IN THE HIGH COURT OF AUSTRALIA

ESSELMONT

V.

OLDHAM & BRESLAND

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on WEDNESDAY, 31st JULY 1963

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

(14)

ESSELMONT

v.

OLDHAM AND ANOTHER

ORDER

Appeal allowed with costs. Judgment of the Full Court of the Supreme Court of Western Australia discharged and in lieu thereof order that the appeal thereto be dismissed with costs.

ESSELMONT

v.

OLDHAM AND ANOTHER

JUDGMENT

KITTO J.
TAYLOR J.
MENZIES J.
WINDEYER J.
OWEN J.

ESSELMONT

v.

OLDHAM AND ANOTHER

The appellant was one defendant in an action against himself and another defendant Bresland brought by the respondent Oldham for damages for negligence causing a collision between two vehicles as a result of which the respondent suffered injuries for which damages of £5,723. 1. 9 were awarded at the trial. The learned trial judge found that the accident was caused by the negligence of Bresland, who was the driver of a taxi in which Oldham was a passenger, and that the appellant, who was the driver of a motor-car, had not been negligent. Upon appeal to the Full Court that finding in favour of the present appellant was reversed and this is an appeal against the order varying the judgment of the learned trial judge by including the appellant as a party liable to pay the damages awarded. Bresland did not appeal nor was he represented upon this appeal.

The facts about which there was no dispute upon the appeal can be stated shortly. Both vehicles were travelling east in St. George's Terrace from Barrack Street, where they had been stopped by a traffic light, towards Pier Street, just beyond which there is a pedestrian crossing running north and south and about ten feet wide. St. George's Terrace is a six-lane road sixty-four feet six inches wide and both vehicles were travelling in the middle lane of the three northern traffic lanes. The appellant's car, as it was passing Pier Street, was probably about twelve feet from the northern kerb line. Bresland's taxi was a couple of lengths behind the appellant's car. Both vehicles were travelling at about

twenty miles per hour. As the appellant approached Pier Street he saw a woman step upon the pedestrian crossing from the northern footpath but she, having looked to her right and seeing traffic approaching, had stepped back on to the footpath. When she stepped on to the pedestrian crossing the appellant slowed down, as did Bresland, but when she stepped back the appellant took that as an invitation to proceed notwithstanding that by virtue of Traffic Regulation 231 she had the right of way. He increased his speed somewhat, as did Bresland. Then, when the appellant's car was about twelve feet from the western edge of the pedestrian crossing the woman left the footpath and seemed to the appellant to be moving quickly across the road. He applied his brakes hard and stopped suddenly with the front of his car upon the crossing. Bresland, as soon as he noticed the appellant was stopping, applied his brakes and swung to the right but, notwithstanding his promptness, was unable to avoid what was described as a gentle collision. The appellant did not give a hand signal as he should have done in accordance with Traffic Regulation 213 but his car was fitted with brake stop-lights and it seems clear that his Honour was satisfied that Bresland could not have applied his brakes sooner than he did.

The learned trial judge found that his stopping as he did was a natural reaction on the part of the appellant and did not amount to negligence. The negligence found against Bresland was that he was driving too close to the car in front.

The Full Court, relying in a measure upon an answer by the appellant to a question asked by his Honour the trial judge to the effect that the woman could not have got near him had he not stopped but had kept going, came to the conclusion that the appellant, in stopping as suddenly as he did, was guilty of negligence. It would seem that his Honour did not understand the foregoing answer to his question as referring to a conclusion which the appellant formed when he stopped for, as has already been pointed out, his Honour regarding his stopping as a natural reaction in an emergency.

In the circumstances we think that there were no sufficient grounds for an appeal court interfering with the finding of the trial judge, based as it was upon the conclusion that stopping, in accordance with a natural reaction when a dithering pedestrian stepped upon a protected crossing in front of him, did not establish that the appellant acted otherwise than as a reasonably careful driver would. The appeal should therefore be allowed.