

EDITORIAL NOTE: CHANGES MADE TO THIS DOCUMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT QUEENSTOWN**

**I TE KŌTI-Ā-ROHE
KI TĀHUNA**

**CRI-2020-059-0000045
[2020] NZDC 3396**

NEW ZEALAND POLICE
Prosecutor

v

DALBERT TIN
Defendant

Hearing: 10 February 2020

Appearances: Sergeant I Collin for the Prosecutor
L C Denton for the Defendant

Judgment: 10 February 2020

NOTES OF JUDGE J J BRANDTS-GIESEN ON SENTENCING

[1] This is a very sad occasion, not just for you, Mr Tin, but especially for the family of Mrs Tait who died, and [victim 1] who fortunately is still able to be here but obviously is not in a good state after this terrible accident.

[2] I acknowledge everyone who is here and who is associated with this case, and I must say that it is an extremely difficult situation for all of you.

The best thing I can do is to quote from the case of *Bassett v Police*, where there were stated quite clearly the competing views on the appropriateness of any sentence imposed for driving charges which have tragic consequences.¹ I quote:

In such circumstances the sentence imposed by the Court will often be seen by the victims as a hopelessly inadequate recognition of the damage done, while the offender will often just as genuinely believe that the sentence greatly overstates his or her culpability. These perspectives can never be reconciled except perhaps in face to face restorative justice processes. The best a sentencing court can do is be consistent.

[3] That is the difficulty that I face, because in a case of careless driving the level of culpability can sometimes be very light, or it can be more significant. Frequently we are careless on the road and fortunately there is nobody there, or nobody else on the road, and we get away with it. At other times, there are people on the road and there are the tragic consequences, which we have seen in this case.

[4] I will come to the question of culpability shortly, but today I do acknowledge those people who are the families who are present, including [victim 1] himself and the family of Mrs Tait. I am sorry that whatever I decide cannot bring back, in the case of the Tait family, your mother and grandmother and other relationships there may be. Nor in your [victim 1's] case can your health be completely restored, or your favourite bike brought back to you.

[5] Mr Tin, you are here today for sentence on three charges:

- i. That you operated a vehicle carelessly and caused the death of Noeline Margaret Tait, for which the maximum penalty is three months' imprisonment, and a \$4500 fine; and
- ii. By that same carelessness you injured [victim 1], for which the penalty is the same; and
- iii. Again, Mr Tin, you injured your wife, [victim 2].

[6] I note that you pleaded guilty at the first available opportunity.

¹ *Bassett v Police* [2014] NZHC 2188.

[7] The summary of facts placed before me is that on 14 January 2020, you were driving a Toyota rental vehicle on Frankton Road. You were driving towards Queenstown, at approximately 70 kilometres an hour. Your only passenger was your wife. She was asleep in the front passenger seat.

[8] You passed the Henson Road intersection, which is a straight stretch of road, and there is a large, well-marked median strip. You crossed the centre line until you were fully on the opposite side. A motor cycle operated by [victim 1] was travelling from Queenstown towards Cromwell. [Victim 1] saw your vehicle in his lane. He immediately took evasive action and decelerated. On realising he could not avoid a collision with you, he turned his motor cycle hard to the left. There was insufficient room between the road edge and your vehicle. Your vehicle collided with that of [victim 1], hitting him in his right leg and somersaulting him from his bike. He landed on a nearby bank, suffering from serious injuries to his legs. He was subsequently flown to Dunedin Hospital by helicopter for medical treatment. You then collided head-on with the oncoming Suzuki Swift driven by Mrs Tait. Both cars were extensively damaged.

[9] As a result of the collision, Mrs Tait died at the scene owing to the injuries she sustained. She was 84 years of age and lived locally.

[10] The third victim was your wife, who was thrown forward in the collision. She suffered pain to her stomach and abdomen, and injuries to her knees.

[11] You stated you did not know why you were on the opposite lane, other than that you speculated, you might say, that you may have been distracted by the scenery.

[12] You are 29 years of age. You were on holiday in New Zealand. You are a Singaporean national.

[13] You have not appeared before a New Zealand Court, and nothing is known about whether or not you have ever appeared in any Court anywhere.

[14] You say you were willing to participate in restorative justice and the Sergeant has just said that there has been a meeting between the family of Mrs Tait and you.

[15] Ms Denton has provided a number of cases where a range of penalties was applied, most being a combination of community work, disqualification and reparation.

[16] Your case is, one might say, typical of its kind. You crossed the centre line until you were completely on the wrong side of the road. You have absolutely no explanation for doing so, other than to say you have may have been distracted by the scenery.

[17] Ms Denton quite correctly points out a number of cases that are similar to yours. She stresses your remorse, and your liability to pay not just for the damage you are facing here, but also for the damage to your rental car. It surprises me greatly that a careless driving incident should negate insurance, because it is not a question of dangerous driving or intentionally damaging a vehicle; it is ultimately one of carelessness, and, if that is not covered by insurance, one wonders what insurance is for.

[18] In determining a sentence, I have to hold you to account, and to punish you for what you have done. I have to impose a penalty, to deter you and others from being careless when driving. At the same time, I have to impose, by law, the least restrictive sentence, and also consider your ability to pay reparation and the victim's situations.

[19] This was a horrific accident and I consider the case of *Police v Goh* to be the most similar in that one person was killed and two injured by that defendant's carelessness.²

[20] As I have already said, whatever penalty I impose will never undo the death and the injuries suffered by the victims and their dependents. I know that families will walk away today feeling that you have not had enough punishment.

² *Police v Goh* [2017] NZDC 28098.

[21] I remind you that it is well known that people who cause accidents like this are haunted by guilt for many years. I accept that you are remorseful and, I understand, that you have never offended before.

[22] What happened on this sad day is a reminder to all road users - be they New Zealanders ordinarily resident in New Zealand, or tourists - to be careful. It is essential, therefore, that road users should not be tired and to pay the utmost attention, especially if on an unfamiliar road or in a foreign country, or, as is so often the case, being distracted. It is one of the self-contradictions, one might say, that people come to New Zealand for the scenery, and then, if they are driving properly, they should see very little of it. However, people are distracted by scenery, and that is all of us, even if we are familiar with this place.

[23] The real difficulty, therefore, is how do I deal with you?

[24] Any disqualification will not have any effect, unless you should come back to New Zealand. However, it is appropriate in this case, although the minimum period of disqualification is six months, that I disqualify you for 15 months on all charges. Furthermore, I direct under s 93 Land Transport Act 1998 that you must not drive in New Zealand again until you have completed a driving test.

[25] The question then is also one of reparation. I note that with respect to the family of Mrs Tait, there has been a payment made by Accident Compensation, and there is, I am informed, therefore a net figure of reparation of \$7390 to be paid. I also impose an emotional harm payment of \$2000. That, as I said earlier, is not enough, but 'the coat has to be cut according to the cloth'.

[26] With respect to [victim 1], he has suffered a loss of an uninsured vehicle. That is not his fault and in any event it is not obligatory in New Zealand to have insurance and a person who causes damage finds his victim as he is. In that case, therefore, I impose reparation of \$15,000 [*later amended at [33] to \$15,450.75*].

[27] The emotional harm suffered in this case is actually by the primary victim, and I therefore impose an emotional harm payment in this case of \$4000 to [victim 1]. That is a substantial payment and is to be made.

[28] The question is how I deal with the usual punishment of community service. In light of the fact that the reparation payable in this case is so high, and in the light of the fact that the only realistic place for you to do it would be in Queenstown where you could only do 40 hours a week, and taking into consideration that you have already done a considerable number of hours voluntarily - 37 hours with the Salvation Army - I am not going to impose a further punishment.

[29] It is best for you to return to your country and then to pay off what you cannot pay immediately.

[30] I note that by 1.00 pm today you are to arrange for \$8000 to be paid into the Court on account of reparation. That reparation is to be paid two-thirds to [victim 1], and one-third to the family of Mrs Tait. The balance is to be paid by you at \$300 per month, paid to the Court by you. If you do not pay that, at least as to \$300 a month, then steps will be taken to recover that from you in Singapore. Do you clearly understand that? [Yes, Your Honour.]

[31] Mr Tin, this is a sad day for you, as I said earlier. It is also a sad day for all the people present in Court today. I just warn drivers, and particularly foreign drivers, that fatigue, distractions of scenery, general euphoria, (and in some cases but not in this case, alcohol and drugs) all make for a cocktail of danger, and that all too often that causes disaster. Disaster certainly happened to you, and to everyone associated with this matter, on 14 January 2020.

[32] I have not made a direction with respect to any payment to your wife because as I said earlier, you have a limited amount of money available. It is important that victims who are strangers be compensated before a victim whose life is shared with you. That is no disrespect to your wife, but it is simply a reality. I hope that she recovers from her injuries, and that your life from now on will be happier than this honeymoon trip has proved to be.

[33] [*Prosecutor addresses His Honour.*] I am sorry, Mr Tin, but I must adjust the reparation figure. With respect to the reparation total for [victim 1], there were other expenses as well, and therefore the total reparation in that case will be \$15,450.75.

J J Brandts-Giesen
District Court Judge