IN THE SUPREME COURT OF QUEENSLAND No. 2717 of 1975

FULL COURT

BEFORE:

Mr. Justice Douglas

Mr. Justice W.B. Campbell

Mr. Justice Williams

BRISBANE, 13 NOVEMBER 1980

BETWEEN:

GEORGE GRIMSHAW (Plaintiff) Respondent

- and -

THE NOMINAL DEFENDANT (QUEENSLAND) (Defendant) Appellant

JUDGMENT

MR. JUSTICE DOUGLAS: This is an appeal in respect of liability by the Nominal Defendant. The matter arises out of an alleged collision which took place on Ipswich Road between 9 and 9.30 p.m. on 4 April 1974 near Wacol.

Ipswich Road has four lanes at that point, two inbound and two outbound. The inbound lanes are separated from the outbound lanes by a median strip.

It was raining heavily. The respondent was driving in the outbound lane close to the median strip. There was a

marked centre line separating the two outbound lanes. On the evidence, and the finding there was misting of the respondent's windscreen, not sufficient to prevent the respondent's vision in respect of the median strip and the centre line.

On the respondent's version, a semi-trailer or perhaps some other type of truck, which was to be the vehicle represented by the Nominal Defendant, came up behind the respondent's vehicle in the outside lane. On the respondent's version, there was a collision between the semi-trailer and his motor vehicle which propelled his motor vehicle from the inside outbound lane to the inside inbound lane and his vehicle came into collision with an oncoming vehicle, and the respondent suffered severe injuries.

The matter came on for trial and the issue of negligence was found in favour of the respondent and damages were awarded to him. As I have said previously, this appeal is in relation only to negligence. Now, His Honour made this finding:

> “All in all, I am satisfied that essentially he is telling the truth, and I find that the collision was caused by an unidentified semi-trailer encroaching into the inner lane and colliding with the plaintiff's vehicle, causing it to cross the median strip out of control and collide with the inbound Valiant sedan.”

It is put to this court for the appellant that His Honour was wrong in concluding that the respondent had proved it was more probable than not that the truck had moved across at all, or in the alternative, sufficiently far to collide with the respondent's vehicle. Secondly, on the respondent's evidence taken as a whole, it was impossible that the truck should have moved across so far. Thirdly, as a matter of probabilities, the only conclusion that could properly be drawn was that the respondent himself was to blame. The appellant went on to advance a number of hypotheses from which it was said that the

establishment of the cause of the veering of the plaintiff's vehicle depended upon the acceptance of one or more of them. I do not set out the hypotheses put forward because I do not think it is necessary to consider them. Going back to what His Honour found, it is obvious that His Honour accepted that at all times the respondent was driving his motor vehicle within the bounds of the lane in which he travelled.

It is also obvious that His Honour accepted that a mark which was found on the passenger side of the respondent's vehicle after the collision was consistent with tyre rub. Now, if His Honour accepted both of these facts, there remains the further fact to be found that the vehicle represented by the appellant came into the respondent's lane. It is obvious that His Honour drew the inference that this was so from the fact that there was evidence which he accepted that the respondent's vehicle was always in its correct lane, and he accepted the fact of the mark on the respondent's vehicle was attributable to the other vehicle. Therefore, His Honour accepted the further conclusion which was open to him that the truck or semi-trailer or whatever it was came out of its lane into the respondent's lane, collided with the respondent's vehicle and thereby caused a collision.

On the evidence which has been referred to us, it was plainly open to His Honour to come to the conclusions which he did, and in those circumstances, I am of the opinion that his judgment should not be disturbed and that the appeal should be dismissed, with costs.

MR. JUSTICE W.B. CAMPBELL: I agree with the order proposed by the learned presiding judge, and with his reasons. In this case, there was clear evidence given by the respondent that he remained in his correct lane until his vehicle was struck by the overtaking truck. There was also evidence that the respondent's vehicle was struck on its passenger side by the tyre of another vehicle. His

Honour, as the presiding judge has said, accepted the plaintiff's evidence.

There are only two points on which I would like to say something. These were two points which appeared to loom large in the argument of Mr. Callinan for the appellant. The first was that the respondent had made an error in his estimation of the distance his offside wheels and his nearside wheels were from the white line and the median strip respectively. His Honour referred to this in his reasons for judgment, saying that one or perhaps both of those estimates must have been erroneous. This does not mean that His Honour erred in accepting the respondent's evidence that he was at all material times in his correct lane.

The other point made by Mr. Callinan was that the respondent should have seen the overtaking truck changing direction prior to the incident occurring. Mr. Callinan appears to rely upon this to throw some doubt on the respondent's evidence, suggesting that the respondent's evidence that he was in his correct lane at all times could not have been accepted. Again, His Honour referred to this fact during his reasons for judgment, saying:

> “The explanation may lie in the heavy rain, the need to concentrate on the road in these circumstances, and the fact that, after all, events such as this can occupy a very short space of time.”

These remarks by His Honour are, in my opinion, unexceptionable.

MR. JUSTICE WILLIAMS: I agree with all that my brothers have said, and with the order proposed. I should like to add that it seems to me that this case demonstrates the difficulties that face the Nominal Defendant in actions such as this in contesting a plaintiff's version where there is no other witness associated with the incident to give an account of what had occurred.

The pleadings indicate that the case was one of “hit” or “no hit” as far as the semi-trailer or truck and the plaintiff's vehicle were concerned. That there was a collision between the plaintiff's vehicle and a Valiant was, of course, undeniable, the plaintiff's vehicle having crossed from its correct side of the roadway over the median strip and onto its incorrect side in the path of the Valiant. The issue was what caused it to go into and over the median strip. Was it something associated with the plaintiff himself, his condition or the manner in which he was driving his vehicle, quite unrelated to whether or not there was a semi-trailer or a truck ever there at all? Assuming that there was a semi-trailer or a truck, (and of that the plaintiff, who was accepted by His Honour, swore positively), then the question really before His Honour was, did the semi-trailer or truck actually come in contact with the plaintiff's vehicle. If it did not, then either it was due to the plaintiff's own fault or the plaintiff had failed to establish responsibility on the part of the defendant. The plaintiff's evidence was clearly that at all times he was on the correct side of the road. He said, “I stayed in the one lane all the way.”, and further, in answer to His Honour's question: “You are saying you maintained that position until you were struck; is that right?”, he said, “Yes, Your Honour.” That was in answer to a question of which Mr. Callinan, Q.C., endeavoured to make considerable capital. It concerned where in his correct lane the plaintiff was driving. It does not in any way militate against the fact that at all times the plaintiff was, according to himself on evidence which His Honour accepted, in his correct lane.

His Honour then adverted to what he said was the one objective piece of evidence, namely the mark on the vehicle. If you take the mark on the vehicle, as His Honour found, as being indicative of a hit, then adding that to the positive sworn and accepted evidence that he was always in his correct lane, then clearly the defendant was responsible. There is no scope then for suggesting that the plaintiff's vehicle may have wandered into the semi-

trailer's lane and made contact with it and thereby produced the mark. Indeed, the case seems not to have been fought upon that basis at all.

I agree that the appeal should be dismissed.

MR. JUSTICE DOUGLAS: The appeal is dismissed, with costs.
