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## FEDERAL COURT OF AUSTRALIA

**MILLAR v CANDY****Blackburn, Franki and McGregor JJ****15 December 1981 — [1981] FCA 208; (1981) 38 ALR 299; (1981) 58 FLR 145****CIVIL PROCEEDINGS – DAMAGES – LIABILITY FOR NEGLIGENCE – ECONOMIC LOSS – MOTOR VEHICLE DAMAGED BEYOND REPAIR – LIABILITY OF TORTFEASOR BEYOND VALUE OF VEHICLE – DAMAGES FROM LOSS OF USE OF VEHICLE – MONEYS PAYABLE UNDER HIRE-PURCHASE AGREEMENT.**

A car in the respondent's possession under hire-purchase was damaged beyond repair as a result of the appellant's negligence. The Supreme Court of the ACT made an order for —

- (a) the market value of the car – \$4800
- (b) loss of use of the vehicle – \$200
- (c) amount to pay out hire-purchase agreement – \$1704.

An appeal to the Federal Court in respect of the amounts of \$200 and \$1704 is the subject of this decision. All three judges agreed the appellant was liable for the \$200 since damages might be recovered for loss of use of a non-profit earning chattel. On the question of the amount to pay out the termination of the hire-purchase agreement, the court was divided. Blackburn and Franki JJ agreed the appellant would be liable for economic loss arising from termination of the hire-purchase agreement only if a special relationship existed between the appellant and the respondent. This was based on the High Court decision of *Caltex Oil (Aust) Pty Ltd v The Dredge "Willemstad"*, however, each came to a different view on the facts as to whether, in this case such a special relationship existed. The only evidence as to such a special relationship was that the drivers of both cars worked together and the respondent had mentioned in general conversation to the appellant: "It cost me \$7000 and I am paying it off to Lombards." It is to be noted that the accident occurred away from work.

**BLACKBURN J:** I cannot believe that the law requires that the reasonable man driving a motor vehicle on the highway has a duty to keep a sharp lookout for those vehicles, and those persons, which are the subject of hire-purchase agreements about which he has previously had some information. It is for this reason with great respect to Franki J that I do not agree the principle of the *Willemstad* is brought into play by the facts of this appeal.