

HONG KONG / JUDGMENT

HKSAR v. LEUNG YUN SHING

COURT

Court of First Instance

DECIDED

2 January 2007

CASE / FILE NUMBER

HCMA668/2006

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bjbj HCMA668/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 668 OF 2006 (ON APPEAL FROM KCS 10169 OF 2006)

BETWEEN HKSAR Respondent and LEUNG YUN SHING (d on 12 June 2006 by Mr Douglas Yau sitting at Kowloon City Law Courts of the offence of careless driving and fined \$3,000. He now appeals against conviction. AUTONUMOUT The particulars of the offence are that on 7 November 2005, at 7:06 p.m., at Kwun Tong Road, the appellant drove a light goods vehicle on the road carelessly.

Facts

AUTONUMOUT The facts admitted at the trial were that on the day in question the appellant was driving the said vehicle along the 4th lane of Kwun Tong Road. When the said vehicle was outside no.392, the front of the appellant s vehicle hit the right side of the body of a pedestrian (the deceased) who was crossing the road. The deceased suffered serious injuries and fell to the ground, and after being admitted to hospital, died of multiple traumatic wounds AUTONUMOUT There were four lanes at the scene of the accident, all going in the same direction and the speed limit was 50 km/hr. The place where the accident happened was not a legal pedestrian crossing place, the nearest pedestrian crossing tunnel being 107 metres away. The weather was fine on the day of the accident; the road surface was dry and the traffic was busy but smooth. Findings of facts AUTONUMOUT The prosecution called an eye witness who described the accident. The learned magistrate found the witness to be honest and reliable. AUTONUMOUT The magistrate found the deceased did run across three lanes, got to the dividing line of the 3rd and 4th lane, stopped for about one to two seconds, leant forward and took one to two steps, saw the appellant s vehicle, tried to retreat but was too late and got hit. The magistrate found that there was no sign of the appellant slowing down his car or honking prior to the impact. AUTONUMOUT The magistrate also found that at the time of the incident the traffic was busy, there was a KMB bus in the left 1st lane unloading passengers and a taxi in either the 2nd or 3rd lane moving slowly,

slightly ahead of the bus which was about 15 metres from the deceased. The appellant's van moved at a relatively fast speed. Even according to the appellant's own statement to the police, he was driving at about 60 km/hr which was 10 km/hr beyond the speed limit. AUTONUMOUT The magistrate also found that the appellant's failure to see the deceased cross from the 1st lane into the 2nd lane and then the 3rd lane showed that he was driving without due care and attention. The magistrate found that a reasonable driver would first of all have not driven at such a speed and, secondly, would not have failed to notice someone running across a 4 lane carriageway. The magistrate found that the deceased began to cross the road 15 metres in front of the stationary bus and that the appellant's van was still behind the taxi which was moving in the 2nd or 3rd lane. Had the appellant driven more carefully he must have been able to see beyond the taxi and to see the deceased. The magistrate found that the appellant failed to see the deceased and that was the reason why he did not slow down or sound his horn or flash his headlights.

AUTONUMOUT The magistrate did not give any weight to what the appellant said to the police about how he was driving the van. The appellant had told the police that he saw a dark shadow moving very quickly from the left to the right at the rear end of the vehicle that was in the 3rd lane. He said that the vehicle was a 7-seater and because of its height the appellant's vision towards the left front was partially blocked by that vehicle. The magistrate did not give any weight to that version as stated by the appellant. Grounds of appeal AUTONUMOUT The first ground of appeal advanced by Mr Curlewis who appeared for the appellant at the trial was that the learned magistrate did not put enough weight on the fact that the road was busy with heavy traffic as it was rush hour thereby not giving the appellant sufficient credence in his explanation that traffic partially obscured his view so that he did not see the deceased crossing the road.

AUTONUMOUT The reply by Miss Tsang who appeared for the respondent was that the magistrate was entitled to put less weight to the exculpatory part of the statement given by the appellant. The appellant did not give evidence at the trial. AUTONUMOUT agree that the magistrate was entitled to attach no weight to the exculpatory part of the appellant's statement to the police. I cannot accept the submission that because this was a 4 lane carriageway and there were no pedestrians crossing the road at the time and there were no pedestrian crossings at the point of impact, the appellant was entitled to assume that nobody would cross that carriageway on that part of the road, even though there was a concrete divider in the middle of the carriageway. AUTONUMOUT take into account what the eye witness said that he was sure that the appellant's van was moving much faster than the taxi and that their speeds were a very strong contrast. Even by his own account, the appellant was driving at about 60 km/hr. When he was asked at the interview what the speed limit on that part of the road was, the appellant answered wrongly that it was 70 km/hr. That shows, to my mind, that the appellant was not aware that the speed limit at that spot was only 50 km/hr and, to my mind, he must have been driving at a speed much in excess of the speed limit of 50 km/hr. By his own account, he was already driving at 60 km/hr. Driving at the speed that the appellant was driving, along that carriageway at night, was not exercising the degree of care and attention that a reasonable, competent and prudent driver would exercise in the circumstances. AUTONUMOUT In my judgment, the magistrate was entitled to find that had the appellant driven more carefully he must have been able to see beyond the taxi which was in the 2nd or 3rd lane and should have been able to see the deceased.

AUTONUMOUT The deceased had not darted across a 1 lane road; he had to cross three lanes before he got to the 4th lane where the appellant s vehicle was travelling. In my judgment, if the appellant had driven at a slower speed and if he had exercised more care and attention, he must have been able to see the deceased as the deceased first emerged from the pavement onto the 1st lane. AUTONUMOUT The second ground was that the learned magistrate erred in law when he placed too much reliance on the speed at which the appellant was travelling when reaching his conclusion that a reasonable driver in all the circumstances would not have driven at such a speed. AUTONUMOUT In the circumstances of this case, my view is that the speed was a vital factor and the magistrate was entitled to consider the speed at which the appellant was travelling. AUTONUMOUT The third ground was that the learned magistrate did not fully consider that the actions of the deceased were the cause of the accident because his actions could be viewed as a reckless endangerment of both his own life and the safety of other road users. AUTONUMOUT In arguing this ground Mr Curlewis depended on cases relied upon in civil proceedings. He submits that the concepts of fault and causation are relevant in assisting to determine what is the standard of a reasonable and prudent driver in all the circumstances of each case. AUTONUMOUT With respect, I do not agree that these concepts have any relevance in the determination of whether a particular driver in the circumstances of a particular case was exercising the degree of care and attention expected of a reasonable, competent and prudent driver. Given the circumstances of this particular case, in my judgment, the appellant was not exercising that degree of care and attention. AUTONUMOUT His appeal against conviction therefore fails and the appeal is dismissed. (Peter Nguyen) Judge of the Court of First Instance High Court Ms Olivia Tsang, GC of Department of Justice, for HKSAR Mr Eric Curlewis of Messrs Munros, for the Appellant PAGE - PAGE A B C D E F 1udk 1udk &`#\$ "@AB & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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