SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO.4 OF 2002

BETWEEN:

EPHRAIM HENDERSON

Appellant

and

LICENSING AUTHORITY

Respondent

Before:

The Hon. Sir Dennis Byron	Chief Justice
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]
The Hon. Mr. Adrian Saunders	Justice of Appeal [Ag.]

Appearances:

Mr. Lindsay Grant for the Appellant
Mr. Dennis Merchant DPP with Mr Vernon Warner Crown Counsel for the Respondent

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2003: January 29;
March 31.

JUDGMENT

[1] **BYRON, C.J.:** The Appellant had pleaded guilty to careless driving under section 53 of the Vehicles and Road Traffic Act Cap 270 of the revised edition 1961. In imposing sentence the Magistrate fined him $1000.00 and disqualified him from holding or obtaining a driver's license for three years. This appeal is against sentence only, on the ground that the period of disqualification was not authorized under the statute and alternatively it was excessive.

[2] The background facts were that the Appellant was driving a passenger bus on the 14th of May 2001 at about 3.45pm on a dry Sunday afternoon. While traveling around a corner the Appellant overtook the bus that was in front of him and collided head on with a jeep that was traveling in the opposite direction. The vehicles were extensively damaged and the passengers in both vehicles sustained extremely serious injuries. The Appellant had one previous conviction for dangerous driving just one year prior to the accident.

[3] The Appellant contends that the learned Magistrate misapplied section 53 of the Vehicles and Road Traffic Act Cap 270 which prescribes that a person convicted of an offence under section 53:

> "shall be liable on summary conviction … on a second or subsequent conviction for a like offence to be disqualified for holding or obtaining a driver's license for such period as the Court shall see fit".

The Appellant contended that the phrase "like offence" means an offence under section 53 and that the conviction for dangerous driving was an offence under section 52 and was not a "like offence". In the premises this was not a second or subsequent offence and the Magistrate exceeded her jurisdiction in imposing a period of disqualification.

[4] The Appellant relied on the case of **Josiah v Blaze** [1961] 4 WIR p.536. In that case, the Appellant was convicted for careless driving under section 53 of the Vehicles and Road Traffic Act in Antigua. The provision was in the same terms as the provisions in the St. Kitts Act. Under that section a sentence for disqualification could only be imposed on the second or subsequent conviction. It had neither been proved nor admitted that the Appellant had been convicted before. The Magistrate imposed a sentence of disqualification by virtue of section 65 of the Act which states:

> "The court before which a person is convicted of any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by the provisions of this Ordinance, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence either

> generally or limited to the driving of a motor vehicle of any particular class or description; and if the offender holds a driver's licence the court shall endorse upon the licence particulars of the conviction."

[5] Lewis J giving the decision of the divisional court, which allowed the appeal, stated:

> "The section under which the Appellant is charged provides its own punishment for the offence created thereby and it is clearly stated in this section that the penalty of disqualification can only be imposed on a second or subsequent conviction for the offence of careless driving. In our opinion it would be wrong to apply the general provision for disqualification on conviction of "any offence in connection with a driving of a motor vehicle" contained in s. 65[1] where a person is charged with an offence under s. 53, as this section provides a specific punishment which can only be applied where the condition precedent stated in the section is satisfied, *viz*., the existence of a second or subsequent conviction for careless driving against the offender. This condition precedent did not in fact exist and accordingly the Magistrate had no power to impose a sentence of disqualification on the Appellant."

[6] Counsel for the Appellant argued that this decision was authority for the proposition that the words "like offence" referred to a second or subsequent conviction for careless driving. We do not agree with him. That was not the question which the court was determining in that case. The court was concerned with the question whether on a conviction for careless driving under section 53, the court could use the penal provisions in section 65 of the Act. There was no attempt to construe the meaning of section 53.

[7] One of the aids to interpreting the meaning of a statutory provision is the context of the provision. The statutory context includes the Act as a whole. When one looks at the context in which this provision is made there are a number of sections, namely sections 51, to 54 all of which give power to the Magistrate to disqualify. Section 51 deals with the offence of driving under the influence of drink or drug. The section mandates a period of disqualification of one year. Section 52 deals with reckless or dangerous driving and mandates a period of disqualification of six months. Section 53 deals with careless driving and mandates that on a second or subsequent conviction of a 'like offence" the court shall disqualify for such period

as the court shall see fit. Section 54 deals with racing and mandates disqualification for a period of twelve months. In each section the court has power to disqualify for periods in excess of the mandatory period. In my view all of these sections deal with "like offences".

[8] In fact it would make the application of the law totally absurd if someone was convicted of dangerous driving and then was subsequently convicted of careless driving if the Magistrate could not impose a disqualification in those circumstances. One has to apply a purposive approach to the interpretation to this section. In any event, even if one uses the literal interpretation, the use of the phrase "like offence" does not connote the "same offence" or conviction of an offence under the same section. If that was the statutory intention it could quite easily have said that what was intended was on a second or subsequent conviction for careless driving or for a second or subsequent conviction for an offence under this section.

[9] In my view the Magistrate was entitled to consider that a person convicted of careless driving who had previously been convicted of dangerous driving could be disqualified under this provision. I would therefore over rule the submission of the Appellant.

[10] In terms of the length of disqualification there were several aggravating factors. The negligence involved was excessive in that he overtook around a bend and at an excessive speed of about 60mph. The vehicle was a public transport vehicle carrying 11 passengers. The danger to the public was established by the evidence that several of the persons injured had multiple fractures to various limbs and spent several weeks in hospital and up to the date of trial, some nine months later, one of them still had difficulty in walking. In mitigation the Appellant contended that he earned his living by driving. The history of this case made it quite clear that a short period of disqualification would not be effective in the case of this particular Appellant. We were not given information as to the extent of the

disqualification period that was ordered on his conviction for dangerous driving. However, Section 52[2] requires:

> "a person convicted of an offence under this section shall without prejudice to the Court to the power of the Court to order a longer period of disqualification be disqualified for holding or obtaining a driver's license for a period of six months from the date of conviction."

[11] Disqualification for at least six months was, therefore, a necessary consequence of the conviction for dangerous driving. Yet he was involved in this incident just one year later. It would appear, therefore, that a short period of disqualification was not an effective form of rehabilitation or reformation. In view of the nature of the incident, the potential consequences to the lives of his passengers, and to the public I conclude that the sentence was not irrational or excessive. I would dismiss the appeal.

Sir Dennis Byron
Chief Justice

I concur.

Adrian Saunders
Justice of Appeal [Ag.]

[12] **GEORGES, J.A. [AG.]:** After hearing arguments from Counsel for each side on 29th January 2003 we dismissed this appeal against conviction for driving without due care and attention but substituted a period of two years disqualification in lieu of three years which the magistrate had imposed in addition to a fine of $1,000.00. We promised because of the importance of the point raised on appeal to give written reasons for our decision. We now do so.

[13] On 21st March 2002 the appellant pleaded guilty and was convicted in the Magistrate's Court in Basseterre of the offence of driving a motor minibus on The Island Main Road at Conaree on 14th May 2001 without due care and attention contrary to section 53 of the Vehicles and Road Traffic Act Chapter 270 of the

Revised Edition 1961 of the Laws of the Federation of St Kitts and Nevis, whereupon the learned Senior Magistrate imposed a fine of $1,000.00 on him payable in two months in default one month's imprisonment. She further ordered the appellant to be disqualified from holding a driver's licence for three years.

[14] Against this conviction the appellant appealed on the following grounds:

[1] That the Learned Magistrate misinterpreted Section 53 of Chapter 270 of the Laws of the federation of St Christopher and Nevis, in that the discretion to disqualify an individual from holding a drivers licence for "like offence" relates to the offences in Section 53 of the same Act and does relate to Section 52 of the said Act, and that the Plaintiff/Appellant was previously convicted for dangerous driving which falls under Section 52 and has its own set of penalties separate and apart from section 53; alternatively;

[2] That the sentence imposed was unduly severe.

[15] Section 53 of the Vehicle and Road Traffic Act ("the Act") states that:

> "If any person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, he shall be guilty of an offence and shall be liable on summary conviction to a fine and on a second or subsequent conviction for a like offence to be disqualified for holding or obtaining a driver's licence for such period as the Court shall think fit."

[16] Learned Counsel for the appellant submitted that by imposing a period of disqualification on the appellant the learned Magistrate misinterpreted section 53 of the Act in that the discretion to disqualify a person from holding a driver's licence on a second or subsequent conviction for a **"like offence"** relates only to offences created under section 53 of the Act and not to a previous conviction for dangerous driving which falls under section 52 of the Act.

[17] The appellant's antecedents show and it was admitted that as at the date of his conviction for driving without due care he had a recent previous conviction for

dangerous driving. This would not however have rendered him liable to be disqualified since the offence of dangerous driving was not a "like offence" under section 53 of the Act learned Counsel argued. In other words the instant conviction could not be construed as being a second or subsequent conviction for a like offence since the offence of dangerous driving fell outside of the ambit of section 53 and is in actual fact established by section 52 of the Act.

[18] Learned Counsel relied on the case of **Josiah v Blaize** (1961) 4 WIR 556 in which the appellant was convicted of the offence of driving a motor vehicle without due care and attention contrary to section 53 of the Antigua Vehicle and Road Traffic Ordinance. The Magistrate imposed a fine on him and disqualified him from holding or obtaining a driver's licence for one month.

[19] At the hearing before the Magistrate it was neither proved nor was it admitted that the appellant had been convicted of a second or subsequent offence of careless driving. It was nevertheless contended by the respondent on appeal that the magistrate had the power to impose a sentence of disqualification by virtue of section 65(1) of the Ordinance which states that:

> "The court before which a person is convicted or any offence in connection with the driving of a motor vehicle may, in addition to any other penalty provided for such offence, and shall, where so required by the provisions of this Ordinance, order that the offender be disqualified for a stated period or permanently from holding or obtaining a driver's licence…. …. …."

[20] This clearly was not a case where the appellant was disqualified for a second or subsequent offence of careless driving but rather under the general provision to disqualify under section 65(1) of the Ordinance.

[21] Not surprisingly therefore the court in allowing the appeal held that it would be wrong to apply the general provision for disqualification or conviction of "any offence in connection with the driving of a motor vehicle" contained in section 65(1) where a person is charged with an offence under section 53 as the latter

section provides a specific punishment which can only be applied where the condition precedent stated in that section is satisfied, viz the existence of a second or subsequent conviction for careless driving and as this condition did not in fact exist in so far as the appellant was concerned the magistrate had no power to impose a penalty of disqualification on the appellant.

[22] In our view the Josiah case is distinguishable from the instant case in that in that former case it was neither proved nor was it admitted that the appellant had been convicted of a second or subsequent offence. Unlike the instant case the condition precedent to trigger disqualification under section 53 of the Act had not been satisfied in the Josiah case and the appellant was in fact disqualified under the general provision of section 65(1) of the Act which was manifestly wrong.

[23] The crucial question which in our view falls to be determined in this case is whether the appellant's previous conviction for dangerous driving constitutes a like offence for the purpose of section 53 of the Act so as to render the appellant's conviction on 21st March 2002 of driving without due care and attention a subsequent like offence and make him liable to be disqualified under the said section.

[24] The learned Director of Public Prosecutions urged and we incline to the view that the question must be answered in the affirmative. To hold otherwise in our opinion would with respect make nonsense of the legislative scheme of the Act. It is our considered view that section 53 of the Act must be given a purposive construction which is to punish and deter more severely repeat offenders for careless driving or driving in a dangerous manner – the distinction between the two being merely one of degree as is illustrated by section 56 of the Act which permits a Magistrate to proceed on a charge for careless driving on hearing a charge under section 52 i.e reckless or dangerous driving where the circumstances so warrant. The offences are in effect sui generis - like offence and the restrictive interpretation put forward by Counsel for the appellant is rejected. That ground of appeal accordingly fails.

[25] However having regard to all the circumstances of the case and in particular the fact that the appellant's livelihood depends on his ability to drive the period of disqualification is reduced from three years to two years from the date of conviction.

[26] Order accordingly.

Ephraim Georges
Justice of Appeal [Ag.]