

THE PEOPLE v EDWARD SAMUEL ZULU (1982) Z.R. 159 (H.C.)

HIGH
NGULUBE,
14TH
(HP/25/1980)

JULY,

COURT
COMM.
1981

Flynote

Road traffic - Dangerous driving - Disobedience of road traffic signs. Tort - Negligence - Duty of care owed to a child.

Headnote

The accused was charged with causing death of a child by dangerous driving. The accident occurred when the child was hit by the accused as she accidentally ran into the road at a pedestrian crossing. The accused failed to slow down when approaching the crossing despite the road signs warning him to do so and despite the fact that he saw the child at the road side waiting to cross.

Held:

- (i) Under reg. 13 of the Rules of the Road Regulations, Cap. 766, there is an obligation on the part of motorists to stop and give precedence to a pedestrian only when the pedestrian is actually on the crossing in the half of the road where the motorist is driving and the pedestrian may only exercise his right of way after affording the motorist the opportunity to stop.
- (ii) Failure to obey traffic signals to slow down resulting in danger is dangerous driving.
- (iii) The duty of care owed to a child is much higher than that owed to an adult and failure to anticipate that a child waiting to cross at the road side may suddenly run into the road is negligence.

Cases cited:

- (1) L.P.T.B. v Upson [1949] 1 All E.R. 60.
- (2) Berrill v R .H.E [1952] 2 Lloyds Rep. 490.
- (3) Yachuk v Oliver Blais Co. Ltd [1949] A.C. 386.
- (4) R. v Gould [1963] 2 All E.R. 847.

Legislation referred to:

Rules of the Road Regulations, Cap.766, reg.13.

For the people: K. C. Chanda, State Advocate.

For the accused: C. C.Chimansa, Nkwazi Chambers.

Judgment

NGULUBE, COMMISSIONER.:

The accused is charged with causing the death of a 10 year old child, Felistas Miti, by dangerous driving. The particulars allege that on 5th September, 1979, he drove his Fiat car number AAC 5123 along the Great East Road in manner which was dangerous to the public having regard to all the necessary circumstances. The onus, as usual, is on the State to prove their case to the required standard.

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It is common ground that the accident happened on a very busy road which, it is common knowledge in Lusaka, has practically no provision for pedestrian crossings except at the scene of this particular accident. I digress to observe that the courts have dealt with numerous cases of pedestrians being knocked down on this road where, despite passing through residential areas, the authorities have fixed an unreasonable speed limit of 65 kph and where there are practically no facilities for pedestrians to cross. It is my sincere hope that one day the authorities will remember the plight of pedestrians, particularly children who have to cross this inherently dangerous stretch of the road in competition with vehicles travelling at 65 kph. I return to the case.

The only eyewitness called by the prosecution was a child of tender years who was 13 years old, Maggie Sakala who had been, at the relevant time only 11 years old. For purposes of this decision, I will accept the accused's version of the facts except in one or two details which I will allude to shortly. It is common ground that there are road signs warning motorists of the presence of the zebra crossing and ordering them to slow down. According to the accused's own evidence, he had been travelling along the road in question and he was following other cars. He had seen the deceased and her companion at the zebra crossing standing at the edge of the road and he had observed that they stood still allowing the other vehicles ahead of him to pass. He held the view that it was the turn of motorists to pass. In his evidence, the accused stated that he was driving at between 50 and 60 kph when approaching the zebra crossing at about 1720 hours on a clear September day, being the date of the accident. When cross-examined about the contents of his warning and caution statement which was not objected to, he told the court that he had been travelling at 65 kph but that in response to the road signs telling motorists to slow down on approaching the zebra crossing he had reduced his speed to between 50 and 60 kph and that as it was the turn of motorists to pass, he thought that speed to be slow enough even for passing through a pedestrian crossing. The accused stated that he was a mere 6 to 7 feet behind the car he was following. His witness Mumba opined that the distance was about 40 feet. I would accept Mumba's version on this aspect as being more realistic.

What follows then was that the deceased suddenly ran into the zebra crossing when she collided with the car driven by the accused at a point a few paces away from the middle line dividing the road. The deceased died from the injuries sustained.

Having assessed the demeanour of all the witnesses and all the evidence before me, I have no doubt in my mind that the accused had no intention of stopping at the zebra crossing and that he had reduced speed only nominally. For my part, I can see no point in his having to reduce speed by a token margin if he felt it was the turn of motorists to pass and did not therefore expect that he may have to stop, which is clearly the intention of the road signs put on the approaches to the uncontrolled pedestrian crossing. I am also satisfied that the accused had seen the children and

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knew that they intended to cross the road at the zebra crossing but that the accused did not anticipate that the deceased would suddenly run into the road.

As counsel for the accused submitted, reg. 13 of the Rules of the Road Regulations under Cap. 766 creates mutual obligations on the part of motorists and pedestrians at an uncontrolled zebra crossing. The regulation briefly stated imposes on the motorist the obligation to stop and give precedence to pedestrian, only when the pedestrian is actually on the crossing, in the half of the road where the motorist is driving. The proviso to the regulation forbids a pedestrian from exercising his right of way unless he has afforded the motorist the opportunity to stop. This then is the statutory position which, I must say, could do with some improvement.

This regulation imposes a duty of care shared equally between the motorist and the pedestrian the one to the other. As between adults or persons the law expects to have a sense of judgment compatible with knowledge of a duty of care to each other, the regulation would certainly cover the fact of this case. If, therefore, the deceased had not been a 10 year old girl but a person of greater age and one expected to know better, the proviso to the regulation would have automatically applied in favour of the accused. I am aware that the regulation does not refer to the case of the pedestrian but the duty of care situation is unmistakable and the law has in fact established principles specifically designed to govern the position of children.

It is settled law that adults must expect children to be less careful than adults. The duty of care that adults owe to children is much higher than that owed to fellow adults. Driving that falls far short of that reasonably expected of a prudent driver is either careless or dangerous, depending upon whether or not danger actually results. The accused in failing to slow down in fact ignored traffic signs to that effect and I certainly do not consider a marginal and token reduction of speed to be a compliance with the requirements to slow down and be ready to stop at an uncontrolled pedestrian crossing. The accused was also aware of the presence at the side of the road of the deceased child and the law is that he should have been prepared to expect a child to be less careful than all adult. The deceased child suddenly ran into the zebra crossing in the face of the accused who had neither anticipated the move nor obeyed the traffic signs. He should have anticipated that a child may do something completely stupid, as she did, as he had seen her and must have apprehended her general intention to cross the road at some stage or other. As Lord Uthwatt put it in *L.P.T.B. v Upson* (1).

"I . . . dissent from the view that drivers are entitled to drive on the assumption that other road users of the road, whether drivers or pedestrians, will behave with reasonable care. It is common experience that many do not. A driver is not of course bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take."

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Slade, J., in *Berrill v R. H.E.* (2) paraphrased the foregoing in this way.

"You are not bound to foresee every extremity of folly which occurs on the road. Equally you are certainly not entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. You are bound to anticipate any act which is reasonably foreseeable, that is to say anything which the experience of road users teaches them that people do, albeit negligently."

To approach a pedestrian crossing at the speed that the accused adopted and without intending or expecting to be required to stop; to disobey traffic signs calling for such slowing down and preparedness to stop at an uncontrolled zebra crossing; to fail to anticipate that a child who intends to cross the road may do so foolishly without the exercise of that judgment and mutual duty of care as would have been reasonably expected in an older person; is driving which falls far short of that expected from a reasonably prudent driver. A prudent driver armed with the knowledge that common experience has taught would slow down ready to stop at a moment's notice at the mere sight of any young children on or near any road, whether the children are intending to cross or merely playing on or near the road. A prudent driver should anticipate folly in children and should slow down ready to stop more especially in the case of children clearly showing an intention to cross, whether it be at zebra crossing or not. The motorists owe them that much.

I am satisfied that because of the age of the deceased in this case, her negligence did not expunge that of the accused as already stated herein before.

I find therefore that on the totality of all the evidence, particularly that of the accused himself as corroborated by his witness, the prosecution has proved the case beyond all reasonable doubt. I find the accused guilty of the offence as charged and convict him thereof.

Accused convicted

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