

LUCAS v. A.R.A.  
~~(TORTS)~~

BETWEEN GRAHAM CHARLES LUCAS of  
126 Point View Drive,  
East Tamaki, Airline Pilot

Plaintiff

A N D THE AUCKLAND REGIONAL AUTHORITY  
a duly constituted Body  
Corporate under the Auckland  
Regional Authority Act, 1963

Defendant

Hearing: March 11, 1980

Counsel: Mr Koppens for Plaintiff  
Mr Miles with Mr Johnston for Defendant

Judgment: 24 MAR 1980

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JUDGMENT OF PRICHARD, J.

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On 22 June, 1978 at about 10.20 pm, Plaintiff having successfully landed the Fokker Friendship aircraft of which he was the captain, left the domestic car park at the Auckland International Airport and set off in his Vauxhall Viva car to drive home. He can have had no premonition of what lay in store for him.

He drove along Andrew McKee Avenue and turned right into George Bolt Memorial Drive. When he came to make his right turn, he was confronted by two Auckland Regional Authority traffic officers in a patrol car. They were coming in the opposite direction along Andrew McKee Avenue intending to turn left into George Bolt Memorial Drive. The driver of the patrol car gave way, allowing Plaintiff to turn into George Bolt Memorial Drive ahead

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of the patrol car. The patrol car then followed Plaintiff's car along George Bolt Memorial Drive. Both traffic officers \* say that Plaintiff failed to signal his intention to turn right.

Traffic Officer Manuel, who was driving the patrol car says that as Plaintiff proceeded along George Bolt Memorial Drive, his speed increased until he was travelling at 80 kph, which is in excess of the speed limit. I do not believe this. The evidence of Traffic Officer Manuel as to Plaintiff's speed is not corroborated by Mr Ford the other traffic officer in the patrol car. (Mr Ford is no longer employed by the Auckland Regional Authority). It was Mr Ford's evidence that Plaintiff was not speeding. The patrol car caught up with Plaintiff in George Bolt Memorial Drive and the traffic officers signalled him to stop. He did so. According to Mr Ford, the only reason for calling on Plaintiff to stop was that he had failed to signal his intention to turn right at the Andrew McKee Avenue intersection. This is in direct conflict with the reason given by Traffic Officer Manuel for stopping Plaintiff. The reason he gave at the time was that Plaintiff was speeding.

In relation to the question of speeding, I note that although Plaintiff was subsequently prosecuted on various charges arising from the incidents of the evening in question, he was not charged with exceeding the speed limit. In view of what transpired later, I have no doubt that he would have been so charged had there been any evidence to support the charge. In view of the conflicting evidence of the two traffic officers, I accept Plaintiff's evidence that he was not speeding and I find as a fact, that Plaintiff did not exceed the speed limit prior to being stopped in George Bolt Memorial Drive.

There is conflict as to the point where Plaintiff was actually stopped in George Bolt Memorial Drive. According to Plaintiff, he was stopped some distance past Nixon Road while, according to the evidence of the traffic officers, the point where Plaintiff was stopped was some 100 yards short of the boundary of the area in which the Auckland Regional Authority has jurisdiction - but the point where Plaintiff says he was stopped was outside that area.

The two officers concerned were not appointed by the Ministry of Transport but were employed by the Auckland Regional Authority as traffic officers.

Section 68B of the Transport Act, 1962 authorises Constables and traffic officers to enforce the provisions of the Act and any Regulations or Bylaws in force under the Act. To this end the Act confers on Constables and traffic officers a number of specific powers which they may exercise on appropriate occasions. Section 68C requires any person using a vehicle on the road to stop the vehicle when directed so to do by a Constable or traffic officer.

However, s.68D limits the area within which a traffic officer, who is not an officer appointed by the Ministry of Transport, is authorised to act. He is restricted to roads under the control of the Authority by which he has been appointed a traffic officer. The proviso to s.68D(b)(ii) extends this restricted area of jurisdiction in cases where the traffic officer believes on reasonable grounds that it is necessary for him to exercise any of the statutory powers or authorities beyond his otherwise restricted territorial jurisdiction in order to deal with any accident or emergency or to prevent the continuance of any danger to the public or to any person.

When Plaintiff was stopped in George Bolt Memorial Drive, Traffic Officer Manuel immediately accused Plaintiff of speeding. (I have already observed that I do not believe he was speeding). Traffic Officer Manuel says that he also asked Plaintiff to produce his driver's licence. Plaintiff denies that this request was made. I find as a fact that he was so asked. Plaintiff's response to the accusation of speeding was the discourteous but not wholly inaccurate remark that it was "absolute nonsense". With that, he got back into his car and drove off. Traffic Officer Manuel says that as Plaintiff closed his door and started to drive away, he shouted "Driver! you will remain stationary". Plaintiff says he did not hear this injunction. This could well be the case because at that stage, he was in the process of starting up his engine and driving off. Plaintiff's action in terminating the discussion in this abrupt way may have been prompted, as he says, by his indignation at being wrongly accused of speeding. However, it is not unlikely that a contributing factor was his realisation that his driver's licence was no longer current; it had expired some two years before the incident.

The two traffic officers in their patrol car then proceeded to follow Plaintiff along George Bolt Memorial Drive. Plaintiff turned right at Montgomery Road and then left into Westney Road, still followed by the patrol car. In Westney Road the patrol car overtook him, ranged alongside and crowded in on him so closely that the two vehicles came into contact. Traffic Officer Manuel and Plaintiff both say there were several such contacts. Mr Ford, the passenger in the patrol car and therefore the closest to Plaintiff's car during the manoeuvre, described it as a "rubbing together" or "scraping" of the two vehicles. Mr Ford says that he was frightened and called out "For Christ's

sake Bob, move over".

At this stage, Plaintiff's car was travelling on its correct side of the road and as close as it could get to the edge of the road. In fact Plaintiff says that at one point he was forced over so far that his wheels were in the gutter and he had no steering. The patrol car had its red light flashing and Mr Ford, from the passenger's seat was attempting to wave down Plaintiff's car. This was a situation distinctly fraught with danger. It became more so on the appearance of another vehicle approaching along Westney Road from the opposite direction. According to the evidence, there was barely room for the approaching car to pass. Mr Ford said there would have been room but "it would have been close". Traffic Officer Manuel thereupon attempted to clear the way for the approaching car by swerving in front of Plaintiff's vehicle. He says that he moved ahead of Plaintiff's vehicle and when about half a car length ahead, signalled his intention to pull to his left by operating his lefthand indicator. The left rear of the patrol car clipped the front right of Plaintiff's car. This impact was described by Traffic Officer Manuel as a "rather large collision".

However, the patrol car did not complete the intended manoeuvre of cutting in in front of Plaintiff's car. Having unsuccessfully made this attempt, clipping the front of Plaintiff's vehicle in the process, the patrol car dropped back and then continued to follow Plaintiff along George Bolt Memorial Drive.

Plaintiff turned to his right into Massey Road, as did the patrol car. In Massey Road the patrol car succeeded in passing Plaintiff's car and took up a position ahead of it. Both cars then travelled along Massey Road in that order. The patrol car made a number of weaving movements which were designed to keep off

place at high speed. But there was a good deal of traffic in Massey Road, including a build-up of traffic behind Plaintiff's car which, by then, was travelling at a much reduced speed. It was a hazardous procedure, to say the least. Eventually, in the vicinity of the Post Office at the intersection of Massey and Thomas Roads, both vehicles came to a halt.

There was then another collision. The traffic officers say that this was occasioned by Plaintiff starting to drive towards them after they had stopped ahead of him; Plaintiff says conversely, that his was the stationary vehicle and that the patrol car reversed into him. There is here a complete conflict of evidence. I can only resolve this conflict by reference to what I regard as the probabilities. Both traffic officers agree that the patrol car was reversed towards Plaintiff's car from a distance of about 20 yards ahead. Traffic Officer Manuel says the object of this exercise was to place the patrol car so close to Plaintiff's car that it could not easily be driven away. This would necessarily mean reversing to a position very close to the front of Plaintiff's car. It has to be remembered that all this took place in the dark except, of course, for the lights of both vehicles. I find it difficult to believe that either driver, despite the fact that both cars were already showing signs of the battering received in the earlier incidents, would deliberately ram his car into the other. What I do believe is that it would be difficult, under the prevailing conditions, for the driver of the car which was reversing to judge accurately his distance from the car behind him.

Indeed, Traffic Officer Manuel admitted that when he started reversing he was not even sure that Plaintiff's car had stopped. From all this evidence, I conclude that

the final collision was caused by Traffic Officer Manuel, understandably, misjudging his distance from the car behind him while reversing. I do not believe the collision was intentionally brought about by either driver. I am satisfied that it was caused through an error of judgment on the part of Traffic Officer Manuel - a contributing factor being that by this time he was not as calm and collected as he is normally.

When both vehicles thus finally came to a stop, the traffic officers emerged from their car and walked back to Plaintiff's vehicle. When they reached it, Plaintiff was seated in his car with the door open. Traffic Officer Manuel approached the Plaintiff while Mr Ford went round to the rear of Plaintiff's car in order to direct approaching traffic.

Plaintiff did not enter into any protracted discussion with Traffic Officer Manuel, but made a remark to the effect that he was not going to be intimidated, reversed his car and drove away. Traffic Officer Maneul says he had to step out of the path of Plaintiff's car to avoid being run over.

On these facts, Plaintiff claims the sum of \$538.10 being the cost of repairs to his vehicle,  
\* together with aggravated and exemplary damages.

The Defendant counter claims for \$287.18 being the cost of repairing its patrol car.

The items of aggravated and exemplary damages are related in the Statement of Claim to a variety of alleged causes of action including negligence, trespass to goods, wrongful exercise of authority and false imprisonment. But nowhere in the pleadings or in the evidence is there any suggestion that the Plaintiff suffered any injury to his person.

I find that the collisions which occurred when the two vehicles were proceeding side by side along Westney Road were the result of intentional and unlawful actions on the part of Traffic Officer Manuel rather than due simply to negligence, and that as to that portion of the damage, the Plaintiff is entitled to succeed in trespass. Doubts have been expressed as to whether an action in trespass is appropriate in road accident cases - but I do not regard the collisions which occurred in Westney Road as simply accidental events. The ultimate collision in Massey Road was not, in my view, brought about intentionally but was due to a failure to take reasonable care when reversing towards Plaintiff's car in the conditions then prevailing. I find no contributory negligence on the part of Plaintiff. Accordingly Plaintiff is entitled to judgment for the sum of \$538.10, the agreed cost of repairing his car.

On these findings Defendant's counter claim for the cost of repairs to its vehicle cannot succeed.

There remains the question as to whether Plaintiff in this action can recover aggravated or exemplary damages and if so, whether in the circumstances, damages should be allowed under these heads or either of them. It was submitted by Mr Miles that in this action the Court has no jurisdiction enabling an award of aggravated or exemplary damages. He referred to the unreported decision of the Court of Appeal in the case of R. v. T. delivered on 19 December, 1979 (C.A. 159/77) and also to the unreported decision of McMullin, J. in Stowers v. Auckland City Council delivered on 2 May, 1979 (Supreme Court, Auckland A.1064/77). In reliance on the decisions, Mr Miles submits that any question of aggravated or exemplary damages, in the circumstances of the present case, is a matter for the jurisdiction



of the Accident Compensation Commission as in terms of the Accident Compensation Act, 1972, that tribunal has exclusive jurisdiction in claims relating to personal injury by accident in New Zealand and also exclusive jurisdiction to determine whether any claim is a claim for personal injury by accident.

\* In R. v. T. (supra), the Court of Appeal was concerned with an action in which the Plaintiffs, husband and wife, claimed damages against a doctor on the basis that the doctor had performed an operation on the wife which he had advised them would be an effective measure against pregnancy. The purpose of the operation was not in fact achieved. It was held by O'Regan, J. at first instance, on a motion for an order staying the action on the grounds that Plaintiffs' claim could not be pursued except in the forum of the Accident Compensation Commission, that Respondents (Plaintiffs in the Court below), were able to proceed with their action insofar as it related to the failure of the doctor to warn them that the operation might not achieve its desired purpose, his failure to explain the risk of pregnancy, his failure to advise them as to the condition following the operation and his failure to identify a structure involved in the operation before operating: he held that the action could not proceed as it was constituted insofar as it relied on an allegation that a certain diathermy procedure had been applied. In essence, O'Regan, J.'s decision was based on his view that the items of damage on which he held that the action could proceed did not arise directly or indirectly out of any personal injury - by accident or otherwise.

On appeal it was held by Woodhouse and Richardson, JJ., Cooke, J. dissenting, that the

to whether any person has cover under the Act - the Court being required to refer any such question to the Commission for decision. Such cover exists whenever any person suffers personal injury by accident in New Zealand or dies as a result of personal injury so suffered. That being so, the Commission is first obliged to decide the earlier question as to whether the claimant has suffered personal injury.

In my view, as it relates to the issue of jurisdiction under the Accident Compensation Act, the instant case bears no resemblance to R. v. T. (supra).

Aggravated and exemplary damages, although treated as a separate head in assessing damages, are essentially an augmentation - for special reasons - of compensatory damages recoverable by the Plaintiff on a substantive cause of action. A claim for aggravated or exemplary damages can, therefore, never survive, independently, on its own roots. To exist, successfully, it has to be grafted on to some cause of action entitling the Plaintiff to compensatory damages. From the nature of the case, the root-stock on to which is grafted the claim for aggravated or exemplary damages - the substantive cause of action to which the claim for aggravated or exemplary damages has to be related - is almost invariably a cause of action in tort and very commonly a tort involving personal injury to the Plaintiff. It follows that in order to determine whether a claim for aggravated or exemplary damages is within the ambit of the exclusive jurisdiction of the Accident Compensation Commission, one must not have regard not only to the facts which are alleged to be special reasons for allowing such damages: One has to go beyond that; identify the basic or substantive cause of action, and see whether that is a claim in respect of personal injuries.

It may be possible, without mentioning or referring to personal injuries, to plead and prove the reasons advanced for augmenting the damages. But once it is seen that an element of the substantive cause of action is an injury to the person, it follows that the claim for aggravated or exemplary damages is a claim for damages arising out of personal injuries - and so within the exclusive jurisdiction of the Accident Compensation Commission.

R. v. T. (supra) was such a case. In the present case, as I have already mentioned, nowhere in the pleadings or in the evidence, is it even faintly suggested that the Plaintiff suffered injury to his person. It is clear that the Commission has exclusive jurisdiction to determine the question, should it arise, as to whether a claim is a claim for personal injury by accident. But there must be a real question arising from the pleadings or the evidence. In the present case there is no ingredient of personal injury in any of the causes of action.

Stowers v. Auckland City Council (supra) was also a decision on a motion to strike out a Statement of Claim - in this case, a claim for punitive damages against a traffic officer alleged to have assaulted the Plaintiff causing him physical injuries. The motion to strike out was on the ground that the assault which gave rise to the claim had caused a "personal injury by accident" within the meaning of the Accident Compensation Act, 1972 so that s.5 of that Act operated as a bar. In the course of his judgment, McMullin, J. referred to a number of recent unreported decisions, some of which involved claims for punitive or exemplary damages arising from assaults. After considering these decision, in which judicial opinion is not

unanimous, McMullin, J. concluded that the matter is primarily one of statutory interpretation, the question being whether s.5 of the Accident Compensation Act, 1972 properly construed, abolishes the right to claim exemplary damages which owe their genesis to some tortious act relating in personal injuries by accident. McMullin, J. proceeded to make a close analysis of the bases for both aggravated and exemplary damages. Having done so he reached the conclusion that the actions which Plaintiff sought to bring had to be classified as a claim for damages arising directly or indirectly out of the injury. He agreed with Quilliam, J. in Donselaar v. Donselaar (Wellington, A.454/76, 29 July, 1977), when he said that:-

"The foundation of the right to claim exemplary damages is still assault which has caused injury."

The decision of McMullin, J. preceded the decision of the Court of Appeal in R. v. T. but is entirely consistent with that decision.

In my view, the present case is clearly distinguishable from both R. v. T. and Stowers v. Auckland City Council on the ground so clearly stated by McMullin, J. in the latter decision. McMullin, J. observed, in the course of his judgment: "If there has been no personal injury by accident, then s.5(1) would not appear to operate as a bar to any proceedings for damages because the premise on which s.5(1) is founded namely 'where any person suffers personal injury by accident' is not present .... In my view, if there is no personal injury within the definition of s.2(1) proceedings for damages will lie."

In the present case, there is no allegation of physical injury to the Plaintiff nor does the evidence suggest that he sustained any such injury. Nor are the

claims for exemplary and aggravated damages in any way referable to a personal injury sustained by the Plaintiff. I hold accordingly that the provisions of the Accident Compensation Act, 1972 do not operate as a bar to Plaintiff's claim for exemplary and aggravated damages in this action as it is now constituted.

It was suggested by Mr Miles that a claim for aggravated or exemplary damages insofar as it relies on injury to Plaintiff's feelings is itself a claim for a species of personal injury. I do not think this is so but, in any event, Plaintiff does not need to invoke his hurt feelings as a cause for increased damages: he claims that Traffic Officer Manuel's actions were malicious, insulting, high-handed, oppressive and in contumelious disregard of Plaintiff's rights, and if these allegations are well founded they are a basis for awarding aggravated and/or exemplary damages. The actions of Traffic Officer Manuel, of which the Plaintiff complains, all occurred on a section of a public road which was not within the jurisdiction of the Defendant. Traffic Officer Manuel gave evidence as to his reason for pursuing Plaintiff after he was first stopped in George Bolt Memorial Drive. When asked why he felt it was necessary to pursue Plaintiff's vehicle in the way he did, he said:-

"After he had driven away, I felt it necessary to interview him, one to obtain his address and most importantly, we felt it was in the interests of public safety. His actions were not normal. He could have been not properly in control of his vehicle, a risk to the public."

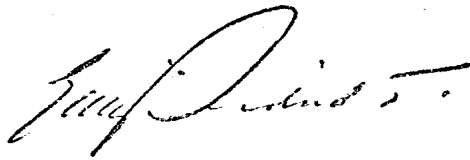
I am not persuaded that this explanation by Traffic Officer Manuel is a true statement of his reasons for his relentless pursuit of Plaintiff. They strike me as being tailored to fit the proviso to s.68(b)(ii) of the Transport Act. Had the traffic officer been

concerned, as he says, with risks to the public, he would, I think have refrained from conducting the pursuit in the way he did. The Plaintiff at the time was in uniform - a uniform which the traffic officer must have wellknown to be that of an airline pilot. There is not the slightest suggestion that Plaintiff had been drinking or was otherwise not in complete control of his vehicle. He offended Traffic Officer Manuel by dismissing the accusation of speeding as "absolute nonsense" and then driving off without producing his driver's licence. Traffic Officer Manuel may have regarded those actions as "not normal", but it does not follow that they were an indication that Plaintiff's driving constituted or might constitute a risk to the public. I am satisfied that the substantial reason for the pursuit was Traffic Officer Manuel's resentment of the Plaintiff's attitude when accused of speeding.

Traffic Officer Manuel also claimed as some justification for pursuing and stopping Plaintiff outside the territorial jurisdiction of the Auckland Regional Authority that he had never been instructed by his employer as to the limits of that jurisdiction - that in fact he had never heard of this until he attended a lecture some 12 months after the events of 22 June, 1978. I find it incredible that a traffic officer would be permitted by the Auckland Regional Authority to operate at large for a period of some 12 months prior without giving him some instruction as to the limits of the territory over which the Authority had jurisdiction. If that was indeed the case, it would reflect no credit on the Auckland Regional Authority; however, I cannot believe that this was the true state of affairs.

disregard of Plaintiff's rights. I consider that the justice of this case will be met if Plaintiff is awarded the sum of \$1,000 in addition to the sum of \$538.10, the cost of repairs to Plaintiff's vehicle.

Accordingly there will be judgment for Plaintiff in the sum of \$1,538.10 with costs to scale and disbursements to be fixed by the Registrar. The counter claim had no effect on the duration of the hearing and would have required no special preparation for trial: I make no order as to costs in respect of the counter claim.



Solicitors:

O'Donnell Wood & Partners, Auckland, for Plaintiff  
Buddle Weir & Co., Auckland, for Defendant