

BUIKESPIS v. TRUST TERRITORY

refer the matter by motion to the District Court, Ponape, and Judge Carl Kohler is authorized to hear the matter as Master and report his findings to this Court.

6. Upon the expiration of the above-stated period of one (1) year, all rights of the plaintiff in and to said land, and the fruit thereof, shall terminate.

ISAURO BUIKESPIS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 298

Trial Division of the High Court

Palau District

April 16, 1968

Appeal from conviction of offense of negligent driving. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that such a conviction did not depend upon the negligence or wrongful parking of the complaining witness but rather the manner and circumstances of the operation of the motor vehicle operated by accused.

Affirmed.

1. Reckless Driving—Mutual Fault

The property of a conviction of reckless driving does not depend upon the negligence or wrongful parking of the complaining witness. (T.T.C., Secs. 815(b)(1), 814(g)(9), 814(g)(6))

2. Reckless Driving—Generally

The core of the offense of reckless driving lies not in the act of operating a motor vehicle, but in the manner and circumstances of its operation. (T.T.C., Sec. 815(b)(1))

3. Reckless Driving—Negligence

The fact that a bus driver blindly backed out to a highway and there hit a vehicle was reckless driving in the manner and circumstances of the operation of the bus. (T.T.C., Sec. 815(b)(1))

4. Appeal and Error—Scope of Review—Facts

Where there is sufficient evidence in the opinion of the trial court to justify the conviction, appellate court will not upset such verdict.

<i>Assessor:</i>	JUDGE FRITZ RUBASCH
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Counsel for Appellant:</i>	FRANCISCO ARMALUUK
<i>Counsel for Appellee:</i>	E. TERMETEET

TURNER, *Associate Justice*

This is an appeal from a conviction of the appellant by the Palau District Court of the offense of negligent driving (Section 815(b)(1), Trust Territory Code).

The facts are not in dispute. The complaining witness stopped his taxi on the edge of the highway in front of the NECO Store behind a bus parked in its usual place beside the store. The bus driver, backing out from his parking area onto the highway, hit the taxi with the left rear end of the bus.

Although appellant stated his grounds for appeal as insufficient evidence, his argument was based on a question of law. Appellant urged that the conviction was erroneous because the complaining witness had parked his taxi in violation of Section 814(g)(9) of the Code, prohibiting parking on the "roadway side" of any vehicle parked at the edge of the highway. In other words, the traffic offense of "double parking".

Appellant also might have relied upon Section 814(g)(6) of the Code prohibiting parking in front of a private driveway, although it is not clear that the bus parking area at the side of the NECO Store is a "driveway".

[1] The propriety of appellant's conviction in the District Court does not depend upon the negligence or wrongful parking of the complaining witness. The offense charged was negligent driving. The only vehicle being driven was the bus. It was backed into a stopped or parked vehicle.

[2] The offense of reckless driving is defined in 7 Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 263 and 264. From that discussion we find this:—

IN RE ESTATE OF LEMMAN

“The core of the offense of reckless driving lies not in the act of operating a motor vehicle, but in the manner and circumstances of its operation.”

[3] Here the undisputed facts that the bus driver blindly backed out to the highway and there hit a vehicle, was in the opinion of the District Court, reckless driving in “the manner and circumstances of the operation” of the bus.

[4] There being evidence sufficient in the opinion of the trial court to justify the conviction, this court, on appeal, will not upset that verdict in accordance with the rule of appeal determinations found in the following cases: *Adelbai v. Ngirchoteot*, 3 T.T.R. 619, and cases cited therein.

JUDGMENT

The judgment appealed from is supported by the law and the evidence, and the judgment is affirmed.

In the Matter of the Estate of LEMMAN, Deceased

Probate Case No. 6

Trial Division of the High Court

Marshall Islands District

May 15, 1968

Petition to probate will. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that as will was not properly executed it could not be admitted to probate, and that under the custom the widow was entitled to the assets of her husband's estate and had sole discretion as to how such assets would later be distributed among decedent's daughters.

1. Wills—Execution

Where alleged will was not executed or signed by the decedent but was dated several months after his death and executed and signed by others it could not be admitted to probate.

2. Marshalls Custom—Widow's Rights

Under the custom the widow is the sole person entitled to receive the assets of her husband's estate.