



HIGH COURT OF AUSTRALIA

Public Information Officer

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SERGE ANIKIN v ALFONSO SIERRA AND STATE TRANSIT AUTHORITY

The High Court of Australia today restored a damages award of \$750,000 to a man who was seriously injured when hit by a bus in the northern Sydney suburb of Epping.

Mr Anikin, 30, had been with his girlfriend and other friends at a rock concert at Macquarie University on 29 March 1997. He argued with his girlfriend and left. While still within the grounds he telephoned his father to say he was lost and his father told him to wait for him at the university offices. When the father arrived he could not find his son, who had set off on foot along Epping Road towards Epping railway station. Why he did this is unknown. The footpath ran out and some unsigned steps ran over a section of rock wall. Nearby street lights were not working. Rubbish was strewn along the shoulder and asphalt had broken away. Mr Anikin was wearing dark clothes but his shoes had a white strip around them.

As he walked along the edge of the roadway facing oncoming traffic, he was struck by the bus driven by Mr Sierra about 9pm. The bus struck him on its front left-hand corner, throwing him against the rockface beside the road. Mr Anikin was unconscious for nine days and was left with brain damage and no memory of the accident. His left arm had to be amputated.

Mr Anikin sued Mr Sierra and the STA for negligence, successfully arguing that Mr Sierra had failed to exercise due care and attention, failed to keep a proper lookout, failed to sound his horn, and failed to either stop the bus or to deviate slightly. Mr Sierra claimed Mr Anikin had suddenly jumped in front of the bus, apparently trying to flag it down, when the bus was only 10 to 15 metres away. District Court Judge Margaret Sidis rejected Mr Sierra's version of events due to inconsistencies in his evidence; the nature of Mr Anikin's injuries, the damage to the bus, lack of skidmarks and other objective factors; and the evidence of Matthew Fatches, a passenger in a car travelling on the other side of the road. Mr Fatches said no vehicles were in front, behind or beside the bus but it did not deviate around Mr Anikin. Expert witnesses said the bus's lights would have illuminated 50 to 60 metres of the road and had a leftwards slant. Judge Sidis estimated Mr Anikin was about 70cm on to the roadway. She entered judgment for Mr Anikin, but reduced his \$1 million damages by 25 per cent for his contributory negligence. The New South Wales Court of Appeal, by a 2-1 majority, overturned the judgment.

Mr Anikin appealed to the High Court which held that the Court of Appeal was not justified in reversing the findings of Judge Sidis who had the advantage of assessing the credibility of various witnesses. The High Court held that the Court of Appeal majority erred in concluding there was no evidence of negligence. While Mr Anikin needed to look out for his own safety, Mr Sierra had obligations to exercise care for pedestrians while in charge of a powerful vehicle. The Court allowed the appeal by a 4-1 majority.

- *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.*