



Summary of Judgment

ANEDDA v HORSEY [2019] VSC 729

14 November 2019

The Court has dismissed a proceeding for damages as a result of a motor vehicle accident. The Court found that the plaintiff had not established the defendant drove her vehicle negligently, causing the collision on 21 February 2013.

The plaintiff claimed that he was driving his BMW sedan (BMW) in a southerly direction along the South Gippsland Highway in Foster North, when his vehicle collided with a Hino street sweeping truck (Hino) being driven by the defendant in a northerly direction.

The plaintiff alleged the defendant's Hino veered into the opposing lane of traffic and collided with the plaintiff's car. The defendant denied she was negligent and claimed the collision occurred because the plaintiff's BMW veered into her lane.

As a result of the collision the Hino rolled over and landed on top of a third vehicle, leading to the death of the driver of that vehicle. An investigation was carried out by the Victoria Police Major Collision Investigation Unit, leading to a criminal prosecution of the plaintiff and his subsequent acquittal by a jury.

The Court considered the plaintiff's evidence in relation to the circumstances of the collision to be unreliable, finding that there were significant inconsistencies in his description of the collision from his first account of how the collision occurred, to his evidence in this trial more than six years later. In contrast, the Court found the defendant's evidence in relation to the BMW being on the wrong side of the road and the BMW hitting the front driver's side of her Hino had been consistent from immediately after the collision. The Court accepted the defendant's explanation of how she came to change her evidence of when she first saw the BMW from approximately 20 meters to 200 meters, as she had consistently said she was not a good judge of distance and it was only after she returned to the collision site, more than six years later, that she measured the distance.

The Court concluded that the plaintiff had not established any negligence on the part of the defendant as he had failed to show that the defendant breached her duty to take reasonable care in the driving and management of her vehicle so as to not injure the plaintiff.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.