IN THE HIGH COURT OF AUSTRALIA

GROSSER

V.

MATHESON AND ANOTHER

ORAL JUDGMENT

REASONS FOR JUDGMENT

Judgment delivered at ADELAIDE

on TUESDAY 20TH SEPTEMBER 1960

W. M. Houston, Govt. Print., Melb.

GROSSER

v.

MATHESON
AND UNION ASSURANCE SOCIETY LIMITED

JUDGMENT
ORAL.

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
KITTO J.
WEBB J.
WINDEYER J.

We do not find it necessary to call upon the respondents.

The case is one in which there is an appeal from a judgment given by Mr. Justice Reed at the trial of an action for damages for personal injuries. It is almost unnecessary to say that the personal injuries were suffered in a road accident.

The plaintiff was a passenger in a utility truck driven by a friend named Learmonth who unfortunately lost his life in the accident. The accident arose out of a collision between the utility and a 5-ton International truck. The date was 2nd May 1958 and the hour was about an hour after sunset when presumably it was quite dark. The utility was a Holden and was being driven in an easterly direction along the Wrattenbullay Road. The 5-ton truck was proceeding in the opposite direction and was driven by the defendant Grosser. The utility was, according to the finding, proceeding at 45 m.p.h. The other car was, according to the finding, proceeding at 35 m.p.h. The road had a narrow bitumen strip twelve feet wide and there is no doubt that the accident occurred primarily through the narrowness of the strip, which presumably both drivers desired to retain.

The International truck had one headlight only alight, the off headlight. It had also another light, a clearance light, which seemed to be burning brightly and would distinguish it from a motor cycle in the view of those who saw it approaching, if that light were observed. It would seem that according to the findings of fact, Learmonth, driving the Holden utility, must have observed the single headlight of the

approaching truck. The finding is that the driver of the truck when about 200 yards away before the impact moved over to his left-hand side somewhat. He had then seen the headlights of the utility. The evidence, which was accepted, says that he brought his near wheels close to the bitumen with the outside dual rear wheels probably just off it, and he straightened up the vehicle when in that position. The truck proceeded, occupying a position on the road which was no doubt a subject of dispute, but both vehicles maintained their courses and speed.

After carefully examining the evidence, Mr. Justice Reed made these findings: "I find that when the collision occurred the utility was travelling on a course which placed its offside wheels on or just north of the centre line of the bitumen strip; and that the truck was then travelling with its offside front wheel running practically on that centre line, with the offside of the tray of the truck a few inches north of the line. Upon the findings I have made Grosser was plainly negligent, in that (1) he drove the truck upon the course which I have found: (2) he drove at an excessive speed in the circumstances: (3) he drove the truck with only one headlight burning: (4) he did not slow down or stop his vehicle: and (5) he did not give any warning of the unusual circumstances to the driver of the other vehicle."

Then the learned judge examines the negligence of Learmonth and concludes in this way: "The negligence of the defendant Grosser was highly culpable, and he created a situation that was calculated to mislead the driver of the utility and was extremely dangerous. On the other hand, although Learmonth was misled by the appearance of the truck as it approached him" (a matter depending, of course, upon his Honour's inference) "he was driving at a speed which in the circumstances was high, and for the reasons already given he

did have an opportunity to drive his vehicle off the road, of which he failed to take advantage."

On those findings of negligence and contributory negligence, his Honour apportioned damages, which were extremely heavy, in the proportion of twenty per cent and eighty per cent, and ordered that the two defendants should contribute in that proportion. The total sum of damages was £21,032, of which £3,532 was special damages and £17,500 was general damages.

The appeal from that decision is based first upon a challenge to his Honour's findings of fact as to the exact manner in which the accident happened and secondly upon an attack on the apportionment of the damages between the defendants as their respective contributions inter se. It is evident that the two things are interconnected: the proportion arises out of his Honour's view of the manner in which the accident actually happened.

Mr. Hogarth has made a careful and thoughtful argument on the evidence as to the basis of the finding of his Honour, particularly of negligence on the part of the driver of the truck. It is clear enough that his Honour was at pains to fix with some exactness, so far as he could on the evidence, the course which the vehicles took. This court, of course, is not as accustomed as Judges of the Supreme Court are to the trial of cases of road accidents and the process of inquiry into them, but from the printed page it has acquired an unwelcome familiarity with the discussion of these matters. Speaking for myself I must say that my experience in all the States of Australia leads me to the conclusion that an exact investigation of the incidents of an accident between vehicles moving at high speed can never be pursued to a satisfactory conclusion.

In the present case the point of importance really comes down to the amount of the roadway which was occupied by the truck as it went forward. Of course, the two things are

relative and a finding of the amount of roadway occupied by the truck cannot be made independent of findings as to the course which was pursued by the utility because, of course, they came into violent collision on their respective right sides.

Listening to the argument, I think we are all of opinion that the case was essentially one where his Honour had on all the evidence to form his own conclusions as to the causes of the collision and the reliability of the witnesses as to what was the most probable explanation. His Honour clearly found, upon evidence which sufficed, that the utility did not in the end take part of the road which was over the centre, but it seems clear enough that in deciding what was the centre, there were all the disadvantages of a narrow road with no white or yellow lines. Why the two parties did not give each other a wider berth is, of course, a matter of speculation, but the larger vehicle was to a certain extent disguised by lack of lights upon its right-hand or offside. The other vehicle was doubtless proceeding at an excessive speed but it seems clear enough that the collision was the result of some misconception of the situation, and that his Honour attributes that to the fault of the larger vehicle leading to an error on the part of Learmonth.

We think the case is essentially one in which we as a court of appeal must follow the general rule which guides us in attempting to deal with questions of fact. We do not set aside a decision on findings of fact of a judge who has heard the witnesses and considered their evidence closely unless some clear error is made to appear.

His Honour's consideration of the evidence took into account not only the demeanour of the witnesses but his general estimate of their reliability in point of memory and observation and ability to recount the story. To that his Honour added a study of the exact text of the transcript. We do not think it is possible in this case for us to interfere with the findings consistently with the principles which should guide us, and we

accordingly think that the attack on the finding of negligence on the part of the defendant must fail.

The proportion of contribution which was fixed is perhaps one which is a little unexpected, but when one studies the views which his Honour took of the behaviour of the respective vehicles - and that, of course, means their drivers - it is completely understandable. We do not interfere with a finding upon such a question unless we are well assured that something has gone wrong in the decision.

On the findings of detailed fact, we think that the contribution which has been ordered is one which is indicated sufficiently by the views his Honour held, which we are not prepared to set aside, as to the respective degrees of culpability. By that is meant the degrees of departure from the normal standards of a reasonable man in managing road vehicles.

For these reasons we think that the appeal should be dismissed. The appeal will be dismissed with costs.