Regina v. Ouseley

[1973] 1 O.R. 729-730

ONTARIO
[COURT OF APPEAL]
GALE, C.J.O., McGILLIVRAY
and ARNUP, JJ.A

10th JANUARY 1973.

Motor vehicles — Following too closely — Crown proving rear-end collision — Whether sufficient to raise prima facie case — Highway Traffic Act, s. 105(1).

The mere fact of a rear-end collision is insufficient to make out a prima facie case that the accused was following too closely contrary to s. 105(1) of the Highway Traffic Act, R.S.O. 1970, c. 202.

Appeal by the Crown from a decision allowing the accused's appeal by way of trial de novo and acquitting the accused on a charge of following too closely contrary to s. 105(1) of the Highway Traffic Act.

A. Campbell, for the Crown, appellant.

A.P. Polishuk, for respondent.

The judgment of the Court was delivered orally by

Gale, C.J.O.:— The respondent was acquitted on appeal by trial de novo on a charge that he contravened s. 105(1) of the Highway Traffic Act, R.S.O. 1970, c. 202. In part, that section is in these terms:

> 105(1) The driver or operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicle and the traffic on and the conditions of the highway.

At the trial it was proved that the respondent's car struck another vehicle which it was following, and that the driver of the lead vehicle had occasion to slow down gradually and stop just before the impact. There was no evidence whatever, apart from the impact, as to how closely behind the lead car the respondent's car was being driven at any time. As part of the Crown's case there was introduced a statement b y the respondent to the following effect: "I saw her brake ahead of me. I braked and started to skid and hit her." There was also evidence that the surface of the street was icy and not in good condition.

Mr. Campbell, on behalf of the Crown, asserts that i n those circumstances the Crown had made out a prima facie case. We do not agree. His proposition would go so far as to suggest that on each occasion where a rear-end collision occurs, at some fleeting second, the following car committed an offence under s. 105(1) of the Highway Traffic Act, and that nothing more need be proved than th e fact of the collision. In our view,

the impact itself would sustain logical inferences other than that the respondent was following too closely and contravened s. 105(1). The trial Judge held, and we agree with him, that the collision may have been caused, quite logically, by inattention on the part of the respondent, or by excessive speed by him. He was not charged with careless driving, however, and we can see no reason why he should have been convicted of this offence, where there was no evidence whatever as to the distance which separated the two cars until the actual impact.

Accordingly, while leave to appeal is granted, the appeal is dismissed.

Having discussed the matter further with counsel, the Court is unanimously of the opinion that this is an instance wherein the provisions of s. 771(3) of the Criminal Code ought to be invoked and we order, therefore, that the appellant pay to the respondent his costs of this appeal, hereby fixed at the sum of $250.

Appeal dismissed.