

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

Traffic Case : 150/2012

STATE

VS

ATNISH CHAND

For Prosecution : Sgt. Lenitasi

For Accused : In person

Date of Hearing : 04 July 2013

Date of Judgment : 08 July 2013

Judgment

1. The accused was charged with the offence of Careless Driving contrary to section 99(1) and 114 of the LTA Act No. 35 of 1998. Particulars of the offence read as follows.
2. The accused pleaded not guilty for the offence and hearing was conducted on 04 July 2013. The prosecution called 05 witnesses and for the defence the accused gave sworn evidence. The accused also called 03 other witnesses who were with him on that day.

Summary of Evidence

3. PW1 was Ahmad Khan, the driver of the sunbeam bus. He said on 28 Sep 2012 he was climbing the Matanipusi hill and saw a car coming from opposite side. The vehicle was coming on his lane and he tried to pull away to prevent an accident but the car came and collided with his bus. PW1 identified the accused as the driver of the vehicle. PW1 also said that the accused was not driving fast at that time and there were double line at that place. In cross examination PW1 said there was no head on collision as he took his bus away from the road.
4. PW2 and PW3 were also in the bus and said the vehicle came to their lane and collided with the bus.

5. PW4 was PC Ravinesh the IO in this case. He also drew the sketch plans which were tendered as EX-01 and conducted the caution interview of the accused (EX-02). PW4 said the accused told him that the accident was caused because of a mechanical fault of his vehicle. In cross examination PW4 said the vehicle inspection was done in front of him and he told the accused the vehicle can be inspected in a ram but the accused had to bear the expenses.
6. Last witness for the prosecution was Mr. Joseva who inspected the vehicle after the accident. He inspected the car on 05 Oct 2012 and said there were no mechanical faults in the vehicle. His report was marked as EX-03. Answering to the questions raised by the accused he said he opened the bonnet of the vehicle but did not open any mechanical parts.
7. The prosecution closed the case after that and being satisfied that there was a case against the accused I gave his rights as per section 179 of the Criminal Procedure Decree. The accused opted to give sworn evidence.
8. The accused said on that day he was driving with his family and realized that the vehicle was going to other lane. He tried to stop but the vehicle swerved and collided with the bus. In cross examination he said the accident was caused because of a mechanical fault and the vehicle was having trouble even before the accident. The accused also said the examiner did not inspect his vehicle properly.
9. DW2 and DW3 were passengers in the back seat and said they were talking and did not see how the accident happened.
10. DW4 was Abihnesh Pillay and he said at that time the accused was not driving fast and the vehicle swerved to the other side because of a mechanical fault. Answering to the questions raised by this Court he said the car was behaving like that 2 or 3 times before the accident.
11. The defence did not call any other witnesses and also closed their case. Both parties opted not to file closing submissions.

The Law

12. The accused was charged with the offence of Careless Driving contrary to section 99(1) of the LTA Act and that section states :

“A person who drives a motor vehicle on a public street without due care and attention commits an offence and is liable on conviction to the prescribed penalty.”

13. The test for careless driving is stated in the case of Khan v State, High Court of Fiji Criminal Appeal No. 1 of 1994 (21 October, 1994) as follows:

"In order to determine whether the offence of careless driving is committed, the test, as LORD GODDARD C.J. said in SIMPSON v PEAT (1952 1 AER 447 at p.449) is: "was D exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?"

The standard of proof is an objective one . . ." (As cited in State v Lovo [2009] FJMC 7; Traffic Case 31.2009 (24 September 2009)

14. In State v Seniloli [2004] FJHC 48; HAC0028.2003S (5 August 2004) Madam Shameem in her summing up said :

"The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused persons before you express an opinion that they are guilty. If you have any reasonable doubt as to whether the accused persons committed the offence charged against each of them on the Information, then it is your duty to express an opinion that the accused are not guilty. It is only if you are satisfied so that you feel sure of their guilt that you must express an opinion that they are guilty. One of the defence counsel asked you if you had the slightest doubt about the accused's guilt. That is not the correct test. The correct test is whether you have any reasonable doubt about the guilt of the accused."

Analysis of Evidence

15. The accident happened in the opposite lane of the accused. The accused did not dispute the point of impact. His defence was that it was caused by a mechanical fault. In his evidence he said his vehicle was behaving strangely and it suddenly went to the other lane causing the accident
16. He also said even before the impact it happened once. This position was confirmed by DW4 who was also a passenger. He said the car was acting like that 2 or 3 times before the accident. DW2 and DW3 who were also passengers in that car never mentioned about this in their evidence which raise doubt about this defence.
17. Even if I accept the accused evidence that this happened because of a mechanical fault the accused would be liable for this offence. As admitted by the DW1 and DW4

the vehicle was having mechanical troubles long before the accident and by driving with such a faulty vehicle the accused was inviting for trouble. Therefore even with the defence's version I believe the accused was not taking due care and attention of a prudent driver.

18. Now I would consider the prosecution's evidence in this case. PW1, PW2 and PW3 said the vehicle came to their lane and bumped with the bus. The IO said that the accident happened because of accused's fault. Vehicle examiner in his report and evidence in the Court said there were no mechanical faults in the vehicle. I have no reasons to doubt his evidence. As stated by him he has number of experience in his job and has no reason to favor the prosecution side. The accused said the vehicle was not inspected in a ram but IO had explained to the accused he had to bear the expenses. The accused did not do that. Also if the accused was not satisfied with the inspection he could have done an inspection on his own which he failed to do.

19. Therefore I accept the prosecution's evidence that there was no fault in the vehicle. Only conclusion that can be reached by this Court is that at that time the accused was not taking due care or attention thereby causing this accident.

20. I find that the prosecution has proved this case beyond reasonable doubt. Accordingly I convict the accused for this charge.

21. 28 days to appeal

08 July 2013

H.S.P.Somaratne
Resident Magistrate