

1956

*Present : T. S. Fernando, J.*

A. L. M. ISMAIL, Appellant, and H. L. PERERA (Sub-Inspector of Police, Hatton), Respondent

*S. C. 514—M. C. Hatton, 8,387*

*Hiring car—Carrying too many passengers—Suspension of driver's driving licence—Legality—“Offence committed in connection with the driving of a motor vehicle”—Motor Traffic Act No. 14 of 1951, ss. 138 (1), 131 (1), 226.*

When a person is convicted of driving a hiring car carrying therein passengers in excess of the permitted number, the offence is one committed in connection with the driving of a motor vehicle within the meaning of section 138 (1) of the Motor Traffic Act. Therefore, an order of suspension of his driving licence is not illegal.

**A**PPPEAL from a judgment of the Magistrate's Court, Hatton.

*C. Chellappah*, for the accused-appellant.

*Ananda G. de Silva*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

August 7, 1956. T. S. FERNANDO, J.—

The appellant was convicted on his own plea on the following charge :—

“ That he did on 4th February 1956 at Dickoya, being the driver of hiring car No. CN. 5655 on a highway, to wit, Main Street, Dickoya, carry therein 17 adult persons excluding himself when it was licensed to carry only 7 persons, and thereby carried 10 persons in excess in breach of section 181 of the Motor Traffic Act, No. 14 of 1951, an offence punishable under section 226 of the same Act. ”

The appellant was sentenced to pay a fine of Rs. 60 and his driving licence was suspended for a period of one year.

Learned counsel appearing for the appellant before me has contended that the order of suspension of the driving licence is illegal and it has become necessary to examine the powers vested in a Court by section 138 (1) of the Motor Traffic Act No. 14 of 1951.

Section 138 (1) is in the following terms :—

“ Subject to the provisions of sub-section (2), any court before which a person is convicted of any offence under this Act, or of any offence under any other written law committed in connection with the driving of a motor vehicle, may in addition to any other punishment which it may lawfully impose for that offence—

- (a) if the person convicted is the holder of a driving licence issued or deemed to be issued under this Act, suspend the licence for a specified period not exceeding two years, or cancel the licence ;
- or
- (b) if the person convicted is not the holder of a driving licence declare him to be disqualified for obtaining a driving licence for a specified period. ”

It is not necessary for the purposes of this appeal to consider the provisions of sub-section (2) or any other sub-section of section 138. Learned counsel argues

- (a) that although the appellant has been convicted of an offence under the Motor Traffic Act it is not an offence committed in connection with the driving of a motor vehicle ;
- and
- (b) that the power of the Court to suspend a driving licence of a person convicted is limited to the case of persons convicted of offences committed in connection with the driving of a motor vehicle. ”

Learned Crown Counsel has argued that in any event it is only in the case of a conviction for an offence under a written law other than the Motor Traffic Act that there is the additional requirement that the offence should be one committed in connection with the driving of a motor vehicle before an order suspending the driving licence of the offender could be made. It is, however, unnecessary for me to consider this argument which depends upon the interpretation to be placed on

this sub-section as I am satisfied that the offence to which the appellant pleaded guilty was an offence committed in connection with the driving of a motor vehicle.

There are several cases decided in the English Courts upon the meaning of the words "in connection with the driving of a motor car" appearing in a similar context in section 4 (1) of the Motor Car Act of 1903.

In *Rex v. Yorkshire (West Riding) Justices, ex parte Shackleton*<sup>1</sup>, Lord Alverstone, C. J., stated that the words "any offence in connection with the driving of a motor car" when read in their context in section 4 of the Motor Car Act, 1903, point to offences connected with the handling or manipulation of the car in the process of driving it, that is, to offences in respect of the actual locomotion of the car. In the case of *Brown v. Crossley*<sup>2</sup> decided in the following year a Divisional Court of the King's Bench held that a conviction for failing to have the back plate of a motor car illuminated was a conviction of an offence in connection with the driving of a motor car within the meaning of the same section 4. Then again, in the case of *White v. Jackson*<sup>3</sup>, Lord Reading, while holding that the using of powerful lights on a motor car in breach of an Order made under the Defence of the Realm (Consolidation) Regulations of 1914, if the offence was committed by the offender while he was driving the car, was an offence in connection with the driving of a motor car within section 4 (1), also stated that full meaning must be given to the words "in connection with", and that the test to be applied was whether the offence was committed while the offender was driving. Four years later, in 1919, where a person had been convicted for that in driving a motor car he used petrol for purposes other than those expressly authorised by the Motor Spirit (Consolidation) and Gas Restriction Order, 1918, another Divisional Court of the King's Bench held that the offence was one committed in connection with the driving of a motor car within the meaning of section 4 of the Motor Car Act of 1903, stating that when the offender was driving the motor car with the spirit the whole locomotive power of the car depended upon the spirit.—see *Simmons v. Pond*<sup>4</sup>.

What section 181 (1) of the Motor Traffic Act penalises is the driving of a hiring car when there are in it passengers in excess of the number it is licensed to carry. The offence of which the appellant was convicted was that of driving the hiring car carrying in it passengers in excess of the permitted number. In these circumstances, even if one applies the tests suggested in the English decisions above referred to, it will be seen that the offence was committed "while the offender was driving" or "in respect of its actual locomotion". I entertain no doubt that the offence of the appellant was one committed in connection with the driving of a motor vehicle, as contemplated in section 138 (1) of the Motor Traffic Act.

The sentence is therefore legal and the appeal must be dismissed.

*Appeal dismissed.*

<sup>1</sup> (1910) 1 K. B. 439 at 441.

<sup>2</sup> (1911) 27 Times L. R. 191.

<sup>3</sup> (1915) 31 Times L. R. 505.

<sup>4</sup> (1919) 35 Times L. R. 187.