

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CRIMINAL DIVISION)

CR 436/94

POLICE

v

C M BATES

Defendant

Miss Maki for Police.

Mr George for defendant.

Date: 2 May 1995

---

DECISION OF QUILLIAM CJ

---

The defendant is charged that on the 15th of May 1994 at Matavera he did cause bodily injury to Vicky Lee Richter by driving a motor vehicle namely a green Hyundai motorcar registration number Kia Orana 555 on the main road at Matavera at a speed which having regard to all the circumstances of the case is dangerous to the public or to any person.

The charge arises out of an accident which occurred on the main road at Matavera just after midnight on the 15th of May. A white Nissan Laurel car was being driven by a Miss Ellis. She and a passenger were returning from the direction of Avarua and had been to a party. It may well be that Miss Ellis was affected by drink

2.

but that is not a matter which I am required to decide. She was certainly travelling faster than she should have. The speed limit there was 60 kilometres per hour. Her evidence was that she saw a white light ahead of her on her side of the road. She seems to have had no idea of the source of that light. She swerved to the left to avoid the light and braked. The car ran off the road, demolished a concrete fence post and came to rest against a tree. Her car was then pointing towards the beach at about right angles to the road. Although one witness says the rear of the car was protruding on to the roadway, this cannot have been so. It was wholly off the sealed roadway. It is no part of my task to decide whether Miss Ellis committed any traffic offence in the course of her driving. Immediately after the Laurel car came to a stop people started to gather in order to offer assistance. An attempt was made to move the car back towards the road but this was unsuccessful. While the attempt was being made the defendant approached the scene in his green Hyundai car. He had a passenger with him. Some distance before reaching the Laurel car the defendant swerved to his left and then his car demolished some concrete fence posts and struck the stationary Laurel car and moved it a substantial distance to its right. From the scale plan put in evidence I estimate that the rear of the car was moved about 7 metres to its right. Immediately before the defendant's car struck the Laurel it struck and injured one of those who had stopped to assist the driver of the Laurel. This was Mrs Richter who received abrasions and lacerations to her legs and also a fractured right

3.

shoulder blade. This has left her with a permanent injury.

The Prosecution case is therefore that the defendant drove his car at a speed which was dangerous and which caused the injuries to Mrs Richter. The defendant's speed was variously estimated by the witnesses. The defendant's own estimate was about 70 kilometres per hour. The calculations by an expert witness produced what he said was a conservative estimate of 85 kilometres per hour. For the purposes of this case I am prepared to proceed on the basis that the speed was about 80 kilometres per hour. On any basis it was substantially in excess of the speed limit of 60 kilometres per hour. The evidence of both the defendant and his passenger was that as he approached the scene of the first accident and being of course unaware that that accident had occurred, he was confronted by the light of a motorcycle travelling towards him on its incorrect side i.e directly in the path of the defendant's car. The defendant said he first thought that motorcycle was moving further to its left and so went to his right to avoid it. The motorcycle then changed direction and went across towards its correct side. The defendant then in order to avoid it had to swerve sharply to his left. At this point he acknowledged that he lost control of the car and he has little recollection of it striking the Laurel.

The witnesses gave differing accounts of the presence and movement of any motorcycle but I am prepared to give the benefit of the

4.

doubt to the defendant and to accept at least in general terms his account of the motorcycle.

It is on this basis that I go on to consider the charge. The Prosecution case is that the very speed of the defendant's car was a significant contributing factor in what happened and caused him to lose control with the result that his car struck Mrs Richter. Several defences were raised to this. First it was argued that the accident occurred wholly off the sealed roadway and accordingly not on the main road as alleged in the information. This contention is based upon the definition of road in Section 2 of the Transport Act. I have a good deal of difficulty in accepting that the definition confines a road only to the carriageway but I do not need to go any further than that. The Prosecution case is based upon the speed of the defendant's car during the time of its approach to the scene and during which time it was certainly on a road. I do not therefore need to consider this defence further.

A second submission was that speed alone is not sufficient to amount to dangerous driving. This submission however ignores the plain words of the statute. Section 25(1) of the Transport Act makes it an offence to cause bodily injury by the driving of a motor vehicle at a speed which having regard to all the circumstances of the case is dangerous to the public or any person. Therefore speed alone may constitute the offence.

5.

The main defence was that the defendant was confronted with an emergency by the presence of a motorcycle on its wrong side and coming towards him and moreover that the manouevres of that motorcycle added to his difficulties. It was contended that this was the effective cause of the defendant's swerve and loss of control. It must be said at once that had the defendant not been travelling at the speed he was, he could have been expected to cope with the emergency. He was admittedly travelling in excess of the speed limit and he also had the obligation as provided by Section 57 of the Transport Act of not driving at such a speed that he was unable to stop his vehicle within half the length of clear roadway that was visible immediately in front of him. It is very clear that the defendant was unable to comply with that obligation and the reason he was unable to do so was his speed. While it may have been commendable of him to have elected not to collide with the motorcycle, the result was that he was completely unable to control his car. The fact that he may not have been aware of the presence of the Laurel car or the people around it, is irrelevant. He ought to have been travelling at a speed which would have enabled him to see them and to avoid them. All the elements of the charge have clearly been proved beyond the reasonable doubt and the defendant must be convicted.

*Richard J.*