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(3) FW NZLR X

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 1827/83

929

IN THE MATTER OF An Appeal from a determination of The District Court at Auckland

BETWEEN THE MOUNT ALBERT CITY COUNCIL
Informant

A N D ROBERT JOHN BLANCE
Defendant

Hearing: 6 August 1984

Counsel: J.K. MacRae for Informant
R.I. Falvey for Defendant

Judgment: 9 AUG 1984

JUDGMENT OF SINCLAIR J.

This matter came before this Court by way of case stated and quite frankly I am somewhat at a loss from the case stated itself, to ascertain just precisely the point which was in issue. At the commencement of the hearing, Mr Falvey indicated that the matter had already been before this Court but due to deficiencies in the original case stated, the matter was remitted back to the District Court for a further case stated to be prepared. He indicated that while an agreement had been

reached as to the form the case stated should follow, in fact when the matter was returned to this Court, the case stated did not in his view conform with what had been agreed to by the parties and the Justices. Mr Falvey requested that the matter be returned to the District Court to be further amended, but in view of the fact that the offence was over 12 months old I decided to embark upon a hearing to see whether I could discern what really was the question in issue between the parties and from the submissions put forward by Mr MacRae, I was able to ascertain the issue which the informant desired to have answered and for that reason I decided to complete the hearing. However, for the sake of completeness I set forth the contents of the case stated as it came before this Court:-

> "1. THE information alleged that the Defendant did on the 12th day of July 1983, at Grande Avenue, Mount Albert, commit an offence against section 60 of the Transport Act 1962 in that he did carelessly use a motor vehicle.
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> 2. THE Defendant pleaded not guilty and after hearing evidence adduced by the Informant on the 14th day of September 1983 we dismissed the information on the grounds that the charge of carelessly using a motor vehicle was not available to the Informant.
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> 3. THE Informant has, within fourteen days after the determination, filed in the office of the District Court at Auckland a notice of its intention to appeal by way of Case Stated for the opinion of this Honourable Court on a question of law only; and we therefore state the following case:
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> (a) It was proved at the hearing that a Bedford truck owned by the Defendant had been parked by the Defendant on the roadway outside his residence at 10 Grande Avenue, Mount Albert,

on the 12th day of July 1983. At approximately 8.30 in the evening of that day a Ford Falcon taxi, being driven in an easterly direction up Grande Avenue, collided with the rear of the parked truck. The street was not well lit, visibility was poor and the truck, which was coloured grey, displayed no parking light to the rear. The driver of the taxi failed to see the truck until a moment before impact and was unable to avoid the collision.

(b) In arriving at our decision to dismiss the charge we determined that the charge of carelessly using a motor vehicle was not available to the Informant in respect of the failure to show a parking light at the rear of the truck because the Traffic Regulations 1976 prescribe specific offences in relation to the non-display of rear parking lights on vehicles.

(c) We then went on to determine that, on the evidence, there was ample room for the Ford Falcon taxi to pass between the parked truck and the middle of the road and that the Informant had therefore failed to establish a prima facie case of carelessly using a motor vehicle on the part of the Defendant.

(d) The question for the opinion of this Honourable Court is whether our decision was erroneous in point of law."

As will be seen from the form of the case stated, there were two apparent issues. Firstly, whether a charge of careless use of a motor vehicle could be sustained where a prosecution relied merely on the failure to display parking lights of a vehicle which had been duly parked and secondly, whether on the evidence the informant had failed to establish a prima facie case of careless use of a motor vehicle where it was established that there was ample room for the complainant's vehicle to pass between a parked truck and the middle of the road.

Central to the submissions put before this Court on behalf of the informant, was the submission that despite anything that was contained in the Traffic Regulations 1976 serial No.1976/227, it was competent for the informant to lay a charge of careless use of a motor vehicle against a person who had allegedly parked the vehicle in a street and which during the hours of darkness did not display sufficient lights to enable the vehicle to be seen by other users of the road.

The case stated discloses that the defendant had parked a truck outside his residence at 10 Grande Avenue, Mount Albert on 12 July 1983 and that at 8.30 p.m. a taxi being driven in an easterly direction up Grande Avenue, collided with the rear of the parked truck. The street was not well lit and visibility was poor and the truck displayed no parking lights to the rear. It was part of the defendant's contention that Reg.37 of the Traffic Regulations 1976 could have been used by the informant as a basis for laying a charge of parking the vehicle with insufficient lighting thereon as was required by that Regulation. The informant countered by saying that a charge of careless use of the motor vehicle in question could be sustained, this being a charge which was laid under s.60 of the Transport Act 1962.

To my mind, the submission on behalf of the informant is correct in that under s.2 of the Transport Act 1962, the word "use" is defined in relation to a vehicle as including "driving, drawing, or propelling by means of another vehicle

and permitting to be on any road." When the vehicle was parked by the defendant, then I am of the view that by permitting the vehicle to be on the road in question, that act fell within the extended definition of the word "use" in the Transport Act 1962.

Neither counsel had been able to find any reported case on this particular aspect of the matter and the only decision which could be located was one referred to in Graham's Law of Transportation and that was in relation to an unreported case of Police v. Ellis in the Dunedin Magistrate's Court in 1957. In that case, the defendant had been charged with using a motor vehicle without due care and attention or without reasonable consideration for other road users. He had parked his truck on a main country road at night in a darkish locality more or less at right angles across the road so as to obstruct half of it whilst a car was being loaded on to a vehicle from an adjoining bank. There was no effective warning to approaching traffic other than from the lights on the truck which were directed at right angles to traffic using the road in a normal fashion. The complainant approached the scene on the obstructed side of the road and an accident occurred. It was argued that the truck was not being used, but the Court held that the word "use" as defined in the Statute which was then in force as "permitting to be on any road", empowered the Court to give the widest possible meaning to the word in question.

Likewise, I am of the view that having regard to the way in which the word "use" has been defined in the 1962 Statute, it is competent for a charge of careless use under s.60 of the Statute to be laid against the driver of a vehicle who parks his vehicle on a roadway during the hours of darkness without it being adequately lit, to inform other road users of its presence.

That is sufficient in my view to answer the query which was put before this Court by way of argument. However, in relation to the charge against this particular defendant, in view of the apparent finding by the Justices that in all the circumstances carelessness had not been established on the part of this particular defendant, I am of the view that it would be contrary to the rules of justice to refer the matter back to the District Court, particularly when the decision of that Court was made on a submission of no case to answer. As pointed out earlier, this particular episode happened over 12 months ago and it would be quite wrong, having regard to the deficiencies in the case stated and the uncertainty as to the manner in which the District Court arrived at its decision, to now refer the case back to the District Court to be further heard. In all the circumstances, there will be no formal order on the case stated at all and no order as to costs.

P.R. Wild J.

Solicitors for Informant: Messrs Nicholson, Gribben and and Company, Auckland

Solicitors for Defendant: Messrs Holmden, Horrocks and Company, Auckland