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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 180/89

1884

BETWEEN HARMON

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 9th November 1989

Counsel: P.M. James for Appellant
G.K. Panckhurst for Respondent

ORAL JUDGMENT OF WILLIAMSON J.

A mechanical failure, not carelessness, was the effective cause of an accident and subsequent death, according to the submission made on this appeal by the Appellant's Counsel. Other submissions in favour of this appeal related to matters concerning the approach taken by the District Court Judge to his finding of carelessness and to the standard of care which he applied. Essentially it is submitted that the prosecution failed to establish not only that the Appellant was careless but also that this carelessness was the effective cause of the accident which occurred.

THE CHARGE

The charge against the Appellant, which was heard in the District Court at Christchurch on the 22nd August 1989, was one laid pursuant to s.56(1) of the Transport Act 1962. It charged that the Appellant, on the 19th January 1989 at Cheviot, did cause the death of Paul William Crampton by carelessly using a motor vehicle.

THE FACTS

Briefly stated the facts called in support of this charge were that the Appellant was the driver of a vehicle in which two young men were front seat passengers. These men were Shayne Cuff, who was sitting alongside the Appellant, and Paul Crampton, who was sitting on the passenger's side. They had been fishing at the Waiau River and late in the afternoon or early evening decided to travel to Cheviot to obtain bread. It was on the return journey that the difficulty arose. They had also been listening to music playing on a cassette in the vehicle. When one tape finished they were all looking for other tapes to place in the cassette deck. Apparently while the Appellant was looking towards the bottom of the front of the vehicle, it moved to the extreme left of the roadway as it travelled round a reasonably gentle bend. The position of the vehicle was brought to the attention of the Appellant by a yell from the deceased. She tried to correct the vehicle's position on the roadway. It then swerved a number of times and ultimately left the road. It rolled and eventually came to rest in a paddock some distance down a slope from the road. Unfortunately Paul Crampton was thrown from the vehicle at the top of the paddock area and suffered injuries from which he later died. He had not been wearing a seat belt.

When the Appellant was spoken to by a Traffic Officer concerning the circumstances which led to this accident, she said:

> "... and I kept driving north up the hill from Cheviot on the left side of the road. I looked

> down toward the floor of the cab or dashboard. Somebody said 'watch out'. I don't know who said it. I looked up. The truck was still on the left side of the road but in the metal verge. I swerved the wheel. I must have lost control at this point."

That statement was made on a day following the accident because on the actual day of the accident the Appellant had been too distressed to discuss the matter.

After the accident and after an inspection by a Traffic Officer who was called to the scene, the vehicle was towed away towards Christchurch. Some distance from the site of the accident, the left front wheel of the vehicle came off. At the time the damaged vehicle was being towed backwards. An inspection by a motor vehicle inspector from the Transport Department revealed that there was no fan belt on the vehicle and that the wheel studs were missing from the hub of the wheel which had come off. It was also ascertained that the chassis of this vehicle had been damaged in a previous accident.

A further interview took place with the Appellant. She then told the Traffic Officer that she had not driven the vehicle before; that it appeared to her to be operating normally; and that in particular the brakes did not require excessive pressure but operated normally and that the general condition of the truck was excellent.

THE DECISION

On the 22nd August 1989, after hearing evidence from Shayne Cuff, the passenger; Peter Hooper, the motor vehicle inspector; Peter Hosking, the Traffic Officer; and John

Coburn, the tow truck operator, the District Court Judge convicted the Appellant. In doing so he held that her driving did not measure up to the standard of a reasonably prudent driver because of inattention and accordingly was careless. He further held that this carelessness led to the accident which occurred and that the matters of mechanical failure which had been raised by the defence were not such as to raise any doubt in his mind that the carelessness was the effective cause of the accident. He expressed that conclusion forcefully saying:

> "Undoubtedly the driving was a contributing cause and I think really was the sole cause of the accident."

GROUNDS OF APPEAL

The grounds of appeal which have been very fully and carefully argued by Counsel for the Appellant, are firstly that the District Court Judge applied the wrong standard of care in relation to the charge, and secondly required the Appellant to prove the possibility of mechanical failure.

In his decision the District Court Judge referred to the necessity to establish that the Appellant had been careless and specifically referred to the standard being that of a reasonable prudent motorist. In describing the carelessness which he found in this case, namely the lack of attention to the road, the District Court Judge went on to say:

> "As a matter of simple road safety, it is absolutely vital that you keep your eyes on the road and your vehicle on course, not wandering off either to one side or to the other. A reasonable prudent motorist would not allow the

> vehicle to go off course especially in an area where there are banks upward or downward on either side."

Counsel for the Appellant has contended that this statement by the District Court Judge indicates that he was applying an absolute standard, namely that a motorist must never look anywhere other than to the road ahead. When the totality of the District Court Judge's comments concerning carelessness are read together, I am of the opinion that this contention is not made out. The District Court Judge was emphasising how important it is that a driver of a motor vehicle looks where he or she is going. There can be little argument with that proposition. In this case the Appellant was inattentive for some period of time and this inattention sparked off the incident which occurred. Evidence of her inattention comes from the direct, unchallenged, evidence of Shayne Cuff and from the admission frankly made the following day by the Appellant. It is also graphically illustrated by the evidence of the call made by the deceased, requiring the Appellant to look where she was going and to correct the course of the motor vehicle.

Counsel for the Appellant has argued that the District Court Judge was incorrect in concluding that the vehicle had actually travelled into the shingle on the left side of the road since there was evidence that while it may have got close to the very left of the bitumen it did not travel off the bitumen. In particular there were no marks found by the Traffic Officer of the wheels having been in the shingle. The District Court Judge's conclusions in this

respect were that the vehicle was in the shingle or that it was further to the left of the roadway than it should have been. While there may be disagreement as to the exact way in which this conclusion has been expressed or may be expressed, it is clear from all of the evidence that the position on the roadway was one which endangered the occupants of the car. Clearly it caused them concern because the deceased had called out and Mr Cuff was aware of the difficult position and the Appellant, on her own statement, took immediate steps to correct that position.

The point which is most forcefully submitted on behalf of the Appellant is that the carelessness, which I have just described, was expended as soon as the Appellant corrected the movement of the vehicle and that the accident which followed was caused by a mechanical failure of the vehicle. At the least it is argued that the evidence brought by the prosecution in this case did not establish that such mechanical failure was not a reasonable possibility as the cause of the accident.

Reference has been made to the cases of Police v Chappell [1974] NZLR 225, and Honeybone v Police, Christchurch Registry, M. 589/85, 5 December 1985, Hardie Boys J. These cases confirm that in a prosecution under s.56(1) of the Transport Act 1962 there must be proof, either directly or by inference, that establishes beyond reasonable doubt a conclusion that there is no reasonable explanation for the

accident other than carelessness. If there is another reasonable hypothesis and the prosecution fails to exclude it, then the case must fail. A decision in that respect involves the Court considering the evidence in a particular case and in balancing the particular factors which are established in evidence in relation to the accident. When a defendant does not offer an explanation, or indeed offers a particular vague or fanciful explanation, then the Court is not required to endeavour to find or to speculate about other explanations. Clearly if there are reasonable possibilities then the Court must consider those in the light of the proof which is produced and consider whether the evidence which has been called excludes those reasonable possibilities.

SUGGESTED POSSIBLE MECHANICAL FAILURES

In this case the District Court Judge concluded that the matters of mechanical failure which have been raised did not amount to reasonable possibility which negatived the inference to be drawn from the facts produced by the prosecution. I have considered again the details of possible mechanical failures causing the accident, which were advanced at the hearing and have been argued on this appeal. The first relates to a failure of the wheel or wheels on the vehicle. The evidence pointed to as being in support of this as a reasonable possibility is the fact that the wheel came off when the vehicle was being towed. The evidence of the Traffic Officer that the mark on the roadway appeared to be a scuff mark rather than that of a skidding tyre pointed, it was

argued, to a defect in the wheel. These facts had to be considered, as they were by the District Court Judge, in the light of the fact that the Appellant made no complaint that there was any unusual behaviour by the vehicle prior to the accident. In the statement she made, she made no reference to any peculiarities in this regard. Counsel argues that that is not surprising if she was not very familiar with the vehicle; was not an experienced driver and if she was involved in the agony of the moment. However that matter must also be considered in the light of the previous way in which the vehicle handled while travelling to and from Cheviot, the fact that she had corrected its course after being urgently required to do so by her co-passenger, and that the evidence concerning a wheel coming off the vehicle relates to a point of time and place far distant from the accident itself.

Reasonableness as to the possibilities that can arise requires a judgment of degree. Possibilities can be raised about almost anything that happens but the Court's duty is to consider which possibilities are reasonable, rather than to consider those which are mere possibilities or fanciful or improbable. Having considered the evidence that has been urged on me on this appeal, I conclude that the District Court Judge was not in error in regarding the possibility of a mechanical failure of the wheel or wheels as not being a reasonable possibility in the circumstances.

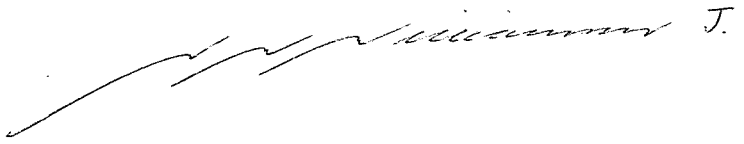
So far as the brakes on the vehicle were concerned, the suggestion made by the Appellant's Counsel was that the

absence of the fan belt would have made the brakes more difficult to apply and therefore could have led to the accident. There is no evidence that the brakes were used or contributed to the behaviour of the vehicle. The Appellant did not suggest in her statements at any time that they caused any difficulty or that she experienced any problem with applying the brakes at any time.

The third mechanical matter referred to was that of a previously damaged chassis. This factor is clearly one which is in the category of a possibility but with no evidence which would raise it above that of a mere possibility. Common sense reasoning in this case requires the Court to conclude that it was the inattention of the Appellant leading to the vehicle being in an endangering position on the left of the roadway and requiring correction that in turn led to the swerving of the vehicle when it was out of control and the eventual accident which occurred.

It has often been said in cases of this nature that the degree of carelessness can be very slight and lead to horrific results, while on the other hand the degree of carelessness can be great and then not lead to very significant results. It is certainly most unfortunate for this Appellant that what was a comparatively slight degree of carelessness led to such a tragic end. The sentence imposed indicates that the degree of carelessness was accepted by the District Court Judge as being minor.

For the reasons that I have given, this appeal must be dismissed.



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