

CN 5964/22

THE DISTRICT COURT OF PORT-LOUIS (NORTH DIVISION) (MAURITIUS)

In the matter of:-

Police

v/s

Mohammad Irfaan Hauseea

JUDGMENT

Introduction

1. The Accused stands charged with the offence of **driving without due care and attention** in breach of *sections 123 C (1)(a) (3) of the Road Traffic Act*. He has pleaded not guilty to the charge and was represented by Mr Bandhu at the trial. Mr Cooshna appeared for the Prosecution assisted by the Police Prosecutor.

Case for the Prosecution

2. At the outset, 3 PF 70 duly signed by Witness 2, were produced and marked as **Docs A, A1 and A2**.
3. Witness 1, ex PS Bholah, produced the two out of court statements of the Accused, which were recorded on the 05th October 2018 and 09 40 hours and 10 15 hours respectively, after the usual warning was given, which were marked as **Docs B** and **B1**. Further, the Accused accompanied him on the locus on the 05th October 2018, where notes and measurements were taken, and he prepared two rough sketches, which were produced and marked as **Docs C** and **C1**. The Witness was duly cross-examined by Learned Counsel for the Accused.
4. Witness 3, Mr Beeshwarnath Doorgah, stated that on the 29th June 2017 at 15 00 hours, he was driving private van, bearing registration number 729 MR 02, along the NTR, from the direction of Port-Louis towards the North. After the Quay D roundabout, he was in the right lane when he heard a police motorcycle, which was in the left lane, knock against the left rear door of his van. The motorcycle fell on spot and he stopped his van. He alighted from his van and it was then that he



realised that there was another police motorcycle which had knocked against the police motorcycle, which in turn knocked against his van. The rear left door of his van was damaged and he could not identify the rider of the police motorcycle which knocked against his vehicle, but the latter was a police officer. He was duly cross-examined by Learned Counsel for the Accused.

5. Case was closed for the Prosecution.

Case for Defence

6. The Accused deposed under oath and was duly cross-examined by Learned Counsel for the Prosecution.
7. Case was closed for the Defence and both Counsel left the matter in the hands of the Court.

The Law

8. Section 123C of the Road Traffic Act reads as follows:

“(1) Any person who drives a motor vehicle on a road or other public place -

(a) without due care and attention; or

(b) without reasonable consideration for other persons using the road or public place, shall commit an offence and shall, on conviction, be liable to a fine of not less than 3,000 rupees nor more than 10,000 rupees and to imprisonment for a term not exceeding 3 months.”

9. In Wilkinson's Road Traffic Offences 11th Edition at page 257, the learned authors describe “careless driving” as follows:

“ may be said to mean departing from the standard of driving which would be exercised by a reasonable, prudent, competent driver in all circumstances of the particular case. It follows that a person who drives without reasonable consideration for other road users can be convicted of driving without due care and attention”



10. Each case has to be decided on its own facts, but the general principle remains that Prosecution must prove beyond reasonable doubt that the accused has departed from the standard of care and skill that in the particular circumstances of the case would have been exercised by a reasonable, prudent and competent driver. A person is guilty of careless driving once it is proved that he has departed from the standard required.¹
11. The driver must have "*failed to do any act or all the acts which a normally prudent driver would have done and which act or omission caused the accident*" - **Hossenally v The State (2001) SCJ 221.**
12. Now, if a driver does not exercise that degree of care and attention, which a reasonably prudent man would exercise in the circumstances, he is guilty, whether or not he is committing an error of judgment (**vide Simpson v. Peat (1952) 1 A.E.R. 447.**)
13. The test therefore, where an accident has occurred, is whether it is proved beyond reasonable doubt that the accused, in the light of existing circumstances of which he was aware or of which a driver exercising ordinary care should have been aware, failed to use the care and attention or to give to other persons using the highway the consideration that a driver of ordinary care would have used or given in the circumstances.

Finding

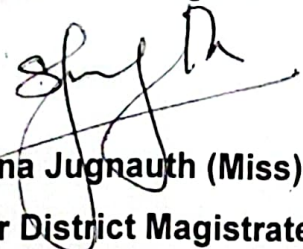
14. I had the opportunity of seeing the different witnesses for the Prosecution and the Accused depose in the present case and I was not convinced by the Prosecution version for the following reasons:
- (a) Witness 1, who is the officer who attended the locus, confirmed that there was an unevenness on the road, but that he failed to include it on **Docs C** and **C1** (*page 16 of the court record refers*). He also confirmed that there were no brake marks on the road;

¹ B Domah, *Mauritian Road Traffic Offences, Volume 1*



- (b) From the outset, the Accused contended that there was an unevenness on the road, which caused his motorcycle to skid thus leading to the accident at hand.
- (c) The standard of care which had to be exercised by a reasonable, prudent and competent driver in the present circumstances now has to be determined. It was held in **Mohamed v R [1988 MR 126]** that *"The duty of care which is owed by a driver of any vehicle cannot be looked at in isolation. This duty depends on a number of factors, namely the type of vehicle being driven, the state of the road, the time at which the driving takes place, persons and vehicles using the road at the material time. By having regard to one or more of these factors the extent of the duty of care to be exercised by a prudent driver can be gauged."*
- (d) Given the circumstances of the present case and the state of the road, it was incumbent on the Accused to slow down the motorcycle when passing over the unevenness. **Doc A2** has been duly considered in as much as the damages sustained by Witness 3's vehicle is concerned. It is the view of this Court that had the Accused been proceeding at a high speed, then the damages to Witness 3's vehicle would have been more consequential.

15. For these reasons, I am prepared to give the benefit of the doubt to the Accused and the case against him is accordingly dismissed.



Shavina Jugnauth (Miss)
Senior District Magistrate
This 13th December 2024