HIGH COURT OF AUSTRALIA

9 December 2015

ALEX ALLEN v DANIELLE LOUISE CHADWICK

[2015] HCA 47

Today the High Court delivered judgment in an appeal from the Full Court of the Supreme Court of South Australia, unanimously allowing the appeal in part and dismissing it in part. The Court held that the respondent, who suffered major injuries as a result of a motor vehicle accident, was not contributorily negligent under s 47 of the *Civil Liability Act* 1936 (SA) ("the Act") for travelling in a car driven by an intoxicated driver, but that she was contributorily negligent under s 49 of the Act for failing to wear a seatbelt.

At approximately 2 am on 12 March 2007, the appellant, the respondent and the appellant's friend went for a drive around Port Victoria, South Australia. The respondent was driving, and the appellant and his friend had been drinking alcohol. After about 15 minutes, the respondent stopped the car on the side of the road and went to urinate behind some bushes. When she returned to the car, the appellant was in the driver's seat and insisted that she get in the car, which she did. The car was outside the township and approximately 500 metres from the Port Victoria Hotel, where the group was staying. It was dark, and the respondent gave evidence that she was disoriented and did not know how near she was to the hotel. The appellant drove erratically for several minutes, during which time the respondent did not fasten her seatbelt. The respondent was flung from the car when it collided with a tree, and sustained spinal injuries that rendered her paraplegic. The appellant's blood alcohol level was estimated to have been 0.229 per cent at the time of the accident.

At trial, it was held that the appellant's negligence caused the respondent's injuries. The trial judge held that the respondent was not contributorily negligent under s 47 of the Act for relying on the care and skill of an intoxicated person because the exception in s 47(2)(b) of the Act applied such that the respondent could not reasonably be expected to have avoided the risk of travelling with the appellant in the circumstances. Failure to wear a seatbelt constitutes contributory negligence under s 49 of the Act and the trial judge rejected the respondent's contention that the appellant's erratic driving had prevented her from fastening her seatbelt.

On appeal, a majority of the Full Court dismissed the appellant's appeal on the s 47(2)(b) issue. The Full Court unanimously allowed the respondent's cross-appeal on the s 49 issue, holding that her failure to fasten her seatbelt was a result of her direct and natural response to the appellant's erratic driving.

By grant of special leave, the appellant appealed to the High Court on both issues. The High Court unanimously dismissed the appeal on the s 47(2)(b) issue and held that, given the facts of the case, the respondent could not reasonably be expected to have avoided the risk of travelling with the appellant. The Court allowed the appeal in respect of the s 49 issue, on the basis that there was no reason to interfere with the trial judge's finding of fact that the appellant's driving did not prevent the respondent from fastening her seatbelt.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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