

IN THE SUPREME COURT OF QUEENSLAND Appeal No. 68 of 1981

FULL COURT

BEFORE:

Mr. Justice Matthews

Mr. Justice Kelly

Mr. Justice Macrossan

BRISBANE, 30 AUGUST 1982

BETWEEN:

BRIAN JOHN HILL

Respondent (Plaintiff)

- and -

WILLIAM GEORGE FRANCIS DELECHANTOS

Appellant (Defendant)

JUDGMENT

MR. JUSTICE MATTHEWS: This appeal is brought from the decision in a running down case whereby both the appellant and respondent were found to be negligent, each of them for fifty per cent of responsibility. The appellant seeks to set aside the finding of negligence against him or, alternatively, urges that the degree of negligence of the plaintiff was higher than was found by the trial judge.

Whilst particular findings of fact are not the basis of the appellant's submissions, it was pointed out that on His Honour's findings the respondent had given no

indication of his intention to turn, had not kept a proper lookout, was struck so far as his motorbike was concerned, on the right-hand side by the vehicle of the appellant, and that he may well have been in breach of some of the traffic regulations. The starting point in this, as in any running down case, is to determine whether the defendant was negligent and, to me, it seems that the trial judge's finding of negligence against the defendant and whether the submissions for the appellant resulted in a different conclusion, must be examined from the words His Honour used when he said this:

"I find the facts broadly to be in accordance with the version of the plaintiff so far as the movement of his motorcycle was concerned. He moved it gradually to the right until it was in the right hand lane where he and his motorcycle were struck on the right hand side by the vehicle of the defendant."

These conclusions of His Honour arise from the fact that prior to the collision and travelling in a road which had two lanes travelling inbound towards Townsville marked on it, the respondent was riding his motorcycle somewhat to the left of the left-hand lane, and the appellant was driving his motor vehicle in the right-hand lane. That the motorcycle moved into that right-hand lane is undoubted, but the question at the heart of the problem, it seems to me, is whether he did it in His Honour's word "gradually" or as His Honour said on another occasion "steadily". The evidence of the respondent which led to this conclusion may be criticised as being somewhat vague. He said on one occasion he did not think he had made a sudden manoeuvre or an oversharpe manoeuvre; but His Honour, in my opinion, had an advantage over us in that he obviously accepted the expressions of the respondent in this behalf, and accepted those expressions as a basis for what he said in the passage I have quoted. If the motorcycle did not make a sudden movement to its right but made a gradual movement, then it follows that this Court, in my opinion, should not interfere with His Honour's findings of negligence on the part of the appellant.

Whether the division of responsibility should be altered is the next question, but remembering that an appellate Court will not lightly interfere with a division of responsibility, on the facts as found by His Honour in this case I would not alter the apportionment as His Honour has made it. For those reasons, I think that the appeal should be dismissed.

MR. JUSTICE KELLY: I agree.

MR. JUSTICE MACROSSAN: I agree.

MR. JUSTICE MATTHEWS: That will be the order of the Court. The appeal is dismissed with costs.