

AUGUSTO JOSEPH, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 304

Trial Division of the High Court

Palau District

August 15, 1969

Appeal from conviction of reckless driving. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that evidence of appellant's excessive speed and resulting uncontrolled skid demonstrated his own reckless and wanton disregard of the safety of any other user of the highway.

Judgment affirmed.

1. Reckless Driving-Mutual Fault

On appeal from conviction of reckless driving court is not concerned with any ill-advised maneuver of the complaining witness as such a

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prosecution is not a civil action for damages in which defendant raises the question of contributory negligence of the plaintiff. (T.T.C., Sec. 815)

2. Reckless Driving-Generally

On appeal from a criminal conviction of reckless driving the appeal must turn on whether there is sufficient evidence to support the charge of driving "recklessly or with gross, wilful or wanton disregard of the lives or safety of the public". (T.T.C., Sec. 815(b) (2))

3. Reckless Driving-Negligence

Appellant's speeding on a road utterly inadequate to permit fast driving, his application of his brakes resulting in an uncontrolled skid and failure to avoid accident by driving to the center or other side of the road demonstrated his own reckless and wanton disregard of the safety of any other user of the highway. (T.T.C., Sec. 815)

4. Appeal and Error-Scope of Review-Facts

There being evidence sufficient in the trial court to justify conviction, appellate court will not upset the verdict.

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*Assessor:*

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*Interpreter:*

KAZUMOTO H. RENGULBAI

*Counsel for Appellant:*

F. ARMALUUK

*Counsel for Appellee:*

AUGUSTO U. DEMEI

TURNER, *Associate Justice*

This is an appeal from the conviction of the appellant by the Palau District Court, of the offense of reckless driving, which is described in Section 815(b) (2) as driving "recklessly or with gross, wilful or wanton disregard of the lives or safety of the public."

The front left side of appellant's automobile struck the right rear of complainant's vehicle. Complainant was partly in and partly out of the highway in front of his theater heading off the highway into the parking area on the right-hand side of the road, appellant, driving easterly, up the hill and away from the district center attempted to pass on the right side of complainant's vehicle, a maneuver, events showed, was impossible of accomplishment. Complainant had backed into the highway from the front of the theater and was returning to a parking area be-

tween the road and the theater front not at the entrance. The maneuver of the complaining witness was ill-considered.

Appellant, through his counsel's argument, sought to lay the blame for the accident on the complainant as a result of his backing and return maneuver, citing 7 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 204, 239 and 264, in support of the proposition that the appellant had the right-of-way while traveling on the public road over a vehicle entering from a private driveway or parking area.

[1] This review of the evidence is necessary to demonstrate we are not concerned with the ill-advised maneuver of the complaining witness. This is not a civil action for damages in which the defendant raised the question of contributory negligence of the plaintiff.

[2] A criminal conviction on appeal must turn on whether there is sufficient evidence to support the charge of driving "recklessly or with gross, wilful or wanton disregard of the lives or safety of the public."

[3] The evidence is adequate to support the conviction in the District Court. It is apparent appellant was speeding on a road utterly inadequate to permit fast driving. Appellant's application of his brakes resulted in an uncontrolled skid and his failure to avoid the accident by driving to the center or left-hand side of the road, or at least to the rear of the complaining witness, demonstrates his own reckless and wanton disregard of the safety of any other user of the highway.

[4] Although the circumstances were different, this case resembles *Isauro Buikespis v. Trust Territory*, Palau District, Criminal Case No. 298, in which the defendant was convicted of reckless driving. As we said in that case:-

"There being evidence sufficient in the opinion of the trial court to justify the conviction, this court, on appeal, will not upset the verdict. . . ." *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

JUDGMENT

The verdict and sentence appealed from is supported by the law and the evidence, and the judgment is affirmed.