TRANSCRIPT OF PROCEEDINGS

DISTRICT COURT No 3701 of 1991

CIVIL JURISDICTION

JUDGE WYLIE QC

MUSDALE PTY LTD Plaintiff

and

CSR LIMITED First Defendant

and

ANDREW KRISCHOCK Second Defendant

BRISBANE

..DATE 04/02/94

JUDGMENT

HIS HONOUR: I have only to decide questions of liability between the parties.

I accept Mr Krischock's evidence that at all material times prior to the collision he was unaware of the presence of the plaintiff's vehicle anywhere on the quarry floor, and in particular of its presence on the quarry floor to his rear when he commenced to reverse the loader he was driving. Because Mr Krischock was required to keep himself informed of the presence of vehicles wishing to be loaded, he may well have looked towards that point where Mr Eiser halted his vehicle. However, he did not become aware of the presence of that vehicle. That gesture, however, may well have led Mr Eiser to believe that he could proceed on to the quarry floor to collect a load of overburden. He may have been negligent

in so concluding, but I am not prepared to find that any such negligence was causative of the collision which subsequently took place.

There is no evidence demonstrating to my satisfaction that the plaintiff company or Mr Eiser knew of the procedure which the defendant company wished followed by truck drivers entering the quarry to collect a load. For that reason I am not satisfied that the plaintiff company is guilty of negligence personally. Whilst conceding that it may have been the more preferable course of action, I am satisfied that the evidence of Mr Eiser, Mr Krischock and Mr Peters admits of a finding that, in fact, a variety of ad hoc arrangements existed or had been used for the purpose of bringing trucks down to a loading point.

I am satisfied that Mr Eiser brought his truck to a position in which it remained stationary near the stockpile but to the rear of the defendant's loader. I am satisfied that whilst each of the vehicles remained stationary it cannot be said that Mr Eiser was negligent in halting where he did.

A most significant circumstance, in my opinion, is that Mr Krischock appreciated that on occasions vehicles would come on to the quarry floor for the purpose, amongst others, of taking aboard a load in a manner which can be described as contrary to the preferable system, and that Mr Krischock was aware of the necessity to have regard to the possible presence of such vehicles.

I am satisfied that Mr Krischock knew that he had only a very limited view to the rear through his rear-vision mirror, and indeed it seems clear that the plaintiff's vehicle was stationary outside the range of vision through that mirror. There was a better view to be gained by turning one's head, although there was still a restricted field of vision. The best view was obtained by the driver changing his position in the driving seat before looking to the rear over his shoulder. That procedure was not availed of and so Mr Krischock commenced to reverse his vehicle unaware of the presence of the plaintiff's vehicle to his rear. I am satisfied

that he was negligent in so doing without having taken any steps to make a proper look-out to his rear.

When Mr Eiser became aware that the loader was reversing he, after some other action, sounded his horn. Mr Krischock became aware of that fact but it was too late for him to avoid the collision which took place. No criticism can be made of Mr Eiser.

I do consider that the defendant company is liable personally by reason of its failure to fit the loader being driven by Mr Krischock with external mirrors. Such would have provided a simple and inexpensive method of enhancing the driver's vision to the rear, and it may be said would also have avoided the necessity for any change of seating position to obtain such a view. To that extent, the chances of the driver regularly looking to the rear would have been enhanced.

As to the suggestion that the defendant company might have utilised some method of communication between the weighbridge office and the loader driver, I say no more than that I am not satisfied that, in the circumstances in which this collision came to pass, any such communication has been shown as more likely to have avoided the collision than not.

I find Mr Krischock negligent, and indeed wholly negligent, when it came to causing the collision. I am not persuaded that Mr Eiser has been shown to have been guilty of any negligence contributing to the happening of the collision.

The consequence is that I give judgment for the plaintiff against both defendants. For the reasons expressed during addresses, I adopt the period of three and three quarter years and the interest rate of 7 per cent for the purposes of interest under section 72 of the Common Law Practice Act.

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HIS HONOUR: I award interest in the amount of $8,529.20, which means that judgment will be entered for $41,021.41.

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HIS HONOUR: I order the defendants to pay the plaintiff's costs of and incidental to the action to be taxed.
