

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 31 OF 2019

(Magistrates' Court Case No. 03 of 2017)

BETWEEN: **KRISHNEEL RAHUL DEO**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Mr S Sharma for the Appellant**
 Ms A Vavadakua for the Respondent

Date of Hearing: **21 July 2020**

Date of Judgment: **24 July 2020**

JUDGMENT

1. Following a trial in the Magistrates' Court, the appellant was convicted of dangerous driving causing grievous bodily harm and sentenced to a fine of \$500.00 and disqualification from driving for 2 months. He filed an appeal against both conviction and sentence, but at the hearing the appeal against sentence was abandoned.
2. Six grounds of appeal have been advanced against conviction. The issue for determination is whether the appellant drove his vehicle in a dangerous manner causing grievous harm to the victim.
3. At trial, both the victim and the appellant gave evidence. The appellant is a high school teacher. On 25 December 2016, he drove a motor vehicle registration number EQ 335 on the Nabouwalu Highway. The point of impact was at Malawai junction in Dreketi. The appellant's evidence was that the collision occurred when he stopped

his vehicle on the highway to make a right turn. He said the vehicle driven by the victim came and hit his vehicle at a high speed.

4. The victim's evidence was that he was driving towards Labasa from Nabouwalu when the appellant suddenly drove to his lane to make a right turn without giving any indication. He said he was driving at a normal highway speed of 80-85 km/h before the impact occurred. To avoid collision he applied his brakes but his vehicle slid and collided with a concrete bus shelter on his side of the lane. He sustained injuries (abrasions and lacerations) to his chest, knees, foot and upper right eye brow.
5. The point of contention at the trial was the point of impact. The appellant's account was that the point of impact was his side of the lane and that he did not drive his vehicle to the opposite lane. The victim's account was that the appellant came to his lane when trying to make a right turn. The sketch plan of the accident scene revealed that the point of impact occurred on the victim's lane and therefore it supported his account of how the collision occurred.
6. The appellant was charged with dangerous driving causing grievous bodily harm contrary to section 97(4) (c) and 114 of the Land Transport Act 1998. Section 97(4) (c) of the Land Transport Act states:

(4) A person commits the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle-

(c) in a manner dangerous to another person or persons

7. There are two essential elements to this offence. Firstly, it must be proved that the accused drove a vehicle involved in an impact occasioning grievous harm to another person. Grievous harm is not defined in the Land Transport Act but the term is defined in the Crimes Act (s 4) as follows:

"grievous harm" means any harm which—

(a) amounts to a maim or dangerous harm; or

(b) seriously or permanently injures health or which is likely so to injure health; or (c) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense

8. Secondly, it must be proved that the manner of the Accused's driving was dangerous. A person drives in a dangerous manner if he or she creates a dangerous situation and that there is some fault on the part of the accused causing that situation (*Prasad v State* [2019] FJHC 881; HAA29.2018 (2 September 2019)).
9. In her judgment the learned trial magistrate concluded that the appellant created a dangerous situation by driving his vehicle to the opposite lane to make a right turn on a highway (point of impact) and that he was at fault for creating that situation. However, she did not make any assessment whether as a result of the impact serious injuries were caused to the victim. The injuries caused to the victim were abrasions or lacerations. The prosecution did not lead any evidence to prove that the abrasions or lacerations sustained by the victim as a result of the impact seriously or permanently injured health of the victim or were likely so to injure health.
10. There was no evidence of grievous harm to the victim for the appellant to be guilty of dangerous driving causing grievous harm. An essential element of the charged offence was not made out. For these reasons, the appellant's conviction and sentence are set aside and an order is made acquitting him of the charged offence. The appellant has already served the suspension of his driving licence. Fine if paid is to be reimbursed to him forthwith.



A handwritten signature in blue ink, appearing to be 'D. Goundar', written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

S.S. Law for Appellant

Office of the Director of Public Prosecutions for Respondent