

IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction

Review No. 8 of 1982

277

000379

IN THE MATTER OF THE CRIMINAL
PROCEDURE CODE

AND IN THE MATTER OF TRAFFIC
CASE NO. 4735 OF 1982 BEFORE
THE SUVA MAGISTRATE'S COURT

REGINAM

Complainant

and

ROBERT O'NEILL

Respondent

ORDER ON REVISION

The review of this case has been prompted by a letter dated 23rd September 1982 from the General Manager of the Fiji Broadcasting Commission wherein, and so far as material, he states as follows:-

"Mr. Robert O'Neill is employed by the FBC as a full-time driver. He was charged with driving a motor vehicle in contravention of Third Party Risk in that there was not in force for the vehicle in question a valid Third Party insurance policy. At the time of the offence Mr. O'Neill was driving the vehicle on the instruction of his employer of official business.

The fact that the vehicle was not properly insured resulted from a serious oversight on the part of another member of our staff whose responsibility it was to ensure that all vehicles were correctly insured and licensed. While in law the driver of the vehicle is responsible for ensuring that his vehicle is properly insured, it is common practice for drivers of vehicles owned by their employers to accept that such formalities have been attended to by the employer.

In view of the fact that the offence in this case was clearly not the result of negligence or misconduct on the part of the driver, who has always been a good employee, I wrote to the Registrar of the Magistrate's Court prior to the case pointing this out and asking that the Magistrate be informed of the special circumstances applying and suggesting that leniency might be exercised in the imposition of a sentence. The Magistrate imposed a fine and disqualified Mr. O'Neill from driving for 12 months, which I am informed is mandatory in such cases.

However, the disqualification of Mr. O'Neill's driving licence has resulted in a serious loss of income for him, which is causing some considerable hardship to his family. While the FBC is prepared to continue his employment, because he is no longer engaged in driving duties he is not receiving overtime and other payments which he would normally be entitled to as a driver.

The purpose of this letter is to ask that the matter be placed before the Hon. the Chief Justice with a request that he review the case and ultimately exercise his revisionary powers to the extent of quashing the disqualification. It is felt there is justification as the disqualification resulted from no neglect on the part of the driver himself and it is considered unfair for him to be penalised and suffer loss of earnings as a result."

With regard to the present matter the respondent was charged and convicted under section 4(1) and (2) of the Motor Vehicles (Insurance) Act which reads:

"4.(1) Subject to the provisions of the next succeeding section, no person shall use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of that motor vehicle by such person or other person as the case may be such a policy of insurance in respect of third party risks as complies with the provisions of this Act.

(2) Any person acting in contravention of this section is guilty of an offence and shall be liable to a fine not exceeding four hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the

power of the court to order a longer period of disqualification) be disqualified from holding or obtaining a driving licence for a period of twelve months from the date of conviction."

The question of law raised is whether there existed on the facts of the case as set out more fully in the letter quoted above special reasons for refraining to impose on the respondent an order of disqualification from holding a motor licence. It is quite clear from the circumstances of the case that the respondent had no reason to suppose or suspect that the vehicle in question was not at the material time insured for third party risks. As already noted that responsibility belonged to his employer which owned the vehicle and on this occasion overlooked to renew the third party insurance in respect of the vehicle. The respondent properly stated in mitigation that he drove the vehicle in good faith and did not know that the vehicle was not at the time insured for third party risks.

I am satisfied that special reasons existed in this case as required by section 4(2) of the Act. Accordingly in the exercise of my powers under section 325 of the Criminal Procedure Code I set aside the order of disqualification of twelve months entered against respondent in the court below.

Chief Justice

Suva,
28th September 1982.