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CHAPMAN V. HEARSE (1961) 106 CLR 112

High Court of Australia – 8 August 1961

FACTS

On a dark and wet night Chapman drove his motor vehicle into the back of Emery's car. Chapman was left lying on the road after the accident. Dr Cherry came upon the scene and left his motor vehicle and began to assist Chapman. While Cherry was treating Chapman a motor vehicle driven by Hearse hit Cherry and killed him.

Cherry's estate sued Hearse. Hearse denied liability and also claimed that Cherry was liable for contributory negligence.

Hearse also joined Chapman as a third party on the grounds that he had contributed to the accident.

The Court found that Hearse had been negligent, but that Chapman had also been negligent and was therefore liable to contribute one quarter of the damages payable by Hearse to Cherry's estate. Both Hearse and Chapman appealed.

ISSUES

Had Cherry been guilty of contributory negligence?

Did Chapman owe a duty of care to Cherry to avoid placing Cherry (as a rescuer) in a position where he might be endangered? Was Chapman's negligence a cause of the death of Cherry?

FINDING

Cherry was a rescuer and not guilty of contributory negligence. There was no evidence to prove that Cherry had been negligent while assisting Chapman. A duty of care was imposed on Chapman to not place himself in a situation where a rescuer could be injured while assisting him.

The death of Cherry was in part caused by Chapman's negligence, as Cherry would not have been on the road but for treating Chapman's injuries.

QUOTE

The Court said:

"[W]hether ... Dr. Cherry's conduct involved any departure from the standard which reasonable care for his own safety demanded. To our minds this question can be answered in only one way. He had, naturally enough, come to Chapman's assistance; in the course of attending to Chapman his attention must invariably have been diverted from the road and if, by reason of this fact, he failed to see the oncoming car until it was too late to get out of its way it would be quite wrong to hold that he was guilty of contributory negligence." – page 119 (1961) 106 CLR 112.

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"What is important to consider is whether a reasonable man might foresee, as the consequence of such a collision, the attendance on the roadway, at some risk to themselves, of persons fulfilling a moral and social duty to render aid to those incapacitated or otherwise injured. ... But one thing is certain and that is that in order to establish the prior existence of a duty of care with respect to a plaintiff subsequently injured as the result of a sequence of events following a defendant's carelessness it is not necessary for the plaintiff to show that the precise manner in which his injuries were sustained was reasonably foreseeable; it is sufficient for if it appears that injury to a class of persons of which he was one might reasonably have been foreseen as a consequence." - page 121 (1961) 106 CLR 112

IMPACT

A person who is negligent may also owe a duty of care to any person who comes to rescue or assist them. It is reasonable that a rescuer be compensated for taking the risk of helping a person who has been negligent and is not punished for taking such a risk by not being compensated for any losses they suffer.

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