

IN THE HIGH COURT OF THE FIJI ISLANDS  
CRIMINAL JURISDICTION  
AT SUVA

CRIMINAL CASE NO: HAC 115 OF 2008

STATE

V

SUBRAMANI KRISHNA

Mr. A Rayawa for State

Mr. R. Singh for Accused

Date of Sentence: 20 February 2009.

#### SENTENCE

1. Subramani Krishna, you have been found guilty after a trial where the assessors were unanimous in their verdict against you. I accepted the assessors verdict and convicted you on one count of Dangerous Driving Occasioning Grievous Harm, contrary to sections 97 [4][c] and 114 of the Land Transport Act 1998 [LTA]. This is your sentence.
2. The liable penalty for this offence under section 114 of the LTA is a maximum fine \$2000 and/or 2 years imprisonment and disqualification

for 12 months. In addition the court may order that up to 3 demerit points against the accused under section 59 [3] of LTA.

3. Mr. Singh for the accused submits the following:

- i) Accused is a first offender in 48 years;
- ii) He is married with three children and with a stable family background;
- iii) He demonstrated accountability and was remorseful for this action;
- iv) No alcohol involved;

4. Mr. Singh referred to the following cases where a non custodial sentence were passed by the court and upheld on appeal to the High Court:

5. As regards the possibility of the court considering the issue of disqualifying the accused from holding or obtaining a drivers licence, Mr Singh highlighted for the court's consideration the following:

- i) Hardship that will be faced by the family if disqualification ordered;
- ii) Previous good character of the accused;
- iii) The existence of contributory fault on the part of the victim;
- iv) Driving is source of livelihood to accused family

6. When court enquired whether the accused is in a financial position to pay a fine, Mr. Singh consulted his client and informed the court that a fine of up to \$1000 is payable if given time.

### Sentence

7. I have carefully considered the submission of Mr. Singh on behalf of the accused. I accept the following as relevant for mitigation in this sentence determination:

- i) The accused cooperated with the police;

- ii) He accepted accountability for his actions early;
- iii) He is a first offender
- iv) Has had no accidents or previous convictions

8. I also considered the fact that offence in this case was committed in July 2005 and there has been some delay in bringing this matter to trial.

9. The following factor as aggravating:

- i) The lack of care and attention of the accused when driving in a densely populated area;

10. Having considered all the above, I conclude that justice in this dictates that a custodial term of imprisonment would be inappropriate. I consider imposing a fine as the appropriate sentence. On enquiry to counsel for the accused, I am advised that the accused is able to pay a fine, if the court is mindful of passing such a sentence.

11. The sentence of this court is that the accused will pay a fine of \$500.00. This fine must be paid no later than Friday 10 April 2009. If the fine is not paid as ordered, the accused shall be imprisoned for 60 days.

12. I also order that \$300.00 of the fine be paid as compensation to the Temesio Tuicomia.

13. I have considered whether the sentence should include a period of disqualification of the accused from holding or applying for a licence. I accept the submission of Mr. Singh in this regard and the reasoning of my brother Justice Gates [now Chief Justice] in Turagatautoka v State [2003] FJHC 237; HAM 0058 of 2003 I have decided against ordering the disqualification of the accused licence. However, I would order that 3 demerit points be awarded against him.

#### ORDERS

14. I make the following orders:

- i) The accused to pay a fine of \$500.00, no later than 10 April 2009. Failure to pay as ordered the accused will be imprisoned for 60 days;
- ii) A payment of \$300.00 from the fine to be paid to the victim Temesio Tuicomia as victim compensation;
- iii) There will be 3 demerit points awarded against the accused.

Isikeli Mataitoga

JUDGE

At Suva

20 February 2009