

LLP 14691 Patra bin Kunchil

vs

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No.17 of 2015)

Pg Hjh Rostaina bte Pg Hj Duraman, J.C.
19th August, 2015

Sentence --- Driving a motor vehicle without being insured --- insurance policy has expired almost 5 months 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.

Dedri bin Amir vs Public Prosecutor [C.A. 2 of 2003] BLR 145.

Facts

The facts as stated in the brief facts were that the Appellant, was stopped by the police on the 23rd September 2014. He was found to have driven whilst the motor vehicle licence (road tax) of the said vehicle had expired since 31st March 2014. Further investigation revealed that he was not covered by Third Party Risks Insurance. The insurance policy has expired since 14th April 2014.

On the 21st 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 will caused him inconvenience.

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 Dk Siti Nurul Fairuz bte Pg Rosli for the Public Prosecutor/Respondent.

Pg Hjh Rostaina, J.C.:

On the 21st April 2015 the Appellant was convicted on his own pleas of two traffic offences, which are as follows:

1st charge

That you did at about 1200 hours on the **23rd day of September 2014**, at the vicinity KM 40 Muara/Tutong Highway towards Muara, in Brunei Darussalam, did drive a motor vehicle registration number BAK 7032 (Toyota Fortuner), whilst the motor vehicle licence (road tax) of the said vehicle **expired on 31st day of March 2014** 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 1200 hours on the **23rd day of September 2014**, at the vicinity of KM 40 Muara/Tutong Highway towards Muara, in Brunei Darussalam, being the driver of a motor vehicle registration number BAK 7032 (Toyota Fortuner), did drive the said motor vehicle on the road when the **insurance policy has expired since 14th day of April 2014** 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 \$250 in default 1 week imprisonment. For the 2nd charge, he was fined \$750 in default 3 weeks imprisonment and was imposed the mandatory 12 months disqualification from driving.

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

It was clear from the facts put forward by the Appellant that he has financial difficulties. He had failed to renew his own motor vehicle’s insurance for almost 5 months when he was caught by the police during a Road Traffic Operation on the 23rd September 2014.

It took him between 45 minutes to 1 hour from his residence at Tutong to reach his work place at Rimba. This would not only caused inconvenience to his family members who then have to send him to work but also to his children whom he would not be able to visit during his visitation rights.

The Deputy Public Prosecutor 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”.

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
19th August 2015