



18 February 2015

PRESS SUMMARY

Jackson (Appellant) v Murray and another (Respondents (Scotland)) [2015] UKSC 5
On appeal from [2012] CSIH 100

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEALS

When she was 13 Ms Jackson, the pursuer, was hit by a car driven by the defender. She appeals to the Supreme Court from the Inner House of Session's assessment of her contributory negligence at 70%. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 states: "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

The collision took place on 12 January 2004 on the A98 road between Banff and Fraserburgh, near its junction with a private road leading to the farm where the pursuer lived with her family. There was a 60mph speed limit, and no street lighting. The pursuer alighted from her school bus, which had just parked on the opposite side of the road from the entrance to the farm road. It was about 40 minutes after sunset and light was fading. The respondent was driving home in the opposite direction, travelling at about 50mph. His lights were on. The pursuer passed between the rear of the bus, which was still stationary, and the car behind it. She paused briefly at the offside rear of the bus, took one or two steps into the road into the path of the defender's oncoming car, before breaking into a run. While running she was struck by the defender's car, still travelling at about 50mph. She was projected into the air, the car passed beneath her and she landed on the road. The pursuer sustained serious injuries.

The Lord Ordinary found that the defender had failed to drive with reasonable care and was negligent. If he had been travelling at a reasonable speed the pursuer would have made it safely past him, so the accident would not have occurred. The Lord Ordinary also considered that the "principal cause" of the accident was the "reckless folly" of the pursuer: either she did not look to the left before crossing or, having looked, she failed to identify and react sensibly to the presence of the car in close proximity. On either scenario the greater cause of the accident was her movement into the path of the defender's car at a time when it was impossible for him to avoid a collision. The Lord Ordinary assessed the pursuer's contributory negligence at 90%. On appeal the Extra Division of the Inner House allowed the pursuer's appeal and assessed her contributory negligence instead at 70%.

JUDGMENT

The Supreme Court allows Ms Jackson's appeal by a majority of 3-2 (Lord Hodge and Lord Wilson dissenting) and awards her 50% of the agreed damages. Lord Reed (with whom Lady Hale and Lord Carnwath agree) gives the lead judgment allowing the appeal. Lord Hodge (with whom Lord Wilson agrees) would have dismissed the appeal.

REASONS FOR THE JUDGMENT

Lord Reed did not accept the appellant's contention that there was no basis for a finding of contributory negligence at all on the findings made by the Lord Ordinary. [17-18]

Section 1(1) of the 1945 Act does not specify how responsibility is to be apportioned. Decided cases show two aspects to apportionment: the respective causative potency of the parties' acts and their respective blameworthiness. The court consistently imposed a high burden on drivers to reflect the potentially dangerous nature of driving. [20-26]

There is no demonstrably correct apportionment. Since different judges may legitimately take different views of what is "just and equitable" in particular circumstances, those differing views should be respected, within the limits of reasonable disagreement. [27-28] The lower court must have gone wrong: in the absence of an identifiable error, only a difference of view as to apportionment that exceeds the ambit of reasonable disagreement will warrant that conclusion. [35] Apportionments are not altered because of disagreement as to the precise figure. However, appellate courts have intervened on the basis of disagreement as to whether one party bore much greater responsibility than the other: there is a qualitative difference between a finding of 60% contribution and a finding of 40%. [38]

The Extra Division provided only a very brief explanation of their apportionment of 70%. Given their conclusion that the causative potency of the defender's conduct was greater than that of the pursuer, the result can only be explained on the basis that they considered the pursuer far more blameworthy. They rightly considered that she did not take reasonable care for her own safety, but regard has to be had to her circumstances. She was only 13. An assessment of the defender's speed in the circumstances was far from easy. Attempting to cross a relatively major road with a 60mph speed limit, after dusk and without street lighting, is not straightforward, even for an adult. The Extra Division considered that the defender's behaviour was "culpable to a substantial degree", with which Lord Reed agrees. Overall the Extra Division's reasoning does not provide a satisfactory explanation of their conclusion that the pursuer bore the major share of responsibility. Lord Reed considered the defender's conduct played at least an equal role to that of the pursuer in causing the damage and was at least equally blameworthy. He therefore allows the appeal and awards 50% of the agreed damages to the pursuer. [39-44]

Lord Hodge would have dismissed the appeal. He agrees on the facts and the legal principles set out in Lord Reed's judgment. [45] The Lord Ordinary's assessment of 90% appears to have been influenced by eyewitnesses' impressions, however the defender's prior failure to reduce his speed was a potent cause of the accident, which put a different perspective on the matter. The Extra Division was entitled to conclude the Lord Ordinary had gone wrong. The Extra Division's assessment is not open to the same criticism, given the Lord Ordinary's findings. [47-49] Not to look or to knowingly run into the path of the car displayed a very high degree of carelessness. The Extra Division were entitled, because of the extent of her blameworthiness, to attribute to the pursuer the major share of responsibility. [57]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html