

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

A.P. No.69/90

NOT
RECOMMENDED

490

BETWEEN JAMES HENRY HODGSON

Appellant

A N D POLICE

Respondent

Hearing: 11 March 1991

Counsel: Ms Sissons for Appellant
I.G. Mill for Respondent

Judgment: 11 March 1991

ORAL JUDGMENT OF TIPPING, J.

This is an appeal by James Henry Hodgson against the sentence imposed upon him when he was convicted on a charge of careless use to which he pleaded guilty. The penalty imposed was a fine of \$800.00 plus four months disqualification.

The Appellant was approaching a fairly narrow humpback bridge on the main highway. Across the bridge, but out of his sight as he approached, was a car pulled to the left going in the same direction as he was travelling but intending to turn right. There is some uncertainty in my view, in the light of what I have been told, as to how far off the road that stationary car was in fact positioned. The version of it put in the statement of facts had that car well

off the road but from what Mr Mill tells me for the Crown it seems that it may have only just been off the carriageway. Be that as it may the Appellant should certainly have been able to avoid it. He was travelling, on his own admission, at 100 kilometres an hour in circumstances where he could not properly see the carriageway up ahead. The position was complicated by an oncoming vehicle which made the gap between it and the parked vehicle on the left quite narrow. The Appellant braked and as a result of braking, so it seems, his car got into something of a slide and collided with the car parked on the left.

It is submitted on his behalf that this was a relatively small piece of careless driving, that there was no injury sustained and property damage only. Counsel points out that the maximum fine for this sort of offence is \$1,000.00, with of course discretionary disqualification available as well. It is pointed out that at the age of 22 he is a first offender and that he needs a licence for employment. That latter matter can, as Mr Mill said, be dealt with, if appropriate, by a partial licence. The real question is whether or not the penalty imposed overall was manifestly excessive.

I think the learned Judge below could well have been influenced by the way in which the summary of facts was phrased, namely that the other vehicle was stopped well off to the left of the roadway. It seems from what I am told by both counsel, that a more accurate appraisal is that the car was stopped off the roadway but not well off it. Perhaps

therefore the learned Judge was brought to the view by the way it was put in the summary that this was a somewhat worse case than it would appear to be. I agree with Mr Mill's submission that this man was obviously going too fast for the conditions and that he should have been able to avoid the parked car which, I am satisfied, was off the carriageway, but only just.

I am satisfied that the case required disqualification. I am not however satisfied that it required a fine as high as the fine that was actually imposed. In my judgment overall the disqualification should not be interfered with but in the light of the slightly different emphasis on the facts which I think should be taken, rather than the way it appeared to the Judge below, the fine should be varied to one of \$500.00. The appeal is allowed to that extent.

A. C. R. J.