

IN THE HIGH COURT OF AUSTRALIA

CARTER AND ANOTHER

v.

RANDELL

REASONS FOR JUDGMENT

ORAL Judgment delivered at..... MELBOURNE
on..... 8th MARCH 1973.....

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NEGLIGENCE - STANDARD OF CARE - APPORTIONMENT - WHETHER UNREASONABLE

CARTER AND ANOTHER

v.

RANDELL

ORDER

(ORAL)

Appeal dismissed with costs.

CARTER AND ANOTHER

v.

RANDELL

JUDGMENT

ORAL

BARWICK C.J.

CARTER AND ANOTHER

v.

RANDELL

The appellant raises two grounds of appeal, first, that there was no material upon which a jury could be allowed to find that the deceased pedestrian had failed to take reasonable care for his own safety and, secondly, that assuming the verdict to stand the apportionment made by the jury of 75 per cent of responsibility to the pedestrian and only 25 per cent to the motorist defendant was unreasonable.

These two propositions were put to the full court and there unanimously rejected.

Here Mr. Thomson has taken us through the relevant evidence very carefully and has put the point of view of the appellant in support of both of these grounds. However, having heard all he has said and having observed the evidence to which he has called attention, I am of the opinion that the appeal should be dismissed, and I would be content to dismiss it for the same reasons as Mr. Justice Smith as Acting Chief Justice in Victoria dismissed the appeal to that court.

CARTER AND ANOTHER

v.

RANDELL

JUDGMENT
(ORAL)

McTIERNAN J.

CARTER AND ANOTHER

v.

RANDELL

I agree.

BEVERLEY EILEEN CARTER
and WENDY LORRAINE HORLEY
(as Executors of the Will of
RAYMOND DENTON CARTER
deceased)

v.

BARRY REGINALD RANDELL

JUDGMENT
(ORAL)

MENZIES J.

BEVERLEY EILEEN CARTER
and WENDY LORRAINE HORLEY
(as Executors of the Will of
RAYMOND DENTON CARTER
deceased)

v.

BARRY REGINALD RANDELL

I agree.

CARTER AND ANOTHER

v.

RANDELL

JUDGMENT
(ORAL).

GIBBS J.

CARTER AND ANOTHER

v.

RANDELL

I agree, and would only add that had I been required as a trial judge sitting without a jury to determine the deceased's share of responsibility I would not have found it at so large a proportion as seventy-five per cent. However, it is only in rare and exceptional cases that an appellate court will vary an apportionment of responsibility made by a jury whose findings of fact are accepted and which has not been shown to have been misled as to the law, and I am unable to hold that the apportionment in the present case was one that no reasonable jury could have reached.

CARTER AND ANOTHER

v.

RANDELL

JUDGMENT

STEPHEN J.

CARTER AND ANOTHER

v.

RANDELL

I agree with what has been said by the
Chief Justice.