IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 14 of 1983

BETWEEN : RANJEET CHANDRA — Appellant

AND : REGINAM — Respondent

Mr. C. Singh — Counsel for the Appellant

Mr. M. Raza, Principal Legal Officer, Counsel for the Respondent

JUDGMENT

This is an appeal from the magistrate's court at Ba. The appellant, a bus driver, was convicted of careless driving.

The appellant while driving his employer's bus on the King's Road in the direction of Lautoka, collided with the complainant's motor vehicle, proceeding in the same direction, when the appellant attempted to turn the bus to the right into a feeder road. The complainant testified that as he approached the bus from the rear, he observed that it had stopped for a pedestrian on the roadway hailing the bus, about half a chain from feeder road. The complainant attempted to pass out the bus at that stage, sounding his horn in doing so: when he drew alongside the bus it suddenly swung across the road to the feeder road. The complainant applied his brakes, but was unable to avoid collision with the right front of the bus.

It was the appellant's version that he had not stopped the bus, but instead had slowed down. He signalled, by use of trafficator, his intention to turn to the right; he observed no approaching vehicle in his rear-view mirror and commenced turning ; just then as the bus was partly off the tar-sealed surface and was about to enter the feeder road, the complainant's vehicle suddenly struck the bus midway on the right-hand side.

The grounds of appeal filed are as follows:

"1. That the learned trial magistrate erred in law in not -

(a) directing himself as to onus of proof;
(b) standard of proof;
(c) fully and adequately evaluating the evidence and consider the contradictions and inconsistency in the evidence;
(d) giving any weight to the appellant's evidence.

2. That the learned trial magistrate upon proper and full evaluation of the evidence ought to have held that the prosecution failed to prove the alleged offence on the part of the appellant. Alternatively the learned trial magistrate upon full and proper evaluation of the evidence ought to have given the appellant the benefit of the doubt.

3. That the learned trial magistrate failed to find any fault or element of carelessness on the part of the appellant.

4. That the decision is unreasonable and cannot be supported having regard to the evidence."

The learned Counsel for the appellant Mr. Singh seems during the argument to have resiled from grounds 1(a) and 1(b) above and to have dealt with the other grounds as a single ground, i.e. that the learned trial magistrate did not evaluate the evidence properly. As to the onus of proof the learned trial magistrate held that the prosecution had established a prima facie case. He surely there accepted that the onus was upon the prosecution to prove the charge. As to the standard of proof, even if the learned trial magistrate did not specifically direct himself thereon, the question remains as to whether any miscarriage of justice arose.

Mr. Singh points to the fact that the complainant's vehicle left brake marks on the road stretching some 50 feet up to where vehicle had collided with the bus. He submits that the length of the brake marks is such that it is possible that the complainant came round the bend in the King's Road, and on seeing the bus turning to its right applied his brakes too late: the brakes apparently were working on one side only and he failed to pull up in time. The distance to the bend was, in the appellant's evidence, four chains, that is, 88 yards. The learned trial magistrate observed that it would be quite impossible for a vehicle to cover that distance in a fraction of a second. The complainant testified that he was driving at 40 m.p.h. at that time. The table of braking distances in Wilkinson's Road Traffic Offences 10 Edition (at back page) indicates that at 40 m.p.h. the 'thinking' or 'reaction' distance is 40 feet and the braking distance 80 feet that is, an overall stopping distance of 120 feet. With defective brakes, the complainant's braking distance would of course be more than 80 feet. Allowing time for the brakes to function, and for the wheels to grip the road, and allowing for the residual speed at impact it will be seen that the brake marks of 50 feet are not necessarily indicative of a speed in excess of 40 m.p.h. Indeed at 50 m.p.h. the braking distance is 125 feet.

Mr. Singh points to the complainant's evidence that his vehicle had reached the right rear wheel of the bus when the bus suddenly started turning. Mr. Singh submits that in view of the length of the brake marks this evidence cannot be correct. It must be remembered however that the complainant testified that the appellant stopped the bus about half a chain away from the feeder road. When the bus started to come across the road the complainant no doubt took evasive action until he eventually collided with the front of the bus at a point past the centre of the feeder road.

The learned trial magistrate rejected the appellant's evidence on two grounds. Firstly he considered it was impossible for a vehicle to cover the intervening distance of 88 yards in the time indicated by the appellant. Applying the figures in Wilkinson's, I calculate that to cover 88 yards in a second, the complainant's vehicle, laden with passengers, would need to have travelled at 180 m.p.h: even allowing for a time lag of two seconds the speed would have to be 90 m.p.h. - in which case the braking distance alone would have been well over 100 yards. These calculations serve to illustrate the accuracy of the learned trial magistrate's observation. Secondly, the learned trial magistrate observed that if it was the case that the complainant's vehicle arrived on the scene seemingly out of nowhere and struck the bus just as it turned into the feeder road, that the bus would have pointed into the said road: instead a police sketch-plan indicated that the bus pointed past the entrance to the feeder road, at a distance of five feet from the left shoulder thereof, indicating that the appellant had had occasion to realise his error and had taken evasive action swinging to the left in order to avoid a collision. This aspect is confirmed by the fact that the police sketch-plan indicates that the complainant's vehicle and the bus collided at a point quite near the right front of the bus and not the middle of the bus, as the appellant testified.

There was evidence of negligence on the part of the complainant. I do not consider that there was a breach of the provision of the Highway Code to the effect that a driver should not overtake another vehicle at a road junction: I do not see that the attempted passing of a stationary vehicle on the roadway constituted an attempted "overtaking" as such. There was however evidence that the complainant's brakes were defective and in this respect he must be regarded as having been negligent. That is not to say that the appellant thereby escapes criminal liability however. The question for the learned trial magistrate to decide was whether, in all the circumstances, the appellant's driving fell below the standard of the reasonably competent and careful driver.

The learned trial magistrate made no such specific finding. I am satisfied however that had he directed himself in the matter he would inevitably have convicted the appellant. In particular, in the absence of a specific direction on the onus and standard of proof, I am satisfied that no miscarriage of justice arose. The appeal is dismissed.

Delivered In Open Court At Lautoka This 4th Day of May, 1984

(B. P. Cullinan)

Judge