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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.118/83

273

BETWEEN

GREGAN

Appellant

A N D THE POLICE

Respondent

Hearing: 27th March, 1984.

Counsel: A. J. Sweetman for Appellant.
 C. O. M. Almao for Respondent.

Judgment: 27th March, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

The Appellant has appealed against his conviction of a charge that on the 2nd August, 1982, at Roto-o-rangi she carelessly used a motor vehicle on Grices Road. The charge results from a relatively minor collision that occurred at 3.10 p.m. on Monday, the 2nd August, 1982, at Grices Road, Roto-o-rangi, near Cambridge, when a school bus driven by the Appellant collided with the door of an utility vehicle driven by C .

On the day in question Mr. C had driven his vehicle to an area in Grices Road where the school bus customarily stops. This was because it was a particularly windy and rainy day, and Mr. C had gone to the bus stop in order to pick up some children from the school bus. He had parked his vehicle in the area of the bus shelter. The school bus driven by the Appellant approached initially from the opposite direction to that in which Mr. C was parked, then did a U turn to stop in the area beside the bus shelter. Some five children then alighted. The bus drove off and as

it did so passed Mr. C 's vehicle, and while passing collided with the right door of Mr. C 's vehicle. It was Mr. C 's evidence that he initially stopped outside the bus shelter, then he moved a little forward to give room for the bus, but when he got out he left his driver's door open, and that it was still in that open position when the school bus collided with it.

It was the Appellant's evidence initially that as she started to pass Mr. C 's vehicle the driver's door was closed. She thought it was definitely not open otherwise she would have seen it. Subsequently, in cross-examination, when she was asked whether the door opened, she acknowledged that it could have opened when she swung out. It was submitted on behalf of the Appellant that there were various alternative explanations as to how the bus came into contact with the door of Mr. C 's vehicle, but I do not need to examine these in detail.

The Justices who heard the case in their decision summarised the evidence given by the prosecution witnesses and also by the Appellant. They then said:-

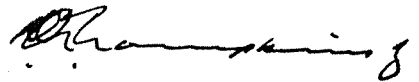
" The court feels the case has been proven. Mrs. Gregan did hit the door of the parked utility and the court does not accept that this was a deliberate action, although there was evidence of ill-feeling between the complainant and the defendant. We find Mrs. Gregan did not exercise that degree of care expected of a careful and prudent driver in the circumstances. "

Constable Beardsley gave evidence of the damage to the bus. He said that there was slight damage to the left front of the bus and a gouge mark along the left hand side about 3 ft. up the side of the bus, that is, from the front the gouge mark had got deeper into the side of the bus the further it continued along the side, which he would estimate

to be approximately 4 ft. 6 inches long. This evidence would certainly suggest that as the bus came up to the utility the driver's door of the utility was open and the bus collided with it.

There was, therefore, in my view ample evidence to support the finding of the Justices that Mrs. Gregan hit the door of the parked utility, and although the Justices did not expand on their reasons why they considered Mrs. Gregan did not exercise that degree of care expected of her, it is apparent to me that they had accepted the evidence of Mr. Coakley that the driver's door was open at all times and that Mrs. Gregan was careless in not observing that as she proceeded to pass the parked utility. There is therefore in my view ample evidence to justify the findings of the Justices.

The appeal is dismissed. The Appellant will be ordered to pay costs on this appeal according to scale in the maximum of \$40. On the notice of motion for leave to adduce further evidence on appeal, Bisson, J., in dismissing the motion, reserved the question of costs because the appeal would proceed. I therefore order the Appellant to pay costs of \$50 on the notice of motion for leave to adduce further evidence.



Solicitors:

Judd, Brown, Kay, Page & O'Shea, Te Awamutu, for Appellant.
Crown Solicitor, Hamilton, for Respondent.