

THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Traffic Case No.1134 of 2013

STATE

v

LAISENIA KORONIVACI

the Prosecution : **CPL Monish**
the Accused : **In Person**
Judgment : **25 August 2017**

JUDGMENT

The accused Laisenia Koronivaci is charge for the following offences;-

First Count

Dangerous Driving Occasioning Death, contrary to section 97(2)(c),(8), and 114 of the Land Transport Act.

Particulars of Offence

Laisenia Koronivaci on the 18th day of August 2013, at Seaqaqa in the Northern Division drove a motor vehicle registration number FD 154 along Seaqaqa/Labasa Highway at Natua in a manner dangerous to another person and causing the death of Mohammed Mustafa Khan.

Second Count

Failure to Comply with Requirement following an Accident, contrary to section 63(1) and 87 of the Land Transport (Traffic) Regulation.

Particulars of Offence

Laisenia Koronivaci on the 18th day of August 2013, at Seaqaqa in the Northern Division drove a motor vehicle registration number FD 154 involved in an accident along Seaqaqa/Labasa Highway at Natua resulting in the death of Mohammed Mustafa Khan failed to stop and give necessary assistance and his name and address and all other requirements as required.

Third Count

Driving Motor Vehicle Without Being the Holder of a Valid Driving Licence, contrary to section 56(3)(a),(6), and 114 of the Land Transport Act.

Particulars of Offence

Laisenia Koronivaci on the 18th day of August 2013, at Seaqaqa in the Northern Division drove a motor vehicle registration number FD 154 along Seaqaqa/Labasa Highway at Natua without being the holder of a valid driving licence in respect of the said motor vehicle with the driving licence expired on 15.4.2012.

Fourth Count

Contravening the Condition of the Third Party Policy Risk, contrary to section 4(1)(2) of the Motor Vehicles (Third Party Insurance) Act.

Particulars of Offence

Laisenia Koronivaci on the 18th day of August 2013, at Seaqaqa in the Northern Division drove a motor vehicle registration number FD 154 along Seaqaqa/Labasa Highway at Natua when there was not in force in relation of the use of such motor vehicle by the said Laisenia Koronivaci, a policy of insurance in respect of the third party policy risk in compliance with the provisions of this Act.

On 4 July 2014, the Accused waived his rights to counsel and pleaded not guilty to all the four counts. The case proceeded to trial on 16 August 2016.

On the trial date the Prosecution called nine witnesses. The Accused exercised his rights to remain silent.

Section 97(2)(c) of the Land Transport Act, state;-

"A person commits the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle in a manner dangerous to another person or persons"

5. Section 63(1) and 87 of the *Land Transport (Traffic) Regulations*, state;-
"63(1) - If a motor vehicle is involved in a motor accident on a public street and this result in death or injury to a person, or damage to another vehicle, or a property of another person or animal, the driver of the vehicle must stop and give any necessary assistance and his or her name and address, the name and address of the owner of the vehicle, its registration number and the name of the insurance company responsible for the third party insurance to any person with an interest in any vehicle, property or animal involved in the accident and present at the time of the accident or immediately after the accident."
"87 - A person who fails to comply with a provision of these Regulations commits an offence"
6. Section 56(3)(a) and (6) of the *Land Transport Act*, state;-
"3(a) - No person shall drive a motor vehicle on a public street unless the person is the holder of a driver's licence of the appropriate class issued under this Part"
"6 - A person who contravenes subsection (3) commits an offence"
7. Section 4(1) and (2) of the *Motor Vehicles (Third Party Insurance) Act*, state;-
"(1) subject to the provision of section 5, no person shall use, or cause or permit any other person to use, a motor vehicle unless there is force in relation to the use of that motor vehicle by such person or other person, as the case may be, such a policy of insurance in respect of third party risks as complies with the provisions of this Act.
(2) Any person acting in contravention of this section is guilty of an offence ..."

The elements of the offence that the prosecution must prove beyond reasonable doubts for the respective counts are;-

Count 1

- a. the accused
- b. drove a vehicle
- c. in a dangerous manner
- d. resulted in an impact
- e. causing death to a person

Count 2

- a. the accused
- b. drove a motor vehicle in a public street

- c. *involved in a motor accident*
- d. *causing death to a person*
- e. *fail to stop and give necessary assistance*

Count 3

- a. *the accused*
- b. *drove a motor vehicle on a public street*
- c. *without being a holder of driver's licence*

Count 4

- a. *the accused*
- b. *used a motor vehicle*
- c. *without a third party policy insurance*

PW1- Mosese Ravutu stated in his evidence that on 18 August 2013, he boarded a green open twin cab vehicle registration FD 154 driven by Laisenia. He identified Laisenia as the accused person as they always called him Lai. He sat on the front left passenger seat. On their way to Seaqaqa, the accused was driving in zigzag manner and four times he was driving on the right hand side of the road. At Koronivuli village the accused was driving towards the left side of the bridge and he warned the accused of the bridge and the accused drove straight again. When they go down on a small hill the accused was driving at 100km per hour and in front he saw an Indian man carrying the rope of a bull. The man was walking behind the bull. He shouted out to the accused to watch out for the man in front, but it was too late as the vehicle hit the man and the bull. The man was thrown to the left side of the road because of the strong impact of the vehicle. The vehicle then ran in a zigzag way and stop in front. He opened the door and ran back to see the man that was lying on the side of the road. The accused did not get out but left the scene and went away. He went to that person and saw two young boys were crying beside that person. The person lying on the road side was breathing slowly and the back of his skull was bleeding. The police vehicle arrived and they took the person to Seaqaqa Hospital.

PW2 - Mohammed Khan. In 2013, he was in form 3, and on 18 August 2013, he was at the backyard of his home with his brother when he saw a green twin cab travelling from the Labasa side coming in a speed and zigzag manner. The said vehicle went out of the white lane. Mustafa Khan was a bit away from the road when he was taking his cattle. The vehicle bumped Mustafa Khan and then bumped the bull. The vehicle went ahead and stopped. One itaukei man came out of the vehicle. Mustafa Khan was lying down motionless and his pulse was working slowly. A police vehicle came from Seaqaqa side and his brother stop the vehicle. They assist the police in put Mustafa into the vehicle.

PW3 – Mohammed Intishamal Khan. On 18 August 2013, he was tying the goat with his brother PW2 at their backyard when he saw the green twin cab coming in a zigzag manner and it was outside of it lane and it was towards the left side. His cousin brother Mustafa Khan was taking the bullock on the left side of the road when he was bumped by the said vehicle and then the same vehicle bumped the bullock. The vehicle went a bit far and stops. A man came out of the vehicle and the vehicle went away. He went with PW1 to the accident scene where Mustafa Khan was lying on the left side of the roadside near the FEA post. They were calling Mustafa Khan but he did not respond as his condition was really bad, he was unconscious and fainted. The back skull of Mustafa was broken by a stone and bleeding. They stop a police vehicle and they put Mustafa into the vehicle and they took him to the hospital.

PW4 – WPC 4271 Miriama. On 18 August 2013, on their way back to Labasa from Seaqaqa, two small boys and one old man stop them on the road yelling accident and pointing to the side of the road. They stop and went to see the man lying down. The old man told them he was hit by a vehicle. The blood was coming out from the nose of the victim. There were marks of broken glasses. They took the victim to the hospital in the police vehicle. At the hospital the body was taken to the Doctor's room where it was announced dead.

PW5 - Hamid Khan stated in his evidence that Mustafa Khan is his son. On 19 August 2013, he went to the hospital for his son post mortem. He identified his son Mustafa Khan to the doctor. The Doctor makes a certificate and gave it to him to sign and he signed. He identifies his signature in the certificate and tenders the cause of death certificate as *Prosecution Exhibit 1*.

PW6 – Samisoni Pita, a retired police officer. He interviewed Laisiasa Koronivaci in itaukei language. He identifies the accused in court. He translates the caution interview into english language. He read the translated english version of the caution interview and tendered as *Prosecution Exhibit 2*.

PW7 – Iliesa Bolatini, he is a vehicle examiner from the Land Transport Authority. He has Certificate and Diploma in vehicle inspection from the Fiji Institute of Technology. He test drive the vehicle on 19 August 2013, there was no mechanical fault or defective in the vehicle. He prepared a report and read his report in court and tender the same as *Prosecution Exhibit 3*.

PW8 – Sgt Leone, he attends a report in Seaqaqa. He visited the scene, took photographs, and uplift evidence.

PW9 – WPC 3244 Temalesi. She is the investigation officer. She drew the rough sketch plan when attending to the scene. She prepare the fair sketch plan and the key to fair sketch plan and tender the rough and fair sketch plan and key as *Prosecution Exhibit 7*. After drawing the sketch plan, she went to the Seaqaqa Hospital where the Doctor informed her that the victim died on arrival and she tender the medical report as *Prosecution Exhibit 8*. She later uplifted the accused driving licence and confirmed that the accused driving licence had expired on 15 April 2012, and tender a copy as *Prosecution Exhibit 9*. There was no official complain lodge by the accused after the accident. After obtaining all the information she charged the accused.

The evidence of the prosecution has shown that it was the accused that was driving the vehicle FD 154 on 18 August 2013 along the Labasa Seaqaqa highway when the said vehicle hit Mohammed Mustafa Khan causing the death of the said Mohammed Mustafa Khan.

PW1, PW2, and PW3's evidence have shown that the accused was driving the said vehicle in a dangerous manner. That is when he drove at a very high speed and at 100km per hour. The accused was driving four times on the right hand side of the road when he is supposed to drive on the left side of the road. The accused was driving towards the left side of the bridge and he was driving in a zigzag manner. The accused was driving out of his lane towards the left of the road when he hit Mohammed Mustafa Khan. With these evidence, I am satisfied that the accused was driving below the standard required of a competent and prudent driver and was driving in a dangerous manner at the time of the impact when he hit Mohammed Mustafa Khan.

The evidence of PW4 and PW5 has shown that Mohammed Mustafa Khan is the person who was hit by the accused on the said day by the said vehicle. That the said Mohammed Mustafa Khan had died upon arrival at the Seaqaqa hospital on the date of the incident. That was supported by the evidence of PW9.

The evidence of PW1 and PW3 has shown that when the accused hit Mohammed Mustafa Khan, the accused did not get off the vehicle to come and give assistance to the victim, the accused drove away from the scene.

The evidence of PW9 has shown that the accused was driving the said vehicle without holding a valid driving licence.

There will be no adverse inference drawn against the Accused in exercising his right to remain silent. The onus is on the Prosecution to prove his case beyond reasonable doubt.

The evidence of the Prosecution were not discredited and as a trier of facts I accept the evidence of the Prosecution.

In assessing the evidence in this case, I am satisfied that the Prosecution has established the elements of the offence for counts 1, 2, and 3. There was no evidence led by the Prosecution to establish the last element for count 4, that there is no Third Party Policy Insurance.

In my judgment, my findings are as follows;-

- a. I find the Accused not guilty as charged for Count 4- **Contravening The Condition Of The Third Party Policy Risk**, and I acquit the accused for this count.

- b. I find the Accused guilty as charged for the following counts;-
 - (i) Count 1- **Dangerous Driving Occasioning Death**.

 - (ii) Count 2- **Fail To Comply With Requirements Following An Accident**.

 - (iii) Count 3- **Driving Motor Vehicle Without Being A Holder Of A Valid Driving Licence**.

I convicted the Accused for the above three counts.



C. M. Tuberi

RESIDENT MAGISTRATE