

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Traffic Case No. 25/2018

BETWEEN: STATE

PROSECUTION

AND: LOG NADAN

ACCUSED

Counsel: Ms. S. Naibe for the State
Mr. N. Padarath for the Accused

Date of Prosecution's Case: 29 November 2024
Date of NCTA Ruling: 25 July 2025
Date of Defence's Case: 9 September 2025
Date of Judgment: 29 January 2026

JUDGMENT

Introduction

1. Mr. Log Nadan ('the Accused') on 5 March 2018 was charged and produced in Court for 1 count of Dangerous Driving Occasioning Death contrary to section 97(2)(c), 6(a), 8 and 114 of the Land Transport Act and 1 count of Occasioning Grievous Bodily Harm by Dangerous Driving contrary to section 97(4)(c), 6(a), (B) and 114 of the Land Transport Act 1998. The particulars of the offence are:

*Count 1
Statement of Offence*

Dangerous Driving Occasioning Death: *Contrary to Section 97(2)(c), 6(a), 8 and 114 of the Land Transport Act No. 35 of 1998.*

Particulars of Offence

Log Nadan, on the 1st day of March 2018 at Ba in the Western Division drove a motor vehicle registration number EZ 682 on Kings Road, Yalalevu in a manner which was dangerous to another person involved in an impact occasioning the death of ***Mohammed Talim***.

*Count 2
Statement of Offence*

Occasioning Grievous Bodily Harm by Dangerous Driving: *Contrary to Section 97(4)(c), 6(a), 8 and 114 of the Land Transport Act No. 35 of 1998.*

Particulars of Offence

Log Nadan, on the 1st day of March 2018 at Ba in the Western Division drove a motor vehicle registration number EZ 682 on Kings Road, Yalalevu in a manner which was

dangerous to the passenger involved in an impact occasioning grievous bodily harm of Aman Avinit Prasad.

2. On 26 November 2018, the Accused pleaded Not Guilty to the above charges. The matter had subsequently been fixed for Trial on various dates but the same never proceeded.
3. On 15 January 2024, Trial proceeded in the matter before this Court's predecessor, State called 1 witness who gave evidence but the counsel for the Accused was not able to cross examination this witness as this Court's predecessor adjourned the matter for continuation of Trial.
4. This Court then took over proceedings on 25 April 2024 and as such informed the Accused of his right under section 139(2) of the Criminal Procedure Act 2009, which allowed the Accused to demand that the witnesses or any of them in this matter be re-summoned and re-heard. After informing the Accused of this right, the Accused initially informed that he did not wish to exercise the said right.
5. However, on 29 November 2024 when the matter was called for continuation of Trial and given the availability of the witness, the Accused informed the Court that he wanted to exercise his right to have the Court to hear this witness give evidence. Thus, State called 2 witnesses and then closed their case. The counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence.
6. Directions were made with respect to filing of submissions. The counsel for the Accused complied with directions and filed submissions on 20 December 2024 whilst State informed on 26 May 2025 that they would not be filing any submissions.
7. On 25 July 2025, this Court refused and dismissed the application for no case to answer with respect to Count 1 being Dangerous Driving Occasioning Death but acquitted the Accused for Count 2 being Dangerous Driving Occasioning Grievous Bodily Harm. The Accused was then explained the procedure under section 179 of the Criminal Procedure Act and it was also explained to him that he had a right to remain silent. The Court was informed that the Accused would give evidence and call witnesses.
8. On 9 September 2025, the Accused gave evidence and thereafter Defence closed its case. State counsel and counsel for the Accused sought time to file closing submissions. Closing submissions by the State counsel was filed on 13 October 2025 and counsel for the Accused filed closing submissions on 24 November 2025.
9. It should be noted that the following documents were tendered by consent:
 - i. Rough Sketch Plan – 'PEX1A'
 - ii. Fair Sketch Plan – 'PEX 1B'
 - iii. Key – 'PEX 1C'
10. Having read the submissions and considered the evidence presented by Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

11. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
12. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

13. Aman Avneet Prasad ('Mr. Prasad') testified that on 1 March 2018, at around 5:15pm, he had been with a friend, Mohammed Talim ('the deceased') who had come to pick him on his motorbike and that they were heading to Dominion Wire & Cables which was before Nailaga Village along Kings Road. He stated that the deceased was driving the bike whilst he – Mr. Prasad was sitting behind the deceased.
14. Mr. Prasad explained that upon returning from Dominion Wire & Cables, just before Ba Industries, a car – a G Touring came into their lane – crossing the white mark. Mr. Prasad testified that he told the deceased to watch out as such the deceased applied the horn and slowed down but the car still kept on coming on their lane and then the next thing Mr. Prasad recalled was that they hit the car, they went over the car and then fell behind the car.
15. Mr. Prasad further explained that they had been quite far from the car but they could see the car crossing the white line and coming into their lane. He stated that the vehicle was turning into the Ba Industries driveway.
16. Dr. Kumar conducted the post-mortem examination of the deceased on 2 March 2018 and prepared the Post-Mortem Report pertaining to the examination which was tendered as 'PEX2'. Dr. Kumar testified that there was a direct injury to the brain tissue because of the head injury which could have been caused by an impact of vehicle or turf or both or even due to high velocity impact. He explained that the cause of death was multiple skull fractures which resulted in traumatic brain injury which led to the deceased's death.
17. The Accused agrees that he had been driving his motor vehicle with registration number EZ 682 along Kings Road, Ba from Navatu. The Accused testified that as he made a turn into the entrance of Ba Industries that is when the motorcycle being driven by the deceased had an impact with the Accused's motor vehicle. The Accused denies that he had driven his motor vehicle in a manner that was dangerous to the deceased which led to the impact and ultimately the deceased's death.

Evaluation of Evidence

18. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Dangerous Driving Occasioning Death, which are:
 - i. the accused
 - ii. drove a motor vehicle
 - iii. involved in an impact
 - iv. in a manner which was dangerous to the person and

v. the impact occasioned the death of the person

19. In *Kumar v State*; Criminal Appeal No. HAA 014 of 2001S (12 April 2002) Her Ladyship Justice Shameem discussed the test for dangerous driving wherein she stated:

"In R -v- Gosney (1974) 3 ALL ER 220, it was held that a charge of dangerous driving is proved when the driver drives in a way which falls below the standard of a competent and prudent driver, and thereby causes a situation, which viewed objectively, is dangerous.

The test for a charge of Dangerous Driving is an objective one, as is the test for Careless Driving. The difference between the Careless Driving and Dangerous Driving is not the manner of driving, (which has the same test) but the situation that has been caused thereby. In other words, a person who drives carelessly, also drives dangerously, if viewed objectively, his/her manner of driving creates a dangerous situation. Thus a person who drives carelessly, drives dangerously if he/she thereby causes a death.

There are many authorities which say that the test for both Dangerous Driving and Careless Driving, is whether the accused has departed from the standard of a reasonable, prudent, competent and experienced driver in all the circumstances of the case. The accused is guilty of either offence even if he committed an error of judgment (Simpson -v- Peat (1952) 1 ALL ER 441) or was an inexperienced driver (McCrone -v- Riding (1938) 1 ALL ER 157.) The difference between Careless Driving and Dangerous Driving in Fiji, is whether the manner of driving (which fell below the requisite standard expected) created a dangerous situation. Thus a careless driver is also a dangerous driver, if his careless driving caused a pile-up of vehicles on a busy motorway resulting in death and injuries. The question of what is careless as opposed to dangerous is one of fact, usually best left to the trial court to decide, on the evidence. However, on a charge of Causing Death by Dangerous Driving, it is no defence that the driver was driving carelessly and not dangerously. The only question is whether the driver's manner of driving fell below the standard expected of a reasonable and prudent driver, and thereby caused a dangerous situation as a result of which, a person died.

20. The Court is mindful of section 97(6) of the Land Transport Act which states:

(6) For the purpose of this section, a vehicle is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if—

- (a) the death or harm is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave public street, and***
- (b) the prosecution proves that the first mentioned vehicle caused the impact.***

21. Considering *Kumar* [supra] in conjunction with section 97(6) of the Land Transport Act, the Court will need to first determine whether the manner the Accused was driving created a dangerous situation and then consider whether there had been some fault by the driver causing this dangerous situation. If the conduct of the driver contributed to cause the dangerous situation then it has fallen below the care or skill of a competent and experienced driver and it could constitute the element of fault.

22. From the outset there is no dispute that on 1 March 2018, the Accused was driving motor vehicle with registration number EZ 682 and that the said motor vehicle which was driven by the Accused was involved in an impact at Kings Road, Ba. This is evident from the Accused's evidence. Further, there is also no dispute that on the said date at Kings Road, Ba, that an impact between the Accused's motor vehicle and the deceased's motorcycle occurred.

23. Thus, it is proven beyond a reasonable doubt that the Accused drove motor vehicle with registration number EZ 682 and that the Accused's motor vehicle was involved in an impact with Mohammed Talim's motorcycle at Kings Road, Ba.

24. The disputes that arise is whether the Accused drove his motor vehicle with registration number EX 682 in a manner dangerous to the deceased and whether the death of the deceased was occasioned due to this impact or because of an intervening conduct as evident from the cross examination undertaken by the counsel for the Accused.

25. In **State v Prasad** Criminal Case No. HAC 72 of 2021 (20 June 2024) His Lordship Justice Rajasinghe referred to the *Liberato* principle as expounded in **Liberato and Others v The Queen** [1985] HCA 66; 159 CLR 507 at 515 where Brennan J held that:

"When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question; who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issue which it bears the onus of proving. The jury must be told that; even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue. His Honour did not make clear to the jury, and the omission was hardly remedied by acknowledging that the question whom to believe is "a gross simplification."

26. **Prasad** [supra] also made reference to the case of **Naidu v State** [2022] FJCA 166; AAU0158.2016 (24 November 2022) where His Lordship Prematilaka highlighted the importance of modifying the *Liberato* principle and held:

[29] On the other hand Liberato has not uttered the final word on this issue. In Johnson v Western Australia [2008] WASCA 164; (2008) 186 A Crim R 531 at 535 [14]- [15] Wheeler JA identified one possible shortcoming in using Brennan J's statement in Liberato as a template for the direction: a jury may completely reject the accused's evidence and thus find it confusing to be told that they cannot find an issue against the accused if his or her evidence gives rise to a 'reasonable doubt' on that issue.

*[30] For that reason, it was usefully held in Anderson [2001] NSWCCA 488; (2001) 127 A Crim R 116 at 121 [26] that **it is preferable that a Liberato direction be framed along the following lines (i) if you believe the accused's evidence (if you believe the accused's account in his or her interview with the police) you must acquit; (ii) if you do not accept that evidence (account) but you consider that it might be true, you must acquit; and (iii) if you do not believe the accused's evidence (if you do not believe the accused's account in his or her interview with the police) you should put that evidence (account) to one side. The question will remain: has the prosecution, on the basis of evidence that you do accept, proved the guilt of the accused beyond reasonable doubt?***

27. His Lordship Justice Rajasinghe in **Prasad** [supra] further stated "if the Court believes the evidence given by the Accused is true or may be true, then the Court must find the Accused not guilty of the offences. Even if the Court rejects the Accused version, that does not automatically imply that the Prosecution has established that the Accused is guilty of the crime. The Prosecution must satisfy that it has established, on the evidence accepted by the

Court, beyond a reasonable doubt, that the Accused committed these offences as charged in the Information".

28. Thus, the Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024)**. In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)**).
29. When considering the Accused's evidence, the Accused testified that he had left home at Navatu at 4:40pm to pick his son who was working at Ba Industries. He explained that as he came closer to Ba Industries he saw his turning point was clear and that the on-coming vehicle being a motorcycle was a long distance as such he turned into the Ba Industries entrance.
30. The Accused stated that he was making a right-hand turn and that the motorcycle was approximately 80-85 meters away with it being between Roofing and Profiles and Sweet and Snacks. He went on to explain that prior to reaching Ba Industries his speed was between 30-40km but as he was turning into Ba Industries, his speed was 10km/hr.
31. When asked from what point he had turned, the Accused answered that he was almost reaching Ba Industries entrance and about to cross the white line mark to make a successful turn and as he was about to enter there was a big bang sound with someone hitting the vehicle.
32. The Accused explained that vehicle that hit him was the motorcycle he had seen that had been 80-85 meters away. The Accused further went on to testify that the motorcycle hit the left-hand side of his vehicle being the passenger's side.
33. When shown the Rough and Fair Sketch Plan with the Key, the Accused confirmed that he had been driving EZ 682 which was a Toyota G-Touring Station Wagon and he confirmed that the position the car was correct as well as the alleged point of impact. However, later on the Accused stated that the impact was not on the front bumper but on the front left side of the bumper but when 'DEX1' a photograph of his vehicle at the scene was shown to the Accused, he agreed that the point of impact was in the middle of the front bumper and not on the left side and he also agreed that what he had earlier said about the point of impact had been incorrect.
34. The probability of the Accused's version of events in that he had testified that he had made a successful turn is questionable. This is especially so as the Accused agreed in cross examination that he hadn't even entered the entrance of Ba Industries when the impact occurred. If the Accused had made a successful turn then his vehicle would have entered the entrance and in the event that the deceased was over-speeding as stated by the Accused in his evidence then the alleged point of impact would have been on the side of the Accused's motor vehicle either in the middle where the doors are or towards the end of the vehicle instead of on the front bumper.

35. Additionally, the video tendered as 'DEX3' showed the Accused's motor vehicle crossed into the opposite or on-coming lane even before reaching the Ba entrance and this was even agreed to by the Accused during cross-examination but then he later denied the same. However, the Court is mindful that during cross-examination, the Accused agreed that he was supposed to stop his vehicle right opposite the junction and then signal to turn into the junction. When shown the sketch plans and questioned that he was not in the middle of the junction, the Accused agreed. He further agreed that he was far away from the middle of the junction and that even before reaching the junction, he was already turning his vehicle into the opposite lane.
36. Thus, the Court finds that Accused's evidence has failed to create a reasonable doubt in Prosecution's case.
37. I now turn my mind to Prosecution's case. Mr. Prasad testified that on 1 March 2018, at around 5:15pm, he had been with the deceased who had picked him up on his motorcycle – a Kawasaki Ninja 600 and that they were heading to Dominion Wire & Cables which was before Nailaga Village along Kings Road. He stated that the deceased was driving the bike whilst he – Mr. Prasad was sitting behind him.
38. Mr. Prasad explained that upon reaching Dominion Wire & Cables, they dropped an item at the Security Booth and then returned. Upon their return, just before Ba Industries, Mr. Prasad explained that a car – a G Touring came into their lane – crossing the white mark. Mr. Prasad testified that he told the deceased to watch out as such the deceased applied the horn and slowed down but the car still kept on coming into their lane and then the next thing Mr. Prasad recalled was that they hit the car, they went over the car and then fell behind the car.
39. When questioned about the speed of the motorbike, Mr. Prasad testified that he couldn't see the meter, but it was probably 50-60km/hr. Mr. Prasad further explained that they had been quite far from the car probably 40-50 meters away when they had noticed the vehicle coming into their lane. He stated that the vehicle was turning into the Ba Industries driveway. Mr. Prasad further explained that the deceased applied the horn 2-3 times, that he tried to slow the bike down but couldn't fully stop the bike and the bike hit the car.
40. During cross-examination, Mr. Prasad agreed that the motorbike was new and that it was bought on the same day. He agreed that the deceased brought the bike to his home to show him. He further agreed that both he and the deceased were test driving the bike and that the deceased was wearing a full motorcycle helmet that covered his head and had a visor whilst Mr. Prasad had been wearing a bicycle helmet. He further agreed that when they had seen the Accused's car it was about 40-50 meters and that he could not tell with certainty that the deceased had been travelling at 50-60 km.
41. When it was suggested to Mr. Prasad in cross-examination that the deceased had been speeding because they were testing how far the bike could go on a straight road, Mr. Prasad stated that the deceased had been driving fast from Saqa to Dominion but at Dominion, Mr. Prasad had told the deceased to slow down as he didn't have a visor and that it was too windy in his eyes.
42. When cross-examined on the point of impact on the car, Mr. Prasad explained that it was right in the middle where the number plate was. When shown 2 photographs of the Accused's car which had been tendered as 'DEX1' and 'DEX2', Mr. Prasad agreed that the impact looked like it

was a little bit towards the passenger's side. Mr. Prasad further agreed that the vehicle that the Accused had been driving had turned enough into the driveway of Ba Industries and that the left side of the passenger side was facing towards them and that the front left hand passenger side or thereabouts was the point of impact. Mr. Prasad further agreed that after the impact he had gone over the car – being 17-18 meters whilst the deceased had gone over the car – 13.8 meters.

43. Moreover, Mr. Prasad was shown the video tendered as 'DEX3' during cross examination which showed the Accused's vehicle approaching and turning towards Ba Industries and the motorcycle approaching, then crashing into the vehicle and Mr. Prasad being thrown over the vehicle and then getting up and running. When it was suggested that back tyre of the motorcycle had lifted, Mr. Prasad answered that it did not look like it and that both tyres were on the tarseal.
44. The counsel for the Accused in submissions referred to the case of *DPP v Perry* [2023] VSC 270 (17 May 2023) being a Supreme Court of Victoria decision. This Ruling pertains to an application for no case to answer, however, counsel for the Accused invited the Court to consider the following paragraphs:

*'In one sense, driving, even when carefully undertaken and fully compliant with applicable rules, will always carry some risk to the driver, passengers and other road users. Driving is not free from hazard and the realisation of an ordinary risk of driving does not mean that the driving must have been dangerous. **The mere fact that there has been a collision, and in the context of s 319(1) of the Crimes Act, the collision has resulted in the death of a person, does not mean that the driving was dangerous. For the driving to be dangerous, there must be some feature [of the driving] which is identified not as a want of care but which subjects the public to some risk over and above that ordinarily associated with the driving of a motor vehicle, including driving by persons who may, on occasions, drive with less than due care and attention.'***

A further illustration of the distinction between negligence and dangerous driving can be seen in the judgment of McLure JA in McPherson. In that case, McLure JA described as a 'fundamental misunderstanding of the law', a prosecution submission that a driver who contravened the give way road rule resulting in a collision with a vehicle that had right of way, must be driving in a manner that was dangerous to the public. Her Honour was not suggesting that failing to give way could not constitute dangerous driving, self-evidently it may. Rather, it is necessary to ask how the driving affected the risk of harm to road users and members of the public when compared with the proper conduct of a motor vehicle.'

45. The Court subsequently found a case to answer in *Perry* [supra] and ultimately the Accused was found guilty by the jury for the charges he was charged with as evident from the Sentence in *DPP v Perry* [2023] VCS 761 (18 December 2023). Within the Sentence the following was observed by the Court:

19 The Crown did not allege that your speed was excessive prior to the collision, but they emphasised that you bore an obligation to give way and to exercise caution if your view was impeded by the larger vehicle. The Crown relied on admissions you made at the accident scene where you said that you did not see the car you collided with because there was a ute in the way.

20 The fact that Mr Johnson's SsangYong Musso was a larger than normal vehicle did not alter your obligation to give way or stop before commencing to turn across the oncoming lanes of traffic in Wells Road. Mr Albert submitted that your failure to give

way, or to keep a proper lookout or slow down or stop to avoid the risk of colliding with a vehicle that had the right of way, involved a gross breach of your responsibility as a driver. He argued that you should have waited for the larger vehicle to move to a position that was not obscuring your view, or that you should have inched forward slowly to ensure a better view before commencing to cross through the lanes of traffic.

21 Ultimately, the jury must be taken to have been persuaded by Mr Albert's arguments on these matters. Notwithstanding arguments advanced by your counsel as to the absence of indicia of dangerousness that might be observed in other cases - such as the effects of alcohol or drugs, sleep deprivation, mobile phone use, or distracted driving - the jury convicted you on both charges.

(my emphasis)

46. It is counsel for the Accused's submission that the failure to follow the right of way rule is not the only consideration but that the law as cited in *Perry* [supra] recognizes or demands that the Court considers the driving prior and at the point of impact to determine if a dangerous situation is created.
47. As stated in paragraph 21 herein, the Court is to first determine whether the manner in which the Accused was driving created a dangerous situation and then consider whether there had been some fault by the Accused in causing this dangerous situation.
48. Considering the evidence of Mr. Prasad, it is apparent that the Accused's motor vehicle had crossed into their lane just before Ba Industries to then turn into the entrance of Ba Industries. From the Sketch Plans tendered as 'PEX1A' and 'PEX1B' it is evident that the Accused's vehicle had not even made it into the entrance of Ba Industries when the impact occurred. Rather the position of the Accused's vehicle in the Sketch Plans shows the Accused's vehicle at a slight diagonal before the entrance. It is obvious that the Accused had started to approach or turn into the entrance of Ba Industries even before approaching the entrance and that whilst the Accused was doing this, he had already crossed into the oncoming lane.
49. Additionally, from the alleged point of impact as highlighted on the Sketch Plans, the impact between the Accused's vehicle and the motorcycle is reflected in the middle of the front bumper. Whilst the counsel for the Accused argued that the point of impact was more to the left of the front bumper given that the Accused was already turning his vehicle into the entrance of Ba Industries, the photograph tendered as 'DEX1' shows the front bumper broken in half with the break being in the middle of the bumper. This highlights to the Court that the Accused had not even made the turn into the entrance of Ba Industries when the impact occurred.
50. Thus, the Court finds the evidence of Mr. Prasad is credible and reliable in conjunction with the Rough and Fair Sketch Plans tendered as it highlights that the Accused had created the dangerous situation of crossing into the on-coming lane before even reaching the entrance of Ba Industries. Even if the on-coming lane was clear, the Accused should not have crossed into the on-coming lane before reaching the entrance of Ba Industries. The Accused's motor vehicle ought to have been parallel to the entrance whilst signaling his intention to turn right and before turning into the entrance of Ba Industries. The Court finds that the Accused's action of crossing into the on-coming lane before even reaching the entrance of Ba Industries fell below the care or skill of a competent and experienced driver.

51. Turning to whether the impact occasioned the death of the deceased, Mr. Prasad explained in his evidence that when they had hit the front of the car, they then flew over. He stated that he then stood up whilst the deceased was lying on the tar seal in a fetal position. Mr. Prasad then testified that he tried to make the deceased straight meaning to sleep on his back but the deceased didn't move or say anything.
52. Mr. Prasad then went on to explain that there was a crowd and in the crowd was a Doctor. The Doctor tried to check the deceased's pulse on his hand but because he was wearing gloves she requested Mr. Prasad to take off the deceased's helmet, which he did. Mr. Prasad testified that upon taking off the deceased's helmet, he saw blood coming out of the deceased's left ear as well as one of his eyes and thereafter the Doctor advised the deceased be taken to the hospital. Mr. Prasad stated that they had used a 4 R Electrical Twin Cab vehicle to take the deceased to Ba Mission Hospital and by the time the vehicle came, there had been a pool of blood around the deceased's head. At the Hospital, Mr. Prasad stated that as attempts to revive the deceased were made, more blood came out of him and that eventually he passed away.
53. In cross-examination, Mr. Prasad was questioned regarding taking off the deceased's helmet. He maintained that he did not have to move the deceased's head but that he moved the belt under the deceased's chin and moved the helmet upwards whilst also using force.
54. With respect to the post-mortem of the deceased, Dr. Kumar testified that he had conducted the post-mortem examination on 2 March 2018 and then prepared the Post-Mortem Report which was then tendered as 'PEX2'. The date of death of the deceased was 1 March 2018. Upon attending to the external examination of the deceased, Dr. Kumar noted that there were visible injuries such as a laceration (cut) on the occipital region (back part of the head) and it extended right to the skull. There was also a brush abrasion (a confined superficial scratch) on the shoulder right to the collar bone above the neck. There was also an abrasion on the lower part of the back with grazes and scratches on the right upper arm.
55. When questioned on the internal examination, Dr. Kumar testified that after cutting through the scalp and after reflecting it there were multiple fractures on the occipital area as well as multiple fractures on the bone. Dr. Kumar stated that when the brain was removed, there was a fracture. He stated that the cerebral vessels were normal, but the brain tissue of the frontal region was macerated because of fractures to the bone.
56. Dr. Kumar testified that there was a direct injury to the brain tissue because of the head injury which could have been caused by an impact of vehicle or turf or both or even due to high velocity impact. Dr. Kumar then testified that the cause of death was multiple skull fractures which resulted in traumatic brain injury which led to the deceased's death. When questioned about his clinical examination being consistent to the cause of death, Dr. Kumar agreed and further stated that the head injury was due to a high velocity impact which was consistent with a motor vehicle accident.
57. In cross-examination, when questioned on the possibility of cuts occurring even wearing a helmet, Dr. Kumar testified that it would probably be dependent on the impact and the speed of the vehicle. Further when questioned if maceration happened due to fractures which then affected the frontal lobe, Dr. Kumar answered in the affirmative and explained that there were no blood injuries within the brain and that it would be hard to cause maceration in the front of the brain. Further, Dr. Kumar agreed that due to the location of the injuries the deceased had hit the back of his head and hard and that falling on your head – 30 meters ahead was sufficient to

cause injury. He explained that force travels and it damaged the petrous portion and that hitting the car or turf would need high velocity.

58. Whilst the counsel for the Accused cross-examined Mr. Prasad with respect to the way he removed the deceased's helmet at the scene, no other evidence was adduced to highlight that an intervening conduct had led to the deceased's death. Further, the counsel of the Accused did not take up this line of questioning with Dr. Kumar.
59. Thus, the evidence of Mr. Prasad that the Accused's motor vehicle and the deceased's motorcycle were involved in an impact when considered in conjunction with the evidence of Dr. Kumar with the Post Mortem Report tendered as 'PEX2', allows the Court to draw an indisputable inference that the impact caused the deceased to receive injuries to the back part of his head and extend to the skull with multiple fractures on the occipital area and bone which had caused the brain tissue of the frontal area to macerate. All this led to a traumatic brain injury which led to the deceased's death.
60. It is important to address the contention of Defence which was evident during cross-examination that the deceased had been speeding at the time of the impact and thus the Accused is not at fault. However, when considering causation, had it not been the Accused's act of crossing into the on-coming lane before reaching the entrance of Ba Industries, the deceased's motorcycle would not have had an impact with the Accused's motor vehicle which led to the deceased sustaining a traumatic brain injury and thereafter his demise.
61. Given that State has proven beyond a reasonable doubt that the Accused had created a dangerous situation of crossing into the on-coming lane before even reaching the entrance of Ba Industries and because the Court has found that such an action fell below the care or skill or a competent and experience driver, the Court finds that State has proven beyond a reasonable doubt that the Accused's conduct was a substantial and operative cause of the deceased's death.
62. Given the totality of evidence led by Prosecution, the Court finds that Prosecution has proven beyond reasonable doubt that the Accused was driving his motor vehicle EZ 682 on Kings Road, Ba and that his motor vehicle was involved in an impact with Mohammed Talim's - the deceased's motorcycle and the manner in which the Accused had driven his motor vehicle was dangerous to the deceased and the impact occasioned the death of the deceased.

Determination

63. I find that Prosecution has discharged its burden in proving Count 1 Dangerous Driving Occasioning Death against the Accused beyond a reasonable doubt.
64. I, therefore, find the Accused, Log Nadan, guilty as charged for Count 1 Dangerous Driving Occasioning Death.




N. Mishra
Resident Magistrate