IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR 5/84

BETWEEN FAULKS

Appellant

A N D THE POLICE

Respondent

Hearing: 9 February 1984

Counsel: A.J.P. More for Appellant
G.D. Pearson for Respondent

Oral Judgment: 10 February 1984

ORAL JUDGMENT OF ROPER J.

This is an appeal against conviction and sentence on a charge pursuant to s.56 of the Transport Act 1962 of causing death through the careless use of a motor vehicle and concerns a collision between the Appellant's Mazda truck and a cyclist. The learned Trial Judge referred to it as a sad case and of course it is because a young man died. It may be that friends and relatives of the deceased, who was only 20, feel that someone should be punished for his death, that is a natural reaction, but it is not every death on the road that justifies criminal sanction.

The facts were that at about 5.30 p.m. on the 18th June last the Appellant left Geraldine on State Highway 72 travelling towards Peel Forest. When about 500 metres from the Geraldine Borough boundary and in the 80 k.p.h. zone he saw a town delivery milk truck ahead with two milk delivery boys standing on the back of the vehicle. His speed he estimated at about 75 k.p.h. He proceeded to overtake the milk truck which was moving slowly. The Appellant's lights were on dip. While in the process of passing the truck he felt a bump on the extreme right of the tray of his truck. The bump was caused by his vehicle striking the deceased's cycle, probably in the area of the handlebar and front wheel. A curious feature of the accident is that the deceased,

and I believe it was agreed his bicycle, were found about 12 metres beyond the point of impact which rather supports the evidence of a Mr Chapman, the driver of the milk truck, that the deceased was cycling at some speed. Mr Chapman estimated that the cyclist was travelling at about 20 m.p.h. with head down. The deceased was wearing dark clothing and there was no light on his cycle. His background, so far as the Appellant's view was concerned, was dark. There was no street lighting and the Appellant's approach to the cyclist had a background of trees and shrubs. It was accepted by all witnesses that it was quite dark, as one would expect in mid winter at 5.30 p.m. It seems apparent that not only did the Appellant not see the cyclist before impact as he admitted, but the cyclist did not see him for the slightest deviation by the cyclist would have avoided the accident.

There was no question of drink in this inquiry. The Trial Judge accepted the cyclist should have been showing a headlight and if he had there would have been no accident. He also referred to the lighting conditions and the problems that had faced the Appellant in detecting an unlit oncoming cyclist, but in the result concluded as Mr Chapman had seen the cyclist approaching then the Appellant should have seen him and in failing to do so contributed to the end result. The Trial Judge referred to Mr Chapman having seen the cyclist about 70 yards ahead. Mr Pearson, in answer to Mr More's submissions, put the matter on a very simple basis. If Mr Chapman saw the cyclist ahead, the Appellant should have seen him, and as he did not he failed to measure up to the standard of the reasonably prudent driver.

In my opinion that is an over-simplification of the issue and I agree with Mr More that the question is not whether the Appellant should have seen what Mr Chapman saw, but whether the Appellant's conduct descended below the standard of care required of a reasonably prudent motorist in the circumstances which faced him, and the latter words are the important ones. Mr Chapman was sitting in his cab travelling at about 10 m.p.h. from house to house with nothing to distract him and all the time in the world to look about. The Appellant was making a passing movement at no great

speed. Mr Chapman put it at about 25-30 m.p.h. It was a passing movement of a vehicle he recognised must be passed with care. He recognised it as a milk truck with delivery boys aboard. He had to be sure he did not imperil them and then assess the point he would pull back in ahead of the milk truck. Mr Chapman did not have those problems. There may have been a measure of fault on the Appellant, but in my view it was so minimal as not to amount to an effective or substantial cause of the accident.

The appeal is therefore allowed, the conviction set aside and the sentence quashed.

There will be costs to the Appellant on this appeal in the sum of $120.

Solicitors:

Petrie, Mayman, Timpany & More, Timaru, for Appellant
Crown Solicitor, Timaru, for Respondent