

1937

Present : Soertsz J.

MUNASINGHE v. ELIYATAMBY.

687—P. C. Matale, 18,151.

*Omnibus—Carrying passengers exceeding six and goods inside the bus—  
Contravention of licence—Liability of driver—Motor Car Ordinance,  
No. 20 of 1927, s. 80 (3).*

Where an omnibus carries a number of passengers exceeding six, the condition that the bus may carry goods to the extent of 336 lb. on the roof becomes operative ; and, if in such a case, goods are carried inside the bus it would amount to a contravention of the licence, irrespective of their weight.

Where goods are carried in a part of the bus not authorized by the licence, the driver is liable under section 80 (3) of the Motor Car Ordinance unless the contravention was not due to any act, omission, neglect, or default on his part.

*Doole v. Zubair (37 N. L. R. 242) distinguished.*

**A** PPEAL from a conviction by the Police Magistrate of Matale.

C. E. S. Perera, for accused, appellant.

M. F. S. Pulle, C.C., for the complainant, respondent.

<sup>1</sup> I. L. R. 8 Mad. 520.

<sup>2</sup> 17 N. L. R. 410.

June 11, 1937. SOERTSZ J.—

The accused in this case was charged in that he "being the driver of motor bus No. X 4256 used the said bus in contravention of its licence by carrying 14 passengers and 2 bags vegetables, 1 bag rice, 1 bag sundries, and 2 bundles of vegetables *inside* the said bus when it was licensed for 17 passengers and 336 pounds of goods on the roof or *in the alternative* to carry 2,484 pounds of goods and 6 passengers in breach of section 31 of Ordinance No. 20 of 1927, and thereby committed an offence punishable under section 84 of Ordinance No. 20 of 1927".

He was convicted and sentenced to pay a fine of Rs. 15.

The appeal is on two questions of law. It is contended (a) that there was no offence because the goods found inside the bus were not weighed and that therefore there is no evidence that the weight of the passengers in excess of 6 passengers plus the weight of the goods inside the bus exceeded the weight allowed, viz., 2,484 lb., (b) that if an offence was committed then the *conductor* and not the *driver* is liable.

The relevant facts are that on this occasion this omnibus was found to be carrying 14 passengers, and the goods described in the charge, *inside* the omnibus and that the accused was the driver of the omnibus. It is admitted that the conditions endorsed on the licence issued in respect of this omnibus are that it may carry 17 passengers and goods up to a weight of 336 pounds on the roof or 2,484 pounds of goods and 6 passengers. In the alternative case there is no restriction as to where the goods are to be carried. It seems clear that the parties interested in the omnibus are given the choice whether to use it on a particular occasion mainly for the conveyance of passengers or mainly for the carriage of goods.

Once the six-passengers limit is exceeded, *ipso facto*, the condition that the bus, if it carries goods as well, should carry them on the roof and not in excess of 336 pounds in weight becomes operative. But, in this instance, there were goods, no matter what their weight inside the bus and thus there occurred a contravention of that condition. The contention put forward that inasmuch as 14 passengers and the driver and the conductor weigh  $16 \times 120$ , i.e., 1,920 pounds, and the weight of the goods has not been ascertained, the omnibus was within the alternative limit of a load of 2,484 pounds is, in my opinion, utterly untenable. That alternative limit is irrelevant except when there are not more than 6 passengers in the omnibus.

The next question is whether the driver could have been charged and convicted. Mr. Perera for the appellant submitted that in terms of regulation 6 (3) in the 4th schedule of the Motor Car Ordinance the conductor and not the driver was liable. Regulation 6 (3) is in these terms—"if there are found in an omnibus goods *exceeding the weight* which, having regard to the number of passengers in the omnibus the omnibus is licensed to carry the conductor of the omnibus shall be guilty of an offence".

But the prosecution in the present case is not based on an allegation that the allowed weight was exceeded, but on the allegation that there were goods inside the omnibus when under the conditions obtaining

at the time, goods should have been *on the roof* and *not inside* the omnibus. So that regulation 6 (3) does not apply. That being so the driver is liable under section 80 (3) of the Ordinance unless the contravention was not due to any act, omission, neglect, or default on his part. The driver has not sought to exculpate himself on any of those grounds.

With regard to the case of *Doole v. Zubair*<sup>1</sup> the headnote does not state the actual point decided in that case, namely, that for ascertaining the denomination of a vehicle whether it is a lorry or an omnibus one must look to the licence and that an omnibus does not become a lorry because goods are carried inside and not on the roof as the condition endorsed on the licence required. The driver was sought to be made liable on the ground that he was there in the position of a lorry driver. Moreover in that case the accused was charged with carrying goods *in excess of the prescribed quantity and not with carrying them in a prohibited part of the omnibus*.

For these reasons, the appeal fails and is dismissed.

*Affirmed.*

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