



Case Watch Bulletin

Take Care to Drive with Due Care

As motorists we are aware that we must drive carefully in order to avoid having a collision. The law goes further than that and provides under Section 83 of the ***Transport Operations (Road Use Management) Act 1985*** as follows:

“any person who drives a motor vehicle on a road or elsewhere without due care and attention or without reasonable consideration for other persons using the road or place shall be guilty of an offence.”

Accidents happen every day on our roads but that does not mean that in every case the person who is negligent causing the accident has committed an offence under this section. In every case if a matter is taken to Court it is up to the Police to prove beyond reasonable doubt that the charged driver has breached this section.

It has in fact been stated in cases that the fact that an accident does occur does not prove that a driver has driven without due care and attention for example, ***Burke -v- Traill – Nash 36 MVR 161.***

Further, the New South Wales motor vehicle law says:

“a driver who makes an error of judgment can still be guilty of negligent driving, although in situations of sudden emergency if the driver was in fact exercising the degree of care and attention which a reasonably prudent driver would exercise, he would not to be convicted, even though another and perhaps more highly skilled driver would have acted differently.”

So in other words, a Court has to decide if a Defendant does not exercise a degree of care and attention that a reasonable and prudent driver would exercise in the circumstances. The circumstances include those created by the Defendant and the lack of “*due care and attention*” may not amount in negligence to another but may be the failure to exercise a degree of care and attention that a reasonable and prudent driver would have exercised (***Johansen -v- Zeller (ex parte Zeller) [1958] QDR 366.***)

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In the decision of **Police -v- Morris [2009] QMC 18** these principals were discussed by the Court. In this case a truck driver was charged with breaching the section as the result of the motor vehicle accident.

Unfortunately for him the Court said that despite the objective difficulty of the situation confronting the driver the Court was satisfied that a reasonably prudent driver must drive to the conditions. This includes taking into account less than ideal driving conditions. The Court said that a reasonably prudent driver must drive to avoid a collision by driving at a speed that permits sudden stops for obstacles on the road. The driver must anticipate possible obstacles. Reduced visibility calls for increased vigilance.

Whilst this may be a plain case where the driver of the truck did breach the section there will be many instances where although a motor vehicle collision occurs a driver does not breach the section. Just because Police decide to charge a driver does not mean that he should plead guilty. This is especially so as upon conviction for guilt it is possible that the Court could disqualify the person from driving for a period of time.

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