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HIGH COURT OVERTURNS CONTROVERSIAL FINDING AGAINST 17 YEAR OLD TETRAPLEGIC

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The High Court has overturned a decision that an unlicensed teenager was driving a vehicle when he sustained catastrophic injuries, finding that it had been proved on the balance of probabilities that his father was the driver at the time of the collision, and that the CTP insurer was therefore liable to pay him damages, costs and interest.

IN ISSUE

- The Court of Appeal's failure to address the evidence of the expert mechanical engineer on the function of the seat belt pretensions and the airbags.
- Whether the Court of Appeal erred in finding the teenager was the driver when this was contrary to compelling inferences from uncontested evidence.

The Background

On 25 September 2013 the 17 year old plaintiff suffered severe spinal injuries in a car accident on North Stradbroke Island. The plaintiff claimed damages for personal injuries, alleging that the collision was caused by the negligence of his father, who was driving the vehicle at the time of the collision.

Against a complex factual scenario and competing circumstantial and forensic evidence, RACQ denied liability on the basis that they alleged the plaintiff himself, underage and unlicensed, had been driving the vehicle at the time of the collision.

THE DECISION AT TRIAL AND ON APPEAL TO THE COURT OF APPEAL

The trial judge, Boddice J, formed an adverse impression of the credibility of the plaintiff and his mother and relied on expert forensic evidence which established that the plaintiff's DNA was on the driver's airbag, in finding against the plaintiff at first instance. The plaintiff appealed.

The leading Court of Appeal judgment by McMurdo JA described the case as "very closely balanced" and identified critical errors in the trial judge's findings, concluding that, save for the inference to be drawn from the DNA evidence, it was "much more likely" that the appellant was not the driver. However, the DNA evidence, in McMurdo JA's analysis, substantially weakened the plaintiff's case. Her Honour concluded that it had not been shown that the trial judge had misused his advantage in seeing and hearing the plaintiff and his mother give evidence. Furthermore, the trial judge's decision was not "glaringly improbable" or "contrary

to compelling inferences", so as to justify being disturbed. The appeal was therefore dismissed.

THE HIGH COURT DECISION

The High Court unanimously overturned the decision and substituted a finding that the plaintiff was not driving at the time of the collision and he should recover his damages (which were agreed at $3,350,000) against RACQ in full, along with costs on an indemnity basis, and interest.

The judges of the High Court were critical of the reasoning adopted by the Court of Appeal, the appellate court having been bound to conduct a "real review" of the evidence given at first instance and of the judge's reasons for judgment, to determine whether the trial judge has erred in fact or law. It was the duty of the Court of Appeal to persist in its task of "weighing [the] conflicting evidence and drawing its own inferences and conclusions." It failed to do so.

The High Court held that in circumstances where the evidence of the plaintiff and his mother was not critical to the determination of this largely circumstantial case, it was not appropriate to order a new trial, and that entitled the High Court to substitute its own judgment.

The fact that the plaintiff, who was paralysed by reason of his injuries, was located in the rear passenger seat within 90 seconds of the collision was a circumstance powerfully in favour of the conclusion that he was not the driver.

The question to be determined was whether it was more probable than not that the father was the driver. In determining this question, all of the circumstances had to be taken into account. The High Court held, in all of the circumstances, it was much more likely that the father was the driver.

IMPLICATIONS FOR YOU

The reasons of the High Court are a helpful reminder that in determining whether court's of original jurisdiction have fallen into error appellate courts must consider all of the evidence which was heard at trial and undertake the exercise of weighing up conflicting features of that evidence to establish whether a party has proven his case to the requisite standard, that is, on the balance of probabilities.

The findings of the High Court also serve to remind us how to maximise the effectiveness and cogency of expert evidence. Ensuring expert witnesses are properly and comprehensively briefed enables them to establish a sound basis for their conclusions, and carefully considering the reliability of an expert witnesses' conclusions in the context of the rest of the body of evidence is vital to assessing the weight which will be given to any individual expert opinion.

Lee v Lee; Hsu v RACQ Insurance Limited; Lee v RACQ Insurance Limited [2019] HCA 28

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