

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

23/9

AP 78/94

1440

BETWEEN

HANSEN

Appellant

AND

THE POLICE

Respondent

Hearing &
Judgment

12 September 1994

Counsel:

Appellant in person
P. Morgan for Respondent

ORAL JUDGMENT OF PENLINGTON J

This is an appeal against sentence. The appellant was charged in the District Court with driving a motor vehicle on 8 April 1994 so that he did cause bodily injury by the careless use of that vehicle.

The appellant was summoned to the District Court on 25 May. He consulted with the Duty Solicitor. After conferring with him the appellant entered a plea of guilty. The appellant was convicted and ordered to undergo a term of community service of 30 hours. In addition he was ordered to pay reparation in the sum of \$1000 at the rate of \$10 per week, the first payment to be on or before 3 June. No order was made in respect of the

appellant's motor driver's licence the learned Judge having found special circumstances.

On the night in question the appellant was driving a motor car in a north-westerly direction on Gordonton road. At the area of the T intersection of Gordonton Road and Thomas Road, Gordonton Road for northerly bound traffic bends to the right. Thomas Road comes in on the left. At the intersection the appellant failed to negotiate the right hand bend. His car came into collision with another vehicle which was stopped at the giveway sign where Thomas Road meets Gordonton Road. As the result of this accident a passenger in the other vehicle received a deep laceration of her scalp and a muscular neck injury. The laceration required 20 stitches and hospitalisation for three nights.

After the victim's discharge from hospital she suffered severe headaches for a time and her eyesight and hearing were also affected. She subsequently had to undergo a course of physiotherapy for the neck injury.

The car with which the appellant collided was damaged. After the accident the appellant was asked for an explanation. He said that he did not realise that the corner was there. He then said:

"I saw the car stopped at the intersection. They must have been waiting for me to go around the corner. I braked but skidded into them."

In this Court, as in the Court below, the appellant pointed to the difficulties created by the absence of a light at the intersection

and the paleness of the road markings at the material time. It seems that there have been a number of accidents at this corner. Although the appellant has driven along this road on many occasions, the learned Judge obviously took the view that the circumstances of the accident and the corner were such as to amount to special circumstances. Hence the absence of any order of disqualification.

The appellant comes before the Court with an impeccable record. He is aged 70 years. He has been driving for 55 years not only in New Zealand but in many other places in the world. This was his first time before the Court.

The appellant conceded in his argument that he did not resent community service.

Mr Morgan for the respondent submitted, and I think rightly so, that the circumstances at the corner together with the circumstances of the accident have been properly taken into account by the learned Judge in finding special circumstances and in making no order for disqualification. Mr Morgan then directed my attention to the other aspects of the case. He submitted that in all the circumstances a sentence of 30 hours community service was only a moderate punishment. I agree with that submission. While the degree of carelessness was in the lower range, the victim did suffer quite severe injuries. This must be taken into account. I am therefore unable to find that a sentence of 30 hours was clearly excessive. That of course was not the only sentence. There was also an order for

reparation in the sum of \$1000 to be paid at the rate of \$10 per week. That was ordered because the owner of the motor vehicle which was involved in the accident will have to pay an excess in that sum. She has a young family and her husband is disabled.

As I understand the appellant's submissions, he is insured. His insurer has assured him that the losses suffered by the other motorist will be met. If that is so, then there will be no need for the appellant to personally meet the reparation order. I am of the opinion that it was a proper order. I would advise the appellant to see his insurance company as soon as possible to ascertain what payment or payments it proposes to make to the other motorist.

Having held that the reparation order was a proper order and was appropriate, the appeal must be dismissed. It is dismissed accordingly.



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P.G.S. Penlington J