

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP. 79/92

BETWEEN PAO SAITUMUA
 Appellant

AND MINISTRY OF TRANSPORT
 Respondent

Hearing: 21 May 1992

Counsel: P. Le'Au'Anae for appellant
 Miss V.J. Shaw for respondent

Judgment: 21 May 1992

(ORAL) JUDGMENT OF BARKER J

This is an appeal against the conviction of the appellant in the District Court at Otahuhu on 31 January 1992 on a charge of careless driving. Two Justices of the Peace convicted the appellant and fined him \$200, plus costs, plus witnesses expenses.

Essentially the findings of the Justices were factual. They found that the appellant turned right in McKenzie Road Mangere - the main road to the Airport - into the path of the complainant, a Mr Solia, in such circumstances that, even if the appellant's vehicle was actually stopped at the time of impact, there was no evasive action that could have been taken by the

complainant to have avoided a collision. There is no suggestion that the complainant was travelling at excessive speed. The accident took place at 6.54 p.m. on 26 March 1991, when weather conditions were dark and rainy.

The prosecution called, not only Mr Solia, but two independent witnesses and a traffic officer to whom the appellant had made a statement. The appellant was an unlicensed driver.

At the conclusion of their reasons for convicting him, the Justices considered that the appellant was inexperienced and had misjudged the situation. That is a comment which seems reasonable in all the circumstances. I have read all the evidence. The Justices accepted the evidence of Mr Rennie, one of the independent witnesses, who stated in evidence-in-chief, that he had said to his travelling companion at the time that the appellant's car was going to hit somebody because of its action in pulling out of a driveway on Mr Rennie's left and straddling the centreline of the road. The appellant's actions comprised an essentially dangerous manoeuvre in a busy highway.

The appellant stated that he had stalled but the Justices seemed to prefer the evidence of the complainant and Mr Rennie, as they were perfectly entitled to do so.

Despite the careful submissions made by Mr Le'Au'Ane on behalf of the appellant, this appeal cannot succeed. The Justices were perfectly entitled on the evidence before them to have found that there was a lack of care incumbent on the ordinary reasonably prudent motorist displayed on this occasion by the appellant. By not making any order concerning the holding of a licence by the appellant, they indicated that they did not regard this as in the worst category of driving offence.

The appeal must be dismissed.

R. J. Barker J.

Solicitors: Crown Solicitor, Auckland, for respondent
P. Le'Au'Anae, Auckland, for appellant

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