

**IN THE RESIDENT MAGISTRATE'S COURT OF FIJI**  
**AT NAVUA**

TRAFFIC CASE: 2194/2010

STATE

VS

SALVEEN SACHIN NAIKER

For Prosecution : Sgt. Lenaitasi

For Accused : Mr. Jasveel Singh

**JUDGMENT**

1. The accused is charged with the offence of Dangerous Driving Occasioning Death contrary to section 97(2) (c) and 114 of the Land Transport Act No. 35 of 1998. The charge read as follows;

**Statement of Offence [a]**

**DANGEROUS DRIVING OCCASIONING DEATH** – Contrary to s. 97[2] [c] and 114 of the Land Transport Act Number 35 of 1998.

**Particulars of Offence [b]**

Salveen Naiker, on the 30<sup>th</sup> day of May 2010, at Navua in the Central Division, drove a motor vehicle registration number FQ 264 on Queens Road, Pacific Harbour, in a manner which was dangerous to the public having regards to all the circumstances of the case, whereby caused the death of ADI KELERA MARAMA.

2. The accused pleaded not guilty to the charge and this matter was taken for hearing on 24 Sep 2012, 13 Oct 2012 and finished on 06 March 2013. The prosecution led the evidence

of 07 witnesses and the accused gave sworn evidence. Only the defence filed closing submission at the conclusion of the case and I have gone through that too.

### **SUMMARAY OF EVIDENCE**

3. PW1 stated that on 30 May 2010 he took the bus to garage and his daughter, the deceased was with him with some of her friends. He parked the bus near Deuba camp site and victim's friends crossed the road first. As the deceased was crossing the road a truck came and hit her. PW1 also said he was not present when the sketch plan was drawn and he did not agree with that. In cross examination PW1 said the bus was partly in the road and Akosta (PW2) and Maria (PW7) crossed first. PW1 also said a new sketch plan was drawn as the point of the impact of the first plan was wrong.
4. PW2 was Akosita, a sister of the deceased. She said she crossed the road with Maria and as the deceased was crossing a truck came and hit her. The deceased was thrown to a ditch from the impact. In cross examination the witness stated that she explained to the police about the point of impact of the accident.
5. PW3, PC Iowane was the IO of this incident. He charged the accused and the charge statement and post mortem report were tendered through him and marked as EX-01 and EX-02 respectively. Answering to the questions raised by the defence PW3 said he visited the scene with miss. Akosi (PW2) and miss. Alowesi (PW7) and managed to draw the sketch plan. PW3 also said the accused was driving in high speed but later admitted that he did not have any evidence of the speed of the vehicle.
6. PW4, PC Setarki drew the sketch plans. He said he did not show the plan to PW1 and later drew a new plan based on PW1's statement. In cross examination he said he visited the scene with Akusita and others and they pointed out the point of impact in the first plan. PW 4 also admitted that he did not visit the scene when he drew the second sketch plan.
7. PW5, PC Rajendar conducted the caution interview of the accused and it was marked as EX-05.
8. PW6 was Elonoa, a friend of the deceased and she said as the deceased was crossing a truck came and bumped her. The witness also said at that time she thought the truck was

over speeding. In cross examination PW6 said there was no parking place and at that time part of the bus was on the road.

9. Last witness for the prosecution was Aloswesi, and she said after she crossed the road the deceased tried to cross and she did not see the accident. The prosecution closed the case after that and the defence made a no case submission under section 178 of the Criminal Procedure Decree. The Court on 30 Jan 2013 found out that there was a case against the accused and based on that the accused opted to give sworn evidence.
10. The accused said as he was passing Pac harbour he saw a bus parked on the side of the road. As he was trying to overtake the bus he saw a girl running in front of the bus and he applied the brakes. At that time bus covered half of the road and there were no lights in the bus. The girl bumped right hand side of his truck. The accused agreed with the first sketch plan and does not recognise the second point of impact. The accused also said at that time he was driving at 60kmph.
11. In cross examination the accused said before the accident he was travelling at 70kmph and he tried to overtake the bus as two vehicles also did that. In re- examination the accused said he was driving at 75kmph and as he was coming near the bus was driving only at 60kmph. As there was no light in the bus the accused thought it was broken down and he sounded his horn and tried to overtake. The defence did not call any other witnesses and also closed their case.

## **THE LAW**

12. The accused is charged with section 97[2] [c] of the Land Transport Authority Act and that section states:-

**A person commits the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of 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.**

13. In Rao v The State, Criminal Appeal No HAA 102 of 2007 Her Ladyship Justice

Shammem outlined the elements of the offences under Sec 97(2) of the Land Transport Act as

- I. **The Accused drove the vehicle**
- II. **He occasioned death**
- III. **In an impact**
- IV. **At the time of the impact the accused was either drunk or speeding or driving in a manner dangerous to other road users.**

14. Considering the facts in the case the elements the prosecution needs to prove in this case are ;

- I. **The Accused drove the motor vehicle**
- II. **That he occasioned the death**
- III. **In an impact**
- IV. **At that time of the impact the accused was driving in a manner dangerous to another person**

15. In Archibold (1996) the term dangerous has been described as danger either of injury to any person or of serious damage to property. Additionally, it states that a person is to be regarded as driving dangerously if:-

- [a] **The way or manner he drives falls far below what would be expected of a competent and careful driver,**
- [b] **It would be obvious to a competent and careful driver that driving in that way would be dangerous.**

16. In Semisi Lasike v The State [2002] FJHC 159; Justice Shameem again noted that **“Dangerous driving is the causing of a dangerous situation by a manner of driving which falls below the standard expected of a prudent driver”**.

17. In Woolmington v DPP (1935) AC 462 it was held that 'no matter what the charge

or where the trial, the principle that the prosecution must prove the guilt of the accused, is part of the common law.’

### **ANALYSIS OF THE EVIDENCE**

18. As pointed out by the learned counsel for the defence in his closing submission only disputed fact in this case is whether the accused was driving in a dangerous manner at the time of the accident. Therefore first I will consider if there is any evidence that can support this point.
19. PW3 in his cross examination stated that the accused was driving in high speed but later retraced this by saying he had no evidence about that. PW6 also said she thinks at the time of the incident the accused was over speeding. The accused also said he was driving at 70kmph but he slowed and before the accident was driving only at 60kmph. Therefore I find that there is insufficient evidence about the speed of the accused’s vehicle.
20. Second sketch plan that was tendered to Court shows the point of the impact very close to right hand side of the road. The point of impact on this plan was actually very near to road shoulder and if that plan can be accepted that could have supported the disputed element in offence. The defence objected strongly to this plan and I think the objections are reasonable and valid.
21. PW4 who drew both plans admitted that the second plan was drawn without visiting the scene (in fact the defence alleged that it was drawn in the prosecution’s office morning before the trial) and based only on PW1’s statement. There were no measurements which could have assisted the Court on this second plan. On the other hand PW3, the IO in cross examination admitted that he could agree with the first sketch plan which was drawn on the day of the incident.
22. As far as I can see the above grounds are the only evidence that can support the disputed element in this case. But I do not think they are sufficient to prove that the accused was driving in a dangerous manner.

23. Now I will consider the first sketch plan that was drawn by the police. The accused agreed with this plan and it shows the point of impact close to the middle of the road. According to the accused the bus was parked on the side of the road (as agreed by all the witnesses) and covering some part of his lane (as admitted by PW1) and as he was trying to overtake the deceased was running in the road and got bumped. PW3 drew this plan with the assistance of Miss Akosito and other eye witnesses and according to him they showed the point of impact in the first plan.
24. I believe there is a vital contradiction about the point of the impact as shown by sketch plans. In the first plan drawn with the assistance of the eye witnesses the point is near to the middle of the road. The second plan drawn with the assistance of PW1 shows point of impact close to right hand side far away from first point.
25. This contradiction naturally raises a doubt about the prosecution's version and I would give that doubt to the defence. Also as discussed in above paragraphs there is insufficient evidence about the manner of the accused's driving.
26. After considering all these factors only conclusion I can reach is that the prosecution has not proved their case beyond reasonable doubt. Therefore I acquit the accused from this charge.
27. 28 days to appeal

10 May 2013

**H.S.P.Somarathne**  
**Resident Magistrate**