

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC 20248

IN THE MATTER of The Criminal  
Procedure Act 1972

A N D

IN THE MATTER of an appeal pursuant to  
section 131

BETWEEN: THE ATTORNEY GENERAL

Appellant

A N D: ULUGIA SIVE ISAAKO

Respondent

Counsel: G Latu for appellant  
P A Fepuleai for respondent

Hearing: 13 February 1996

Judgment: 19 February 1996

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JUDGMENT OF SAPOLU, CJ

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This is an appeal by the Police against a decision of the Magistrates Court dismissing a charge of negligent driving causing death against the respondent who was the defendant in the Magistrates Court proceedings.

The defendant was charged under section 39A of the Road Traffic Ordinance 1960 that at Vaimoso on the 11th day of August 1994 he did negligently drive a truck on Vaitele Street thereby causing the death of one Malala Lautaimi. The

learned Magistrate who tried the case dismissed the charge on the basis that there was no proof beyond reasonable doubt that it was the negligent driving of the defendant which caused the injuries which resulted in the death of Malala Lautaimi. The prosecution has now appealed against that finding.

I will now refer to the facts of this case which are well set out in the decision of the learned Magistrate and are not challenged on this appeal. It was in the morning of 11 August 1994 that the defendant was driving a Government truck registered number 9040 along Vaitele Street from west to east at Vaimoso. A motorcycle driven by Malala Lautaimi was heading east to west in the same stretch of road. Both vehicles were approaching the intersection at Vaimoso near the store of one A P Cain. At the same time a pick up vehicle was approaching the same intersection on Fugalei Street. When this pick up came close to the intersection, the driver saw the motorcycle approaching from the east on Vaitele Street so he slowed down to give way. The truck driven by the defendant when approaching the intersection was obliged to give way to the motor cycle. The defendant saw the motorcycle but he thought he could make a clear turn of the intersection into Fugalei Street before the motorcycle got to where his truck was. The defendant admitted that he should have given way to the motorcycle but because he did not, his truck collided with the motorcycle.

When the collision occurred the motor cyclist Malala Lautaimi was thrown into the air and fell in front of the pick up vehicle approaching the intersection from Fugalei Street. Malala Lautaimi was hooked by a sharp object possibly the tow hook under the front part of the pick up vehicle and was dragged along under the pick up vehicle as the pick up swerved out of the road to avoid being

involved in the collision. The medical evidence showed that Malala Lautaimi died as a result of shock due to excessive blood loss from multiple injuries both externally and internally. The more serious injuries contributing to excessive loss of blood being the fractures to both legs and the rupture of the abdominal wall and small intestine.

I have set out almost word for word the facts as found by the learned Magistrate. His Worship then considered that there was no direct evidence to show what injuries were caused when the truck driven by the defendant collided with the motorcycle driven by Malala Lautaimi and what injuries were caused as a result of Malala Lautaimi being hooked and dragged under the pick up vehicle. Thus even though the learned Magistrate found negligence to have been established against the defendant, he came to the conclusion that he was not satisfied beyond reasonable doubt that the death of the deceased resulted from the defendant's negligent driving.

The only issue on this appeal is whether on the facts as found by the learned Magistrate there was proof beyond reasonable doubt that the death of the deceased was caused by the defendant's negligent driving. The issue thus becomes one of causation. As such it is essentially a question of fact : *R v Storey* [1931] NZLR 417. The real difficulty in this area is not so much in determining whether there is a factual nexus between a cause and a particular result but in the formulation of legal principles which are applicable in determining that factual nexus. Be that as it may, the question of causation is still essentially one of fact.

I therefore turn to a New Zealand case whose facts are very similar to the facts of the present appeal. This is the case of *Smyth v Police* [1973] NZLR 56 under the provisions of the Transport Act 1962 (NZ). In that case a truck driven by the defendant collided with the victim who was crossing a pedestrian crossing. The impact of the collision flung the victim into the air. When the victim came down he lay prone on the road. Another vehicle which was driven in the same direction as the defendant's truck but did not see the collision or the victim, struck the victim who was lying on the road. The victim sustained bodily injuries. The defendant was charged and convicted in the Magistrates Court with driving with excess alcohol in his blood causing bodily injuries to the victim. He appealed against his conviction to the Supreme Court. One of the grounds of the appeal was that it was not clear from the medical evidence which injuries were caused by which vehicle. In dismissing the appeal Woodhouse J at p.58 had this to say about this ground of appeal :

"In deference, however, to the competent and carefully prepared submissions put forward by Mr Burnes I propose to go on to consider the second limb of his argument in this part of the case. On the basis that he was correct in his contention that there was no sufficient evidence to enable the finding that the first impact caused injury to the complainant, Mr Burnes then submitted that the Magistrate was wrong in deciding in any event that the appellant's driving was an effective cause in the legal sense of the injuries suffered by the complainant when the second vehicle arrived on the scene.

"If it be assumed for the moment that the first impact caused no physical injury but merely left the man prone on the ground the issue becomes a question as to whether... the actual injuries which he then suffered were caused by the appellant. I think a useful analogy can be found in the law referable to assault. It is elementary of course that an assault can arise by the direct or indirect application of force. So that if a person can be pushed on to a busy highway the direct results of the assault might cost him no damage although nobody would wish to argue that the immediate subsequent injury done by collision with a vehicle was

"not one of the effects of the original cause. I do not propose  
"to lay down some sort of test concerning the problem raised by  
"the present appeal but it appears to me that a decision in the  
"area of causation must be decided in each case within its own  
"environment as a matter of degree and circumstance. If I am  
"right about that and such a general test is applied to the facts  
"under consideration by the Magistrate on this occasion then I am  
"of the opinion that he correctly took into account all the  
"considerations that are relevant and applicable; and he then  
"came to a conclusion with which I agree".

The analogy referred to by Woodhouse J in the passage I have just cited from his judgment in *Smyth v Police* is very similar to the factual situation which arose in the later case of *R v Fleeting (No.1)* [1977] 1 NZLR 343 which is one of the cases cited by Mr Latu for the appellant in support of his submissions in the present appeal. In that case the defendant and the deceased were arguing on the footpath near a taxi rank in Queen Street, Auckland, New Zealand. The defendant then pushed the deceased who fell out from the footpath onto the road and was almost immediately run over by a passing car. The defendant was charged with manslaughter and at the trial the medical evidence indicated that the fatal injuries sustained by the deceased were consistent with his having been run over and dragged by a car. The argument by counsel for the defendant that there was no causal nexus between the act of the defendant in pushing the deceased from the footpath onto the road and the death of the deceased was rejected by the Court. Likewise the alternative argument by defence counsel that the action of the car driver constituted a novus actus interveniens which provided a basis for exculpation was also rejected by the Court.

In the present appeal the Magistrate's finding of negligent driving on the part of the defendant as the cause of the collision between the defendant's truck

and the deceased's motorcycle is not disputed. It was the impact of the collision that flung the deceased into the air and landed him in front of an approaching pick up vehicle. The deceased was hooked onto a sharp object under the front part of the pick up vehicle and was dragged along under the pick up as it swerved out of the road to avoid being involved in the collision. Even though the medical evidence is not clear as to whether the fatal injuries were caused at the time of the collision between the defendant's truck and the deceased's motorcycle or at the time the deceased was hooked and dragged under the pick up vehicle, this Court is of the view that in either case the negligence of the defendant was a real cause of the deceased's death.

If the fatal injuries were sustained by the deceased at the time of the collision then the defendant's negligent driving was the sole cause of death. If on the other hand the fatal injuries were sustained at the time the deceased was hooked and dragged along under the pick up vehicle, then the defendant's negligence was a contributing cause although not the sole cause of death. It is not necessary that the defendant's negligence be the sole cause of death; so long as it is one of the contributing causes and was something more than de minimis then that is sufficient even though the conduct of some other person also contributed to the death of the deceased : *R v Hennigan* [1971] 3 All ER 133; *Smyth v Police* [1973] NZLR 56.

The case of *R v Fleeting (No.1)* [1977] 1 NZLR 343 was concerned with the charge of manslaughter and not with negligent driving causing death or bodily injuries. However the facts of that case and the discussion it provides on the question of causation lend support to the view I have taken in this appeal. For

instance there is a passage cited in that case from the Queensland case of *R v Knutsen* [1963] Qd R 157 which says :

"It is clear that in some cases under [the Queensland section], the injury may be the immediate result of the accused's unlawful act (e.g. a blow with a knife). In others, it may be the result of the acts of some third party in conjunction with the effects of the act of the accused, e.g., the accused's violence may cause the injured party to suffer harm in an instinctive effort to avoid harm from the accused's violence or put the injured party in such a position that he cannot escape injury from other source of imminent harm. In most, if not all, of these cases an onlooker would exclaim - 'He (i.e. the accused) did that'. I can see no difference between an unaccompanied physical assault which knocks or flings a man into an open fire or off a footpath into the course of a passing car and a threatened assault of such a kind that, in an effort to escape, the proposed victim falls into the fire or stumbles off the footpath in front of the car. Cases may be multiplied in which the accused's unlawful act is not the sole cause of the injury suffered, but in some way is a real and substantial part of the cause of the ultimate injury".

I do not see anything in that passage which contradicts the view this Court has taken in this appeal.

There may have been some suggestion that the involvement of the pick up vehicle in this case constituted a breach of the causal nexus or chain of causation between the defendant's negligence and the deceased's death. In other words the involvement of the pick up vehicle in the accident is said to be a *novus actus interveniens*. In *R v Storey* [1931] NZLR 417, Myers CJ said :

"But if it appeared that in some way or other the deceased driver was negligent after the impact and after the effect of the accused's negligence was spent, and that the death of himself and of his wife was due to that subsequent negligence, that would be a *novus actus*".

That was also a case of manslaughter by negligence but I think what was said by Myers CJ in that case provides a sound basis for determining whether in the present appeal the subsequent involvement of the pick up vehicle when it dragged the deceased along constituted a novus actus interveniens.

The question thus is whether the effect of the defendant's negligent driving was spent when the approaching pick up vehicle dragged along the deceased who was hooked under it. The answer must be in the negative. The reason why the deceased was dragged underneath the pick up vehicle was because of the collision between the truck driven by the defendant and the motorcycle driven by the deceased which flung the deceased into the air and landed him in front of the approaching pick up. That collision was caused by the defendant's negligent driving. The collision between the truck and the motorcycle and the presence of the defendant under the pick up vehicle occurred almost simultaneously. There was therefore no time for the effect of the defendant's negligence to be spent or exhausted before the deceased was run over and dragged underneath the pick up vehicle. Accordingly any suggestion that the subsequent involvement of the pick up vehicle in this accident constituted a novus actus interveniens cannot succeed.

Mr Latu for the appellant placed his argument on this aspect of the case on the foreseeability test. He submitted that the running over and dragging of the deceased under the pick up vehicle was a reasonably foreseeable consequence of the defendant's negligent driving. He relied on a passage in p.347 of the decision in *R v Fleeting (No.1)* [1977] 1 NZLR 343 for that submission. I think this underlines the point I referred to earlier in his judgment that the real

difficulty in the area of causation is in formulating the relevant legal principles for determining the causal and factual nexus between the act complained of and a particular effect or consequence. I prefer to leave the question of reasonable foreseeability, which as used in the law of torts relates to the question of remoteness of damages, for another case.

In all then, the appeal is allowed and this case is remitted back to the Magistrates Court for the conviction to be entered against the defendant on the charge of negligent driving causing death and for sentence.

*TFM Sapala*  
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CHIEF JUSTICE