

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Traffic Case No. 556 of 2014

STATE

v

AMLESH CHAND

Counsels : **CPL Monish** for the Prosecution
Ms Dunn. S for the Accused

Judgment : **20 March 2018**

JUDGMENT

1. The Accused, *Amlesh Chand*, was charged for *Careless Driving*, contrary to section 99(1) and 114 of the *Land Transport Act 1998*.
2. The particulars of the offence are;-
"Amlesh Chand on the 6th day of September 2014, at Labasa in the Northern Division, drove motor vehicle registration number LT 1427 at Labasa Market Taxi stand without due care and attention bumped one vehicle number LT 3551."
3. On 20 July 2015, the Accused pleaded not guilty to the charge. The Defence Counsel informed the court on the same day that they are not challenging the caution interview. The case proceeded to trial on 18 October 2016.

4. At the trial, the Prosecution called three witnesses. There were two witnesses for the defence case.
5. *Section 99(1) of the Land Transport Act 1998, state;-*
"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"
6. The elements of the offence that the Prosecution must prove beyond reasonable doubts are;-
 - a) *the accused,*
 - b) *drives a motor vehicle LT 1427,*
 - c) *on a public street,*
 - d) *without due care and attention.*
7. The burden of proof is on the Prosecution to prove his case beyond reasonable doubt.

Prosecution Evidence

8. The first prosecution witness is Mahen Prasad who is the complainant in this case. On 6 September 2014, in the afternoon he was driving taxi LT 3551 and was on his way to pick one job from Charan's Foodtown at 3pm. He drove through the road beside the market. He was driving slowly and before he makes a right turn at the band in front of the canteen, he saw a black bumper of a vehicle right back on the side. When his vehicle turning right, the taxi LT 1427 driven by the Accused, came very fast and hit the left hand side fender of his taxi. He identified the Accused in court. He called the police. He stated that the accident could be avoided if the Accused was driving slowly.
9. Shant Lal is the second witness for the prosecution. On 6 September 2014, he was driving taxi LT 1130 and he witness the accident. When the accident occurred he was driving behind Mahen Prasad's taxi. He stated that Mahen's

taxi was already turned into the band when taxi LT 1427 came and collided with the left hand side fender of Mahen's taxi. He identify the Accused in court. He stated that the Accused taxi was speeding.

10. The third prosecution witness is PC 3517 Ratu Meli. He is the investigating officer. He visited the scene, take the measurement, draw the rough sketch, recorded the witnesses statement and interview the complainant and the accused. He tendered the rough sketch plan, fair sketch, and the key (PE2, PE3A and PE3B respectively). When he arrived at the scene, the taxi of Mahen Prasad was turning and bumped by the taxi of the Accused. On the next Monday, Mahen informed him that Shant Lal was behind him on that day. The Accused is the suspect and was charged. Shant Lal's statement was recorded.

Defence Evidence

11. The Accused in his evidence stated that on 6 September 2014, he was driving taxi LT 1427. From the main road he turned left into the market taxi stand. He turns left between the taxi stand. The taxi stand on the right is empty. When he turned right there is no vehicle in front of him. When he drives towards the T junction the grey taxi was far away from his right with a distance of the length of 2 cars. While driving, all of a sudden, he saw a grey car in front of his car, he applied his break and it was too late. That taxi was driven by Mahen but he did not see the taxi number. He cannot drive fast because there is a lot of turning. He call the police. It was a Saturday and market vendors were selling on the road side. He asked the police if he has asked those people who are selling at the market on that day. He was driving on normal speed and was not careless.
12. In cross-examination, he stated that he was 10 metres away from the junction and Mahen's taxi was 8 metres away from the junction. Mahen's car was 2 cars away. A length of a car is almost 4 meters. The right hand rule on T junction is that he has the right of way. When the road is clear he increased his speed and he did not take precautions as Mahen's vehicle had already

turned into the lane towards Countdown. Because he did not take precaution he bumped the left fender of Mahen's taxi.

13. In re-examination, he stated that he was not speeding and he takes precaution but it was too late when he applied the break.
14. Anasa Tai is the second witness for the defence case. He is a market vendor. On 6 September 2014, he was standing outside the market opposite the Chinese cafe. At about 3pm, on his right side, he saw a taxi coming slowly. On his left is a taxi with a distance of 2 taxi coming very fast and trying to turn first. The taxi on the right reached the T junction first. He watched the two cars for about 2 minutes when the accident occurred. He was the first to see them after the accident. He was there when the police arrived. He informed the police that the accused taxi was coming slowly and Mahen's taxi was speeding. He is not an expert on speeding

Analysis and Determination

15. The evidence of the prosecution has established that the Accused was driving taxi LT 1427 when he bumped taxi LT 3551. The Accused has confirmed that in his evidence. The accident was at the T junction road beside the Labasa Market. The court has taken judicial notice of that road that it was a public street as it accessible by every vehicle on daily basis in the Northern Division with no restriction.
16. The Accused deny that he was careless and blame Mahen for speeding. That evidence and position of the Accused was discredited during cross examination where he admitted that he increase his speed and he did not take precaution causing the accident. In assessing his credibility as witness, I will accept his admission of speeding when he increase his speed and not taking precaution and I reject his evidence of denial as it was self serving and offered to protect himself.

17. This is an offence of careless driving. The test for careless driving was discussed by Shameem. J, in *Kumar v State* [2002] FJHC 291; HAA 014.2001S (12 April 2002), that it was an objective test of driving in a manner that is below the standard of a reasonable, prudent, and competent driver.
18. There was an accident. The investigating officer stated that the Accused is the suspect and that why he was charged. The Accused evidence of increasing speed is consistent with his evidence that Mahen's taxi was 8 metres to the T junction and his taxi was 10 metres away from the same junction. That distance suggests that Mahen's taxi will first reach the T junction and this is supported by the rough and fair sketch plan and the evidence adduced in court. The Accused evidence of not taking precaution is supported by his evidence in chief where he stated that suddenly he saw Mahen's vehicle in front of him.
19. The Accused manner of driving when he increased his speed and not taking precaution clearly show that the Accused was driving below the standard required of a reasonable, prudent, and competent driver. The test of careless driving has been established.
20. In assessing the evidence in totality, I find that the Prosecution has satisfied all the elements of the offence beyond reasonable doubts.
21. In my Judgment, I find the Accused was careless in his driving and I find him guilty as charged. Accordingly, the Accused is convicted.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE