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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. No. 551/84

1646

BETWEEN ROLLINSON

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 2 November 1984

Counsel: W. Rosenberg for Appellant
N.W. Williamson for Respondent

Judgment: 2 November 1984

ORAL JUDGMENT OF QUILLIAM J

This is an appeal against conviction and sentence on a charge of careless use of a motor vehicle.

The prosecution case related to the manner of driving of a Holden car on Barbadoes Street, Christchurch, on 1 May 1984. The principal prosecution witness, Mr Quinlivan, said he was driving south on Barbadoes Street and stopped at the intersection of Salisbury Street as the red light was against him. He said that there are four lanes on the road at this point. The left lane indicated that it was for traffic turning left, then there were two lanes showing that they were for through traffic, and on the right was an unmarked lane. There is a prohibition against turning right at that point so traffic in the right lane would only be able to go straight ahead. However, his evidence was that on the other side of the intersection there was a line of parked cars so it was not possible to drive straight through in that right-hand lane. Mr Quinlivan said that when the

lights changed he moved off and had gone about ten yards and reached a speed of about 15 km/h when a car, driven by a person he subsequently identified as the appellant, passed on his right travelling at a speed which he estimated at not less than 70 km/h. This car swerved over to the lane in which Mr Quinlivan was driving. Ahead Mr Quinlivan saw that there was a pedestrian crossing the road from left to right and he said that the appellant's car swerved to its left in order to miss that pedestrian and missed him by only a few feet. The two vehicles stopped side by side at the Kilmore Street intersection and Mr Quinlivan was then able to see who the driver of the car was. He made a remark to him but the appellant just laughed. When the lights changed they moved off. The appellant accelerated away and a little further on cut into his left in front of Mr Quinlivan who said that he had to brake in order to avoid an accident. Later Mr Quinlivan made a complaint to the Ministry of Transport as to the driving of the appellant.

The appellant was not represented in the District Court and it may be that his case was therefore not as well presented as it would otherwise have been, but that, of course, was his choice.

The appeal has been presented upon the basis of a detailed criticism of the principal findings of the District Judge. Those findings are contained in the judgment in this passage where it is said:

> " ... I would find that the action of a driver in coming up on the inside of parked cars at speed travelling over 50 kilometres an hour and cutting in front and having to swerve to avoid a pedestrian would amount to careless use and I would also find the actions of a driver to cut in front of another car and get into the same lane thereby forcing that car to brake and come to a stop would again amount to careless use because it creates a potential danger situation. "

Those remarks have been subjected to close scrutiny and it is said that they do not amount to a basis for a finding of careless use.

It needs to be observed at once that a large part of the criticism directed at the District Judge's findings amount to an invitation to me to take a different view of the evidence given by the complainant than that which the District Judge plainly took. This was upon the basis that there were reasons for not accepting the evidence which the complainant gave. It is, of course, basic to an appeal in a matter of this kind that this Court will not interfere with a finding as to the credibility of a witness unless it is clear from the transcript that there was no basis upon which the finding could have been made. In other words the assessment of the reliability of a witness is left to the judgment of the tribunal which actually saw the witness. It is, of course, out of the question that I should now interfere with those findings so long as I can see that there was a basis in the evidence for them. That observation at once disposes of a great deal of the argument which has been advanced.

It was sought to argue that the complainant was wrong in his description of the marked lanes on the roadway and the presence of parked vehicles. This is a simple example of what I have just been saying. The complainant gave his evidence to that effect, he was challenged on it in cross-examination, there was no evidence given by the appellant to contradict that evidence. The assessment of it was entirely a matter for the District Judge. And so with the criticism of the finding as to a speed of over 50 km/h; this was solely a matter of credibility and I would not contemplate interfering with it.

It is unnecessary for me to traverse all the matters raised because they suffer from the same difficulty, that in the end it was the District Judge who saw the witness and as he was not offered any evidence to the contrary it is clear that he was perfectly free to accept that evidence.

On the assumption that the District Judge was prepared to accept Mr Quinlivan's evidence, and plainly he did, then the only question which remains is whether the driving of the appellant, as disclosed by that evidence, can be said to amount to careless use. The correct test has been referred to by counsel for the appellant, and that is whether the appellant was exercising that degree of care and attention that a reasonable and prudent driver would exercise in the same circumstances. The effect of the evidence given was that the appellant overtook Mr Quinlivan on the first intersection at a speed which must have left little margin for error in view of the parked cars ahead, and that required him to move over to the next lane in front of the complainant. He then drove closer to a pedestrian than was prudent and had to swerve to his left to do so. There was a suggestion, in argument, that this had been the fault of the pedestrian but I can see nothing in the evidence to suggest that that was the conclusion which ought to have been drawn. The appellant then cut in ahead of the complainant in such a way as to cause the complainant to brake. All of this, it seems to me, clearly amounts to a departure from the standard of care of the reasonably prudent motorist and so I can see no basis on which I ought to interfere with the finding as to conviction.

The penalty was a fine of $250 and disqualification for a period of three months. With regard to that, it is argued that the fine was greater than normally imposed in this district for that offence and that

as road safety was not involved there should have been no disqualification.

As to the fine, I am not aware of the usual fines for this offence in this district, but having regard to the fact that this was the appellant's second offence of careless driving, and that on the previous occasion he was fined $200, I should have thought that the fine was modest. As to the disqualification, quite clearly road safety was indeed a factor here. The very circumstance that the complainant was at one stage required to take avoiding action makes that plain. The appellant's driving in general on this occasion was bad to the point of arrogance and I can see no reason to interfere with the sentence.

The appeal against conviction and sentence are therefore both dismissed.

Solicitors: M.J. Knowles, CHRISTCHURCH, for Appellant

Crown Solicitor, CHRISTCHURCH, for Respondent