

20/80

QUEEN'S BENCH DIVISION at MANCHESTER (ENGLAND)

ROBERTS and ORS v RAMSBOTTOM

Neill J

31 January, 7 February 1979 — (1980) 1 All ER 7; [1980] 1 WLR 823

NEGLIGENCE – DEFENCE – SUDDEN EVENT OR AFFLICTION – MALFUNCTION OF MIND – ROAD ACCIDENT – DRIVER SUFFERING STROKE SHORTLY BEFORE ACCIDENT – STROKE CAUSING IMPAIRMENT OF DRIVER'S CONSCIOUSNESS – DRIVER'S CONTROL OF VEHICLE IMPAIRED – DRIVER NOT AWARE OF STROKE – DRIVER AWARE OF FEELING QUEER AT TIME OF ACCIDENT – WHETHER IMPAIRMENT OF CONSCIOUSNESS A DEFENCE – WHETHER DRIVER LIABLE FOR DAMAGE CAUSED BY ACCIDENT.

On 4th June 1976 at about 10.20 a.m. Mrs R, the second plaintiff, parked a car belonging to her husband, the first plaintiff, outside a launderette. As she alighted from the car a car driven by the defendant, who was aged 73, collided head on with it damaging it beyond repair and she and her daughter, the third plaintiff, who was with her in the car, were injured. Mr R's husband brought an action against the defendant in respect of the damage to his car and certain other loss resulting from the collision, and Mrs R and her daughter claimed damages against the defendant in respect of the injuries they had suffered.

No criticism was made of Mrs R's driving and it was not in dispute that the circumstances of the collision established a *prima facie* case of negligence against the defendant entitling the plaintiffs to damages. The defendant contended however that he was not liable to the plaintiffs because 20 minutes before the accident he had suffered a stroke which so clouded his consciousness that from that moment he had been, through no fault of his own, unable properly to control his car or to appreciate that he was no longer fit to drive.

The evidence showed that on the day of the accident the defendant had left his home at about 10 a.m. to go to his office some 2½ miles away. He had left without taking his wife with him contrary to arrangement. His journey involved him in travelling through a busy part of the town and going round a number of corners. Shortly before colliding with the first plaintiff's car the defendant had struck a parked van, insisting when asked by its occupants that he was all right, and had knocked a boy off his bicycle although there had been plenty of room for him to pass. The defendant told a police constable at the hospital where he was taken after the collision with the first plaintiff's car that after each collision, he had felt queer but had felt all right afterwards. The next day the defendant could remember nothing of the journey.

The judge found that the defendant had suffered a stroke shortly before leaving his home on the day of the accident, that before he suffered the stroke he had had no previous symptoms or warning signs, that following the onset of the stroke his consciousness had been impaired and that state of impaired or clouded consciousness had continued throughout the journey from his home to the point of impact with the first plaintiff's car, that he had experienced the feelings of queerness which he had described to the constable and did know at the time it had happened that he had hit the parked van, that throughout the journey and up to the moment of impact with the first plaintiff's car he had been sufficiently in possession of his faculties to have some, though an impaired awareness of his surroundings and the traffic conditions and to make a series of deliberate and voluntary though insufficient movements of his hands and legs to manipulate the controls of his car, and that he had at no time been aware of the fact that he had been unfit to drive. On the question whether the defendant's physical condition absolved him from liability for negligence.

HELD: In an action for negligence arising out of a motor vehicle accident where shortly before the accident the defendant suffered a malfunction of the mind which so clouded his consciousness that from that moment he was, through no fault of his own, unable properly to control his vehicle or to appreciate that he was no longer fit to drive, the defendant was not able to escape liability unless his actions had been wholly beyond his control, as in cases of sudden unconsciousness, i.e. he could only avoid liability where the facts established what the law recognised as automatism. But, if he retained some control, albeit imperfect, and his driving, judged objectively, was below the required standard, he remained liable, in the same way as a driver who was old or infirm. It was clear from the medical evidence that the defendant's condition did not amount in law to automatism, and he was accordingly liable to the plaintiffs. Alternatively he was liable on the ground that he had continued to drive when he was unfit to do so and should have been aware of his unfitness. Although he was, owing to his mental state, unable to appreciate that he should have stopped and although he was in no way morally to blame, that was irrelevant to the question of legal liability since impairment of judgment was not a defence. There could accordingly be judgment for the plaintiffs.

Hill v Baxter (1958) 1 All ER 193; [1958] 1 QB 277; (1958) 42 Cr App R 51; and

Watmore v Jenkins (1962) 2 All ER 868; [1962] 2 QB 572, applied.