



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### WAYNE EDWARD MANLEY v IAIN STEWART ALEXANDER

A tow-truck driver had driven negligently when his attention was diverted for a couple of seconds by a drunk man lurching along the side of the road, the High Court of Australia held today.

Mr Manley ran over Mr Alexander as Mr Alexander lay along the centre of Middleton Beach Road, Albany, Western Australia, at 4.15am on 7 October 2000. Mr Alexander and his housemate, Cameron Turner, were walking home after a night of heavy drinking when the accident happened. He said later he had drunk about 12 stubbies of beer. At the WA District Court trial of Mr Alexander's claim for damages, Mr Manley gave the only account of what happened as Mr Alexander remembered nothing and Mr Turner had moved interstate and was not called as a witness. Mr Manley, then 24, said as he was driving home from a call-out he saw a man, understood to be Mr Turner, on the roadside. He kept his eye on Mr Turner and veered to the centre of the road as Mr Turner appeared about to walk on to the roadway. As he looked back at the road ahead he saw something on the road then felt the truck run over it. Mr Alexander, then 29, was lying parallel with the centre line and wearing dark clothing. He suffered serious injuries. Mr Manley admitted taking his eyes off the road for two or three seconds.

Judge Denis O'Sullivan held that he was not negligent, as there was no evidence that Mr Manley was not keeping a proper lookout in the circumstances, and no evidence of excessive speed or of failing to handle the truck in a reasonable manner. Mr Alexander successfully appealed to the Full Court of the WA Supreme Court, which held that both men had been negligent. It held that it could be inferred that Mr Alexander was already on the roadway when Mr Manley saw Mr Turner beside the road. The Court held that having taken his eyes off the road for two to three seconds, Mr Manley had failed to take reasonable care in breach of his duty to other road users who might, however unexpectedly, happen to be on the road. The Court ordered that damages be assessed for Mr Alexander but reduced by 70 per cent for contributory negligence on his part. Mr Manley appealed to the High Court. He did not challenge the factual findings, but contended it was not open to the Full Court to conclude from those facts that he had failed to take reasonable care. Mr Alexander did not challenge the large discount the Full Court allowed for contributory negligence.

The High Court, by a 3-2 majority, dismissed the appeal. It held that no error was shown in the Full Court's reasoning and it was open to the Full Court to conclude that Mr Manley failed to exercise reasonable care. The Court held that driving with reasonable attention requires simultaneous attention to a number of different features of what may be in the vehicle's path. While the possibility of someone lying on a roadway at 4am was remote, the reasonable care drivers must exercise requires that they control the speed and direction of the vehicle in such a way that they can take reasonable steps to react to such events.

- *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.*