

25/78

SUPREME COURT OF VICTORIA

AUTOMOBILE GLASSES PTY LTD v HARMON

Jenkinson J

17 May 1978

CIVIL PROCEEDINGS – MOTOR VEHICLE ACCIDENT – COMPLAINANT'S VEHICLE TRAVELLING SOUTH AT NO MORE THAN 50K/MH WITH LEFT FLASHING INDICATOR OPERATING – DEFENDANT'S VEHICLE TURNED OUT OF SIDE ROAD BELIEVING THAT COMPLAINANT'S VEHICLE WOULD TURN LEFT AS INDICATING – COMPLAINANT'S VEHICLE PROCEEDED STRAIGHT AHEAD – VEHICLES COLLIDED – DAMAGE OCCURRED – COMPLAINT DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR.

Order Nisi to review order of Magistrates' Court dismissing complainant's complaint for damages. Unchallenged findings — complainant travelling south in Springvale Road at no more than 50 km/h with left flashing indicator operating. Defendant's car stationary at mouth of McKay Rd on eastern side of Springvale Road. Defendant saw the approaching car on his right inferred an intention on its driver to turn left, but driver had no such intention.

HELD: Order nisi discharged.

1. From the evidence of what the defendant gave in evidence before the Magistrates' Court, it justified the finding by the Magistrate that the defendant had exercised reasonable care while observing the other vehicle. A speed of no more than 50 kilometres per hour might not unreasonably have been found by the Magistrate to be not indicative of an intention to pass through the intersection, in my opinion. The Magistrate addressed himself to the question as to what the speed of the complainant's vehicle was and made a finding on that question.

2. One cannot stigmatise, as beyond what might reasonably be found, the view that the risk of such misuse (evaluated upon the Magistrate's conception of common experience) was not so high as to have required in the exercise of reasonable care any further observation of the complainant's vehicle by the defendant than he gave it, nor so high as to have required in the exercise of reasonable care that the observed speed of that vehicle be regarded as raising a suspicion of such misuse.

JENKINSON J: The first ground of the order nisi reads:

'Upon the evidence before him the learned Stipendiary Magistrate was bound to find that the defendant had been negligent:

- (a) by failing to yield right of way to the complainant's vehicle;
- (b) by failing to make an estimate of the speed of the complainant's oncoming vehicle, and in particular as to whether such speed was consistent with an intention by the defendant to turn left at the said intersection;
- (c) by proceeding into the said intersection when the speed of the complainant's vehicle was inconsistent with the intention referred to in para (b);
- (d) by failing to keep a proper lookout to his right.'

The evidence of the defendant, according to the evidence before me, included the following statements:

Para 7: 'He said that he pulled up at the intersection and waited there while 6-7 cars which were travelling in a southerly direction in Springvale Road went through the intersection. He said that Springvale Road was a very busy road. He agreed that there were Give Way signs erected at the intersection facing traffic coming from McKay Road. He said that he first noticed the Complainant's vehicle on his right, coming down Springvale Road heading in a southerly direction. He said that it was in the left hand lane. When he first saw it, it was a distance of 3 chains from the intersection although he said that it was hard to estimate distance. He said that he saw the left hand indicator on the Complainant's utility commence operating. He said that these indicators made him believe that the Complainant's vehicle would turn left into McKay Road and accordingly, he started to proceed into the intersection on this assumption. As he moved forward, he looked to the left and looked back when he got to the line dividing the two south-bound lanes in Springvale Road. When he did look back he saw the Complainant's vehicle a very short distance away on his right. At the time the

Complainant's vehicle was in the course of moving from the left-hand lane into the right-hand lane in an apparent attempt to avoid his vehicle. Mr Harman said that he immediately stopped, whereupon the front of his vehicle was right at the white line dividing the two lanes. He said that in that position he had fully blocked the left hand lane for south bound traffic in Springvale Road. He said that the Complainant's utility then collided with the front of his vehicle...'.

Para 8: Under cross-examination (the defendant) said that when he entered the intersection from McKay Rd, he was looking to the left and not to the right. He said that before turning his head to the left and moving forward, he had not made an estimate of the speed of the Complainant's vehicle. He said that he looked to the left as he entered the intersection in order to see whether there was any traffic coming along Springvale Road from his left. On a question from the Magistrate, Mr Harman agreed that the plantation dividing Springvale Road at that intersection was of a sufficient width to accommodate his car without obstructing traffic in Springvale Road from either direction. He said that although he was looking to the left as he entered the intersection, he did not consider this to be dangerous because he had assumed that the Complainant's vehicle would turn left into McKay Road because the left hand indicator was operating. He said that the only basis upon which he made the assumption that the Complainant's vehicle would turn into McKay Road was the fact that the left hand indicator was operating. He said that he was unable to say whether, at the time he looked to the left and commenced to enter the intersection, the Complainant's vehicle was travelling at a speed consistent with that of a vehicle intending to execute a left hand turn.'

The court concedes that the defendant had failed to perceive, by observation of the other vehicle's speed and reflection thereon, that the intention of the other vehicle's driver might be contrary to that which the indicator light suggested. It was then submitted that reasonable care and skill on the part of the defendant would have led him to such a perception.

From the evidence of what the defendant gave in evidence before the Magistrates' Court, I would regard the evidence in that Court as justifying a finding by the learned Magistrate that the defendant had exercised reasonable care while observing the other vehicle. A speed of no more than 50 kilometres per hour might not unreasonably have been found by the Magistrate to be not indicative of an intention to pass through the intersection, in my opinion.

The learned Magistrate addressed himself to the question as to what the speed of the complainant's vehicle was and made a finding on that question.

I cannot stigmatise, as beyond what might reasonably be found, the view that the risk of such misuse (evaluated upon the Magistrate's conception of common experience) is not so high as to have required in the exercise of reasonable care any further observation of the complainant's vehicle by the defendant than he gave it, nor so high as to have required in the exercise of reasonable care that the observed speed of that vehicle be regarded as raising a suspicion of such misuse. The order nisi will be discharged.