

17

IN THE HIGH COURT OF AUSTRALIA

TULLY

V.

BEACH AND OTHERS

REASONS FOR JUDGMENT

(original)

Sept 19, 1961.

TULLY

v.

BEACH AND OTHERS

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
TAYLOR J.

TULLY

v.

BEACH AND OTHERS

This is an appeal from a judgment of Mr. Justice Matthews by which he entered judgment for the defendant in an action for damages for personal injuries due to negligence in a road accident.

The facts are short, and the appeal which has been brought by the plaintiff depends not so much on a rejection of the findings of the judge as to what actually happened but upon the contention that, having regard to what appears to have happened, he was bound to find that the accident was due to negligence.

The plaintiff was riding as a passenger beside her husband in a car as he drove it along the Bruce Highway. He was driving north, and he was near Caboolture. The body of the traffic was coming in the opposite direction. In front of him was a car driven by a man named Birt, who is not a party to these proceedings. Behind him was a car driven by Beach, who is the defendant in the action. He was insured by the Standard Insurance Company, and that insurer has been joined at its own election as an additional defendant. The husband of the plaintiff has been brought in by the defendant as third party.

There were three cars in succession - Birt's first, then Tully's, then Beach's - and the question upon which we think the case must be decided is simply whether Mr. Justice Matthews was entitled to acquit Beach of negligence.

Beach's car ran into the rear of Tully's car, and it is said that the plaintiff's injuries were caused by the severity of the blow to the car, the reaction upon her frame and the shock which was thus inflicted. Tully's car had pulled up

All this was caused because out of the oncoming traffic from the opposite direction a car containing some young men was driven at very high speed. It veered out from the line of traffic, which led Birt to veer to his left and drop his speed from what he says was 30 miles an hour to what he says was 15 miles an hour. The attention of Tully, so it was said, was likewise attracted. He veered slightly to his right to see better, then to his left, and hit Birt; not, however, a very severe collision.

Mr. Justice Matthews considered Regulation 30 of the Traffic Regulations and its operation on the situation in which the parties found themselves, particularly Beach, and he considered the general law of negligence governing such a situation.

Beach's evidence was that he was travelling about three car lengths behind the car in front of him, Tully's, and that he just saw the situation caused by Tully's car pulling up and was unable to avoid a collision.

Regulation 30 says that the driver of a vehicle upon any road shall drive such vehicle at such a speed that it can be stopped within half the length of clear carriageway which is visible to such driver immediately in front of such vehicle. It is qualified, however, by a proviso which says that the driver of a vehicle shall not be convicted of an offence against the Regulation if it can be proved that his vehicle was being driven behind any other vehicle and the carriageway between his vehicle and such other vehicle was clear and that his vehicle was being driven at such speed that it could be stopped short of such other vehicle in the event of a sudden stop or sudden reduction of speed by the latter.

His Honour was of the opinion that, having regard to the evidence of Beach, and the distance which he was actually

sufficient degree of negligence which I understand to mean that, according to the ordinary practice of car drivers and judged by the standard of the reasonable conduct of reasonable men driving in such a situation, there was no negligence.

He said, after considering the operation of the Regulations, "If anything I consider the defendant Tully having come into contact with Birt's car before his car was struck by Beach caused Beach's car to strike his, and that there was not any negligence on the part of Beach. There were certain skid marks made by Beach's car on the roadway which were not measured but which Beach said were from 25 to 30 feet in length and which would indicate that for that distance, whatever it was, he had applied his brakes with full force. However, as I have indicated above, I think no negligence can be attributed to the defendant Beach or to the third party Tully, in the circumstances as I find them."

It is suggested that his Honour was considering the matter at a point in the succession of events too close to the actual collision; that he was not considering the anterior state of affairs before the emergency arose when the three cars were proceeding as if no danger was anticipated. It was at that point, it is said, that negligence occurred by reason of Beach driving too close at the speed which he had adopted.

It will be seen from what I have said that the case is really an appeal on facts, not so much an attack on the finding of the learned trial judge as to what actually occurred. It is not a matter of law. We think that it was an inference which the learned judge was entitled to adopt and that he was not bound in the circumstances to regard Beach as guilty of negligence. We are unable to agree with the contention that he did not consider the case at what may be described as an early enough stage in the proceedings. We think his Honour did so consider it and that we are not entitled as an Appeal Court to disregard his view of the

character and conduct of the parties, particularly of Beach, at that time or afterwards when the accident became apparently inevitable. No doubt there is what may be called an old fashioned view, and it has been pressed, namely that the circumstances were such that the occurrence of the accident itself involved a presumption of negligence; but when you come to examine the situation you will find an unusual thing occurred; it was not in itself highly unusual for the young men to behave in such a way, but the whole succession of events from and including that point formed an unusual incident and his Honour was impressed with the view that precautions had been taken to guard against any ordinary eventuality. In the circumstances, negligence ought not to be attributed to Beach or, for that matter, to Tully.

That means that the appeal should be dismissed. The appeal will be dismissed with costs. The cross appeal should be dismissed with costs against the cross appellant.