

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

TGA AP 37/90

**NOT
RECOMMENDED**

BETWEEN

ADELIA PAN FINLAY

Appellant

~~1988~~

AND

MINISTRY OF TRANSPORT

Respondent

11

Hearing: 30 January 1991

Counsel: Appellant appears in person
B.H. Dickey for Crown

Judgment: 30 January 1991

JUDGMENT OF DOOGUE J

This is an appeal against conviction in respect of an infringement offence, namely a failure to give way at a give-way sign at an intersection in breach of Regulation 9(2) Traffic Regulations 1976. That Regulation reads:

"Every driver approaching or entering an intersection on a roadway where traffic moving in the direction in which he is travelling is controlled by a give-way sign at or near the intersection shall give way to any vehicle approaching or crossing the intersection from a roadway not controlled by either a stop sign or a give-way sign."

The case for the prosecution was that a Mrs Roden was driving along Cameron Road, Tauranga, in a southerly direction in the left hand lane of a four lane highway when she was

struck by the appellant's vehicle at the intersection with Third Avenue. Cameron Road in the vicinity of Third Avenue where the collision occurred is divided by a wide median strip which, however, narrows as it approaches Third Avenue from either direction to provide a third lane at that point for traffic turning to the right in either direction from Cameron Road.

It was the evidence of Mrs Roden that as she crossed the intersection of Third Avenue she was hit by her right rear door by the appellant's vehicle with the result that her vehicle was spun around and she ended up facing in a northerly direction in Cameron Road on the same side of the street as before but slightly in the right hand lane. She had not seen the appellant's vehicle prior to the impact. Her evidence was that she was proceeding at approximately 45 kilometres per hour. Her evidence was also that the weather was poor, it was slightly raining and visibility was not very good.

The appellant's evidence was that she was travelling across Cameron Road on Third Avenue. She had approached the intersection and stopped at the give-way sign. She had her windows wound down because of the extremely poor visibility at the time. As she could not see clearly enough to make a complete crossing of the intersection she had crossed the first two northerly lanes of Cameron Road and had then stopped in the area of the median strip, which another witness had measured as being of an overall width of approximately 19 feet subject to

the narrowing that I have already mentioned. Her evidence was that whilst she was so stopped Mrs Roden's vehicle appeared to have skidded and turned to the left away from her with the result that the rear portion of Mrs Roden's vehicle had scraped across the left front of her car and that was the cause of the damage to Mrs Roden's vehicle which consisted of a scrape. It was part of the appellant's case that that scrape was entirely inconsistent with a collision of the type which the prosecution put before the District Court.

There was other evidence given for the prosecution from a traffic officer. Certain criticisms are made of his evidence. There was, in addition, evidence given by the son of the appellant. Neither of those witnesses were witnesses of what actually occurred, although they did give some evidence of relevance in relation to weather conditions and such like at the time. The appellant took particular issue with certain of the evidence of the traffic officer, but as it is not germane to the determination of the Justices of the Peace under appeal I will not refer to it in any detail.

The incident itself occurred on 2 June 1990. At the hearing on 31 October 1990 the Justices, having heard the witnesses, stated:-

"We have carefully considered the evidence presented here and we are of the opinion that taking into account all the facts of the accident that the defendant Mrs Finlay was in error.

Quite clearly the obligations of a driver in crossing any intersection is to ensure that it is safe and prudent to do so. The evidence shown is that Mrs Roden was proceeding legally down Cameron Road with the right of way in her favour. Although we do believe that you did stop at the median line, that you failed to observe for a number of reasons, Mrs Roden approaching from the left. The fact also that Mrs Roden's car swerved we find to be a natural sequence of events following a collision of this nature.

We accordingly find the charge proved.

The original penalty, the fine of \$55.00 will be imposed with Court Costs of \$65.00 and witness fees of \$17.00."

The reference to the original penalty is because initially the matter was dealt with in the absence of the appellant but a rehearing was granted.

The onus is on the appellant to satisfy the Court that in all the circumstances the Court below was not warranted in entering a conviction or, at least, that the mind of the Court below should have been left in a state of reasonable doubt. Thus effectively the onus is upon the appellant to show the decision was wrong. Any advantages the Court may have had in seeing and hearing the witnesses has to be borne in mind upon an appeal and that is particularly relevant in the present case.

The appellant raises five points on appeal. Three of those points relate to procedural matters. It is not necessary to record them in detail. The most important of them is that it is submitted that the conduct of the hearing by the Justices of the Peace was prejudicial to the appellant. Various points

were taken under that head. I am not, however, satisfied by the appellant that any prejudice occurred to the appellant in respect of any of the points so raised. Indeed it is not entirely clear to me from the appellant's argument how it is submitted that any prejudice did occur. It is plain from the transcript of the evidence that the witnesses were fully heard, including the appellant herself and her son.

The gravamen of the appeal is really in the third and fourth points raised by the appellant, which amount to submissions that the decision appealed from is wrong, in that it failed to give adequate recognition to the nature of the vehicle damage to Mrs Roden's vehicle, the likely point of impact flowing from that damage - when the traffic officer's evidence as to impact was a virtual impossibility, combined with the failure of Mrs Roden to see the appellant's vehicle - with the consequent likelihood that the appellant's evidence was more consistent with the facts, and other matters of a lesser nature relating to the accident itself.

It is unnecessary to refer to each of these points in detail. The conflict between the prosecution's case and the appellant's case has already been spelt out in a general way in the summary of the evidence presented to the Court below. It is apparent from the decision of the Justices of the Peace that they preferred the evidence of Mrs Roden to that of the appellant. That was a view open to them. It may not have been the view of another Court or necessarily this Court if it had

been hearing the matter at first instance, but that was the view adopted by the Justices. There is no suggestion that the Justices failed to apply the appropriate standards to the case, namely that the appellant's driving was to be judged in accordance with the standard of a reasonable and prudent driver in all the circumstances. It is apparent that the Justices believed Mrs Roden and accepted her evidence that she was in her left hand lane and that that is where the collision occurred with the consequences already stated. They rejected the appellant's description of what occurred. Understandably the appellant takes issue with that and has advanced arguments and reasons as to why the Justices are wrong in their conclusion. It would be a bold Court which would reverse the decision of a Court below upon argument based on contrary inferences in respect of collision damage and consequent position of vehicles.

The real issue for the Court below was whether they accepted Mrs Roden's version of events or whether they accepted the appellant's. Even if they had accepted the appellant's version of events it may still have been that the appellant would have been in breach of the duty upon her under the regulation as it could well have been that a person in Mrs Roden's position, if she had been turning into Third Avenue, could still have had a collision with the appellant's vehicle in the position that the appellant says her vehicle was in. Be that as it may, there is not such a discrepancy between the witnesses as to visibility, which was another point raised

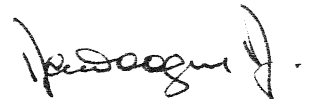
by the appellant, for that to be determinative in favour of the appellant in respect of the decision of the Justices. The point raised by the appellant in respect of the traffic officer's evidence as to the point of impact is quite irrelevant to the determination of the Justices as it is apparent that they did not rely on that and indeed could not have done so.

A further point is raised by the appellant, namely that the traffic officer involved spent more time with Mrs Roden than with her. That appears to relate to an alleged bias of the traffic officer in his evidence. However, as I have already made clear, the significance of that aspect is immaterial in the present circumstances when it is apparent that in their overall assessment of the case the Justices preferred the evidence of Mrs Roden and drew inferences from that evidence which they were entitled to draw, notwithstanding that the appellant understandably believes that her evidence should have been accepted and that the case against her should have failed.

Mr Dickey, for the respondent, has submitted that in respect of the points of appeal relating to the substance of the appeal that this Court is being asked to usurp the function of the Justices of the Peace as the initial triers of fact and that they drew inferences which could properly be drawn. If it were apparent from the evidence that the Justices had not been entitled to draw the inferences which they did draw, or that

there was no evidence to support their determination, then clearly this Court has a power to intervene. In the present circumstances, however, there is nothing to show that the Justices of the Peace were not warranted in entering a conviction or that their minds should have been left in a state of reasonable doubt once they accepted the evidence of Mrs Roden.

The appellant is asking me to accept her evidence. That however would require me to substitute my determination for that of the Justices in respect of an issue of credibility which was one for the Justices. The conviction must, therefore, be upheld and the appeal dismissed.



Appellant appears in person

Solicitors for the Respondent: Crown Solicitor, Rotorua