

IN THE MAGISTRATES COURT OF FIJI
AT LABASA

CRIMINAL JURISDICTION

Traffic Case No. 67 of 2018

STATE

-v-

INOKE TUILOALOA

Appearances: Constable A. Lal
Mr. A. Waqanivalagi, *of counsel* instructed by the Legal Aid
Commission *for the Defendant*

Date of Sentence Hearing: 28 May 2019

Date of Sentence: 31 May 2019

SENTENCE

1. You were convicted after trial of **Dangerous Driving Causing Grievous Bodily Harm**; contrary to section 97 (4) (c) and section 114 of the **Land Transport Act No. 35 of 1998**.
2. The particulars of offence are that you “on the 13th day of July, 2018 at Seaqaqa in the Northern Division drove a motor vehicle registration number FS 993 at Vucitoka along Labasa – Nabouwalu Road in a manner dangerous to another person causing grievous bodily harm to Manikam Goundar.”
3. You overtook on a double line while travelling at a high speed as you approached, climbed and crested a blind hill. Your actions that day caused the motor vehicle driven by Ankush Goundar to fly off the road, hit a wall and land in the drain. A passenger in that vehicle, Mr. Manikam Goundar was seriously injured as a result. In addition to a 1 x 1 cm puncture wound to the top of the head, and a 5 x 7 cm abrasion to the right side of the head, Mr. Manikam Goundar lost some vision to the right eye and broke his left clavicle.

Maximum Penalty & Tariff

4. The maximum penalty for this offence is a fine of \$2000.00 or a term of imprisonment of 2 years or both and disqualification from driving for 12 months.

5. The tariff for this offence ranges between a fine and a suspended terms of imprisonment to 12 months imprisonment: *see Hussein v. The State* [2017] FJHC 854; HAA 06.2017 (7 November 2017) per Rajasinghe J. at [32].

Aggravating Factors

6. The manner of your driving was objectively very dangerous.
7. You permitted anger to cloud your judgment and blind you to the very real dangers your driving and your vehicle posed to other road users at that time.
8. A vehicle is more than just a modern convenience. It is a dangerous object if not driven responsibly.

Mitigating Factors

9. You are 49 years old and are a widower with 5 children, the oldest of whom is 27 and the youngest of whom is 16 years old.
10. You reside in Lekuku, Seaqaqa and you are a yagona farmer who earns \$200.00 a month. You are the sole-bread winner for your family.
11. You are a first offender and in 18 years of driving, this is your first traffic offence.
12. You are truly remorseful for your actions, your counsel submits. You have sought the forgiveness of the complainants, I am told. Moreover, you fully regret your actions from that day and you promise to take better care and exercise sound judgment in future.

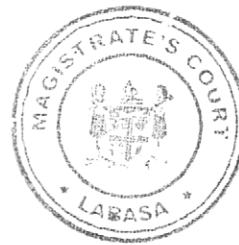
Sentencing

13. I pick a starting point of 12 months imprisonment and I increase this by 6 months for the aggravating factors present here. Your sentence is now 1 year and 6 months.
14. I decrease this sentence nominally by 1 month for your personal circumstances. I further reduce your sentence by 6 months for the fact that you are a first offender at 49 years old and for the fact that this is your first traffic offence in 18 years of driving.
15. Your sentence is now 11 months imprisonment.
16. There was no guilty plea at the first available opportunity, which is often the first and best sign of genuine remorse for the commission of a crime. However, I carefully observed you during the course of the trial, during the reading of my judgment and during the sentencing hearing.
17. It struck me that you wanted a full ventilation of all that had transpired that day, including the reckless manner in which another driver had driven, according to you. That is your right in law.
18. It also struck me during the reading of the judgment, and at the sentencing hearing that you are truly remorseful. In the short interim between judgment and sentence,

you accepted full responsibility for your actions, you apologised to the victims of your crime.

19. In the circumstances, I believe that the objectives of punishment, deterrence both specific and general *and* rehabilitation of the offender are best met through the imposition of a term of imprisonment *suspended* for a period of 3 years.
20. A suspended sentence is like the proverbial sword of Damocles hanging over someone's neck for a period of 3 years. If the person re-offends, he or she runs the risk that of that sword descending *on top* of whatever penalty is imposed for the second and subsequent offence.
21. You must not commit another offence in the next 3 years. If you do, you may find yourself serving the 11 month imprisonment term I suspended today.
22. Further, you are disqualified from driving for a period of 12 months.
23. **28 days to appeal.**

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Seini K Puamau
Resident Magistrate



Dated at Labasa this 31st day of May 2019