

27/87

SUPREME COURT OF VICTORIA

HADDAD v MITCHELL

Nathan J

14 May 1987

NEGLIGENCE – MOTOR VEHICLE COLLISION – MOTORIST TURNING IN FRONT OF ONCOMING VEHICLE – WHETHER NEGLIGENT – WHETHER APPORTIONMENT OF LIABILITY APPROPRIATE.

Where a motorist (confused by the presence of a left-turning vehicle) turned across the path of oncoming traffic and collided with an oncoming vehicle, it was open to the Court to find 100% liability on the part of the motorist making the turn.

NATHAN J: [1] I have before me two orders nisi, both of them arise from the same circumstance and that is a motor collision which occurred at the intersection of Broadmeadows Road and Sharps Road, Broadmeadows, on the 7th August 1985. The carriage of the matter has been conducted by Mr Walsh, appearing for Maurice Haddad, the driver of a car in Sharps [2] Road at the relevant time. Mr Bassett, appeared for Mr Mitchell, the driver and owner of the other vehicle involved in the collision which was also travelling in Sharps Road albeit in an opposite direction to that of Mrs Haddad. The two orders arise merely as a matter of procedure because of the fact of there being a summons and a cross-summons at the initial hearing. The Magistrate found entirely in Mr Mitchell's favour, and dismissed Mrs Haddad's complaint, and it is on that conclusion that the orders nisi were obtained. Haddad's order is on the basis that no reasonable Magistrate, properly informed and taking a judicial view of the evidence before him, could have arrived at the conclusion of one hundred per cent liability on Mrs Haddad's part.

I register some surprise that an order nisi was obtained in this matter, for the material before me shows not only that a reasonable Magistrate properly informed could have arrived at that conclusion but would have been perverse had he not. The applicant's own material revealed of course, the evidence of an independent witness, that indicated a story of Mrs Haddad's vehicle commencing its turn across the face of oncoming traffic. She, herself, has conceded that the oncoming path of Mr Mitchell's vehicle was confused by her insofar as a vehicle had turned left shortly prior to or at the time of Mr Mitchell's vehicle approaching. Any Magistrate would have been entitled to have accepted the evidence-in-chief of both independent witnesses, and have comfortably concluded that Mrs Haddad's vehicle had commenced on its path or its turn across the face of Mr Mitchell's oncoming vehicle.

[3] Matters as to impact damage indicating the events of the collisions are of peripheral value, and the contradictions referred to by Mr Walsh indicate a lively legal mind but in no way displace the heavy onus borne by him. The contradictions in the evidence to which he referred are contrived, the inconsistencies as to damage as put by Mr Mitchell are tortured, and the plain facts of the matter show through the affidavit material. [4] The photographs, part of the exhibits, support Mr Mitchell's contentions. He was not seriously eroded in terms of credit according to the affidavit material, and his story is entirely plausible. Once I accept that view I must then examine whether a Magistrate could reasonably come to the view of finding one hundred percent liability on Mrs Haddad's part, or whether on the face of the evidence an apportionment should have ensued. I am satisfied that the story given by Mr Mitchell of a vehicle turning across his path, resulting in him braking and skidding into the said vehicle does not necessarily incur any liability on his part. A reasonable Magistrate could properly conclude that the initiating factor of all the damages which followed was the commencement of the right hand turn across the path of Mr Mitchell's vehicle. It is of no satisfaction to Mrs Haddad that a court or another Magistrate might have come to a different view in respect of apportionment.

If it was reasonable in those circumstances for the Magistrate so to conclude, then indeed the onus placed upon the applicant has not been discharged. I merely observe that on the view of

the facts which I am of the view the Magistrate could have arrived at then indeed he was perfectly entitled not to apportion liability. Matters of motor car collisions are often a matter of passion and pride, and I suspect there have been elements of that in this case. Be that as it may, the law does not decide issues on that basis, but upon the evidence which is presented before it. I am perfectly comfortable, in fact more than satisfied, that the learned Magistrate did not make a manifest error on the material before him. [5] The order nisi will be discharged. In this matter costs should follow the event. I order that the applicant pay the respondent's costs to be taxed or as otherwise agreed upon.
