8/ Aegma

IN THE HIGH COURT OF AUSTRALIA

HUDSON

*V.*

WALSH AND ANOTHER

# REASONS FOR JUDGMENT

£1/-/-

*Judgment delivered at* BRISBANE

*on* WEDNESDAY, 20TH SEPTEMBER 1961

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

C.7163/51

HUDSON

v.

WALSH AND ANOTHER

ORDER

Judgment for the plaintiff for £10,551. 8. 6 with costs.

HUDSON

v.

WALSH AND ANOTHER

JUDGMENT

TAYLOR J.

HUDSON

v.

WALSH AND ANOTHER

In this action the plaintiff, who is a resident of New South Wales, claims damages from the defendants in respect of personal injuries which he sustained on the 3rd January last. The first-named defendant is a resident of Queensland and the second-named defendant a resident of Victoria.

It appears from the evidence that the plaintiff sustained his injuries in Queensland whilst holidaying there with his wife and family. They had come to Queensland in a panel van with a hired caravan attached and on the day of the accident they travelled north along the Bruce highway. Just short of Caboolture, however, the plaintiff turned off the highway and made a diversion. At a later stage, when he regained the highway, he turned to the left. This set his course in a southerly direction whereas, in fact, he had intended to continue his course to the north. But before he had travelled very far he recognized some landmarks which he had passed before turning off the highway. One of these was a narrow bridge and after crossing it he pulled to the side of the road and stopped. At this point the bitumen roadway is about twenty or twenty-one feet wide and on either side there were earth shoulders. That on the eastern side was somewhere between nine and eleven feet wide and was bounded by a low bank. From a position in the vicinity of the southern end of the bridge the road rose to the crest of a hill approximately one hundred and sixty yards to the south. The spot where the van and caravan came to rest was a little closer to the crest of the hill than to the southern end of the bridge. In the situation where he stopped the van and trailer were clear of

the bitumen. Having satisfied himself that he was heading in the wrong direction the plaintiff then endeavoured to regain the bitumen for the purpose of proceeding a little further to the south to a position where he could turn the two vehicles around. But there had been rain that day and the earth shoulder had become so slippery that the driving wheels of his vehicle would not grip sufficiently to enable him to tow the caravan on to the bitumen. As he was attempting to extricate the vehicles another motorist, one Christensen, who passed on his way south, perceived his predicament. Christensen went on for a short distance and then parked his car and walked back along the edge of the highway to give the plaintiff some assistance. After considering the position they unfastened the van from the caravan and when this had been done the plaintiff was able to drive the van on to the bitumen strip and then proceed a little further south where he turned around and came back on the western side of the highway. He then parked the van close to the western edge of the bitumen strip. The off-side wheels may have been just on the bitumen. If they were not actually on the bitumen they were close to it at a place some fifteen or twenty feet beyond the point where the caravan was parked on the other side of the road. Then Christensen and the plaintiff commenced to move the caravan further down the hill with the object of taking it to the other side of the road and there swinging it round so that it might be again attached to the van. But they had scarcely commenced to carry out this manoeuvre when a car driven by the second-named defendant came north along the road at a high rate of speed. The first-named defendant was the registered owner of this vehicle.

There was evidence in the case showing that some part of the plaintiff's caravan could have been observed by a prudent driver proceeding in a northerly direction before he got within one hundred yards of it. But, however this may be, the crest of the hill was some seventy yards to the south

of the position which the caravan occupied and it was in full view for a distance of some seventy or eighty yards to the south. About the time when the defendant Alderman approached the crest of the hill Christensen and the plaintiff had managed to get the caravan moving. They had taken it about ten feet to the north and had just turned it at an angle of about thirty or forty degrees to the bitumen strip. At this stage its rear side corner was projecting on to the eastern edge of the bitumen. According to the plaintiff and Christensen this corner was about four or five feet on to the strip when they heard the oncoming car. On the other hand, Alderman says that when he first saw the caravan it had proceeded to a point on or close to the centre line. I am satisfied, however, that the caravan did not at that time, or at any time, obstruct the road to anything like that extent. However, Alderman says that he applied the brakes of the car as soon as he saw the caravan, that the car went into a skid towards the right, that he regained control of it and applied the brakes again, that the car skidded again, crossed the road and came into broadside collision with the caravan. The force of the collision overturned the caravan and the car then embedded itself in the bank on the eastern side of the highway. Christensen narrowly escaped injury but the plaintiff's right leg was crushed between the bumper bar of Alderman's car and the bank on the eastern side of the road. It was so badly injured that it was found necessary for an amputation to be performed that evening in Brisbane hospital.

To my mind the evidence clearly establishes that Alderman was driving the car at a speed which, in the circumstances, was grossly excessive. Both the plaintiff and Christensen maintain that it was travelling at a speed between sixty and seventy miles an hour but some criticism is offered of their estimates because of the limited opportunity which they had to judge its speed. They are supported, however, by the witness Bowstead who had passed the caravan as he proceeded

south almost immediately before the collision. He reached the crest of the hill where he intended to turn into a side road and then come back to assist the plaintiff and Christensen. But he waited for Alderman's car to pass and he was impressed by its "terrific" speed. As it passed him, he said, his car "shuddered" and, apparently, it excited his attention sufficiently to induce him to watch its progress in his rear vision mirror. He saw it skid but he did not actually see the collision. I have not the slightest doubt that his estimate of the speed of the car, which was also sixty to seventy miles an hour, was substantially accurate. But even if his estimate was somewhat high the speed at which the car was travelling was grossly excessive in the circumstances. The road was wet, the shoulders on either side were greasy, the vehicle was approaching a narrow bridge and for some distance before he came close to the crest of the hill the driver's view of the road ahead was, to some extent, impeded. I should add that the brakes on his car were power brakes and Alderman had observed that they acted with great force when suddenly and firmly applied. Again Alderman knew that the caravan was in difficulties by the side of the road for he, himself, had come from the north just a few minutes before. He had crossed the bridge, seen the caravan and, having proceeded about a mile or so further to the south, had passed a car which his daughter was driving to the north whereupon he turned round and followed her. Finally if, as he says, he applied his brakes when he first saw the caravan from the crest of the hill, the subsequent behaviour of his car was, at least, consistent with the fact that he was driving at an excessive speed in the circumstances.

Alderman gave evidence to the effect that the car was travelling about forty or fifty miles an hour when he first saw the caravan whilst his son estimated its speed "round fifty miles per hour". The former maintained that

at the speed at which he was travelling there was ample room in which to pull up after he first applied his brakes. The picture which he presents is that if the car had behaved normally there would have been no risk of collision and that the cause of the plaintiff's injuries was the skid in which he became involved. I do not believe that this was the situation. A speed of fity miles an hour would, itself, have been excessive in the circumstances as they existed but I am satisfied that this estimate of the speed of the vehicle was incorrect and that Bowstead's estimate is much more reliable. I should add that I was not impressed with the evidence of Alderman and his son concerning the speed of the car nor with the account of the former concerning the behaviour of the car immediately preceding the collision. I do not believe that he regained control of the car after the initial skid; on the contrary, I am satisfied that the car was driven at a greatly excessive speed, that because of this Alderman felt that he was suddenly confronted with an emergency, that he applied his brakes suddenly and violently and it is not surprising that, in the circumstances, his car became uncontrollable. That being so, it is plain that Alderman was negligent.

It remains to be considered whether, as was alleged on behalf of the defendants, the plaintiff himself was guilty of contributory negligence. To my mind this issue must be resolved in the plaintiff's favour. It was suggested that the plaintiff was negligent in attempting, with Christensen's assistance, to haul the caravan across the highway without having someone on the crest of the hill to warn oncoming traffic. There is, of course, no doubt that it would have been more prudent to have adopted that course. But the fact that it was not adopted does not mean that, in acting as he did, the plaintiff failed to take reasonable care for his own safety. After all there was a clear and unimpeded

view of the caravan for a distance of seventy or eighty yards to the south and some part of the vehicle could have been seen for a considerably greater distance. Moreover, it is not as though, at the time when Alderman first saw it, the caravan was, as he says, obstructing as much as half of the bitumen strip; it was projecting only four or five feet from the eastern side and if he had been travelling at a reasonable speed there would have been no danger. Nor is there any substance in the other suggestion, somewhat faintly made, that the plaintiff failed to keep a look out whilst trying to extricate the caravan. The fact is that both he and Christensen heard the car coming whilst it was still a considerable distance away and they immediately attempted to get out of its way. In this the plaintiff was unsuccessful and this was so because of the speed at which the car was travelling. I am satisfied that, whilst travelling at a grossly excessive speed, the defendant Alderman saw the caravan being man-handled, that it was then projecting just on to the bitumen on the eastern side and that, realizing that his own speed was so excessive, he applied his brakes violently and lost control of the car. In my view Alderman's negligence was the sole cause of the plaintiff's injuries and the conduct of the plaintiff in no way contributed.

The question of damages is not without difficulty. The plaintiff has been the technical manager of a company in Sydney for some five years. He is still employed in that position and, notwithstanding his injuries, is quite capable of carrying out the duties which it imposes upon him. After the accident he was in the Brisbane General Hospital for sixteen days only and then discharged on condition that he would return to his home in Sydney. It speaks volumes for his courage and fortitude that he was back at work on crutches the on/ 6th February. But damages cannot be assessed as a reward

for courage and fortitude; the fact is that he has lost no salary and, as far as one can see, he will be able to continue in his present position as long as he wishes. But it must be borne in mind that he is a young man, aged thirty-two, who, quite obviously, is industrious, capable and eager to advance himself in life and it is reasonable to suppose that his disability will place him at a disadvantage in competing with others in his chosen field. Moreover, he has been accustomed to leading an active and full life and has been a regular participant in many sporting activities. Accordingly, the loss of his leg has meant and will mean a great deal to him. Additionally, he has undergone a great deal of pain and suffering and, according to the evidence, he will not be without some degree of pain during the rest of his life. It should also be mentioned that the plaintiff has consistently performed a great deal of work in and about his home. In particular, he did much of the work involved in its construction and shortly before the accident he had decided to enlarge it in order to accommodate his growing family. Further, he proposed to undertake other unfinished work in the grounds of the house. This he will not now be able to undertake. Nor will he be able effectively to perform the general work of maintaining the house and grounds, a task which he has consistently undertaken. Doing the best I can I assess the sum of £7,500 to compensate him for the loss of his leg, for his past and future pain and suffering, for the general loss of the enjoyment of life which it will entail and to cover any disadvantage to which he may be subjected in his future working life.

The plaintiff lives at Dee Why and his place of work is at Alexandria. It has been his practice to make this journey by driving his car to the nearest form of public transport and then to make his way to work by changing from one form of public transport to another. He now says that

the process of making the journey in this manner is beyond him and, for my part, I think it not unreasonable that an allowance should be made to permit him to travel to work by car. He is quite capable of managing a car with automatic transmission and he has provided himself with such a vehicle. Some allowance to cover the additional expense which this will involve should also be made. A further allowance should, I think, also be made to provide substitute labour from time to time for the tasks about the house and grounds which he performed until the time of his accident and which he is now no longer able to perform. Finally, the evidence shows that the maintenance and repairs to his artificial limb, and its replacement as and when required, will entail an average expenditure of some £50 per annum. It is agreed by the parties that in fixing a capital sum with respect to the last three items I should be at liberty to employ the table set out in33 A.L.J. p. 28. I think it not unreasonable that the capital sum which I should award in respect of these items should be assessed by taking the present value of £4 per week for thirty years and then by discounting that sum to provide for obvious contingencies. The present value of such a weekly sum is expressed to be £3,196 but, having regard to the fact that the plaintiff's working life may continue for a substantial period beyond the age of sixty-two, I do not see why it should be discounted to any great extent. Altogether I think I should assess under these headings an amount of £2,750 making his general damages £10,250. To this sum there should be added the proved special damages of £301. 8. 6. Accordingly, there will be judgment for the plaintiff for the sum of £10,551. 8. 6.