Harlip bin Haji Basar

vs

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No.15 of 2015)

Pg Hjh Rostaina bte Pg Hj Duraman, J.C.
17th August and 24th August, 2015

Sentence --- Driving a motor vehicle without being insured --- insurance policy has expired for more than 1 year prior to the offence --- financial difficulties --- special reasons --- section 3(1) and 3(2) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap 90 --- disqualified from driving a motor vehicle for 12 months.

Cases refer:

Public Prosecutor vs Lim Jin Lee and Salina Binti Mohd Salleh [C.A. 25 of 2000] 2 JCBD 217.
Mitchell Brian Burke vs Public Prosecutor [C.A.58 of 2011] 2012 BLR 110.

Facts

The facts as stated in the brief facts were that the Appellant, was stopped by the police on the 4th September 2014. He was found to have driven whilst the motor vehicle licence (road tax) of the said vehicle had expired since 30th June 2013. Further investigation revealed that he was not covered by Third Party Risks Insurance. The insurance policy has expired since 12th July 2013.

On the 14th April 2015, the Appellant was convicted on his own pleas of the above two traffic offences and was sentenced accordingly. The Magistrate had also imposed the mandatory disqualification order for a period of 12 months.

The Appellant appealed against this sentence of 12 months mandatory disqualification order on the ground that it is excessive and burdensome.

Held, dismissing the appeal:

1. The offence under section 8(1) of the Road Traffic Act, Chapter 68 and punishable under section 8(2) of the same which prescribed a fine of $4,000 and imprisonment for 3 months.

2. The offence under section 3(1) and punishable under section 3(2) of the Motor Vehicles Insurance (Third Party Risks), Chapter 90 which prescribed a fine of $10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are "special reasons".

3. Unless a defendant can forward "special reasons" for the Magistrate not to disqualify, see *Public Prosecutor vs Lim Jin Lee and Salina Binti Mohd Salleh [C.A. No.25 of 2000]2 JCBD 217 and other authorities*.

4. The Appellant was advised to write to the Registrar, Subordinate Court to ask a Magistrate concerned to consider the removal of the disqualification order under section 44(1) of the Road Traffic Act, Cap 68, at any time after the expiration of 6 months from the date of the order and apply to the court before which he was convicted to remove the disqualification order.

Appellant in person. Unrepresented.
DPP Muhammad Aiman Adri bin Ahmad Zakaria for the Public Prosecutor/Respondent.

Pg Hjh Rostaina, J.C.:

On the 14th April 2015, the Appellant was convicted on his own pleas of two traffic offences, which are as follows:

> 1st charge
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> That you did at about 2020 hours on the **4th day of September 2014**, at the vicinity of the connecting road of Terunjing towards Rimba Highway, in Brunei Darussalam, did drive a motor vehicle registration number KJ 8134 (Suzuki APV GLX), whilst the motor vehicle insurance (road tax) of the said vehicle **expired on 30th June 2013** and that you have thereby committed an act contrary to section 8(1) of the Road Traffic Act Chapter 68 and punishable under section 8(2) of the said Act.
>
> 2nd charge
>
> That you did at about 2020 hours on the **4th day of September 2014**, at the vicinity of the connecting road of Terunjing towards Rimba Highway, in Brunei Darussalam, being the driver of motor vehicle registration number KJ 8134 (Suzuki APV GLX), did drive the said motor vehicle on the road when the **insurance policy has expired since 12th day of July 2013** and that you have committed an offence under section 3(1) and punishable under section 3(2) of the Motor Vehicle Insurance (Third Party Risk Act) Chapter 90.

Accordingly, for the 1st charge, the Appellant was fined $400 in default 1 week imprisonment. For the 2nd charge, he was fined $1,500 in default 3 weeks imprisonment and was imposed the mandatory 12 months disqualification from driving. These fines were to be paid by way of instalments of $100 per month from the end of April 2015.

Before me, the Appellant appealed against the decision made by the Magistrate on the ground that the mandatory disqualification order of 12 months ought not to have been imposed.

The penalty prescribed for the second charge is a fine of $10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are "special reasons".

SPECIAL REASONS

The Respondent submitted the Appellant was caught when his motor vehicle was stopped by the police during a Road Traffic Operation on the 4th September 2014. He had not renewed his motor vehicle's insurance. It had expired for 1 year, 2 months and 5 days.

Initially, the Appellant informed the court that he is the only member of his family that drives. Therefore, himself and his family would be greatly inconvenience if his driving licence is disqualified. He also informed the court that he was carrying food for a family function on the day his motor vehicle was stopped. However, it was later revealed that his wife also drives.

The Respondent submitted the above are not special reasons.

In the case of *Public Prosecutor vs Lim Jin Lee and Salina Binti Mohd Salleh [C.A. No. 25 of 2000] 2 JCBD 217* where Silke J.A., said that, "….. to be *"special reasons"* the reason must be an extenuating or mitigating circumstance; it must not amount in law to a defence".

This was also pointed out by the Chief Justice in the case of *Mitchell Brian Burke vs Public Prosecutor (C.A. No.58 of 2011) 2012 BLR 110*, where he stated the following:-

> *"….. the reasons must be directly connected with the commission of the offence and not with the offender. The reasons must be extenuating and mitigating circumstances and must not amount in law to a defence. The reasons must be a matter which the court ought properly to take into account went considering sentence."*

The Chief Justice further stated:-

> *"….. because if an innocent road user is knocked down and seriously injured or killed, he and/or his dependants may not be able to obtain compensation from the uninsured driver for any loss or damage he and/or they may have suffered."*

It is clear from the facts put forward by the Appellant, that he has financial difficulties. He is married with nine children. If his driving licence is taking away from him he and his family will be greatly inconvenienced. He had retired from the Armed Forces and is now engaged in some part time work. Therefore, he needs his driving licence to drive himself to work as well as to fetch and send his family members.

Much as I sympathise with him, it is established by pervious cases that special reasons must relate to the commission of the offence itself and not to the hardship which may be caused to a defendant by the disqualification.

I dismiss the appeal and hereby order the Appellant be disqualified from driving a motor vehicle for 12 months with effect from today.

The Appellant is also advised to write to the Registrar, Subordinate Court to ask a Magistrate concerned to consider the removal of the disqualification order under section 44(1) of the Road Traffic Act, Cap 68, at any time after the expiration of 6 months from the date of the order and apply to the court before which he was convicted to remove the disqualification order.

PG HJH ROSTAINA BTE PG HJ DURAMAN
Judicial Commissioner
24th August 2015