

1957

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

M. V. L. PERERA, Appellant, and M. D. G. PERERA  
(Inspector of Police), Respondent

S. C. 1,210—M. M. C. Colombo, 21,642

*Motor Traffic Act, No 14 of 1951—Failing to take such action as may be necessary to avoid an accident—Ingredients of offence—Sections 151 (1), 153 (2).*

A charge under section 151 (1) of the Motor Traffic Act for failing to take such action as may be necessary to avoid an accident should not be thoughtlessly appended to each and every charge of negligent or reckless driving. In a prosecution under that section the burden is on the complainant to show that action was reasonably appropriate in the circumstances and to prove that the accused failed to take that action.

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

*D. D. Athulathmudali*, with *D. R. Wijegoonewardena*, for the accused-appellant.

*V. S. A. Pullenayegum*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 1, 1957. H. N. G. FERNANDO, J.—

The appellant was convicted on two counts in respect of the driving of a motor vehicle. Firstly of reckless driving in contravention of section 153 (2) of the Motor Traffic Act, and secondly of "failing to take such action as may be necessary to avoid an accident" in contravention of section 151 (1).

In regard to the 1st count, the Magistrate has accepted the evidence that the car driven by the accused knocked down a man who was walking along the right side of the road and came to rest against a drain also on the right side. In the absence of any excuse for the car having been driven on its wrong side, I see no reason to interfere with the conviction on count (1).

I have noticed, however, that in prosecutions under the Act charges under section 151 (1) are "tacked on" without due regard to what is in my opinion the real purpose of section 151 (1). The section provides that "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". In *Wijesinghe v. Rajapakse*\* *Dias, J.* had occasion to refer to the corresponding section 86 (1) of the former Motor Car Ordinance which is in similar terms and to cite the following observation of *Keuneman, J.* in an unreported case with reference to section 86 (1). "I am inclined to think that this presupposes that an accident is imminent or at any rate foreseen or

\* (1947) 48 N. L. R. 352.

anticipated. Under such circumstances, no doubt, it will be the duty of the driver of the motor car to take all action necessary to avoid the accident and if he fails to do so he may be made liable under these sections. But, in the present case, there is nothing to indicate that there were any steps either necessary or possible which the accused could take at the time when the accident could fairly be anticipated". I would with respect agree with this observation. It is noteworthy that sub-section (1) of section 151 is prefaced by the words which I have underlined above. Section 150 contains what are described in the marginal note as rules of the road. The rules there laid down include *inter alia* the left side rule, restrictions as to overtaking, rules against obstruction, and the rule giving preference to right or off-side traffic at intersections. When therefore section 151 (1) casts a duty on a driver to take necessary action to avoid accident *notwithstanding anything contained in section 150*, there is in contemplation even action in contravention of section 150. For instance the action contemplated may in an appropriate situation involve the driving of a car on the right or off-side if that is reasonably necessary in order to avoid an accident. The fact that the action contemplated may even involve a breach of a rule of the road indicates that the Legislature had in mind "emergency situations" and casts on the driver a special duty in such situations to take appropriate action to avoid such accidents. The appropriate action may of course be merely to halt your car or to make an unintended turning or to take some other quite "lawful or innocent" step. But reasonable action in a particular situation may well include deliberate acceleration or even, as already pointed out, some breach of a standard rule of the road.

Having regard to the purpose of the section, it is clear, in my opinion, that a charge thereunder should not be thoughtlessly appended to each and every charge of negligent or reckless driving, and in any event the burden would be on the prosecution to show what action was reasonably appropriate in the circumstances and to prove that the accused failed to take that action.

In the case before me all that was established was that the accused drove his car in such a manner that he ran over a pedestrian walking on the off-side, and the circumstances raised a clear inference that the accident was caused by recklessness. Once the accident was imminent, it was possible that it might have been avoided, say by jamming on the brakes or by swerving away from the off-side or else by swerving still further to the off-side. But before the accused could be properly convicted of failing to take any such course of action, the prosecution had first to prove what the appropriate course of action would have been and secondly that the accused failed to take that action.

The conviction and sentence on the 1st count is accordingly affirmed but the conviction on the 2nd count is set aside. The fine of Rs. 50 paid in respect of this conviction will be remitted.

*Conviction on 1st count affirmed.*

*Conviction on 2nd count set aside.*