

1959

Present : H. N. G. Fernando, J.

A. G. DE SILVA, Appellant, and S. I. ASEEZ (Headquarters Inspector, Mt. Lavinia), Respondent

S. C. 540—M. C. Colombo South, 87640

Motor Traffic Act, No. 14 of 1951—General duty of driver to avoid accidents—Scope of Section 151 (1).

By Section 151 (1) of the Motor Traffic Act—

“ Notwithstanding anything contained in section 150, it shall be the duty of the driver of every motor vehicle on a highway to take such action as may be necessary to avoid any accident.”

Held, that the Section does not apply to circumstances existing before the imminency or likelihood of an accident. It requires a driver to make every reasonable attempt to avert an accident which has already become imminent or likely, either through his own fault or that of another. Accordingly, the conduct of the driver before the imminency of the accident, although that conduct might have founded a charge of reckless or negligent driving, should not be made the basis of a conviction under Section 151 (1).

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

M. M. Kumarakulasingham, for the accused-appellant.

P. Nagendran, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 25, 1959. H. N. G. FERNANDO, J.—

After hearing argument I set aside the conviction of the accused in this case and now state my reasons.

Even allowing for the prevalent laxity in the mode of framing charges against accused persons the first part of the charge in this case framed by the Magistrate makes nonsense :—

“ You are hereby charged, that you did, within the jurisdiction of this Court at Galle Road, Mount Lavinia being the driver of private

car No. EL 2366 drive the same on the public highway to wit, Galle Road, Mount Lavinia and failed to take the following actions to wit (1) Drive negligently or without reasonable consideration for persons using the said highway (2) Drive the said car in a manner dangerous under the circumstances. . . . ”

This part of the charge in brief constitutes an allegation that the accused *failed to drive the car negligently and failed to drive it in a dangerous manner*. If this absurdity be ignored, the remaining part of the charge is that the accused, in breach of Section 151(1) of the Motor Traffic Act (No. 14 of 1951) failed to take the following actions to avoid an accident i.e. “(3)

Fail to give audible warning of the approach or proceeding of the said vehicle by sounding the horn (4) Fail to apply the brakes in time considered absolutely necessary under the circumstances (5) Fail to observe the traffic signs indicating motor vehicles of the impending approach to this dangerous part of the highway in breach of section 151(1) of the Motor Traffic Act No. 14 of 1951 read with section 216 of the Motor Traffic Act No. 14 of 1951 and thereby committed an offence punishable under section 216 of the Motor Traffic Act No. 14 of 1951”.

It would appear that on 15th March, 1958, a pedestrian commenced to cross the Galle Road from the seaside in the vicinity of the South Western Bus Company Depot at Ratmalana, intending to go to a canteen situated on the landside of the road and somewhat to the left of the point from which he commenced to cross. He reached the centre of the Galle Road and could not proceed further because there were cars on the landside of the road going in the direction of Mount Lavinia. He therefore stopped crossing and instead walked along the centre of the road in the Colombo direction apparently waiting for a chance to cross with an ebb in the flow of traffic on the land-side. The two eye-witnesses who gave evidence stated that at this stage they heard a sound whereupon they saw the accused's car being driven towards Colombo on the sea-side of the Galle Road but near the centre of the road. They heard the brakes being applied and the car came to a halt fairly near the land-side kerb and they then saw the pedestrian lying fallen right on the centre of the road. According to the evidence accepted by the learned Magistrate the point of impact was 21 feet from the sea-side pavement and 30 feet from the land-side pavement. The brake-marks indicate that the accused had applied his brakes when his car was not less than 19 feet from the point of impact and that while applying the brakes the accused had tried to veer his car away from the centre of the road towards the left side in order to avoid hitting the pedestrian.

The accused explained that he deliberately drove near the centre of the road though yet on its left or proper side, in order to keep free of the busy traffic expected to be entering or leaving the bus depot, but

the question whether he was negligent in so doing does not arise because no charge of negligent driving was framed against him. The only matters for determination therefore are whether he failed to take the steps specified in paragraphs 3, 4 and 5 of the charge or any of them, and whether any such failure if any constitutes a breach of Section 151 (1). I shall now consider those paragraphs separately.

The accused does not deny that he did not sound his horn. Considering the evidence that the pedestrian had reached the centre of the road and was then walking along the centre the accused who was driving about five feet away from the centre of the road could have had no reason to anticipate that the pedestrian would (as he ultimately did) return to a point on the sea-side half of the road and within the path along which the accused's car was proceeding. The brake-marks indicate that when the car was nearly within 20 feet of the pedestrian, he suddenly realised that the pedestrian would be in the path of the car. The evidence of the eye-witnesses and of the accused, together, render it at least likely that the pedestrian, because of the traffic approaching from his left suddenly drew back a few steps and thus suddenly brought himself within the line which was being followed by the accused's car. Until this moment there was no serious need for the accused to anticipate an accident and to take action to prevent it. The brake-marks indicate that the accused probably took action when the danger became imminent. The fact that the injuries spoken to by the J. M. O. were in his opinion consistent with the car having brushed against the pedestrian's right side confirms the view that the pedestrian may have been in the act of stepping back just about the time of the impact. It is doubtful whether the sounding of the horn at that stage would have made any difference. If the pedestrian was in the act of stepping back for fear of the traffic in front of him, was it probable that the sound of a horn would have induced him to step forward again? In any event the accused's attempt to avoid the accident by applying his brakes and veering towards the left can well explain his inability also to sound the horn.

As to paragraph (4) of the charge I have already indicated my reasons for the view that the prosecution failed to establish that the accused should have commenced to apply his brakes earlier than he actually did so.

The evidence was quite insufficient to constitute the failure referred to in paragraph (5) of the charge. The two eye-witnesses said that on the Northern and Southern sides of the garage there are boards indicating that the garage is a busy one. There is no evidence however to show that these boards are traffic signs erected by the proper authority or that they constituted warnings as to speed limits. In any event disregard of any such warning would constitute negligent driving but cannot form the subject of a charge under Section 151 (1).

The main ground for the conviction was stated by the Magistrate as follows :—“ Had the accused driven his car on his correct side and had he gone at a slower speed in view of the cautioning boards the accident could have been avoided ”. This might well have been a proper ground if the accused had been charged with negligent driving. But the statement shows that the Magistrate misunderstood the object of Section 151. Driving upon the wrong side of the road can render an accident imminent or likely ; but Section 151 (1) does not apply to circumstances existing before the imminency or likelihood of an accident. It requires a driver to make every reasonable attempt to avert an accident which has already become imminent or likely, either through his own fault or that of another. Accordingly the conduct of the driver before the imminency of the accident, although that conduct might have founded a charge of reckless or negligent driving, should not have been made the basis of a conviction under Section 151 (1).

Conviction set aside.