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IN THE HIGH COURT OF AUSTRALIA

MARLOW

V.

TATLOW AND OTHERS

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on WEDNESDAY, 10TH MARCH, 1965.

A. C. Brooks, Government Printer, Melbourne
C.7639/60

MARLOW

v.

TATLOW AND OTHERS

JUDGMENT
(ORAL)

KITTO J.

MARLOW

v.

TATLOW AND OTHERS

In this action the plaintiff claims damages in respect of a collision which occurred on 29th December 1963 on the Tasman Highway in Tasmania between a motor-car which she was driving and a bus which the defendant Reed was driving in the course of his employment by his co-defendants.

She alleges that the collision was caused by negligence on the part of Reed in the management of the bus. The defendants deny the allegation of negligence and they raise a defence of contributory negligence.

In addition they counter claim in respect of damage sustained by the bus in and in consequence of the collision, alleging that the collision was caused by negligence of the plaintiff in the management of her car.

The Tasman Highway runs from Launceston to St. Helens, passing through Scottsdale and crossing a single-track railway line at Tonganah. For some distance - perhaps a mile - before it reaches the crossing, it follows a straight course down a slight gradient. The surface of the crossing is raised slightly above the general level of the roadway. There is no narrowing of the roadway at this point. Beyond the crossing, the road continues its slightly downward course, still following the same straight line for half a mile or so.

The roadway is bitumen-paved to a width of about 16 feet. The railway crossing is clearly marked by a post on each side bearing a white wooden cross and equipped with blinking lights to give warning of the approach of trains. The collision occurred about 11.30 on a fine clear morning.

The road was dry. The plaintiff, with her husband and her mother in the car as passengers, was driving towards St. Helens on her correct side of the road. The car was a small Standard 10 horsepower car and she was driving it at a speed of 30 to 35 miles per hour down the incline towards the Tonganah crossing. When she reached a point between 50 and 70 yards before the crossing, she saw the signs indicating the railway. The lights were not operating, as no train was in the vicinity. She then changed from top gear into third and applied her brakes. When her car was perhaps 20 feet - perhaps less - from the crossing, the defendants' bus, travelling behind her and in the same direction, collided with her car. Its near-side front mudguard hit the off-side rear of the plaintiff's car causing it to hurtle forward across the railway line and finish on its hood at the left-hand side of the road, some 8 or 10 feet beyond the line. The bus swerved to the right-hand side of the road, knocked over the post holding the warning sign, bent a light steel pole near it, passed over the railway line and came to a stop some 30 or 40 feet further towards St. Helens than the plaintiff's car.

According to the evidence given by the plaintiff, her husband and her mother, her slowing down was not a sudden affair. The defendant Reed who, for some distance back, had been driving his bus some 60 feet behind her at a speed which he said was 35 miles an hour, gave in evidence two versions of what the plaintiff did. One was that she stopped completely; the other was that she slowed down suddenly and came almost to a stop. I accept the evidence of the plaintiff and her witnesses on this point. No doubt her speed fell considerably in the course of 50 yards or so, but I do not believe that she stopped, or nearly stopped, or reduced speed with a suddenness that would have presented any problem to Reed if he had been driving with proper care.

I think that if Reed had been as alert as was reasonably to be expected of him while the two vehicles were descending the incline towards the railway line, he would have observed the plaintiff's car slowing down as soon as it began to do so, and would have been able either to match the plaintiff's decrease of speed, or take his bus on to the right-hand side of the roadway and pass the plaintiff's car without any collision. There was no other traffic in the vicinity to impede the latter manoeuvre.

When he was well back from the crossing he saw the railway signs. A reasonably careful and skilful bus driver in his situation, paying proper attention, would have allowed for the obvious possibility - not to say probability - that the car ahead of him might reduce its speed as it approached the crossing, if only in order to cope with the raised level of the roadway at that point, and would have been ready to act upon the first sign of a slowing down.

In my judgment, Reed was not sufficiently attentive. The plaintiff admits that she gave no hand signal as she began to reduce her speed; but I am not satisfied that a reasonably careful driver in her position would have felt that a hand signal was called for having regard to the prominence of the railway signs and the evident hump on the roadway at the crossing, and to the fact that the reduction of speed that took place was not at all sudden, but was only what any following driver ought to have expected at that point on that road.

Indeed, I am not satisfied that if Reed had been keeping the careful lookout that was reasonable in the circumstances, a hand signal would have told him any more than would have been apparent to him without its assistance.

The truth, in my view, is that he awoke unreasonably late to the need to decrease his own speed and if necessary take the outside running; and that is why he not only

hit the car, but catapulted it across the line, and himself came to a stop so far ahead.

The witness Dickson, who at the time was a police officer, arrived at the scene of the collision soon after it occurred; and next day he made for the purposes of an official report a sketch in which he set out to show - though somewhat misleadingly because it is not to scale - what he found on his arrival.

With the aid of this sketch he deposed to having found two parallel skid marks such as the plaintiff's car might have made if its brakes had been on hard enough for all the wheels to lock. These marks approached the train lines, finishing about 6 feet short of them. Their length Dickson described variously as being about 8 feet or about 18 feet; the defendant Reed said the length was 8 feet, and I am not satisfied that it was more.

There is nothing to explain why the plaintiff should have voluntarily applied her brakes so hard as to lock the wheels. There is only one possible explanation of the marks that seems to me to be probable and it is consistent with the evidence of the plaintiff which I accept. This is that when the bus hit the rear of the car, the plaintiff, whose foot was up to that point pressing lightly on the brake pedal, unknowingly but not unnaturally threw her whole weight on to the pedal, and consequently the car had its four wheels locked as it was pushed forward by the bus for a few feet before capsizing.

In my opinion, therefore, the collision is to be attributed wholly to the negligence of Reed, and there should be judgment for the plaintiff accordingly.

The question of damages remains. The special damages are agreed at £726. As to the general damages, I accept the evidence of the plaintiff and her witnesses. She herself

has by no means exaggerated the suffering of her weeks in hospital, or the ordeals of the three operations she had to undergo, or her continuing disabilities and handicaps. Her right elbow has diminished flexion, her right forearm and hand are heavily scarred, she has lost the ring finger of that hand, the other fingers are of greatly diminished utility, and the appearance of the hand is sufficiently unsightly to be a source of embarrassment in company and in public. Naturally a right-handed person, she is at a substantial disadvantage in her work and, although she is at present earning the same wages as before her injury, her capacity to obtain equally remunerative employment, if she should need to do so in the future, is much impaired.

In the everyday tasks in the home, she is faced with constant and frustrating difficulties. Such manual work as knitting, of which she formerly did a good deal, is now beyond her. She is 43 years of age. No doubt she will learn to compensate, to some extent, for the damage to her hand and arm, but that damage must tell against her, in one way and another, every day of her life.

I fix the general damages at £3,500.

Does either counsel wish to address me on the question of costs?

(Both counsel then made submissions).

I shall add only this: that the case has been brought in this Court as being within the jurisdiction of the High Court on the ground that the plaintiff and the defendant are residents of different States, but it is a kind of case which normally, and more appropriately, is tried in the Supreme Courts of the States.

If I thought that the bringing of the action in the High Court had resulted in any material increase of costs - as it

might well have done if, for instance, I had found it necessary to adjourn to Tasmania for a view, or to take evidence there - I should not have hesitated to make a special order. I am not able, however, to say that the costs have been increased by the course that was taken and I therefore propose to make the usual order. But I hope that practitioners will bear in mind what I have said, before instituting such actions as this in the High Court in future.

I order that judgment be entered for the plaintiff for £4226 in the action and that judgment be entered for her on the counter-claim also. In each case the judgment will be with costs.

MR. MARTIN: I take it that the costs will include the interrogatories?

HIS HONOUR: Whatever costs include, they will include. That is to say, I presume that there is no need for any special order, is there, under the Rules?

. . . . . .

MR. LAMACRAFT: If it is any comfort to my learned friend, there would be no objection . . .

HIS HONOUR: Perhaps, for safety, I should say that if any ancillary order is necessary, the parties, by mutual consent, may see me in chambers and I will add to the order. Otherwise it could be restored to the list for further hearing before the order is taken out.