IN THE SUPREME COURT OF QUEENSLAND No. 4010 of 1980

CIVIL JURISDICTION

BEFORE MR. JUSTICE MATTHEWS

BRISBANE, 21 MARCH 1985

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BETWEEN:

RAYMOND LESLIE BARRIE — Plaintiff

- and -

JOSEPHINE MARY SLEDGE — First defendant

- and -

BARRY JAMES SLEDGE — Second Defendant

- and -

STATE GOVERNMENT INSURANCE OFFICE (QUEENSLAND) — Defendant by election

JUDGMENT

HIS HONOUR: The collision out of which this action arose occurred on the intersection of Norman Street and Chermside Road North, Ipswich. A small motor cycle being ridden by the plaintiff was approaching that intersection from the west and at the same time as a Holden motor vehicle then being driven by the first defendant and owned by her and her husband, the second defendant, was approaching it from the south. This meant that the Holden

was on the right of the plaintiff, but before entering upon the intersection the first defendant was, by a traffic sign erected on the footpath of Chermside Road North at about the property line along the direction of Norman Street, required to stop. The collision occurred at about eight o'clock in the evening of 12 September 1978.

At that time the regulations relevant to such a sign were quite different from the law which now applies. When a driver on the right had stopped as required by the sign he was then thereafter entitled to right of way over a vehicle approaching on his left. The plaintiff's case is based in the main on two allegations: first it is said that, having regard to the relative positions of the two vehicles at the time when the plaintiff first observed the Holden and what happened thereafter, there is a clear inference to be drawn that the first defendant had not stopped as required by the sign. Secondly, and based on her own admission that, until collision, she had not seen the motor cycle, it is said that, in any event, she was not keeping a proper lookout.

Questions of credibility naturally arise and in respect of them I mention at the outset that I did not form any conclusion that either the plaintiff or the first defendant was an untruthful witness, but they both, I would think, have used the long time which has elapsed since the collision to reconstruct events as they would now wish those events to be seen.

Therefore, there are aspects of the evidence which I approach cautiously. This is why, in considering allegations against the first defendant, I reject the inference contrary, of course, to her evidence, that she did not stop. I do this because I accept her evidence in that behalf and because estimates given of the distances and speed of the vehicles involved do not for me have such force as to lead to a contrary conclusion. I think there was time for her to have made a momentary stop. I use the word “momentary” because I think that the stop probably was just that, but long enough for the first defendant to make

the incorrect assumption that the headlights of the two vehicles which she observed, one to the left and one to the right, were on the only vehicles approaching the intersection. I would add that probably she had already made that assumption before she stopped.

The question then arises why she did not see the motor cycle. She says it must have been without a headlight, but here again I accept the sworn evidence on the subject rather than the inference. I find that the motor cycle did have a headlight burning and that even if that headlight was not a very strong light it would have been observed by the first defendant had she been keeping a proper lookout. She was, in my view, guilty of negligence.

Against the plaintiff it was asserted that he had been negligent in failing to keep a proper lookout. There was another allegation that he was travelling without having his headlight alight, and it was also said that he was affected at the time by consumption of alcohol. I have, in effect, already dealt with the question of the headlight, and the evidence in respect of consumption of beer by the plaintiff prior to his leaving for his home that evening is such as to lead me to conclude that at the relevant time he drank no more than four beers. This, on his evidence, had not affected his capacity to control the motor cycle, and I accept this was so. However, as I have said, he did not see the Holden stop and it is probably so that after first observing that vehicle he concentrated his attention behind him for a comparatively long period. I am unable to understand his failure to see the Holden after first observing it and his travelling to the intersection as he did, except on the basis that this comparatively long time amounted to a failure to keep a proper lookout. He also was, in my opinion, negligent.

Had the first defendant seen the motor cycle, she would probably have not claimed any right of way over it, but if the plaintiff had seen the Holden stop and then start to cross on to the intersection, he would probably

have conceded right of way to it. In these circumstances, I think that the drivers could be said to be equally to blame and I so find.

The plaintiff was born on 30 August 1933. As a result of the injuries suffered by him in the collision, his right leg below the knee was amputated and thereafter, he underwent treatment, including operative treatment, until early 1980 and he has been fitted with a prosthesis. He obviously endured, during the period of treatment, a deal of pain and discomfort and from then on and in the future, the loss of amenities of life are quite significant for him. He now has no pain, but some discomfort from chafing. The loss of part of his leg has resulted in assessments of disability of the whole leg at about 70 per cent and under the conventional head of pain and suffering endured and to be endured and loss of enjoyment of life, I would assess the sum of $45,000, observing in passing that the figure may be a little generous because the plaintiff now suffers no pain and will not do so in the future and he has a quite satisfactory prosthesis. Of that sum, I would attribute $15,000 to the period to trial.

Economic loss is a more difficult subject. The plaintiff was a wood machinist and at the time of his injury was a member of the R.A.A.F. He had the rank of sergeant and using crutches, he resumed duties, although on a different basis, three months after the collision and continued in the R.A.A.F. until 30 June, 1980 when he was due for discharge. He had not, before the relevant accident, intended to apply for re-engagement and in the event, did not do so. For some twelve months after retirement from the Air Force, he did not seek other employment and for some time prior to trial, he has not done so. In the intermediate time, he worked in his trade for two comparatively short periods for a firm of shop fitters. His net pay for the periods he worked was $5,696.49. He is, on the evidence, a capable and keen worker and for sometime during the six and a half years which have elapsed since the collision, he was earnest in

his attempts to find work. His failure to do so resulted not only from his disability, but also to some extent because of economic conditions. It is obvious that to assess his loss of earning capacity to trial and thereafter is even more a matter of rough estimation than is usually the case. He says now that he will try to get a job as a taxi driver and gives an impression of confidence in his doing so. He has found it difficult to carry on as a wood machinist and is thought by himself and also by Philip Edward Brown, a witness on whom I would rely, to be a source of danger to himself and others if he does do that work. In the circumstances, it seems reasonable that he should not attempt such work and for the future. I think that I should consider him as having lost the capacity to do it. He is, of course, limited in respect of other fields also. Accepting, as I think will be the case, that he drives a taxi, it is unlikely that he will earn what he would have been able to earn as a wood machinist.

For his lost earning capacity to trial, I would assess the sum of $25,000, taking into account in arriving at that figure the sums earned by him during that period. For the future, I would assess the loss at $45,000, which is approximately the present value of $90 per week, calculated for a period of thirteen years. To this figure I should add a loss for future expenses in respect of the prosthesis and this I would fix at $7,000. The total of the general damages assessed is therefore $122,000, of which $30,000 may be attributed to the period to trial.

Special damages are accepted as having been $3,097.89 and bearing in mind what I said about liability, there will be judgment for the plaintiff against the defendant by election in the sum of $62,549 with costs, including reserved costs, to be taxed.

I order the defendant by election to pay to the plaintiff interest since the date of the collision to trial on the sum of $15,000 at seven per cent per annum.
