40/01; [2001] VSC 341

SUPREME COURT OF VICTORIA

GOH v BERRY STREET INCORPORATED

Eames J

29 August 2001

CIVIL PROCEEDINGS – MOTOR VEHICLE COLLISION BETWEEN TWO VEHICLES IN INTERSECTION CONTROLLED BY TRAFFIC CONTROL SIGNALS – FINDING BY MAGISTRATE THAT NO CLEAR EVIDENCE AS TO THE STATE OF THE LIGHTS AT THE POINT OF COLLISION – CLAIM UPHELD BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR.

Two vehicles collided in an intersection controlled by traffic control signals. One vehicle turned in front of an oncoming southbound vehicle. The driver of the turning vehicle claimed that she had a green arrow in her favour. The other driver said she had a green light in her favour. On the hearing of the claim, the magistrate found that the driver of the turning vehicle had a green arrow at the time of entering the intersection. He said that there being no clear evidence as to the state of the lights, the driver of the turning vehicle was negligent and was liable for the damage. Upon appeal—

HELD: Appeal dismissed.
It was open to the magistrate to find that there could not have been a green arrow if there was a green light facing the southbound traffic. The magistrate's finding as to the state of the lights could not have been made if the southbound vehicle had entered on a red light. Further, the reference by the magistrate to the obligation on the driver of a turning vehicle would not have applied if that vehicle had turned on a green arrow. In the circumstances, the decision of the magistrate was open on the evidence.

EAMES J:

1. This is an appeal on a question of law from a decision of a Magistrate, made on 6 April 2001 in the Magistrates' Court at Melbourne. His Worship, on that day, had heard evidence on a complaint brought by the respondent in which it claimed that it had suffered loss and damage arising out of a collision between its vehicle (when being driven by Miss Angela Misces) and a vehicle driven by the appellant, Anita Goh.

2. The collision occurred at the intersection of Nicholson Street and Alexandra Parade, Carlton on 26 August 2000.

3. The appellant, Ms Goh, was driving north on Nicholson Street, intending to turn right into Alexander Parade. The driver of the respondent's vehicle was travelling south on Nicholson Street intending to travel across the intersection without turning.

4. The collision took place when the front of the appellant's vehicle struck the rear quarter driver's side of the respondent's vehicle, which had veered to the left in an attempt to avoid the turning vehicle. It was common ground that a short time before the collision another vehicle, which must have been in front of the appellant's vehicle on Nicholson Street, had turned right into Alexandra Parade.

5. The evidence in the case was very short. Both drivers gave evidence. The appellant asserted that when making her right-hand turn she had a green arrow facing her. The respondent's driver said that she entered the intersection on a green light for southbound traffic.

6. At the conclusion of the evidence His Worship immediately gave reasons for decision, and held that the respondent had made out its case. He ordered the appellant to pay the sum of $11,161.77 together with interest and costs.

7. The one ground of appeal focuses attention on the reasons given by the learned Magistrate in finding in favour of the respondent.

8. His Worship found that both drivers were familiar with the intersection. He summarised portion of the appellant's evidence, in the following terms: "At the time of entering, that's the white line area of the intersection, there was a green arrow displayed in her favour and also a green signal for northbound traffic in Nicholson Street."

9. In its context, that summary of the appellants' evidence constitutes a finding of fact. That finding is important because it is a finding as to the moment of the appellant's entry into the intersection, not a finding as to whether or not there was a green arrow applicable at the moment when the collision occurred. That finding is repeated in a later passage of the reasons for decision.

10. Toward the end of his short reasons for decision the transcript records that His Worship said this:

> "Ms Misces has sworn that she entered the intersection with a green signal in her favour and Ms Goh has sworn that she entered with a green turn arrow in her favour. Both versions just cannot be correct and one of the witnesses must be mistaken. As I have said, I have found both witnesses to be credible, neither were attempting to (inaudible) so as far as I can discern, so therefore the evidence does not enable one to say what was the state of the lights. What is clear is that there cannot be a right turn arrow into Alexandra Parade when there is a green signal for both southbound Nicholson Street traffic. It is obvious that the lights would be putting people into collision with each other. The only explanation is that there could be defective lights, but there is no basis for such an assumption. There being no clear evidence as to the state of the lights then I look to the circumstance that Ms Goh is a right turning vehicle and carries a high onus as a turning vehicle. I appreciate that the argument might well be that an obligation of a turning vehicle evaporates if there is an arrow turn applicable to that car, but that just cannot be determined from the evidence as I have said. Nor can the southbound traffic signal be established. Doing the best one can with the available evidence and bearing in mind that the plaintiff need establish its case I find that the defendant, as a turning vehicle, carries a higher obligation than the plaintiff and that negligence is established with the defendant. There is no counter-claim on foot. I note the consequence that there will be an award on the claim in the sum of $11,161.77, together with interest and costs on Scale D."

11. After His Worship delivered those reasons, counsel for the defendant/appellant asked His Worship, "Do I understand you to make a finding that in your findings, to be able to say that you can't establish or can't make a determination on what colour the lights were either way, so that it is on that basis that my client is responsible 100 per cent, because she has failed to give way to vehicle?"

12. To that question His Worship answered, "What in essence is what I am attempting to say is that on the basis of the evidence both versions came from credible witnesses and really just cancel out, they nullify each other on the signals and therefore you have got one turning vehicle, no other suggestion of speed or excessive braking."

13. The question of law identified in the notice of appeal is in the following terms; "The Magistrate, having announced that neither evidence of the plaintiff or the defendant as to the relevant accident was to be preferred, was it incumbent upon him to dismiss the plaintiff's claim?"

14. Mr Martin of counsel, for the appellant, submitted that His Worship had been unable to find on the balance of probabilities that the respondent had not entered on a red light and having been unable to find that the appellant had not made her turn on a green arrow, the plaintiff/respondent had simply failed to prove its case on the balance of probabilities, but submitted that His Worship had in fact purported to decide the case on an artificial basis, pretending that it was an intersection without any traffic lights, at all, for the purpose of his determination.

15. Mr McDermott, for the respondent, submitted that the finding was supportable on the evidence, including evidence as to the point of the collision and of the damage to the vehicles, which was consistent with there being a failure to keep a proper look-out by the appellant. He noted that the defence had not pleaded contributory negligence and, thus, any finding of negligence on the part of the appellant would give a verdict in favour of the respondent.

16. The fact contributory negligence was not expressly pleaded does not seem to me in all the circumstances of this case to be of importance. The Magistrates' Court is not a court of pleadings and it would have been open to argue contributory negligence had it been appropriate to do so.

17. There is no doubt that the terms in which His Worship expressed his reasons were somewhat awkward. It is important to bear in mind, however, that His Worship delivered the reasons immediately the evidence ended and, as is the Victorian tradition, without the benefit of submissions by counsel as to the facts.

18. If there is a reasonable view of the evidence on which the decision can be supported then this court would not set it aside on appeal, see *Young v Paddle Bros Pty Ltd* [1956] VicLawRp 6; [1956] VLR 38 at 41; [1956] ALR 301. The decision by a Magistrate as to a question of fact is to be treated like a decision of a jury, and if there was any evidence upon which a reasonable Magistrate might have reached the conclusion which he did, then the decision will stand: see *Spurling v Development Underwriting (Vic) Pty Ltd* [1973] VicRp 1; [1973] VR 1 at 11; (1972) 30 LGRA 19, per Stephen J.

19. Although His Worship appears to have decided the case without having regard to the state of the lights it must follow from his findings that he did not conclude that the respondent's vehicle entered against a red light, because, as he found, there could not have been both a green arrow and a green light facing the two vehicles at the same time.

20. There was an obvious explanation for the accident which the evidence would have supported, namely, that with respect to the northbound vehicles, and vehicles also intending to turn right into Alexandra Parade, the sequence was that first both a green light and a green arrow would be displayed, but that after some vehicles had turned right the green arrow would cease to be displayed and at the moment a green light would face both north and also southbound vehicles in Nicholson Street. Northbound vehicles intending to turn right would then have to give way to on-coming southbound vehicles.

21. That sequence of lights and that possible explanation was put to the appellant in cross-examination by counsel for the respondent. In her evidence she said, "I looked up when I was just passing the white line and it was a green arrow." Later she was asked, "So what I am putting to you is that you did see the car in front, you looked up before you entered the intersection and you saw that there was a green arrow, that while you were in the intersection you saw a green light, but at that stage it wasn't a green arrow?" She replied, "On the point of my vehicle entering the intersection I had a green arrow, that I can say." She was asked, "And what I am putting to you is that you proceeded into the intersection on the assumption there was a green arrow and you failed to give way to the other vehicle, which is what you were meant to do?" She said, "I was turning right and I had the green arrow."

22. Those responses, in my view, are entirely consistent with the witness only being confident that there was a green arrow as she first moved into the intersection, not later.

23. His Worship's findings, which I noted earlier, seem to me to have recognised that that was the limit of the positive assertion made in cross-examination, and to have constituted a finding that that was the extent of the actual state of the observations made by the witness at the relevant time.

24. In expressing himself in terms that, "There being no clear evidence as to the state of the lights," and "an obligation of a turning vehicle evaporates if there is an arrow turn applicable to that car, but that just cannot be determined from the evidence", those statements must be read with His Worship's finding that there could not be a green arrow if there was a red [?green: *ed*] light facing the southbound traffic. Thus, despite the words he unfortunately chose, his finding could not have been made if the respondent's vehicle had entered on a red light.

25. The verdict, therefore, can be supported by the evidence and also by those findings of fact which I have identified as being explicitly and impliedly made by His Worship. Furthermore, as counsel for the respondent noted, there was a good deal of other evidence to support the contention that the appellant had failed to keep a proper look-out at the time. To have spoken of the "higher obligation" of the turning vehicle was potentially (and, probably, actually) confusing, but it followed an acknowledgment that such an obligation would not have applied if that vehicle had turned on a green arrow.

26. It is easy to be critical of the elegance of the expressions used in the short *ex tempore* reasons of His Worship, but in all the circumstances I do not consider that error of law has been established in his decision. His decision was open on the evidence and the appeal therefore must be dismissed. The order will be the appeal will be dismissed with costs.

APPEARANCES: For the Appellant Goh: Mr G Martin, counsel. Peter Eggleston & Associates, solicitors. For the Respondent Berry Street Incorporated: Mr G McDermott, counsel. Rogers & Gaylard, solicitors.
