

**ITENO SENIP, Appellant**  
**v.**  
**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**  
**Criminal Case No. 132**  
**Trial Division of the High Court**  
**Truk District**  
**September 21, 1961**

Appeal from conviction in Truk District Court of violation of motor vehicle statutes prohibiting driving without brakes (T.T.C., Sec. 813(b)) and reckless driving (Sec. 815(b)). Appellant contends that he was unaware of defect in brakes and consequently did not have criminal intent to violate statutes and that incident was a case of unavoidable accident. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that neither intent nor knowledge are necessary elements of statutory crime of driving without brakes, but that evidence was insufficient to establish crime of reckless driving beyond reasonable doubt.

Affirmed in part and reversed in part.

**1. Motor Vehicles—Brakes**

Every motor vehicle when operating on highways of Trust Territory must be equipped with safe brakes in good working order. (T.T.C., Sec. 813(b) )

**2. Criminal Law—Strict Liability**

It is within power of legislature to declare an act criminal irrespective of intent or knowledge of doer of act.

**3. Criminal Law—Strict Liability**

Although criminal intent is essential element of common law crimes, it is not always necessary element of statutory crimes.

**4. Motor Vehicles—Generally**

Under many statutes making non-compliance with motor vehicle regulations an offense, neither intent to violate nor knowledge of violation constitutes element of offense.

**5. Motor Vehicles—Brakes**

Where accused operated vehicle while brakes were inadequate to control movement, finding of guilt of statutory offense will be sustained. (T.T.C., Sec. 813(b) )

**6. Motor Vehicles—Brakes**

Thirty days imprisonment for violation of statute requiring working brakes may be excessive when accused was unaware of defect. (T.T.C., Sec. 813(b) )

**7. Reckless Driving—Generally**

One may not drive vehicle on Trust Territory highway carelessly and heedlessly in wilful or wanton disregard of rights and safety of others, or without due caution at speed or in manner so as to endanger or be likely to endanger person or property. (T.T.C., Sec. 815(b) )

**8. Reckless Driving—Fault**

Mechanical failure of brakes where driver was not aware of defect is insufficient to sustain conviction for reckless driving. (T.T.C., Sec. 815(b) (2) )

**9. Torts—Negligence**

In civil action, one cannot be held responsible for negligence unless he had knowledge or reasonably was chargeable with knowledge that act or omission involved danger to another.

**10. Reckless Driving—Negligence**

Rule in civil actions that violation of statute is negligence per se is not applicable in criminal prosecution for reckless driving. (T.T.C., Sec. 815(b) (2) )

*Assessor:*

JUDGE ICHIRO MOSES

*Interpreter:*

FRITZ SOUKICHI

*Counsel for Appellant:*

ANDON L. AMARAICH

*Counsel for Appellee:*

MITARO S. DANIS

*KINNARE, Associate Justice*

Appellant pleaded guilty to a charge of driving without a license (Trust Territory Code, Section 812(i)), and pleaded not guilty to the charges of driving without brakes (Trust Territory Code, Section 813(b) ), and reckless driving (Trust Territory Code, Section 815(b) ). This appeal is from the finding of guilty on the two counts last named.

Appellant's argument at the hearing was the same as that set forth in his Notice of Appeal; that is, that the occurrence on which the charges were based was a pure accident, entailing no criminal responsibility. Appellee contends the evidence justified the finding.

#### FACTS

There is no real dispute as to the facts in this case, although appellant and appellee draw different inferences therefrom.

Witnesses for the prosecution testified that the truck operated by appellant rolled backward from the parking place in front of the hotel, that it continued on down the hill until it stopped in the ditch in front of the Administration Building, and that while the truck was in motion one Iaeko, riding in the cab, fell or jumped to the road, receiving injuries.

Appellant testified that he works for the Truk Trading Company; that in the course of his employment he drove the truck involved first to the commissary, where he stopped to pick up various items; that he then drove to the hotel to see Mr. Bowne. He testified that the foot brake worked normally and satisfactorily when he stopped at the commissary and when he stopped at the hotel. The hand brake did not work.

As to what happened when appellant and Iaeko left the hotel and got in the truck, appellant testified as follows: "I start the engine, and while doing it I feel the car moving. I step on the brake, the brake does not work, like I step into the air, at this time I look backward and try to cut the car into the open place but it is too late . . . . On our way down I hear some one yelling up and said Iaeko fall off, I look back and I saw Iaeko lying on the main road, for this reason I was confused and nervous . . . suddenly the car stop, I look out I realized I was in the ditch."

Yosita testified that he had worked for the Truk Trading Company in their garage for four years, that he takes care of all the cars for the company, that previously he had worked for the government garage for two years, where he had been shop foreman; that on the morning of the accident he had checked the brakes on the truck involved in the accident and they functioned properly.

He testified further that he saw the truck in the ditch after the accident; that he tested the brake at that time;

that the brake did not function, that the master cylinder was empty, and the "brake line" was broke; that in his opinion the pressure in the line caused the hole from which the brake fluid drained, or that the "pipe is too old and rusty and easy to be a hole right there".

Rain testified for the defense. He is an employee of the Truk Trading Company, and he drove the truck involved in the accident the same morning that the accident occurred before appellant drove it. When Rain drove it the brake "was good".

Two pieces of brake line were offered by the defense, were not objected to by the prosecution, and received in evidence. The longer line has a hole about one-eighth inch in width, three-sixteenths inch in length.

#### OPINION

Assuming that appellant is correct in his contention that this is a case of "unavoidable accident" (or "inevitable accident", as the term also used) we must consider whether this fact of itself is sufficient to entitle appellant to an acquittal on the charges here involved.

[1] Section 813(b), Trust Territory Code, reads as follows: "Every motor vehicle when operating on a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle . . . . All brakes shall be adequate to stop the motor vehicle within a safe distance and shall be maintained in good working order."

[2] "Undoubtedly it is within the power of the legislature to declare an act criminal irrespective of the intent or knowledge of the doer of the act." Am. Jur., Vol. 14, Criminal Law, § 16.

[3, 4] "At common law a criminal intent is an essential element of a crime, but is not always a necessary element

of statutory crimes. Under many statutes making non-compliance with motor vehicle regulations a penal offense, neither an intent to violate a regulation nor knowledge that it is being violated constitutes an element of the offense. The only question is whether the defendant did the forbidden act." Am. Jur., Vol. 5A, Automobiles, § 1122.

[5] As it is indisputable that appellant did operate the truck while its brakes were inadequate to control its movement, and as this was the only question necessary for the court to determine under Count Two, the finding of "guilty" as to Count Two must be sustained.

[6] It does appear that the trial court's sentence of thirty days' imprisonment, under all the circumstances, may be excessive.

[7] As to the charge of reckless driving, Count Three, we believe appellant stands on stronger ground. Section 815(b), Trust Territory Code, forbids driving any vehicle on a highway "carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

[8] We do not think the record in this case supports a finding that appellant drove a vehicle either "carelessly or heedlessly in a wilful or wanton disregard of the rights or safety of others" or "without due caution and circumspection".

[9] Even in civil cases, "a man cannot be held responsible on the theory of negligence from an injury for an act or omission on his part unless it appears that he had knowledge or reasonably was chargeable with knowledge that the act or omission involved danger to another." Am. Jur., Vol. 38, Negligence, § 23.

[10] "The rule in some jurisdictions, applied to civil actions, that the violation of a statute is negligence per se is not applicable in a criminal prosecution for reckless driving where the issue, which is between the state and the accused, is confined to the conduct of the accused and contributory negligence is not involved." Am. Jur., Vol. 5A, Automobiles, § 1181.

#### JUDGMENT

The finding of the District Court for Truk District as to Count Two, Criminal Case No. 1267 is affirmed; the sentence is reduced to five days' imprisonment, suspended on the same conditions as applied to the original sentence of thirty days. The finding and sentence on Count Three are vacated, and a finding of not guilty entered.