

REGINA

v.

INDAR NAICKER

[SUPREME COURT, 1978 (Grant C. J.) 19th May]

Revisional Jurisdiction

Criminal law—practice and procedure—traffic offences—driving whilst uninsured—disqualification for 12 months mandatory in absence of special reasons—special reasons to be raised oath—reasons to be special to the offence and not to the offender—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) S. 4.

Following conviction for the offence of driving a motor vehicle whilst not covered by third party insurance the respondent was disqualified for six months. No special reasons were advanced to the Magistrate for not imposing the mandatory minimum period of 12 months disqualification. In the exercise of its revisional jurisdiction the Supreme Court substituted a period of 12 months disqualification.

Cases referred to:

Whittal v. Kirby [1946] 2 All E. R. 552

R. v. Lundt-Smith [1964] 2 W. L. R. 1063

Kandsami v. Reginam, Fiji Cr. App. 68/64 (unrep.)

Attorney-General v. Rishad Hussein Shah Fiji Cr. App. 18/66 (Unrep.)

Review by the Supreme Court of a sentence imposed by the Magistrate's Court.

A. H. C. T. Gates for the Crown

The respondent did not appear and was not represented.

GRANT C.J.:

On the 5th December 1977 at Labasa Magistrates Court the respondent was convicted of, *inter alia*, using a motor vehicle which was not insured against third party risks contrary to section 4(1) of the Motor Vehicles (Third Party Insurance) Ordinance, whereupon the trial Magistrate imposed a fine of ten dollars and purported to disqualify the respondent from holding or obtaining a driving licence for a period of only six months.

By virtue of section 4(2) of the Motor Vehicles (Third Party Insurance) Ordinance the minimum mandatory period of disqualification of this offence, in the absence of special reasons, is twelve months; and it is well established that it is for the accused to raise special reasons and to give evidence on oath of the circumstances which it is submitted amount to same, which circumstances must be special to the case and not to the offender (*Whittal v. Kirby* (1946) 2 All E. R. 552; *R. v.*

A *Lundi-Smith* (1964) 2 W. L. R. 1063; *Kandasami v. R.* Fiji Crim. App. 68/64; and the *Attorney-General v. Rishad Hussein Shah* Fiji Crim. App. 18/66).

This procedure was not followed and no special reasons were raised.

In the exercise of the revisional jurisdiction of this Court the period of disqualification is increased to twelve months with effect from the 5th December 1977.

B

Sentence of the Magistrate's Court varied.