

1946

Present : Nagalingam A.J.

RAJAH, Appellant, and ABEYEGUNewardENE, Respondent.

1,374—M. C. Colombo South, 6,231.

Motor car—Driving in such manner as to obstruct other traffic—Meaning of the term “obstructing traffic”—Motor Car Ordinance, ss. 85 (7), 86,176.

Where a motorist crosses the road causing some slight obstruction to the other traffic he cannot be said to be guilty of obstructing traffic within the meaning of section 85 (7) of the Motor Car Ordinance.

A PPEAL against a conviction from the Magistrate's Court, Colombo South.

F. A. Hayley, K.C. (with him B. D. Gandevia), for the accused appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur. adv. vult.

December 17, 1946. NAGALINGAM A.J.—

The charge against the accused in this case is that he did drive a motor car from a highway into a place which is not a highway in such a manner as to obstruct other traffic on the highway in breach of section 85 (7) of the Motor Car Ordinance. He was found guilty and sentenced to pay a fine of Rs. 50 (Fifty).

The main ground that has been urged in appeal on his behalf is that an analysis of the evidence led on behalf of the prosecution reveals that the accused's version of how the accident which has given rise to this prosecution is entitled to prevail over the version given by either of the two prosecution witnesses who themselves speak to the circumstances attending the accident though in parts of their testimony they are in conflict with each other. Briefly the facts are that the accused was driving from the direction of Colombo towards Nugegoda along the High Level road at about 1 o'clock on the afternoon on the day in question keeping well to his left and that as he approached the junction of Frances place with the High Level road he drove his car across the High Level road to turn into Frances place; while his car was yet on the High Level road close to the junction of Frances place, a naval truck driven from the direction of Nugegoda towards Colombo came and banged into the left side of the accused's car.

The case for the accused is that he is a frequent user of this part of the road, that he came along the High Level road and before taking the turn he looked right ahead of him as far as he could, that is to say, up to the bend of the road which is now proved to be about 85 feet from the junction of Frances place according to the architect, Gonzal, and seeing no traffic he slowly drove across the centre of the road and got on to the right of the road and while his car was yet on the main road but almost close to the imaginary right hand edge of the road at the junction his attention was attracted by the noise caused by the naval truck getting into a skid at a distance of 55 feet away from him and as he looked he saw the truck come towards his car on the skid and strike against his car. Admittedly, the road was wet after the rains.

The two witnesses for the prosecution are the driver of the naval truck, one Banda, and one Lt. Post who was seated by the driver. According to Lt. Post, the truck was driven from the direction of Nugegoda towards Colombo, and as he came from the direction of Nugegoda towards the bend, that is to say, the bend 85 feet away from the junction of Frances place, he noticed a lorry coming from the opposite direction, that is to say, the same direction as the one that was being taken by the accused. He further says that as he reached the bend he saw three private cars following the lorry and that the last of the three cars was on his side of the road, apparently turning into Frances place.

If Lt. Post's evidence, which the learned Magistrate accepts, is to be acted upon, there can be little doubt that at a distance of 85 feet from the junction of Frances place he had noticed the car of the accused turn and get on to its right side of the road. Two facts emerge very clearly from this evidence of Lt. Post. One is that the driver of his truck if he kept a proper look-out must have seen from a distance of 85 feet the accused's car take the turn across the road and the second is that the accused had begun to take his turn into Frances place while yet the truck was 85 feet away from the junction. The driver, however, says that he noticed the car only when he was five yards away from it but in view of Lt. Post's evidence that one could see for a distance of 35 yards from Frances place towards the direction of Nugegoda and the more reliable evidence of

the architect Gonzal that a distance of 85 feet only is visible from Frances place, it is not possible to reconcile the driver's evidence that he noticed the accused's car only when he was five yards away from it.

It is probably well to set out here another major factor in regard to which there is conflict between Lt. Post and driver Banda. According to Lt. Post, when the brakes were applied by driver Banda the truck skidded into the first of the civilian cars and bounced off it into the car driven by the accused. The driver made no mention of a skid to the Police. At the trial, though the driver admitted that his truck was involved in a skid, he makes no mention of his truck skidding into and bouncing off another car before it banged into the accused's car. Now if one examine Posts's evidence on this point, it is clear to see that the first car into which the truck skidded must have been some distance away from the accused's car for the lengths of the cars and the distances they were apart from each other must be taken into account ; therefore when the truck skidded into that first car the brake must have been applied not at a distance of five yards, as the driver says, from the accused's car but very much further away, and that is more in keeping with the accused's testimony that it was at a distance of something like 55 feet. That the accused drove his car at a moderate speed is testified to by Post himself. Banda, on the other hand, says he drove his truck at about 20 to 25 miles an hour and the evidence shows that from the bend already referred to to the junction of Frances place the road descends steeply and the truck would therefore have had a tendency to gain speed. One can then very well understand how the application of brakes on the vehicle that was driven at a fairly fast speed would create conditions favourable to a skid.

The question for decision is whether where the driver of a motor car sees no vehicle ahead of him for a distance of 85 feet and turns carefully from a highway into a road which is not a highway he is guilty of obstructing traffic. The term "obstructing traffic" must necessarily be a relative term having regard to the conditions of the traffic on the road at any specified point of time. When a motorist attempts to get from one side of the road to the other he must, where the road carries a large volume of traffic, necessarily cause obstruction to other traffic to some extent, unless, of course he crosses the road at a spot on either side of which there is no bend for a distance and at a moment of time when there is no traffic to be seen during the whole of the time taken by him in crossing from one side of the road to the other. I do not think that where a motorist crosses the road causing some slight obstruction to the other traffic he could be said to be guilty of obstructing traffic within the meaning of section 85 (7) of the Motor Car Ordinance. In fact the Legislature has foreseen the difficulties that would otherwise arise and in section 86 provides that notwithstanding anything contained in section 85, it shall be the duty of the driver of every motor car on a highway to take such action as may be necessary to avoid any accident. It would be advantageous also to note that the term "obstructing traffic" is defined in the Ordinance itself in section 176 thereof as follows: "Obstructing traffic includes any wilful act or unreasonable use of a highway which is likely

to cause any risk of accident or damage to traffic on the highway or to impede the free movement of traffic in any manner required or permitted by law on the highway". If attention is directed to this definition having regard to the facts of this case it would be seen that unless it could be established that the accused used the highway unreasonably and that he was likely thereby to cause risk of accident or damage to traffic on the highway he could not be said to have obstructed traffic. I think where it is shown as in this case that the driver of a motor car drove his vehicle along a highway keeping well to his left and after taking stock of the traffic on the road to a distance of 85 feet and satisfying himself that there was no other traffic which would be impeded by his taking a turn across the highway crosses the highway at a moderate or even slow speed, he cannot be said to be obstructing traffic, for on any other reasoning he could never cross the road.

The accident in this case must be attributed, as both Lt. Post and driver Banda say, to the fact that the truck skidded, for both the witnesses are agreed that the accident could otherwise have been avoided.

Again, in fact, it is not the case for the prosecution that there was not sufficient room for the truck to have negotiated in safety the car of the accused though the learned Magistrate has taken the view that owing to the presence of other traffic on the road the naval truck could not have passed the vehicle of the accused. But this view of the Magistrate is opposed to the express testimony given, as I said, by the driver and the witness Post. It is therefore plain on these facts that the accident in which the truck and the accused's car were involved was due not so much to any lack of care on the part of the accused in driving his car from the highway into Frances place but to the circumstance that at the speed at which the truck was driven on a road that was admittedly wet the application of brakes produced a skid to which alone the accident should be attributed.

In view of the conclusion reached by me I would allow the appeal and acquit the accused.

Appeal allowed.
