

NZLR

**NOT
RECOMMENDED**

JUDGMENT DISTRIBUTION LIST

NAME OF PROCEEDING: G.L. HANSEN v POLICE

REGISTRY AND FILE NUMBER: HAMILTON A.135/98

JUDGMENT DATE: 14 DECEMBER 1998

DESCRIPTION AND CATCHPHRASES

Transport law. Appeal against sentence. Fine of \$500 imposed for careless driving. Appellant's car hit the rear of a stationary car ahead which was in a line of cars stopped for a red light. Unblemished driving record for 20 years. Speed not excessive. Fine held to be manifestly excessive. Reduced to \$250.

TO BE DISTRIBUTED BEYOND COURT FILE AND PARTIES

Court file(s)
Counsel
NZLR (with assessment sticker)
Butterworths (with assessment sticker)
Judges' Clerks
Brookers
Law Society Library (with catchphrase)
District Court File (appeal)
JPs (appeal) (c/o Registrar, Royal Federation of NZ JPs Assn)

ASSESSMENT: NOT RECOMMENDED

TO BE AVAILABLE ON SEARCH WITHOUT LEAVE.

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

A. 135/98

BETWEEN: G L HANSEN

Appellant

AND: THE POLICE

Respondent

Hearing &
Judgment: 14 December 1998

Counsel: No appearance on behalf of Appellant
(Written submissions only)
C.Q.M. Almao for Respondent

ORAL JUDGMENT OF PENLINGTON J

Solicitors: Crown Solicitor, Hamilton

This is an appeal against sentence.

The appellant was charged with careless driving on State Highway 1 on 13 April 1998. The appellant pleaded guilty by letter. He was convicted and fined \$500 together with Court costs \$130.

As to the facts. On 12 April 1998 at about 1 pm the appellant was driving a Mitsubishi motor car north on S.H.1 near Huntly. He approached the area of the McDonald's Restaurant. A line of traffic had stopped ahead of him for a red light at the Tainui Bridge Road intersection. The appellant did not realise that the vehicle in front of him had stopped. He failed to stop in time. A collision occurred with the stationary vehicle which was propelled forward by the impact.

When asked for an explanation the appellant admitted the facts which I have outlined and he said that he did not think that the vehicle in front of him had any brake lights on at the time of the accident.

In the appellant's letter to the Court he repeated the explanation which he had given the police. He added that this was the first accident in over 20 years of driving.

Two Justices of the Peace heard the prosecution on 24 September. They imposed the fine without giving any reasons.

In the appellant's notice of appeal the appellant has again asserted the absence of brake lights on the vehicle ahead of him as a causative factor. He added that (i) he was travelling well under the speed limit; (ii) that he attempted to stop for the vehicle ahead. As well, he repeated his good driving record over the last twenty years.

The appellant did not appear in support of the appeal. He did, however, send a helpful written submission to the Court which I have carefully read. The appellant now disputes the police summary of facts. He said that his belief is that the vehicle immediately in front of him:

"...had already collided with a stationary vehicle in front of it without having made an effort to stop and this would explain the absence of brake lights".

The appellant then goes on to submit that:

"....The front vehicle involved in the accident which was hit by the vehicle I collided with was totally omitted from the police summary, a point I feel is very important in my defence."

As I have said, the appellant pleaded guilty by letter. This means that he acknowledged that he himself had been careless; in other words that he had failed to observe the standard of care of the ordinary prudent and reasonable driver. An accident is not necessary to sustain a charge of

careless driving. The contributory negligence of another or others is no defence.

The appellant's duty was to keep a proper look out and to drive at a speed and at a distance behind the vehicle ahead that he could stop short of having a collision. See Regulation 22 of the Traffic Regulations 1976. The appellant failed to do so. Prima facie he was in breach of that Regulation and was therefore careless. Indeed, the appellant admitted that fault by pleading guilty.

I now turn to the fine which was imposed.

The maximum fine prescribed for careless driving is \$1,000. This means that the Justices of the Peace imposed half the maximum.

I have carefully considered all the circumstances of the incident and have brought into account the submissions made by the appellant. He is entitled to draw on the credit of his good driving record. He was not driving at an excessive speed. Indeed he was travelling well under the speed limit. Apart from this momentary lapse his driving complied with the standard of care of the ordinary prudent and reasonable driver.

In these circumstances I hold that the fine imposed was manifestly excessive. The appeal is allowed. In lieu of a fine of \$500 the appellant will be fined \$250. The order as to Court costs will remain unaltered.

A handwritten signature in black ink, appearing to read "P.G.S. Penlington J.", written in a cursive style.

P.G.S. Penlington J