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SUPREME COURT OF NEW SOUTH WALES — COURT OF APPEAL

BLACKMAN v COMMISSIONER for MAIN ROADS

Reynolds, Hutley and Bowen JJ A

30 October 1973

PROCEDURE – CLAIM FOR DAMAGES FOR NEGLIGENCE – MOTOR VEHICLE COLLISION – TRUCK DRIVER REQUIRED TO APPLY BRAKES PRIOR TO COLLISION – MECHANICAL FAILURE OF TRUCK – SUCH FAILURE NOT CAUSALLY RELATED TO THE COLLISION – WHETHER ONUS WAS PLACED ON THE TRUCK DRIVER TO PROVE THERE WAS A MECHANICAL FAILURE – WHETHER THE QUESTION OF ONUS WAS RELEVANT.

Claim for damages for negligence when collision between plaintiff's vehicle and defendant's truck when travelling in opposing directions at end of one-lane bridge. Plaintiff, moving slowly had almost crossed bridge. Defendant, travelling at 35-25 mph veered to one side on muddy surface and skidded crosswise into the plaintiff. He explained that his wheels locked because of mechanical failure. Police evidence substantiated that his wheels were fixed and immovable after the accident. Trial judge found that the wheel lock was probably caused by hard braking.

HELD:

1. The trial judge was probably right when he said that where a defendant sought to escape from a situation where on the face of it he was negligent, by alleging some mechanical failure for which he was not responsible that in that case there was a burden on him to adduce some evidence to support his contention.

2. However, given the justifiable findings of fact which concluded the case against the appellant, the trial judge's observation on the law as to onus played no part in his determination.

3. Furthermore, there was not any evidence of mechanical failure causally related to the accident to require consideration by the tribunal of fact.

4. Accordingly, onus in those circumstances was irrelevant.

REYNOLDS J: It is submitted that where His Honour went on to say, as I have quoted, 'It has been put to me that there was some mechanical failure. The onus would be on the defendant to establish this.', that His Honour has misdirected himself in law and a new trial is called for. His Honour had already made a finding that the defendant had to apply his brakes so hard that the wheels locked, and it is not suggested – nor can it be suggested – that in making this finding he had misdirected himself in point of onus.

If the learned District Court Judge was intending to deny by what he said that the onus of establishing negligence on the part of the defendant was upon the plaintiff from the first to last, then what His Honour said in my opinion, was incorrect. If His Honour meant no more than that where a defendant seeks to escape from a situation where on the face of it he was negligent, by alleging some mechanical failure for which he was not responsible that in that case there is a burden on him to adduce some evidence to support his contention, His Honour was probably right.

In the present case what His Honour said was of no moment. His Honour had already made justifiable findings of fact which concluded the case against the appellant, and His Honour's observation on the law as to onus played no part in his determination.

Furthermore, there was not, in my opinion, any evidence of mechanical failure causally related to the accident to require consideration by the tribunal of fact. Onus in these circumstances was irrelevant.