

Panel agrees judge made right call in conviction

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Halton police officers investigating the collision found that Bhargal had driven more than the legislated number of hours.

Bhargal had fallen asleep at the wheel after driving 16 hours without required sleep breaks. He maintained two different driving logs — one for American authorities and another for Canadian authorities. The logs, which keep track of how long a driver has been operating a vehicle and when sleep breaks are taken, had been fixed to make it appear as though he was driving within legal guidelines.

Bhargal appealed the conviction for criminal negligence causing death on the basis that the trial judge: failed to adequately explain to the jury the elements of the charge and how that offence differs from that of dangerous driving causing death; and secondly, failed to adequately relate the evidence to the offence.

He did not appeal his conviction for dangerous driving causing death.

Bhargal retained high-profile criminal lawyer John Rosen, who has defended such notorious murderers as Paul Bernardo and John Papalia, and Lindsay Daviau, who works at a Toronto-based trials and appeals law firm, to appeal his sentence. They sought a two- to three-year sentence and a driving prohibition of five years.

The three-member panel that considered the appeal found that Justice Hourigan properly instructed the jury on the elements of criminal negligence causing death and explained the difference between that offence and the lesser offence of dangerous driving causing death.

The panel stated that the judge explained that the appellant's conduct must show a wanton or reckless disregard for the lives or safety of other people, and that the conduct must be a marked and substantial departure from what a reasonably prudent person would do in the same circumstances.

Furthermore, the Ontario Court of Appeal found that the judge presiding over Bhargal's case imposed a sentence that, in his opinion, was fit in the particular circumstances of the case.

They based this on the judge's finding that the appellant had deliberately ignored the driver safety rules, had doctored his log books in an effort to avoid his rest obligations and had put his economic interests ahead of public safety.

Justice Hourigan, said the panel in its decision, correctly concluded that the appellant's deliberate course of conduct was a significant aggravating factor.

Further, he found that there was a clear need for specific deterrence because the appellant had received a warning about excess driving only days before the accident.

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