

Uber Driver Guilty of Negligent Driving Causing Death

By Ugur Nedim and Sonia Hickey

32-year old Uber driver Nazrul Islam is facing up to 18 months in prison after a Magistrate in Downing Centre Local Court found him [guilty of negligent driving occasioning death](#).

The court heard that Mr Islam had been working for 21 hours before the incident and, despite testifying he had seven hours of sleep, it was not continuous rest.

Magistrate Mary Ryan found that the circumstances of 30-year old Englishman Samuel Thomas' death suggested that Islam was "much more fatigued than he admitted", and her Honour was not convinced the driver had slept during his breaks for as long as he claimed.

Mr Thomas had been drinking at a birthday party with colleagues in Strathfield, before he caught the Uber towards Pitt Street with friends Stephen Ronning and Greg Hensman.

When the car stopped at a red light, Thomas opened the door and got out, and was immediately hit by a bus.

Her Honour noted that the sound of the door opening could be heard in footage played in court, and that opening the door automatically switched the car's internal light on, which woke the other intoxicated passengers. She found that these facts would have alerted a reasonably prudent driver to remain stationary.

Instead, Mr Islam accelerated when the light went green and Mr Thomas was half way out the door.

Negligent driving

[Negligent driving is established](#) where the prosecution is able to prove beyond reasonable doubt that a driver or rider of a motor vehicle departed from the standard of care for others that would be expected of a reasonably prudent driver or rider in the circumstances; R v Buttsworth (1983) 1 NSWLR 658.

This is known as an 'objective test' which looks at what a reasonable and practicable driver would have done in the given situation.

It requires an assessment of all relevant circumstances known to the driver or rider at the time, rather than a determination as to what, given the benefit of hindsight, would have been the best course of action.

Driving in the absence of 'due care and attention' can amount to negligent driving, provided the act was causing the inattention was deliberate or arose from an error of judgment; Sprigg v Police [2011] SASC 10.

The maximum penalty for negligent driving occasioning death where it is a motorist's first major traffic offence in five years is 18 months' imprisonment and/or a fine of \$3,300, plus three years off the road which can be reduced by a court to a minimum of 12 months.

Fatigue on New South Wales Roads

Fatigue is one of the top three killers on New South Wales Roads, and collisions caused by fatigue are twice as likely to be fatal.

Being tired at the wheel can seriously impair the ability to drive, with research suggesting that being awake for about [17 hours has a similar effect on cognitive function as a blood alcohol content \(BAC\) of 0.05](#).

Calls for reform

There are calls for greater regulation of the ride-share industry, with critics of the current situation saying governments should step in and impose more rules rather than continue to essentially sit on their hands.

Shortly after Mr Islam was charged last year, Uber [implemente a policy that would automatically log drivers off for six hours](#) after they have been online and driving for 12 hours.

But there are concerns that drivers can still drive for up to 15 hours, despite the automatic log off feature within the app, because it stops calculating when a driver is stopped at traffic lights or for a passenger pickup.

A recent report suggests that many Uber drivers are working [for less than the minimum wage](#), so may be pushing themselves beyond safe physical and mental limits to make ends meet..

Uber has not publicly commented on the death of Mr Thomas, except to say the company is committed to 'driver and passenger safety.'