15/87

SUPREME COURT OF SOUTH AUSTRALIA

McCUTCHEON v GRIMMOND (No. 2)

Cox J

17, 18, 21-24 April, 28 May 1986 — [1986] 40 SASR 487

NEGLIGENCE – MOTOR VEHICLE COLLISION – INTERSECTION CONTROLLED BY TRAFFIC CONTROL SIGNALS – ONE DRIVER ENTERING INTERSECTION WHEN SIGNALS IN MIDDLE OF RED PHASE – WHETHER OTHER DRIVER ENTERING INTERSECTION ON GREEN LIGHT GUILTY OF CONTRIBUTORY NEGLIGENCE.

1. Where a driver entered an intersection when the traffic control signals were in the middle of the red phase, it was held that the other driver was not obliged to foresee that kind of homicidal behaviour and was not guilty of contributory negligence.

2. Whilst it is important that people drive defensively, the driver with a green light is not required to cross an intersection with unreasonable apprehension at the expense of risking a rear end collision with a following motorist.

COX J: [487] The plaintiff sues the defendant for damages for injuries received in a road accident at Woodville on 26th June 1982 when the car she was driving collided with a car being driven by the defendant. The defendant denies that he was in any way responsible for the collision; alternatively, he says that, if he was, the plaintiff was guilty of contributory negligence. He also joins issue on the nature and extent of the plaintiff's injuries and consequential loss.

The accident happened between 6.30 and 7.00 on a Saturday morning. The plaintiff was driving in a south-westerly direction along Woodville Road towards R Elizabeth Hospital. It was fine. Visibility was good. Traffic conditions were fairly light. The plaintiff had to cross the **[488]** Port Road. She crossed the up-track safely with the green light but collided with the defendant's car as she was crossing the down-track. Her speed throughout was about 40km/hour. The defendant was driving along the down-track of the Port Road, coming from the plaintiff's left, and ran into the near side of her car. There is no reason to think that his speed was grossly excessive. He said it was about 60 km/hour.

The plaintiff did not really see the other car before the collision, and the defendant did not see the plaintiff's car until it was too late to do anything about it. The plaintiff insisted in evidence that the traffic lights were in her favour when the impact occurred, and the defendant was pretty certain that the traffic lights were then in his favour. It would appear that the traffic lights were working properly. Given the phasing of the lights at that intersection, one of the parties must be very wrong because it was not possible for both of them to obey the lights and get anywhere near to colliding with one another. The plaintiff was alone in her car and the defendant's only passenger, his brother, said he was dozing and could not give any useful evidence about the matter. Fortunately there was an eye witness, Mr Lewis, who was disinterested and, I am satisfied, completely reliable. His evidence was entirely favourable to the plaintiff. I find that the defendant was negligent in entering the intersection against the red light.

Mr Janus, for the defendant, submitted that the plaintiff must at least be guilty of contributory negligence. She should have kept a better look out. The plantation between the up-track and the down-track of the Port Road is 108 feet wide. There were scattered trees and shrubs on the plantation but the evidence suggests that the two drivers could have seen one another had they looked. There are two problems as it seems to me, about Mr Janus's argument. First, despite what I have just said, the evidence about the view across the corner is not entirely clear. I am not sure what obstruction, if any, was created by the trees and shrubs. I note that the defendant did not see the plaintiff as she came through the plantation, although one would expect that any motorist deliberately entering the intersection against the red light (as I consider the defendant

did) would at least satisfy himself first that it was safe to do so. More important, it is a question of what may reasonably be required of a motorist in the plaintiff's circumstances. Road users have all learned to be ready for the motorist who enters a controlled intersection after the lights have changed from green to amber, even from amber to red, but that was not this case. The lights facing the plaintiff changed to green before she got to the up-track of the Port Road and they were still green, according to Lewis's evidence, an appreciable time after the collision. It follows that the defendant entered the intersection when the lights were more or less in the middle of their Port Road red phase.

I do not think the plaintiff was obliged to foresee that kind of homicidal behaviour. No doubt some motorists would have looked about them more and have seen the defendant's car approaching, but that is not the test. And what if the plaintiff had seen the defendant's car approaching? It is important, I think, not to set an unrealistically high standard for the "stand on" driver in right-of-way cases and the like. We all know that there are people who drive around the city on their brakes, stopping when they **[489]** have to but not a moment before they have to. The behaviour of such people at a controlled intersection is unpredictable, unless the prediction is to be based upon the almost invariable obedience of motorists (including, at the last instant, that sort of motorist) to such a definite and uncompromising warning as a red traffic light that is in the middle of its phase. It is important that people drive defensively, but it is no use driving across intersections such as this in a state of constant and unreasonable apprehension, quick to avoid a collision with someone on the left who might drive straight through the red light but at the expense of risking a rear end collision with a following motorist instead. I do not think that the plaintiff was guilty of contributory negligence.

[His Honour then assessed the plaintiff's damages and gave judgment for the plaintiff for $56,536.]
