

1959

Present : Basnayake, C.J.

M. T. DORAY, Appellant, *and* INSPECTOR OF POLICE, DEHIWELA,
Respondent

S. C. 47—M. C. Colombo South, 90,255

Motor Traffic Act, No. 14 of 1951—Prosecution for failure to take such action as was necessary to avoid an accident—Particulars which charge must contain—Sections 151 (1), 216 (1) (a), 226.

A charge under section 151 (1) of the Motor Traffic Act for failure to take such action as was necessary to avoid an accident should state what necessary action the accused failed to take. The charge should contain such particulars as are necessary to give the accused notice of the allegation or allegations of the prosecution. To state that the accused failed to take necessary action to avoid an accident is not sufficient.

A PPEAL from a judgment of the Magistrate's Court, Colombo South.

G. F. Sethukavaler, with *S. Sivarasa*, for Accused-Appellant.

Daya Perera, Crown Counsel, for Attorney-General.

April 24, 1959. BASNAYAKE, C.J.—

The appellant was convicted of committing an offence punishable under section 226 of the Motor Traffic Act, No 14 of 1951, in breach of the duty imposed on him under section 151 (1) read with section 216 (1) (a)

¹ 6 C. W. R. 227.

² (1945) 46 N. L. R. 81.

³ (1948) 50 N. L. R. 52.

of that Act. The statement of the particulars of the offence contained in the summons which was read to the appellant is as follows :—

“that you did on the 10th day of Aug. 1958 at Dehiwela within the jurisdiction aforesaid ride motor cycle No. CY 7892 and to fail to take necessary actions to avoid an accident to wit knocking against a pedestrian A. Weerasinghe causing him grievous injury in breach of section 151 (1) and that you thereby committed an offence punishable under section 226 M. T. A. of the Penal Code ”.

Shortly the facts are that on 10th of August 1958, which is a Sunday, the appellant was riding his motor bicycle along Hill Street, Dehiwela, towards Bellanwila at about eleven in the morning. The length of road he was travelling on at the material time was sloping and he was travelling down the slope. The injured person was proceeding on foot on his way back from the market opposite the Dehiwela Police Station whither he had gone to make a purchase. One side of the road had been dug up for the purpose of laying a water main and the trench had been newly filled up leaving an uneven surface. The injured person was knocked down by the appellant's motor bicycle. He sustained a fracture of the right fibula in its middle, an injury on the back of the left side of the head, and a contusion on the inner half of the right hand. In consequence of these injuries he was incapacitated for over nine weeks.

The charge which was read out to the appellant from the summons is inelegantly drafted and does not specify the action that he failed to take, although the report sent under section 148 (1) (b) of the Criminal Procedure Code did so. The injured person asserts that he was knocked down from behind without any warning by the appellant who was travelling very fast. The appellant's version is that the injured person suddenly stepped off a mound of earth on the side of the road and came on to his path. It is admitted by the injured person that he must have fallen “ more or less on the centre of the road ”. The evidence is inconclusive and does not establish what action which was necessary to avoid the accident the appellant failed to take. The prosecution cannot succeed without doing so. The investigations made by the Police are most unhelpful.

Learned counsel relied on the case of *Perera v. Perera*¹ and the unreported judgment of this Court in S. C. No. 1,039/M. C. Colombo No. 75,967, S. C. Minutes of 30th January 1957, in which my brother Sinnetamby has held that a charge under section 151 (1) of the Motor Traffic Act should state what necessary action the accused failed to take. I agree that the charge should contain such particulars as are necessary to give the accused notice of the allegation or allegations of the prosecution. To state, as has been done in the instant case, that the accused failed to take necessary action to avoid an accident is not sufficient. Section 151 (1) is not designed to penalise the driver of a motor vehicle merely because he meets with an accident. It must be proved that the accident took place because he intentionally failed in breach of his duty to take such action as was necessary to avoid the accident in respect of

¹ (1957) 59 N. L. R. 64.

which he is charged. It must also be proved that the action was such as was reasonably possible under the circumstances. For the law does not compel the performance of the impossible. The action contemplated is not necessarily the action that need be taken at the time of the accident. For instance it is necessary that a driver should proceed slowly in a crowded street in order to avoid an accident, or when approaching a blind corner or bend give warning of his presence to other traffic. For the above reasons I allow the appeal and quash the conviction.

Counsel for the appellant states that the particulars of the conviction that has been quashed have, under section 138 (5), been endorsed upon his driving licence. I direct the Magistrate to cancel the endorsement made on the licence of the appellant after directing him to produce it before him.

Appeal allowed.
