

IN THE HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.73/96

In the matter between

REX

vs

KRISHNA NAIDOO

CORAM : MATSEBULA J

FOR CROWN : MR. WACHIRA

FOR DEFENCE : IN PERSON

JUDGMENT ON SENTENCE

27/08/96

The accused was grossly negligent driving his truck on a public road used by other drivers of motor vehicles. There is no evidence that his driving faculty had been influenced by intoxicating drinks or drugs. I suspect the accused was suffering from fatigue and was drowsy as he drove along his motor vehicle in the manner PW1 described to the court.

The court can therefore not find much assistance in cases such as that of R VS CHRETIEN 1974(4) SA in that, in that case the accused had taken intoxicating drinks. However to borrow the passage from CHRETIEN'S case at Page 877 which reads as follows:

'The passing of sentence of an appropriate sentence in a case such as this is always a difficult task. It is necessary to balance a

2

variety of interests. It is necessary to take into account both circumstances of the crime together with the personal circumstances of the accused. In addition and in suitable cases to have regard to the interests of the community in each case a nice balance must be achieved between those conflicting interest. I am aware of the fact that the court is charged and correctly so with ensuring that in each case justice is blended with a correct amount mercy but yet on the other hand one must be at once's guard that mercy is not confused with misplaced pity.'

I have listened to your long and elaborate address in mitigation and I have taken into account all the material facts you have addressed me on.

You are not in a position to pay even a nominal fine and if such fine were imposed you would apply to have it deferred and be paid in terms of instalments which in your particular case the court cannot grant.

The legislature does not provide that there shall be an automatic suspension of a driver's licence when accused's negligent driving has resulted in the death of a person. See this respect GRANTONY TWALA VS REX SWAZILAND LAW REPORTS 1979/1981 nor can an order for an endorsement have

any significant meaning you being a peregrini not ordinarily resident in Swaziland. To this extent the court will not order a suspension of your driver's licence nor endorsement of the particulars of this conviction on your licence. To this extent the court has been very lenient considering that your driving is a means of your livelihood.

Taking all factors into account the court sentences you as follows:

'You will be sentenced to an effective five years imprisonment and the court suspends three of the five years for a period of three years on condition that you are not during the period of suspension convicted of culpable homicide involving the contravention of Section 115(1)(a) of the ROAD TRAFFIC ACT committed during the period of suspension.'

J.M. MATSEBULA

JUDGE