

RTA V FLETCHER & LEIGHTON CONTRACTORS [2001] NSWCA 63

Court of Appeal –26 March 2001

FACTS

Fletcher and a friend rode their motor cycles from Nowra to Wagga Wagga. The Hume Highway which was maintained by the Road and Traffic Authority of New South Wales (“RTA”) was then undergoing road works conducted by Leighton

Contractors. The contract between RTA and Leighton included a provision for safeguarding the public when works under the contract were conducted. These responsibilities included putting up the necessary warning signs for the public.

The Hume Highway took a curve to the right due to the road works. When Fletcher approached the curve, he failed to notice some warning signs on his left and drove straight ahead instead of following the curve to the right. He sustained severe injuries.

Fletcher had driven straight ahead because another road joined the highway near the curve and at night a user of the highway could believe that the other road was a continuation of the highway. On the night of the accident another vehicle with its headlights on had been approaching the highway along the road. The Court found that larger and clearer signs should have been erected to warn drivers of the curve and the road works.

ISSUES

1. Whether Fletcher was guilty of contributory negligence for failing to notice the warning signs?
2. Whether RTA was still responsible for failing to take the precaution of erecting proper signs after contracting these responsibilities to Leighton.

FINDINGS

Fletcher was guilty of contributory negligence for failing to keep a proper look out for the warning signs that should have been conspicuous to him. However, the RTA and Leighton should have been prepared for such an emergency situation and taken the precaution of erecting signs to seize the attention of the most distracted driver.

RTA was two thirds liable as it owned the land and had complete control over the road and its environment together with superior knowledge of signage. It should have erected or caused its contractor to erect such signage as was necessary to minimize the risk of accidents.

QUOTE

Meagher JA said:

“...Fletcher failed to keep a proper look-out and in his state of fatigue that is hardly to be wondered at; but in any situation it is impossible always to keep a proper look-out and in his case the vision of an oncoming

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car fixated him to the extent that fulfilling his primary duty of looking straight ahead distracted him from noticing warning signs on his left.

Leighton ought to have realized that such an emergency might seize the attention of the most distracted driver in order to deal with it.”

IMPACT

The RTA had engaged the contractor to undertake the road works and the contract included provisions requiring the contractor to take precautions to protect road users.

However, the RTA still had an ultimate responsibility to road users and could not entirely avoid this responsibility by delegating these responsibilities to the contractor. The RTA should have taken greater care to ensure that the contractor had erected the necessary warning signs.

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