



HIGH COURT OF AUSTRALIA

Public Information Officer

14 May 2008

ROADS AND TRAFFIC AUTHORITY OF NSW v GRANT ROYAL AND GEORGE SMURTHWAITE

The Roads and Traffic Authority (RTA) was not to blame for a car crash that occurred at an alleged highway black spot as the drivers themselves were at fault, the High Court of Australia held today.

Mr Smurthwaite was crossing the northbound lanes of a divided section of the Pacific Highway from Bago Road, just north of Herons Creek, south of Port Macquarie, on 12 March 2001 when his car was struck by a car driven by Mr Royal. Mr Smurthwaite had stopped at a Stop sign where Bago Road met the highway. George Hubbard drew up immediately behind him. Anthony Relf, driving a Telstra van, was behind Mr Royal's car travelling north. Mr Hubbard and Mr Relf each gave evidence about the actions of the drivers they followed. Mr Royal said he did not expect Mr Smurthwaite to cross the highway in the face of oncoming vehicles. He had his cruise control set at 105kmh while the highway had a maximum speed of 100kmh with an 85kmh advisory sign 300 metres before the intersection. Bago Road crossed the highway's northbound lanes during a long curve away from the straight southbound lanes. Mr Royal had just moved into the right lane, indicating as he did so, then appeared to cut the curve by driving through the intersection in the right turning lane, the point at which the collision occurred.

Mr Smurthwaite was seriously injured and remembered little of the lead-up to the crash. He sued Mr Royal and the RTA for negligence. Both Mr Royal and the RTA denied negligence, alleged contributory negligence by Mr Smurthwaite, and cross-claimed against each other. District Court Judge Joseph Phelan found that the primary cause of the collision was Mr Royal's breach of his duty of care to Mr Smurthwaite, but reduced Mr Smurthwaite's damages by one-third to \$871,019.50 on account of his contributory negligence. Judge Phelan dismissed the claim and cross-claim against the RTA. The NSW Court of Appeal, by majority, allowed Mr Royal's appeal against Judge Phelan's dismissal of his cross-claim against the RTA. The Court held that the RTA knew the intersection was an accident black spot and should have taken steps to change the configuration. It held that the RTA should bear one-third of the damages judgment. The RTA was granted special leave to appeal to the High Court, limited to the question of whether a breach of its duty of care caused Mr Smurthwaite's injury. Mr Smurthwaite was joined as a second respondent but he filed a submitting appearance as his interests were not affected either way.

The High Court, by a 4-1 majority, allowed the appeal. The majority held that any fault in the design of the intersection did not contribute to the particular accident. The cause was error by both drivers. Mr Smurthwaite failed to observe the approaching car. Both Mr Royal and Mr Relf said they had seen Mr Smurthwaite's car and Mr Hubbard could see Mr Royal approaching, so there was no evidence that Mr Royal's car was obscured by another vehicle. Mr Royal took no evasive action and his cutting the corner by driving through the right-hand turning lane may have misled Mr Smurthwaite into thinking he was slowing down to turn right off the highway, giving him enough time to cross. The Court held that both drivers were in a position to see each other in time to avoid the collision.

- *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.*