

IN THE HIGH COURT OF AUSTRALIA

MOORE

V.

BELL

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE
on TUESDAY, 10TH MARCH 1970

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MOORE

v.

BELL

ORDER

Appeal dismissed with costs.

MOORE

v.

BELL

JUDGMENT

(ORAL)

BARWICK C.J.

MOORE

v.

BELL

This appeal arises out of the trial of an action in which a motor boat operator claims indemnity or contribution from another motor boat operator in respect of a verdict to which the appellant had properly agreed in an action against him by a water skier who, at the relevant time, had been towed by the respondent and who suffered personal injury by reason of an act of the appellant.

The trial judge was not prepared to find that the respondent was in breach of any duty towards the water skier causally related to the damage for which the appellant was responsible and accordingly found a verdict for the respondent.

Mr. Connor for the appellant has submitted to us that the trial judge was wrong in refusing to conclude upon the particular facts of the case that the respondent was in breach of his duty to take care for the safety of the water skier he had been towing, in two respects: firstly, in not recovering the tow line after the water skier had let it go and before it was picked up by the appellant's boat; and secondly, in not having in his boat an observer as required by law.

Mr. Connor has examined the relevant facts very fully and I find no need to recount them here. He says that upon those facts the proper inference is that the

respondent failed to exercise due care for the skier's safety and that that failure contributed to the happening of the accident in which the water skier was personally injured.

The case, of course, turns on its own facts. The trial judge has not thought that any of the various lines of conduct on the part of the respondent which the appellant has suggested he ought to have taken were reasonably required of him in the circumstances. In addition, his Honour thought that the absence of an observer from the respondent's boat did not contribute to the result.

Having considered all that counsel for the appellant has said, I am unable to reach the conclusion that the trial judge was wrong in not accepting the view that in the circumstances of the case the appellant had established negligence on the part of the respondent causally related to the damage for which the appellant has become responsible. Consequently the appeal, in my opinion, should be dismissed.

MOORE v. BELL

JUDGMENT
(ORAL)

KITTO J.

MOORE v. BELL

I agree.

MOORE v. BELL

JUDGMENT
(ORAL)

WALSH J.

MOORE v. BELL

I agree.