IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 153/94

94/1131

BETWEEN ARTHUR EDWARD LINDSAY

Appellant

A N D THE POLICE

Respondent

Hearing: 30 June 1994

Counsel: Mr Lindsay, Appellant, Appears In Person
R Raymond for Respondent

ORAL JUDGMENT OF WILLIAMSON J.

This is an appeal against conviction and sentence on a charge of using a motor vehicle carelessly on Seaview Road. The charge was brought pursuant to S60 of the Transport Act 1962.

The question of whether or not a person is driving carelessly is a matter of fact. In the classic case of Simpson v Peat [1952] 2 Q.B. 24 Lord Goddard CJ said:-

> "The question for the Justices was, was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? If he was not they should convict. If on the other hand the circumstances show that his conduct was not inconsistent with that of a reasonably prudent driver the case has not been proved."

In this case it is necessary to determine whether or not the Justices of the Peace who entered the conviction against Arthur Edward Lindsay did so in accordance with the test which I have just set out.

The evidence before them was that of a motor cyclist Bruce Tibble who said that he had been riding his motor cycle along Seaview Road at approximately 30 kilometres an hour when a motor vehicle pulled out in front of him causing him to brake suddenly and to collide with the motorcar. The motor cyclist claimed that the collision had taken place at a point on the roadway along the line that motor cyclists normally travelled. He claimed that this point was the most practicable and sensible along which to ride a motor cycle. In addition to his evidence, a police constable gave evidence of a statement which he had taken on the same day from the appellant, Mr Lindsay, in which Mr Lindsay stated that, while his car had been in the process of making a U turn, the collision would not have occurred if the motor cyclist Mr Tibble had continued along the same path as he had previously been travelling. The appellant Mr Lindsay also gave evidence in front of the Justices. He said then that before he had entered his motor vehicle he had looked towards New Brighton Mall and had observed the motor cycle when it was not far from the police station. He said he got in his car, turned it on, put his indicator on, looked in the rear vision mirror and then swung out to the middle of the road. He said that just before reaching the middle of the road he looked left to make sure there were no cars coming through the roundabout but that, all of a sudden, the motor cycle hit him on the front of the right rear door of his car. He said that at that stage his car allowed sufficient room for the motor cyclist to have travelled around behind him.

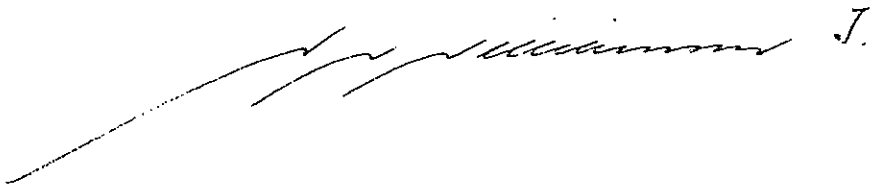
The Justices who heard this evidence concluded that Mr Lindsay's driving was careless. They said that in their view his action in pulling out from the side of the road after only a glance in his rear vision mirror was careless.

In this Court Mr Lindsay has appealed against that finding of the Justices of the Peace. He says that they were not correct because not only had he glanced in his rear vision mirror but he had also looked towards the path of the motor cyclist prior to getting into his motor vehicle. A decision as to whether or not a driver's actions were careless in the circumstances must be made upon the standard of a reasonable and a prudent driver. The Justices of the Peace were entitled to take the view that a reasonable and prudent driver would look behind his car immediately prior to actually pulling out. To look behind prior to getting into the car and then to merely glance in the rear vision mirror is not sufficient. Accordingly, even on the factual basis that Mr Lindsay has put to this Court on appeal, there is still a degree of carelessness involved upon which it was proper for the Justices to enter a conviction. In arriving at this conclusion the Court is not saying that the motor cyclist was entirely free of any blame himself. Upon this particular charge the Court must consider not the motor cyclist's care or lack of care but rather the circumstances applying to the person charged.

For these reasons then the appeal against conviction must be dismissed. The conviction stands.

Mr Lindsay has also raised in his submissions the amount of the reparation which was ordered against him namely $430. He claims that the damage caused to the motor cycle did not justify a charge of this amount. According to the evidence produced in the District Court the police officer

said that a bill and receipt for $430 was on the police file. On that basis he asked for reparation of $430. According to the evidence before this Court the motor cyclist did not give any evidence about the damage to his vehicle or the cost of that damage or the amount which he may have paid to have it repaired. While the police officer asked for reparation he does not appear to have produced the receipt or bill for the Court's consideration. No consideration appears to have been given to whether or not it was appropriate to order reparation without further considering the degree of carelessness involved and in particular whether or not there was any contributory carelessness on the part of the motor cyclist. That is not satisfactory. This Court must deal with the evidence which was before the Court. On the basis of that evidence there was insufficient material for an order for reparation to be made. Accordingly the appeal against sentence is allowed in so far as the order for reparation is involved. That order will be quashed. It leaves the order for Mr Lindsay to pay the costs of $95 and the witnesses' expenses of $35. It also leaves the order for resitting of the driver's licence. The only alteration to the District Court decision is that the order for reparation of $430 is quashed.



Solicitors: Mr Lindsay Appellant, Christchurch, In Person
The Crown Solicitor, Christchurch, for Respondent