5/99; [1998] VSC 169

SUPREME COURT OF VICTORIA

PASHA v EDMONDS and METROPOLITAN AMBULANCE SERVICE

Smith J

2, 9 December 1998 — (1998) 28 MVR 217

PROCEDURE – DUTY TO GIVE REASONS FOR DECISION – REASONS NOT REQUIRED TO BE GIVEN IN EVERY CASE – MOTOR VEHICLE COLLISION CASE – NOT A SIMPLE INTERSECTION COLLISION CASE – AMBULANCE CROSSING INTERSECTION AGAINST A RED LIGHT – CLAIM DISMISSED BY MAGISTRATE – NO REASONS GIVEN – WHETHER MAGISTRATE IN ERROR.

1. As a general rule a magistrate should state reasons for the decision. However, there are exceptions to the rule and it is clear that a magistrate does not on every occasion commit error if he or she fails to state reasons. For example, reasons may not be necessary having regard to the simplicity of the context of the case and the state of the evidence.

***Sun Alliance Insurance v Massoud* [1989] VicRp 2; (1989) VR 8; and**

***Brittingham v Williams* [1932] VicLawRp 35; [1932] VLR 237; 38 ALR 176, referred to.**

2. Where a magistrate heard claims involving relatively large sums of money arising from a motor vehicle collision and the fact-situation was not one of a simple intersection collision but one where an ambulance was crossing against a red light, the mere statement of the magistrate's decision to dismiss the claim and make an order on the counterclaim did not indicate sufficiently the basis of that decision nor was it immediately clear why the magistrate should have reached his decision. In those circumstances the magistrate was in error in failing to give reasons for his decision.

SMITH J:

The Proceedings

1. This is an appeal from an order made in the Magistrates' Court at Melbourne on 21 August 1998 in civil proceedings in which Hina Pasha, the appellant in these proceedings, sought damages arising out of a collision with a vehicle driven by the first respondent on behalf of the second respondent. Ms Pasha had alleged that the collision was caused by the negligence of the respondents. The respondents had counter-claimed alleging negligence on the part of Ms Pasha.

2. At the conclusion of the evidence, the learned magistrate dismissed Ms Pasha's case and upheld the case of the respondents. He gave no reasons. He ordered that Ms Pasha's claim be dismissed. As to the counter-claim, he ordered her to pay $31,696.72 damages together with $769.06 interest and costs of $2,892.20.

The Appeal - Question of Law

3. In giving directions in this matter pursuant to Rule 58.09 of the *Supreme Court Rules*, the Master identified the following question of law to be decided -

"whether the court from which the appeal lies was obliged to give reasons for its decision.

The Evidence and Hearing Below

4. The respondents to the appeal do not dispute the account of the hearing given in the affidavits filed by the appellant save and except to state that the account of the cross-examination of the plaintiff is inadequate. They do not give details. Counsel who appeared for the defendant at the hearing has sworn an affidavit for the respondent. He concedes that such omissions as occur in the affidavits filed for the appellant are not critical to the consideration of the sole ground of appeal.

5. The affidavits filed by the appellant record that she was driving along the Hume Highway at 8:30am on the morning of 22nd September 1997 when she came to the intersection with Camp Road. As she was passing through the intersection her car came into collision with an ambulance driven by the first respondent which had come from her right. It was common ground that the traffic light facing her was green and that facing the ambulance was red. The plaintiff had given

evidence that she had heard no sirens and did not see the ambulance approaching until it was too late to do anything. She gave evidence that she had driven slowly into the intersection and that, to her right, there were large semi-trailers which obscured her vision. They, she said, appeared to be moving slowly. She said she didn't have much room to move when she saw the ambulance because she was travelling in the far left hand lane of the Hume Highway and there was a traffic island on her left. She claimed that she swerved slightly to her left and that the right hand off side of her vehicle collided with the left side of the ambulance.

6. Her affidavit records that the first respondent gave evidence that he was the driver of the ambulance and that he was on his way to a Code 1 emergency. He gave evidence that the sirens and warning lights on the ambulance were operating and that as he went through the intersection he was "crawling" through it. He said he checked every lane going across Camp Road before proceeding through. He said he stopped half way across the intersection and then looked at a semi-trailer driver in what he thought was the farthest left lane. He said that at no stage did he see the appellant's car and he only became aware of it after the collision.

7. In her affidavit she also deposes that counsel for the respondents called another ambulance officer, Jeffrey Pope, who was a passenger in the ambulance. He gave evidence that he activated the sirens and lights and that he surveyed the whole intersection before entering into it. He said the ambulance was travelling at a maximum speed of ten kilometres per hour and that he "cleared all the lanes". He said that he checked the farthest left lane and that it appeared to be clear. He said that after the collision he switched off the sirens and emergency lights.

8. The exhibits to the affidavit contained stills taken from a video tape of the scene of the collision after it occurred. They show the positions of the vehicle when they came to a stationary position. Both vehicles were in Camp Road to the left of the lane in which the plaintiff had been travelling. Thus both vehicles had moved in the direction the ambulance was travelling. The ambulance had come from the plaintiff's right crossing the Hume Highway. The plaintiff's vehicle was at a 45º angle to Camp Road near the centre island of Camp Road. The rear bumper bar was a short distance from the continuation of the Hume Highway kerb line. The ambulance was lying on the driver's side at right angles to Camp Road with the rear abutting the kerb of the centre island of Camp Road. It had travelled approximately three car lengths into Camp Road.

9. Plainly, the learned Magistrate took the view that the plaintiff had failed to establish negligence on the part of the defendant driver and that the defendant on the other hand had established negligence on the part of the plaintiff. The learned Magistrate, however, did not give reasons for these decisions.

10. In the affidavit filed for the respondents it is noted that counsel for the plaintiff did not ask the learned Magistrate for reasons for his decision nor seek any other explanation on any issue before the court. It deposes that ample opportunity existed for this to occur given that counsel for the plaintiff subsequently indicated to the court that he had received instructions from his client that the counter-claim quantum of damages was no longer in dispute.

The Relevant Law

11. The duty of a court to give reasons has been the subject of a number of decisions and most recently considered in this court by Gillard J in *Bevis v Alex Gregson Roof Tiles Pty Ltd* (unreported, 19 June 1997).

12. It is common ground that as a general rule a judge or a magistrate should state his or her reasons. Both parties referred to cases such as *Sun Alliance v Massoud* [1989] VicRp 2; (1989) VR 8 and the cases referred to in that decision (at p19). Like most rules, however, there are exceptions and it is clear that a judge does not on every occasion commit error if he or she fails to state reasons. In *Sun Alliance Insurance v Massoud* (above at VR 19) Gray J (with whom Fullagar and Tadgell JJ agreed) stated:

> "That does not mean that on every occasion a judge will be in error if he fails to state reasons. The simplicity of the context of the case or the state of the evidence may be such that a mere statement of the judge's conclusion will sufficiently indicate the basis of a decision. Some examples of such situations were given by Cussen ACJ in *Brittingham v Williams* [1932] VicLawRp 35; [1932] VLR 237 at 239; 38 ALR 176. In such cases the foundation for the judge's conclusion will be indicated as a matter of necessary inference ..."

13. Thus his Honour referred to two situations where reasons may not be necessary. The first was the simplicity of the context of the case and the other was the state of the evidence. In *Brittingham v Williams* the following examples were given (at 239):

> (a) a case which turns entirely on a finding in relation to a single and simple question of fact;
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> (b) a case which has been so conducted that the reason or reasons for the decision is or are obvious to any intelligent person (see *Lamb v Toledo-Berkel Pty Ltd* [1969] VicRp 43; [1969] VR 343, 345; (1968) 14 FLR 181);
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> (c) where a claim or defence has been presented in so muddled a way that it would be a waste of public time to give reason; and
>
> (d) cases where it may not be necessary or desirable to give evidence.

Counsel for the respondents pointed out that, in a number of cases where error has been found, the result of the case appeared to be contrary to the overwhelming preponderance of evidence (*Di Iacovo v Lacanale* [1957] VicRp 78; (1957) VR 553 at 555; *Lock v Gordon* [1966] VicRp 23; [1966] VR 185 at 187; *Sun Alliance Insurance v Massoud* at 18; and *Bevis v Alex Gregson Roof Tiles Pty Ltd*, above at 5, described as "the other end of the spectrum".)

14. Reasons advanced in the authorities for the imposition of the duty to give reasons are various. In *Housing Commission of New South Wales v Tadmar Pastoral Co Pty Ltd* [1983] 3 NSWLR 378 at 386; (1984) 54 ALR 155; (1983) 53 LGRA 325; (1984) 58 ALJR 553 Mahoney JA said that the giving of reasons was "an incident of the judicial process" (see also *Public Service Board NSW v Osmond* [1986] HCA 7; (1986) 159 CLR 656; 63 ALR 559; (1986) 60 ALJR 209 at 213). In *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 279-80) McHugh JA as he then was, commented that in the absence of reasons a judicial decision cannot be distinguished from an arbitrary decision. His Honour in that case identified at least three purposes. One was to enable to parties to see the extent to which their arguments had been understood and accepted as well as the basis of a judge's decision. The second advanced was that it furthered judicial accountability - without reasons it is difficult to review a decision. The third point raised was that it enabled interested persons to ascertain the basis upon which such cases will probably be decided in the future. In *Sun Alliance Insurance v Massoud* (at 18), Gray J commented that reasons will be inadequate in his view if, inter alia, "justice is not seen to have been done." This it seems to me is a very important separate or underlying consideration. (See also *Public Service Board of NSW v Osmond* [1986] HCA 7; (1986) 159 CLR 656 at 668; 63 ALR 559; (1986) 60 ALJR 209.)

Arguments of the Parties

15. Relying on the above authorities, counsel for the appellant submitted that reasons were required. Counsel for the respondents, on the other hand, submitted that this case was a very simple and straightforward one and that the decision is clearly explicable on the grounds that the learned magistrate rejected the evidence of the plaintiff and accepted that of the driver of the ambulance and his passenger. In that situation it is said the statement of his Worship's decision was sufficient to indicate the basis of the decision.

Analysis

16. Having considered the material placed before me I am satisfied that the mere statement of the magistrate's decision does not indicate sufficiently the basis of that decision. In particular, it is not immediately clear why the magistrate should have reached his decision.

17. Firstly, if it be accepted, as was argued for the respondents, that the learned magistrate rejected the evidence of the plaintiff and accepted the evidence of the first respondent and the passenger, it is not clear why he should necessarily have done so. The ambulance came to a halt about three car lengths from the Hume Highway on its side. That fact seems to me to raise a question warranting consideration and comment as to whether the ambulance was "crawling" very slowly across the Hume Highway as was said in evidence by its driver and passenger and therefore raises an issue for comment as to the credibility of their evidence, evidence on which he said he relied.

18. Further, if the evidence of the driver of the ambulance and his passenger is accepted, the situation was not one of a simple intersection collision with the plaintiff failing to give way to the vehicle on her right. The situation was one where the ambulance was crossing against a red light with a green light favouring the plaintiff. This was a dangerous situation and a question arose for consideration and comment as to what standard of care was expected of the ambulance driver and his fellow employee, the passenger, in negotiating that unusual situation. Next, it appears that neither saw the plaintiff's vehicle.

A question worthy of consideration and comment from the learned magistrate was whether and to what extent that failure to see the plaintiff's vehicle was the result of a failure to proceed at a proper speed or a failure to keep a proper look out (or both). As to keeping a proper look out, I note that the evidence of the driver, as recorded in the appellant's affidavit, was that he assumed the semi-trailer was in the left lane. If that account be correct, he did not notice that there was another lane and that it did not have a vehicle in it as he approached it. Did that constitute negligence? Further, did the driver rely on the passenger to keep a proper lookout? If not, should he have taken steps to use him for that purpose? Alternatively, there may have been an issue as to whether, exercising all due care, the collision could not have been avoided.

19. I think it also relevant to take into account, in deciding whether reasons should have been given, the fact that relatively large sums of money were involved.

20. Counsel for the respondents submitted that the failure to seek reasons gives rise to the inference that the reasons for the decision were obvious. Reliance was placed on a statement in the judgment of Gillard J in *Bevis v Gregson* above (at p6). While his Honour did not cite authority for that proposition it would seem to me to be a reasonable proposition to advance – that is, that a failure to seek reasons is capable of giving rise to an inference that, at the time, the reasons for the decision were seen to be obvious. I do not think the inference can be taken any further than that. It may be, for example, that in the heat of the moment, and perhaps in a state of some shock, the lawyers acting for the plaintiffs thought they understood the reasons but subsequently changed their views. Ultimately, however, whatever inference one might draw from the conduct of the parties at the time, the question ultimately is whether in all the circumstances the duty to give reasons arose.

21. I am satisfied that the circumstances of the case were not such as to make it obvious what the basis of the decision was and that reasons should have been given. There is, however, a further consideration.

22. It is common ground that the evidence of the three witnesses referred to above concluded shortly before 1:00pm. The respondents wished to call an independent witness. It appears that the learned Magistrate indicated that the evidence of the independent witness would probably take more than five minutes and he therefore adjourned the proceedings until after lunch. On the resumption after the luncheon adjournment, his Worship addressed counsel for the respondents, Mr Birchill, saying that he had thought about the matter over lunch and that he did not need to hear from the other witness for the respondents if that witness's evidence did not add anything further to the case. Not surprisingly, counsel for the respondents did not call the independent witness and his Worship then proceeded to give his decision dismissing the plaintiff's case and upholding the case for the defendants.

23. I am sympathetic towards anything done by judicial officers in the interest of expedition. No doubt his Worship was motivated by that concern. What he indicated by his comment, however, was that he had reached a conclusion which was favourable towards the defendants on the evidence then before him and by that comment he gave the defendants the benefit of that information. In those circumstances it became even more important, bearing in mind the underlying concern that justice be seen to be done, that his Worship stated what his reasons were. In the absence of such reasons, the concern identified by McHugh JA is exacerbated - namely, that a decision without reasons cannot be distinguished from an arbitrary decision.

Conclusion

24. For the above reasons I am satisfied that a duty to give reasons arose and that the failure to give reasons was a breach of that duty. It follows from those conclusions that an error of law

has been shown (*Sun Alliance Insurance Ltd v Massoud* (above); *Lock v Gordon* [1966] VicRp 23; [1966] VR 185).

25. The issue remaining to be considered is the disposition of the matter. Counsel for the respondents submitted that, if the appeal was successful, the matter should be referred to the learned magistrate with a direction to give reasons. This was opposed by counsel for the appellant who seeks a rehearing of the matter. In support of her case, the appellant filed an affidavit on the day of the hearing of the appeal which attached a letter from the Deputy Registrar, Magistrates' Court of Victoria, dated 7 October 1998. The substance of that letter was as follows:

> "I have been advised by the Magistrate that he has no note on the above matter and accordingly is unable to provide you with any copies. Please note that a similar request has been received from Tress Cocks and Maddox, solicitors for the defendant. I have today replied to their request in similar terms."

The solicitors for the defendants concede that they did receive a copy of that letter.

26. Counsel for the appellant submitted, that having regard to the time that has now elapsed, and bearing in mind that the learned Magistrate has no notes, his Worship cannot be expected to be able to give adequate reasons.

27. Counsel for the respondents brought to my attention, with the consent of the appellant, the fact that on 16 October 1998 an offer had been made by the respondents to the appellant to return to the learned magistrate to make a joint application for reasons and that that offer had been rejected. It was put for the respondents that the appellant is not concerned about getting reasons but is seeking to have another hearing of her claim.

28. No doubt the appellant is motivated, at least, in part by the desire to secure another hearing. Nonetheless, in view of the information available in October as to the absence of notes, it was not unreasonable for the appellant to reject the proposal to return to the learned magistrate to seek his reasons some two months after the decision.

29. Error of law having been shown, the appeal must be allowed. At to the disposition of the matter, the fact that the learned magistrate has no notes with which to refresh his recollection makes it impractical in my view to return the matter to him with a direction merely to give reasons. I, therefore, propose to remit the proceedings to the Melbourne Magistrates' Court for rehearing.

30. I will hear submissions or costs before finally disposing of the matter.

APPEARANCES: For the appellant Pasha: Mr KA Boden, counsel. Starnet Legal Pty Ltd, solicitors. For the respondents: Ms F O'Brien, counsel. Tress Cocks Maddox, solicitors.
