

3982-057

CARR

v.

THE STATE OF SOUTH AUSTRALIA

JUDGMENT

(Oral)

MASON J.

WILSON J.

BRENNAN J.

DEANE J.

DAWSON J.

CARR

v.

THE STATE OF SOUTH AUSTRALIA

At first instance Sangster J. and, on appeal, the Full Court found that the injuries sustained by the appellant when he slipped on 16 July 1973 on the stairs of the Cross Keys Hotel at Gepps Cross were not caused or contributed to by the negligence of the respondent as his employer. The negligence alleged is that the respondent, knowing that the appellant suffered from a stiff back due to fusion of discs and to a serious psychological disorder, and aware of a report dated 18 January 1972 by the Director-General of Public Health recommending that the appellant should continue in employment and that he was suitable for occupations which did not involve travel by car over long distances or heavy responsibility, nevertheless assigned him, without objection on his part, as a licensing inspector with responsibility for inspecting country licensed premises. The performance of this duty involved him in travelling some distance by car.

The conclusion reached in the courts below was that, even assuming negligence on the part of the respondent in assigning the appellant to country inspections involving travelling distances by car, this breach of duty did not cause or contribute to his slipping on the stairs of the Cross Keys Hotel. In this respect we should mention that the appellant, when employed in the performance of clerical and administrative duties before being assigned to country inspections, daily ascended and descended stairs in the course of his employment without suffering any adverse consequences. This circumstance, quite apart from the absence of evidence to suggest otherwise, in our view made it impossible for the courts below to find that there was involved in the assignment of the appellant to country inspections a foreseeable risk of his injury in ascending or descending stairs or to find that the respondent should reasonably have foreseen some such risk of injury. Nor was there any basis in the evidence for a finding that the employer was or should have been aware of the possibility that the appellant would, by reason of his pre-existing back condition, suffer serious injury or aggravation or injury from a minor trip or slip of a type that might be thought likely to occur on inspection of country hotels.

3.

On the evidence we can see no legitimate basis for interfering with the finding of the courts below on the issue of causation. We would merely add that the evidence does not indicate that the appellant slipped on the stairs by reason of the physical disability or psychiatric disorder from which he suffered.

The appeal is therefore dismissed with costs.

IN THE HIGH COURT OF AUSTRALIA

CARR

THE STATE OF SOUTH AUSTRALIA

REASONS FOR JUDGMENT

Judgment delivered at ADELAIDE
on 19th August 1982

RM74/30574