

Between:

VIJAY SINGH s/o RAM UDIT SINGH

and

REGINAM
Mr. A. Singh for the Appellant
Mr. I. Khan for the Respondent
JUDGMENT

On 5th March 1980 in Suva Magistrate's Court the appellant was convicted after trial of careless driving contrary to sections 37 and 85 of the Traffic Act and was sentenced to a fine of \$40 or six months' imprisonment.

The particulars of offence alleged against the appellant were that on 6th day of June 1979 in Suva appellant drove a motor vehicle on Princes Road without due care and attention.

The appellant now appeals against his conviction on the ground that the evidence adduced by the prosecution was not sufficient to support the conviction.

The facts as found by the learned Magistrate are set out at page 10 of the record where he said:

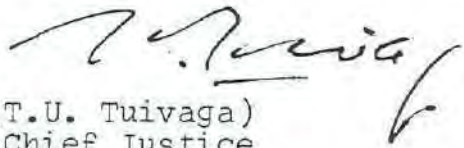
"From the evidence before me I am left in no doubt that P.W.1 had parked his car on Princes Road earlier in the day. He entered his car with a child and began to make a 'U' turn allowing for the bus which he could see some 100/125 yards away. He had negotiated the 'U' turn and was straight on the road when accused hit his car on the rear causing the damage described by the prosecution witnesses. I don't believe accused that P.W.1 came from the side road without warning. I am satisfied beyond a reasonable doubt that the accused was driving carelessly in that he was failing to keep a sufficient lookout.

That does not mean that I do not consider that some blame also attaches to P.W.1."

In his evidence appellant claimed that P.W.1 came from the junction at Tamavua Native Land Subdivision without stopping at the junction and that ~~was~~ how he collided with the right rear part of complainant's car which was damaged. This evidence appears to be supported by the nature of the damage sustained by the car. If P.W.1's account of the incident is correct, then one would expect the bus to have collided with the car on its left side (while carrying out the 'U' turn) or squarely on its rear if it had straightened up by then. Another unsatisfactory feature of the case is that P.W.1 claimed that he did the 'U' turn on Princes Road which, if true, was clearly dangerous and he should have exercised a greater degree of care than he would appear to have done as he said he had seen the bus on Princes Road travelling towards him before he proceeded to do the 'U' turn.

On the whole of the evidence I accept and am satisfied that there is a reasonable doubt on the question as to whether the appellant drove without due care and attention in Princes Road on the day in question and thereby causing a motor accident.

In these circumstances the conviction against appellant cannot stand and must be quashed. The fine if already paid must be refunded to the appellant.


(T.U. Tuivaga)
Chief Justice

Suva,
23th August 1980.