Original

IN THE HIGH COURT OF AUSTRALIA

Bell

v.

Denver

Original

REASONS FOR JUDGMENT

Judgment delivered at .....

on 8 JULY 1959

(11)

W. M. HOUSTON, Govt. Print., Melb.

C.19?8/55

BELL

v.

DEMOREST

ORDER

Appeal dismissed with costs.

BELL

v.

DEMOREST

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
MENZIES J.
WINDEYER J.

BELL

v.

DEMOREST

This is an appeal from a judgment in an action for personal injuries heard in the Supreme Court of Western Australia before Jackson J. He gave judgment for the plaintiff and awarded her damages in the sum of £5326, of which £4000 was general damages.

Personal injuries were sustained by the plaintiff on 16th December 1956, at which date she was nearly twenty-nine years of age. She had pursued a musical career and she taught music at a school; she had in fact attained some distinction in the practice and teaching of music. At about ten minutes past one in the afternoon of that day she wished to cross Walcott Street. As she crossed from north-east to south-west she saw a Holden taxi being driven from south-east to north-west along the street; it was on her left coming towards her. She had reached the centre of the street and was crossing the street at right angles. She stopped; the taxi stopped. The taxi was driven by a man named Johnson and he waved her on. He had drawn up his taxi not at any pedestrian crossing but simply because she was crossing in front of him, and he just drew it up along the line he was travelling so that when he had stopped it his taxi was still towards the middle of the street. He was not driving over to the left-hand side of the road fully, and there was ample room between the near side of his taxi and the kerb for another car to pass.

The plaintiff crossed in front of him, induced to do so by his waving her on; but coming up behind the taxi was the defendant's car. The defendant was driving it at a speed which may be estimated from what the defendant said in evidence

to have been about 30 m.p.h. She did not see it, and probably could not have seen it, at that point because Johnson's taxi was in her line of vision. For the same reason the defendant did not see her as he advanced. He determined to go between the Holden taxi and the gutter and to pass the stationary taxi in that way. He did so, not at an excessive speed if such a manoeuvre were correct, but at speed. She caught no sight of him until it was too late, and she was thrown down and quite seriously injured.

The plaintiff made those facts the basis of a case of negligence on the part of the defendant, that is that he drove his car on the left of the other car and ignored the possibilities of the situation which had thus arisen. She was answered by a denial of negligence and by a plea of contributory negligence on the ground that she should have looked carefully to the left when she passed the front of the radiator of the stationary taxi and that she would then have seen the defendant's car before she advanced.

The trial judge had no hesitation in finding the defendant guilty of negligence in passing to the left of the stationary car at speed without being aware of why that car had become stationary and with lack of regard to the consequences. He negatived contributory negligence on the part of the plaintiff. We think his findings completely right. It is contrary to a by-law to pass a car on the left proceeding in the same direction. It seems correct to say that the taxi was proceeding in the same direction and to neglect the small point that it had become at one point of time stationary, because, according to the defendant's own evidence, he proceeded to pass it as he saw it drawing up. At all events, even if one disregards this question of the precise connotation of the word "proceeding" in the by-law, it was an improper and a wrong practice for him to pass in that way.

Johnson, the taxi driver, held up his right hand as

he drew up so that those behind him could see that he was stopping and had stopped. The inference which the defendant drew is in a sense his own business, but one would assume that the natural inference to draw was that the car was stopping and had stopped in order to let some other traffic take its course; in the circumstances the obvious inference to be drawn was that the other traffic was a pedestrian. At all events, the defendant took a chance which a moment's consideration would have shewn to be notoriously full of danger, and his action proved for the plaintiff to have very serious consequences.

When one comes to consider the allegation of contributory negligence on her part, it is important to see what was happening. The plaintiff had stopped in the middle of the street because of the advancing Holden taxi; the taxi-driver had given her the right of way, had drawn up in order to let her pass and had waved her on. She, perhaps under the impulse which a pedestrian usually feels in those circumstances, hurried to pass the stationary taxi and had no reason to believe that there was any danger on the other side; and indeed, if one could rely on a presumption that the plaintiff knew the law and that the defendant both knew it and would obey it, she was entitled to suppose that there was nobody who would interfere with her once she had passed the taxi. What she could have seen if she had looked we do not know. It was all an instantaneous matter. She hurried past his bonnet and was immediately struck. The defendant when he saw her in front of him tried to pull to the right and she was struck by his left-hand mudguard and headlight. She must therefore have got across some distance, but how much she hurried does not appear. At all events she did not see him until it was far too late for her to take any action.

In those circumstances we think this is a street accident of a kind which is not uncharacteristic of modern

traffic, in which the defendant was solely to blame because he took the course of going on the left-hand side of a car which was drawn up to allow a pedestrian to pass.

The second question in the appeal is the question whether the damages are excessive. No attack is made upon the amount of special damages awarded. The attack is entirely on the amount which has been assessed for general damages.

We have gone a long way in past decisions in leaving in the hands of a judge the assessment, the quantification, of damages which are in a very general sense the result of his discretionary judgment, subject to considerations of pain and suffering, loss of future prospects and general disablement of a plaintiff who has suffered personal injuries, and it is enough to say that the assessment made by his Honour is well within the reasonable limits which would be allowed to a judge at first instance. Nevertheless we have considered the facts which have been brought before us by Mr. Hatfield as to this lady's sufferings and injuries and constant loss, both in a very material sense and in a less material sense, of her general enjoyment of life and in her profession. We think the view which has been expressed by Mr. Hatfield that an amount such as this should be reserved for much more serious cases cannot really be sustained. After all, she has suffered very seriously, she has been affected in her work, and in her enjoyment of her work, and in various other ways; we think the amount is no more than adequate.

The appeal is dismissed with costs.