**Robel**

AND

**Public Prosecutor**

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**(High Court of Brunei Darussalam)**
**(Criminal Appeal No. 28 of 2018)**

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Steven Chong, C.J.
**12 December 2018**

*Driving a car with expired insurance policy – Whether there were "special reasons" for not ordering disqualification – ss.3(1) and 3(2) of the Motor Vehicle Insurance (Third Party Risks) Act.*

Appellant unrepresented.
PO Hajah'Adzimah Mukarramah Binti Haji Salleh for the Public Prosecutor/Respondent.

**Cases cited:**

*R v Crossen* [1939] 1 NI 106
*Whittal v Kirby* [1946] All ER 552
*Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh* [2002] 2 JCBD 217
*Ali Akbar Assan Maricar v Public Prosecutor* [1996] JCBD 303
*Public Prosecutor v Marcus Tee Peng Tan* [2011] 1 JCBD 254

**Steven Chong, C.J. (ex tempore):**

**<u>Introduction</u>**

On 27 September 2018 in the Magistrate's Court the appellant pleaded guilty to driving a car without a valid insurance policy contrary to section 3(1) of the Motor Vehicles Insurance (Third Party Risks) Act ("the Act").

Magistrate Kamaliah Fadhilah Binti Hj Ibrahim imposed a fine of $750 and ordered the appellant to be disqualified from driving for 12 months.

This is an appeal against the disqualification order.

Shortly stated the facts were that on the morning of 6 March 2018 the appellant was driving a Mitsubishi along Jalan Kota Batu in the direction of Bandar Seri Begawan when he was stopped at a police roadblock.  Upon inspection by the police it was discovered that the insurance policy of the Mitsubishi had expired on 17 February 2018.

**Grounds of appeal**

The grounds of appeal are as follows:

(a) The appellant did not know the insurance policy had expired.

(b) The appellant was "on a mission to save a life".

(c) The appellant needed his driving licence because he had to drive to work and to take his wife to the university where she was studying.

**"Special reasons"**

The disqualification order was made pursuant to section 3(2) of the Act which provides that a person convicted under section 3(1) " *. . . shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence under the Road Traffic Act, for a period of 12 months from the date of conviction."*

The test for "*special reasons*" was formulated in *R v Crossen* [1939] 1 NI 106, where the King's Bench Division of Northern Ireland held at pp.12, 113:

*"A 'special reason' within the exception is one which is special to the facts which constitute the offence.  It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment.  A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."*

This test was approved by Lord Goddard, C.J., in *Whittal v Kirby* [1946] All ER 552, who in the course of his judgment said, obiter, at p.556:

*"For myself, I would say that I strongly incline to the opinion that a person who drives or causes or permits a vehicle to be driven when there is no policy in force must be disqualified unless the court can find in relation to the particular offences some mitigating circumstances, and that mere forgetfulness or carelessness in not taking out a policy could not amount to a special reason."*

*Whittal v Kirby* was cited with approval by the Court of Appeal in *Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh* [2002] 2 JCBD 217.

Applying this test for "*special reasons*" in the context of driving a car without a valid insurance policy, Roberts, C.J., in *Ali Akbar Assan Maricar v Public Prosecutor* [1996] JCBD 303, said at p.304:

*"…………….. The fact that the car is not owned by the driver is not a special reason.*

*Nor does a lack of knowledge that the car is not insured constitute a special reason."*

In *Public Prosecutor v Marcus Tee Peng Tan* [2011] 1 JCBD 254 this court said at p.256:

*"The test for "special reasons" is a stringent one and for good reason. In so far as driving a car without insurance is concerned, it is a very serious matter because it may leave other road users, in the event of an accident resulting in injury or death, without adequate, or worse still, without any, compensation."*

None of the grounds of appeal can be considered a "special reason" in the context of section 3(2) of the Act.

Ground (a) concerns the appellant's lack of knowledge of the expiry of the insurance policy. This is not a "*special reason*". It was incumbent upon the appellant to ensure that the car was covered with a valid insurance policy before he drove it.

Ground (b) does not constitute a special reason. The appellant's assertion that he was "*on a mission to save a life*" is a gross exaggeration. The appellant, who is employed as a safety officer in a building construction company, claims that his manager instructed him to drive the Mitsubishi to buy medicine for a welder who was "*seriously ill*" at the time. This was not a medical emergency in which the welder's illness posed an immediate risk to his life.

Ground (c) relates to the appellant personally, not to the offence, and cannot be a special reason. The appellant will have to find alternative transport for him to go to work and for his wife to attend university.

**<u>Conclusion</u>**

There is no "*special reason*" in this case. The Magistrate was right to order disqualification.

The appeal is dismissed.

**DATO PADUKA STEVEN CHONG**
Chief Justice