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NZLR  
X

IN THE HIGH COURT OF NEWZEALAND  
WHANGAREI REGISTRY

M.96/84

1303

BETWEEN

POLICE (LES ANDREWES)

Appellant

A N D

C LAZARUS  
of Auckland, Builder

Respondent

Offence: Dangerous Driving Causing Death  
Dealt With: 6 April 1984 By: Paul DCJ  
Sentence: Fined \$500; 12 months Disqualification

Appeal Hearing: 12 October 1984

Oral Judgment: 12 October 1984

Counsel: P J Smith for appellant  
A Fairley for respondent

Decision: APPEAL DISMISSED

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(ORAL) JUDGMENT OF HENRY, J.

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This is an appeal under s.115A of the Summary Proceedings Act 1957 against a sentence by way of fine and disqualification imposed in the District Court on 6 April 1984 on the Respondent on one charge of causing death by dangerous driving.

The basic submission for the Appellant is that a fine was not an appropriate penalty in the particular circumstances of this case, and that the Court was in those circumstances obliged to impose some term of imprisonment. In the course of submissions, Mr Smith has referred me to a number of authorities dealing with penalties relating to driving offences, and in particular those under the section of the Transport Act 1962 now in question.

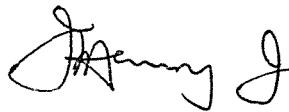
In my view, the principles to be applied on an appeal such as this are clear and little help can be gained by a consideration of other cases which are, of course, entirely dependent on their own factual situation.

Here the accident in question occurred at about 6:15 a.m. as the Respondent was driving north, he having crossed a continuous yellow line in the course of overtaking two vehicles and at the latter stage of that manoeuvre coming into collision with a car travelling in the opposite direction. A passenger and apparently a close friend of Respondent died as a result of injuries received in that accident. It appears that the Respondent had travelled from Auckland that morning, and I note it was still in the early hours of the morning when the accident occurred. The Memorandum made by the learned District Court Judge indicates that there was some suggestion made to him that the Respondent may have fallen asleep at about the time the accident occurred, and that apparently seemed to him to be a possible explanation for its occurrence.

I do not think that the facts set out in the Summary which was before the learned District Court Judge, and which is also before me, indicate a level of driving which can be described as of the worst type leading to a charge of this nature. Dangerous driving, whilst of course serious as it must be to warrant a charge and a conviction as such, does vary tremendously from case to case, and the facts here do not have the serious connotations such as those which often

appear before the Court. I have given careful consideration to all that Mr Smith has submitted to me but I am not taken to the point where I can say that the failure to impose a period of imprisonment on this Respondent, having regard to the circumstances of his offence and having regard to his own personal character and history, was inappropriate. I do not think the earlier offences, the more serious of which dates back to 1979, are sufficient to require the Court to regard the matter in any other way.

In the course of submissions no challenge was made to the period of disqualification imposed on the Respondent, and as I am therefore of the view that the penalty was not inappropriate nor do I think it inadequate, accordingly the appeal must be dismissed.



Solicitors:

Crown Solicitor, Whangarei, for appellant  
Lynch Atkins & Co., Whangarei, for respondent