When he arrived at the first Constable, Constable Aitken, the bulk of the competiters had passed the finishing line. The other scratch man passed him. The Constable signalled to the defendant to go on. He went on and as he advanced he says that he kept his eyes first on the crowd which had assembled to see the road race and lined the street so that he would not collide with any of them and then upon the other Constable. As it happened, as the defendant was slowly making his approach to Senior Constable O'Hara, the plaintiff came into view. Along the stretch, which was estimated variously but which seems to have been not to be less than 200 yards, the plaintiff came at his best pace. He was wearing a peaked cap and according to his account he realised that although he was behind the other scratch man there was some recognition or advantage to be obtained if he made second best time and he therefore finished at a strong pace, at about 25 miles an hour as he estimates it. He rode with his head down, looking just in front of his wheel. Any view he might otherwise have had in that position was obscured by his peaked cap. Suddenly Senior Constable O'Hara saw him coming and he at once signalled to the defendant as driver of the van to go to the side of the road. The van was at that time towards the middle of the road

with its right-hand wheels over the centre line, which was marked with a yellow or white line, proceeding very slowly. As the Senior Constable said in his evidence, the defendant took the van as much as he could to his left side of the road and stopped it. The position in which he stopped it was subsequently marked. The rear right wheel was in the centre line of the road; the front right wheel was two or three feet to the left of it. The plaintiff, however, passed the finishing line and hit the right-hand side of the van. He seems to have hit the front mudguard and the handle of the right-hand door. He sustained very serious injuries to his arm, which he lost. The distance which the van had gone whilst the plaintiff was in view is, of course, a matter of estimate. But on the calculations it seems probable that the plaintiff was in view during the last 40 yards which the van drove before the accident. It was going at a very slow pace. However, the dirver (the defendant) did not see the cyclist. He says that his attention was centred upon the Constable, from whom he was expecting directions, and upon the people. The people were gathered at the side of the road and mostly about the finishing line and on each side of the finishing line. There is not much evidence as to how they would obscure his vision, but they certainly were on the bitumen of the road at times.

In those circumstances the Chief Justice acquitted the defendant of negligence. He did not find the plaintiff guilty of contributory negligence, but he did suggest that, had he thought that the plaintiff was guilty of contributory negligence, the consequences of that contributory negligence might have been avoided by the defendant if he saw the cyclist.

The question for us is whether the learned Chief Justice's finding is to be sustained, and we think it is. The question is entirely one of fact. We are not disposed to attribute contributory negligence in the curious circumstances of this case to the plaintiff. He was engaged in a road race, the police were

there. We need not consider with any nicety the legality of the proceedings in the road race. The scene was that of a road race and the plaintiff was behaving as a cyclist would do in a road race at the finishing point. But if he was not guilty of contributory negligence it was because he was entitled to rely upon the regulation of the highway by the police whilst the race was taking place. The defendant's whole case is that he also relied upon the regulation of the scene by the police. He had of course a duty to the crowd. It seems to us that the learned Chief Justice was perfectly right in saying there was no negligence in his going forward under the direction of Constable Aitken. As he went forward of course he was getting closer to the finishing line and to the Senior Constable. The Senior Constable was undertaking the direction of traffic at that point. It was natural, and reasonable, for him to keep his eyes on the Senior Constable at that point for his directions and he had in the meantime to see that he did not come into collision with any members of the crowd which was lining the highway. In those circumstances we think that it is not the case that any specific duty was placed upon him to keep a lookout for himself in case another rider was coming into view. He had his attention fully occupied in performing the other duties and it was the function of the Senior Constable to see that no other rider was in view and that the way was clear to him. When the Senior Constable did see the other rider coming into view it was too late to get the van any further off the track. Because the van got its front wheels two or three feet from the centre line but not its back wheels, it was not pointing straight down the road. It seems clear that the cyclist who had been coming up what is called the straight on his left-hand side veered over to the centre as he approached the finishing line and this brought about the accident. But this fact, although it occasioned the accident, does not affect the question of negligence. We think

the case should be decided on the simple ground that there was no negligence in the defendant and that the Chief Justice's finding should be sustained. The burden of proof was, of course, on the plaintiff upon that issue. It was found against him and although Mr. Wright has referred to passages in the evidence which do show that an interval in time existed in which, assuming that the crowd did not obscure his view he might, had he looked up, have seen the plaintiff, we do not think the finding of the Chief Justice that there was no negligence can be disturbed on that ground. In any case one could not be sure that the defendant could have avoided the accident in the short interval which the plaintiff's speed allowed, had the defendant seen him earlier than the Senior Constable did.

For those reasons the appeal should be dismissed.