

2-11

NZLR

X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 357/84

1456

BETWEEN

PEDERSEN

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Offence: Dangerous speed
Dealt with: 6 June 1984 AT: Hamilton BY: F.F.Latham DCJ
Sentence: Fine \$250; Court costs \$20; disqualified for
six months.

Appeal hearing: 5 November 1984
Judgment: 5 November 1984
Counsel: J.C.Chamley for appellant
P.J.Morgan for respondent

ORAL JUDGMENT OF BISSON, J.

This is an appeal against conviction in respect of an offence of driving at a speed which might have been dangerous to the public. The appellant overtook four motor vehicles travelling head of him at night on a stretch of road north of Ngaruawahia and then continued until he slowed down and was stopped, in effect, by a traffic officer who gave evidence that his speed was 154 k/h.

In the points on appeal the main thrust is directed to passages in the decision of the learned District Court Judge and the way he expressed his views about the relevance of speed when considering danger to the public on the highway. Mr Chamley for the appellant has very carefully analysed the evidence and correctly presented the law to the court, citing a number of cases, in particular that there must be some reasonable likelihood of foreseeable danger to the public in the situation.

The learned District Court Judge considered that the appellant was entitled to overtake these four vehicles ahead of him in view of the fact that there was no oncoming traffic and that he had a vehicle which was designed for quick acceleration so that the overtaking movement would be taken

in a short distance. However, it seems quite clear that he did not, having made that overtaking movement, immediately reduce his speed to the speed limit. I am satisfied on the evidence that he continued at a high speed and really did not slow down to a stop until he realised he was being followed by a traffic officer. The level at which a speed becomes dangerous does depend on all the surrounding circumstances but, in this case, it was at night and on a main highway with some side roads and various farm proerties so that there was a reasonably foreseeable likelihood of a member of the public, either on foot or in a vehicle, emerging and at night not being able to safely estimate the speed of the appellant's car. He would see only the lights and he would be entitled to assume that the oncoming vehicle was driving at a speed close to the maximum speed limit of 80 k/h and by no means anywhere near a speed close to double that limit. That being the case the speed would create a trap which was potentially dangerous to the public.

The appellant was rightly convicted and the appeal is dismissed.

G. E. Brown J.

Solicitors

Thorne Thorne White & Clark-Walker of Auckland for appellant
Crown solicitor for respondent.