

SUPREME COURT OF QUEENSLAND

CITATION: *Manton v Harris & Anor* [2020] QSC 102

PARTIES: **DANE DOUGLAS MANTON**
(plaintiff)
v
MITCHELL CHARLES HARRIS
(first defendant)
QBE INSURANCE (AUSTRALIA) LTD
ACN 003 191 035
(second defendant)

FILE NO/S: BS No 7043 of 2018

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 6 May 2020

DELIVERED AT: Brisbane

HEARING DATE: 5 May 2020 (with BS No 7044 of 2018)

JUDGE: Bradley J

ORDER: **The Court finds that:**

- 1. The first defendant breached the duty of care he owed to the plaintiff, as a fellow road user, causing the motor vehicle he was driving to collide with the vehicle driven by the plaintiff at approximately 7:40 am on 2 July 2015 near 240 Bribie Island Road, Caboolture.**
- 2. The collision was not caused or contributed to by any negligence of the plaintiff.**
- 3. The collision occurred in the East-bound lane of Bribie Island Road.**

CATCHWORDS: TORTS – NEGLIGENCE – STANDARD OF CARE, SCOPE OF DUTY AND SUBSEQUENT BREACH – GENERALLY – where the plaintiff and first defendant were driving towards each other on a single carriageway which had one lane in each direction – where the vehicles driven by the plaintiff and first defendant collided – where the plaintiff alleges that the first defendant caused the vehicle he was driving to cross into the lane in which the plaintiff was driving, when it was unsafe to do so and without giving way to the vehicle driven by the plaintiff, thereby causing the collision – whether the collision occurred as a result of the

negligence of the first defendant – whether any negligence on the part of the plaintiff caused or contributed to the collision

COUNSEL: B F Charrington, with B M Wessling-Smith, for the plaintiff in BS No 7043 of 2018
 R Morton for the defendants in BS No 7043 of 2018
 M T O’Sullivan for the plaintiff in BS No 7044 of 2018
 G C O’Driscoll for the defendants in BS No 7044 of 2018

SOLICITORS: Revolution Law for the plaintiff in BS No 7043 of 2018
 McInnes Wilson for the defendants in BS No 7043 of 2018
 Everingham Lawyers for the plaintiff in BS No 7044 of 2018
 Barry Nilsson for the defendants in BS No 7044 of 2018

- [1] On 15 November 2018, Justice Martin ordered that this proceeding and Brisbane Supreme Court proceeding 7044 of 2018 be heard together in relation to the issue of liability only. The claim in each proceeding arises out of the same two-vehicle motor accident on 2 July 2015, in which the plaintiff in each proceeding was the driver of one of the vehicles and the first defendant in each proceeding was the driver of the other vehicle (and so the plaintiff in the other proceeding). The second defendant in each proceeding is the third party insurer of each first defendant.
- [2] The hearing on liability only was conducted on 5 May 2020. The same parties and the same issues were involved in each of the proceedings. At the hearing, each plaintiff proposed to call witnesses and adduce documentary evidence on which it would rely not only to advance its claim but, logically, to defend against the claim of the other plaintiff. Each party had an opportunity to cross-examine any witness called by another party. In the circumstances, by consent, I directed at the outset of the hearing that the evidence given in each proceeding would stand as evidence in the other proceeding, and that each party could rely on the evidence given, whether in one or the other proceeding.
- [3] After the order was made, Counsel for each of the plaintiffs called witnesses, who were cross-examined, and tendered photographs, sketches and two written statements.
- [4] For the reasons given in *Harris v Manton & Anor* [2020] QSC 101, I find that the motor vehicle accident on 2 July 2015 occurred as a result of the negligence of the first defendant Mr Harris, while driving the Mazda utility with registration number MCH 97 (the **Utility**), in crossing into the lane in which the plaintiff Mr Manton was travelling in a Mitsubishi Pajero Wagon with registration number 458 GLW (the **Pajero**), when it was unsafe to do so, and without giving way to the Pajero. I am satisfied on the evidence and so find that the Pajero did not move out of the East-bound lane of the road at any time before it collided with the Utility and that the collision occurred within one or two seconds of Mr Harris in the Utility crossing into the East-bound lane.
- [5] It follows that I find that Mr Harris breached the duty of care he owed to Mr Manton, as a fellow road user, causing the Utility to collide with the Pajero at approximately 7:40 am on 2 July 2015 near 240 Bribie Island Road, Caboolture. There was no negligence on the part of Mr Manton that caused or contributed to the collision. The collision occurred in the East-bound lane of Bribie Island Road.