**16/87**

## SUPREME COURT OF NEW SOUTH WALES — COMMON LAW DIVISION

# *HENDERSON v HASSEL and ANOR*

**Wood J**

**24 June 1986 — (1986) 3 MVR 359**

**NEGLIGENCE – MOTOR VEHICLE COLLISION – INTERSECTION CONTROLLED BY TRAFFIC CONTROL SIGNALS – DUTY OF DRIVER CROSSING ON GREEN LIGHT.**

**1. A motorist has no absolute right to enter an intersection merely in compliance with a green light. However, in determining the respective duties of the drivers, the position of the motorist entering on a green light is somewhat stronger than that of the driver entering against a red light.**

**2. Whether there has been a breach of the duty of care by the driver with the right of passage depends on whether that driver:**
**(a) should have seen the other driver;**
**(b) ought reasonably to have anticipated the possibility of a collision; and**
**(c) could have done anything useful to avoid the collision.**

**WOOD J: [359]** *[His Honour outlined the evidence given in respect of the accident and in respect of the quantum of damages. He found that the plaintiff had failed to prove negligence in the primary way she placed her case, since he was satisfied that it was she rather than the defendant coach driver who disobeyed the traffic control signal. He continued:]* I turn, therefore, to the second way in which she put her case, namely that the first defendant failed in his duty to her in not looking up King St as he approached the intersection, thereby denying to himself the opportunity to see her in sufficient time to avoid the collision.

While it may be accepted that a defendant who enters an intersection with a green light in his favour will not always be blameless if he collides with another vehicle in the intersection, the traffic control signal is a powerful factor in his favour. This is a matter, to my mind, which is well demonstrated by prior decisions. Each of course is a decision based on its own facts, and it would be unwise and unjustified to seek to extract a statement of general principle from them.

Nevertheless the course of judicial reasoning discloses the common sense view which is to be applied in such cases. Reliance was placed by counsel for the plaintiff on the well known passage in *Sibley v Kais* [1967] HCA 43; (1967) 118 CLR 424; [1968] ALR 158; 41 ALJR 220, where, in a joint judgment, the court said at 427 in relation to the traffic rules imposed by statutory Regulation in Western Australia:

> **[360]** "These Regulations in nominating the vehicle which has another vehicle on its right as the give-way vehicle are undoubtedly salutary and their breach is deservedly marked with criminal penalties. But they are not definitive of the respective duties of the drivers of such vehicles to each other or in respect of themselves: nor is the breach of such Regulations conclusive as to the performance of the duty owed to one another or in respect of themselves. The common law duty to act reasonably in all the circumstances is paramount.
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> The failure to take reasonable care in given circumstances is not necessarily answered by reliance upon the expected performance by the driver of the give way vehicle of his obligations under the Regulations; for there is no general rule that in all circumstances a driver can rely upon the performance by others of their duties, whether derived from statutory sources or from the common law. Whether or not in particular circumstances it is reasonable to act upon the assumption that another will act in some particular way, as for example by performing his duty under a Regulation, must remain a question of fact to be judged in all the particular circumstances of the case.
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> Therefore, it is, in our opinion rightly said that the "'right hand rule" is not the be all and end all in relation to questions of civil responsibility'. The obligation of each driver of two vehicles approaching an intersection is to take reasonable care. What amounts to 'reasonable care' is, of course, a question

> of fact but to our mind, generally speaking, reasonable care requires each driver as he approaches the intersection to have his vehicle so far in hand that he can bring his vehicle to a halt or otherwise avoid an impact, should he find another vehicle approaching from his right or from his left in such a fashion that, if both vehicles continue, a collision may reasonably be expected."

This passage has been approved and applied by the High Court subsequently in *Cocks v Sheppard* (1979) 25 ALR 325; (1979) 53 ALJR 591 and *Baggermaatschappig Boz and Kalis BV v Australian Shipping Commission* (1980) 54 ALJR 382. As McClemens J observed however in *Versic v Connors* (1968) 88 WN (NSW) (Pt 1) 332 at 335; [1968] 3 NSWR 770; "*Sibley v Kais* lays down no new principles, but merely restates in a clear manner what they are". *[His Honour then referred to Regulations made under the* Motor Traffic Act *1909 (NSW) and continued].* **[361]**...When considering the conduct of the parties in the present case, I think it appropriate to bear in mind the purpose which traffic control lights are designed to serve. Although not elevating this purpose to a rule of law, I believe it should be assumed to be part of the information known to and accepted by motorists. Conveniently, the purpose was described by Scott LJ in *Joseph Eva Ltd v Reeves* [1938] 2 KB 393, in a passage with which I respectfully agree at 410:

> "As I said at the outset, the essence of the lighting system is to prevent the presence on what the judge called 'the restricted "area" of the cross-roads of any traffic from the red direction when traffic is ordered forward in the green light direction. Its object is not only to prevent collisions but also to prevent unnecessary delay at cross-roads: and if a car with the green just opened in its favour, summoning it forward, had to keep a lookout for traffic from the red direction, it would prevent that automatic resumption of forward movement by the vehicles temporarily held up, which is vital to the free circulation of traffic. To hold that such a car owes a duty to a lawbreaker crossing from the red direction would undermine the whole system of lights Regulation and defeat an important part of its purpose'."

In this regard I consider the position of the motorist approaching an intersection with a traffic control light in his favour is somewhat stronger than that of the driver of a stand-on vehicle approaching an intersection governed by a stop sign. In the latter case, it seems to me, there is more cause, arising out of common experience, for caution as to the possible approach of a disobedient or unobservant motorist.

An examination of the cases where negligence or contributory negligence has been found against motorists entering intersections with the signal in their favour invariably shows that there was knowledge of the other vehicle, or an opportunity with the exercise of reasonable care for it to have been seen within time for evasive action to be taken: e.g. *Godsmark v Knight Brothers (Brighton) Ltd* 1960 *The Times* 12 May; *Shepherd v Zilm* (1976) 14 SASR 257; *Grace v Sheppard Wine Tankers Pty Ltd* (1978) 18 SASR 541; but cf *Reeves case; Radburn v Kemp* [1971] 3 All ER 249; and *Rust v Needham* (1974) 9 SASR 510. The assumption upon which these cases was decided was described by Zelling J in *Shepherd v Zilm* at 260 as:

> "... an assumption which any driver may properly make that the drivers of other vehicles will use the road reasonably and in conformity with the law, until he has actual notice that they will not do so, or has disabled himself from obtaining that notice due to his own defective look out."

As Edmund Davies LJ observed in *Radburn v Kemp* at 251, there is "no absolute right to enter a road junction when and merely because the lights turn in your favour". Whether there is a breach of the duty of care by the party with the right of passage will depend on all the other circumstances and prevailing conditions. This will include whether or not the other vehicle should have been seen by the driver with the green light, whether he ought reasonably to have anticipated that it would carry on, and whether once it was seen he could have done anything useful to avoid the accident.

It is for the plaintiff to establish that the first defendant was negligent in not seeing the plaintiff, and in not taking action to avoid the accident. That **[362]** to my mind required proof that the defendant should have anticipated the possibility of an accident of the kind which occurred, that he could have seen sufficiently far up King St from the centre lane in George St to pick up the plaintiff's vehicle, and that he had time to bring the coach to a stop.

In this regard, the present case is to be considered in the context of my finding that the defendant entered a built up intersection in the centre of the city, on an entirely reasonable

course, at a reasonable speed and at a time when the green phase was well under way. He was not accelerating rapidly away on the change of light to green, nor was he trying to beat a change to red. In either of these events he might reasonably have anticipated the possibility of another vehicle within the intersection, for example, because it was under the charge of a slow moving driver, or of an impatient driver.

I see no reason why a prudent driver in the position of the first defendant should have anticipated the possibility of a vehicle on his right disobeying the traffic signal in the conditions which thus prevailed. Next, I am satisfied that the first defendant's vision to his right was substantially limited by the angle of the intersection and the building on the south-western corner. Finally, I am satisfied that the first defendant could not reasonably have been expected to have brought his coach to a stop so as to avoid the accident within the time available, whether that is taken as the time from which he might first have seen the vehicle had be been looking to his right, or the time he first saw it. In this Regard there was nothing in his position or speed of approach which was either unusual or unreasonable so as to affect his vision or control of the coach.

In the result, although I entertain considerable sympathy for the plaintiff in her predicament, I am not satisfied that she has proved that the first defendant was negligent. There will be a verdict for the defendants, and I order the plaintiff to pay their costs.

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