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IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA

BETWEEN:

REGINA

v.

WILSON OTTO NUNA.

## R E A S O N S

MANN C.J.
WEWAK
14/2/62

The deceased woman, HAURI, died as a result of injuries when she fell of the back of a tip-truck being driven by the accused.

I am satisfied that accused was unaware of the woman's presence on the truck, and that he was in fact unaware of any duty towards her, or of any particular circumstances which endangered the life or health of anyone.

The woman had been offered a lift by the accused, and she and a number of other passengers had been brought in to the Cathedral for early Mass. The truck stopped on the left of the roadway just below the Cathedral, and the passengers other than the deceased alighted. The passengers alighted in a place where they had friends, also going to Mass, and I cannot tell to what extent they were distracted by the social opportunities the occasion afforded. At all events nobody seems to have taken much notice of the fact that the deceased was carrying a baby and needed help to get down safely.

The deceased was the last on the truck and in order to get down crossed over from the left to the right side of the truck, and sat on the edge of the tray, preparing to hand the baby down to a girl, who was probably the witness BEFAURE, when the truck started off, and the deceased did not have time either to release the child or dismount.

The deceased was carried about 800 yards on the back edge of the tray and then fell off, striking her head on the road and receiving the injuries from which she died. The baby fell off with her.

I think that the deceased was not thrown off the tuck. She either fell or launched herself off in a state of panic, concentrating on the protection of the child. The evidence on this point is meagre, but it is by no means uncommon for persons unaccustomed to vehicles to reach a state of terror and fall or jump off, to certain death.

Whilst on the back edge of the truck the deceased was in a position of considerable danger and in addition was in a situation which would be terrifying to her. Apart from being carried away rapidly

from her friends, she was sitting on broken steel flooring, with a loose steel sideboard and no tailboard to protect her, holding the baby with her right hand and supporting herself with her left arm round a projecting steel fitting on top of the rear extremity of the sideboard. This fitting is rough and fairly sharp edged, and would cause great discomfort to her arm. The truck was noisy and the loose members must have added to both the noise and the insecurity of her perch. She was apparently on the extreme edge of a slippery and springing steel floor. The truck, fitted with compound springs and unloaded must have bounced along the road. The deceased and others had been shouting but as far as the deceased knew, had failed to attract the driver's attention.

In these circumstances I think the deceased, by whatever means she fell of the truck, must be regarded as having acted not from choice but by the circumstances which forced or caused her to leave the back of the truck.

The truck itself was not a safe vehicle for passenger transport. With no tailboard and a floor polished by tipping operations, the passengers were insecure. The steel shield over the cabin restricts the driver's rearward view dangerously, and so far as appears there were no rear vision appliances, which omission might encourage carelessness. The noise of the truck and body prevented reasonable communication with the driver.

The accused was not a licensed driver and there is gross neglect here on the part of the accused or his employers or both. The accused is employed as a mechanic and is apparently familiar with handling vehicles, and although his driving on this occasion does not suggest incompetence, he may well have been unaccustomed to observance of any routine designed to ensure safety for passengers on a large vehicle. Neither he nor his passengers appeared to observe any standard which would be acceptable as indicative of a vehicle or system of conduct suitable for passenger transport.

I am satisfied that the speed of the truck, considered alone, was not excessive. It appeared, as far as the evidence shows, to have been normal. Some witnesses, whose judgment would not be reliable and whose natural anxiety would govern their impressions, said that it moved off quickly. Any speed in the circumstances would be too high for the safety of the deceased and her child.

I was invited to infer that the accused did not look to see whether all the passengers had alighted. I cannot do this, but I am satisfied that if he did look at all through the small window, he did not take the trouble to look adequately, for by peering out

at an awkward angle he could have had a clear view of the deceased. If he happened to be holding the footbrake on at the moment he may have had difficulty doing this. Whatever the reason, I am satisfied that he did not look properly through the window. I believe, but cannot say for sure, that his attention was distracted by the passengers on his right, and especially NOLIM, who thanked him, and he did not think of the possibility of passengers still being on board. The deceased woman's descent was evidently considerably delayed by the circumstances I have mentioned, and if it were proper to guess, a guess that all the passengers were off the truck might have been reasonable, but for the fact that the driver knew that one of the women was carrying a baby.

What then is the standard imposed by Section 289? All the circumstances must be considered together.

From Callaghan's case, 87 C.L.R. p.115 it appears a fortiori that the standard is a reckless disregard of human life or safety. The neglect of precautions referred to in Section 289 must therefore be read in this light.

Apart from that Section, I am satisfied that the death of the deceased comes within Sections 300 and 303 and is an accidental death within Section 23. I am satisfied that the woman's life was endangered in the situation in which she found herself and that this danger in fact materialised.

Was accused ignorant of her presence; criminally negligent?

I think the whole question turns on the shouts of warning given by bystanders and on accused's failure to see the deceased.

Accused admitted he heard shouts at a stage he did not identify, and thought that people only wanted a lift. I have only one case to consider on this point and although it is possible that other people in other places shouted at a later stage, this seems to me to be something arising by way of argument from mere words. The evidence of shouting when the truck moved off is strong and clear, and in spite of the noise of the truck, the accused if he heard any shouting, had a much better chance of hearing it then. I have no doubt that this is in fact what he heard.

On the other question, I think the accused was not justified in allowing anything to distract him from looking in such a way as to see the deceased. Even after he started he should have looked back when he heard shouting, and would then have become aware of the woman's presence.

In some ways this is a border-line case, because the accused committed only negative acts in circumstances that failed to prompt his mind to take precautions which he undoubtedly would have taken if he had thoughts of them. The accused appears to be

a man of very good character, but I find that on this occasion he handled the vehicle with an absence of safety precautions which on the facts known to him, ought to have been taken as essential to the preservation of the life and safety of his passengers. I think that his negligence satisfies the requirements of Section 289. Anybody driving a vehicle must observe, at his peril, at least those basic requirements.

VERDICT: Guilty.

Trained Doctor boy, Buka Passage, Rabaul Mechanic, Engineer Colyer Watson (N.G.) Ltd.

1959, Driving - Japanese Salvage Team.

1961, Driving for Glaus.

In custody 2½ months.

Sentence suspended.

Accused to be released on entering into his own Recognizance of £25 to be of good behaviour for one year and to come up for sentence if and when called upon within that period.