

BETWEEN

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1666

Appellant

AND

MINISTRY OF TRANSPORT

Respondent

Hearing: 4 December 1984

Counsel: Wittenhannah for Appellant  
Jones for Respondent

Judgment: 4 December 1984

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(ORAL) JUDGMENT OF PRICHARD, J.

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On 27 July this year, the Appellant pleaded guilty in the Children and Young Persons Court to a charge of careless driving causing injury. He was sentenced to 80 hours community service and was disqualified from holding or obtaining a motor driver's licence for a period of two years. At the time of the incident which gave rise to this charge, the Appellant was aged 16 years and 3 months.

The circumstances were that at about 10.45 p.m. on 10 February, the Appellant was driving a Honda Hatchback car in The Strand, Takapuna. There were no less than 9 youths, including the Appellant in the vehicle. Two of these boys were in the luggage compartment at the rear

of the car. When the car pulled up in The Strand, one of the boys, Robert by name, got out of the car and it seems that in doing so, he stumbled and fell on to the road, landing on his back with his legs still inside the vehicle. The Appellant, who was quite unaware that this had happened - his view of the rear of the car was no doubt obstructed by the large number of other passengers - reversed and in consequence, the car ran over the boy Robert

The tragic consequence is that the boy Robert received a broken spine and is now paralysed from the neck down with only slight movement in his elbows.

It was, of course, careless and irresponsible on the part of the Appellant to allow this number of persons to travel in the car. It was a car owned by his brother but which he had permission to use. But when one has regard to the incident itself, it could fairly be described as almost a pure accident, certainly involving no high degree of negligence on the part of the driver.

I understand from reading the Social Welfare report - which was before the District Court Judge at the time of sentencing, that the mother of the injured boy now has feelings of resentment, bitterness and anger towards the Appellant. And this is something which is understandable.

I am influenced in no small degree, by the excellent reports furnished to the Court by \_\_\_\_\_'s form teacher at Northcote College and by references in the report from the social worker who describes the Appellant as a quiet and thoughtful youth who shows a lot of maturity for his 16 years and who also reports that the Appellant has been regularly visiting the injured lad in hospital and who obviously has strong feelings of guilt and remorse as a result of his act of carelessness. I am informed from the Bar that the Appellant has now left school and is in employment.

I have formed the impression that the learned District Court Judge in this case was influenced to a considerable degree by the information he had as to the feelings of the mother of the injured lad. But it is not the function of the Court to exact retribution in a case of this kind and, in all the circumstances, I think the disqualification for a period of 2 years was unduly harsh. The period of community service, I am informed, is causing difficulty in relation to the Appellant's present employment.

This appeal is allowed to the extent that the disqualification is reduced to a period of 6 months and the period of community service is reduced to 30 hours.

*John Dickson J.*