

IN THE HIGH COURT OF NEW ZEALAND

M. 1150/84

AUCKLAND REGISTRY

1289

BETWEEN

MOYES

APPELLANT

A N D

MINISTRY OF TRANSPORT

RESPONDENT

Judgment: 9 October 1984  
Hearing: 9 October 1984  
Counsel: Ronayne for Appellant  
Miss Shine for Respondent

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ORAL JUDGMENT OF CASEY J.

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Mr Moyes appeals against his conviction and sentence on a charge of careless use of a motor vehicle on Atkinson Road on 28th october 1983. The case was heard before two Justices and was fully defended. At the end they found the charge proved. They had the option, of course, as happens in all these cases, of deciding between two conflicting accounts of how the accident happened. I think it is implicit from their decision that they favoured the evidence given by Mr Harlowe, the driver of the other vehicle involved in the collision about the centre of the intersection. There is some dispute about exactly where the point of impact was. The traffic officer who came there shortly afterwards put it right at the centre of the road, stating that both parties had accepted this by reference to the debris that was found there. However, there was a suggestion in the evidence that Mr Moyes was trying to maintain a point slightly further towards his side of the road. This was to some extent supported by a witness who, I gather, was his aunt, and had emerged from a house into which he disappeared shortly after the incident.

It became clear from the evidence and is undisputed that as Mr Moyes approached the intersection with Daffodil Street, he indicated an intention to make a left hand turn, but instead of moving into that street, proceeded straight across the intersection. It transpires that his indicator was directed at a turn into a driveway which led to his grandmother's house a little distance past the intersection. It was suggested that he had no alternative but to signal before coming to Daffodil Street, because the law requires that he gives three seconds' notice. I simply cannot accept this explanation. There was nothing to prevent him slowing right down once he passed the intersection and giving his intimation of a turn at that point. As it stood, Mr Harlowe thought he intended turning into Daffodil Street - as would any other motorist in his situation - and on the assumption that he was going to yield the right of way to him (making a right hand turn) he felt it was in order for him to proceed.

The situation obviously developed from that initial misunderstanding. It becomes immaterial for the purposes of resolving this appeal which one of the parties was right over the point of impact, although I think that Mr Harlowe's account of the observed movements of Mr Moyes' vehicle is a credible one, when he described him braking and skidding across and the front corners of the two vehicles colliding with each other. Be that as it may, the question that the Court must ask is whether, in the management of his vehicle, Mr Moyes displayed the care of a reasonable and prudent driver in all the circumstances. It is impossible to answer this in his favour in the light of the clear signal he gave before the intersection, and which any reasonable and prudent driver must have appreciated would be taken by approaching traffic as an intention to turn into Daffodil Street. In these circumstances, I think the Justices reached the right conclusion. There was a suggestion in Mr Ronayne's submission that from comments they made at the end they may have felt that Mr Moyes was speeding or that they

found him at fault because of his youth. I do not read them in this way. I think it was nothing more than a paternalistic homily which they addressed to him after finding he had been careless.

In these circumstances the appeals must be dismissed. The appeal against sentence was not pursued, nor do I think it could be

*M.B. Casey*

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