

THE STATE

VERSUS

NAMATAI MAPFUMO

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 17 NOVEMBER 2008 AND 22 JANUARY 2009

Negligent Driving

CHEDA J: This is a review judgment forwarded to me as per the usual procedure in terms of the Magistrate Court Act.

“The accused was charged with Contravening section 52(2)(a) of the Road Traffic Act [Chapter 13:11] as read with section 21(a) of part LXXXIV of the Criminal Penalties Amendment Act Number 22 of 2001 ‘Negligent Driving’.

He pleaded guilty, was convicted and sentenced to a fine of \$400 or in default of payment to 3 months imprisonment.

The allegation against accused is that on the 11th January 2007 he drove a motor vehicle Toyota Hilux along Guinea Fowl valley Road, off Shurugwi Road, negligently resulting in it overturning and landing on its roof. The vehicle was extensively damaged. It is common cause that he failed to engage into a suitable gear when approaching a slope. There were, however, no injuries sustained by either the accused or his passenger.

The particulars of negligence are as follows:

(a) Travelling at an excessive speed in the circumstances.
Failing to keep the vehicle under proper control.
Failing to stop or act reasonably when an accident seemed imminent.

These particulars were not disputed by the accused. I raised a query why accused’s

license was not endorsed and also why he was not prohibited from driving for a certain period as required by the Act.

In her response the trial magistrate stated:-

“I write in response to the query raised with respect to the above reference. The reason why accused was not prohibited from driving is that accused is a first offender who was driving an ordinary motor vehicle. In terms of section 52(4)(a) of the Road Traffic Act the court has a discretion whether or not to prohibit him from driving.

I came to the conclusion that the facts and circumstances of this case did not warrant prohibition.

I stand guided.

(Signed)

R Muchena
Trial Magistrate.”

With greatest respect the trial magistrate has seriously misled herself by considering the issue of special circumstances which only apply where one is convicted under section 52(2)(b) and (c), the accused was convicted under section 52(2)(a) which does not need an enquiry about special circumstances.

It is, therefore, clear that she misdirected herself in that regard. On the issue of negligence she concluded that accused’s negligence was ordinary. Again, I fail to understand how an accused who was driving a car at an excessive speed, approached a slope and failed to engage the vehicle to a suitable gear resulting in such an accident where the car lands on its roof can be convicted of ordinary negligence.

The state outline which has not been contradicted state that the vehicle was in a good working condition suffered excessive damage. If this is ordinary negligence then God forbid.

It is my view that the learned trial magistrate did not properly read and understand the Road Traffic Act thereby coming to a wrong conclusion, which unfortunately even when her mistake is pointed out to her, she still failed to see it. Magistrates are urged to accept that pointing out a mistake on their part is not intended to insult them, but is intended to guide them only for future purposes.

This was infact gross negligence on the part of the accused which should have attracted a prohibition from driving.

The learned trial magistrate has therefore done injustice to this case.

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I, therefore, find that these proceedings are not in accordance with real and substantial justice and I accordingly withhold my certificate.

Ndou J agrees.....