

1954

Present : Sansoni J.

NORTH-WESTERN BLUE LINE BUS CO., LTD., Appellant,
and GREEN LINE OMNIBUS CO., LTD., *et al.*,
Respondents

S. C. 1,245—Motor Traffic Appeal 138

Motor Traffic Act, No. 14 of 1951—Right of appeal to Supreme Court—Appealable period—Computation—Sections 210, 211, 212.

The appealable period of twenty-one days in section 212 (2) of the Motor Traffic Act runs from the date of the determination or order of the Transport Appeals Tribunal and not from the date on which notice of the determination or order is served on the appellant.

¹ (1937) 8 C. L. W. 123.

APP^EAL against a decision of the Transport Appeals Tribunal.

H. V. Perera, Q.C., with *H. W. Tambiah* and *S. Sharvananda*, for the appellant.

H. W. Jayewardene, Q.C., with *K. Shinya*, for the respondents.

Cur. adv. vult.

October 8, 1954. SANSONI J.—

This is an appeal filed under the provisions of section 212 of the Motor Traffic Act, No. 14 of 1951, against the decision of the Transport Appeals Tribunal dated 11th July, 1953. Mr. H. W. Jayawardene who appears for the 1st respondent has taken the preliminary objection that the appeal has been filed out of time and should be rejected on this account. The petition of appeal was filed on 11th August, 1953. I am dealing with the preliminary objection on the basis that the date of the decision under appeal is the date it bears on its face, and that the appellant company received on 25th July the notice in writing of the Tribunal's decision which was posted to it on 24th July.

Section 212 (2) provides that "the petition of appeal . . . shall be presented to the Tribunal by the appellant within 21 days after the date of the Tribunal's decision against which the appeal is preferred". Section 212 (4) requires the Tribunal to cause the petition to be transmitted to this Court, but only where the petition "is presented to the Tribunal in the manner and within the time specified in sub-section (2)". I have no doubt that if the petition was not filed within the prescribed time the appellant is not entitled to be heard.

Now section 211 (1) provides how the Tribunal should inquire into a matter coming up before it by way of appeal from any determination or order of the Commissioner of Motor Traffic. Then follow the provisions regulating the manner of giving the decision of the Tribunal, viz., section 211 (2)—"After the hearing of an appeal the Tribunal shall *give such decision* thereon as it may think fit".

- (3) "In every case where the decision of the Tribunal upon any appeal makes it necessary so to do, the Tribunal shall either make a fresh determination, or vary the determination of the Commissioner and issue all such directions as may be necessary to enable the Commissioner to give effect to the determination as so varied".
- (4) "In the event of any difference of opinion among the members of the Tribunal, the decision of the majority shall be the decision of the Tribunal".

- (5) " The Secretary shall give notice in writing of the decision of the Tribunal upon any appeal to the appellant, to the Commissioner and to every other respondent to the appeal ".
- (6) " Subject to the provisions of section 212, the decision of the Tribunal shall be final and conclusive ".

It was submitted for the appellant that the decision of the Tribunal does not become effective until it is formally given in the sense of being pronounced in the presence of, or otherwise communicated to, the parties, and the period of 21 days will commence to run only from the day it was so pronounced or communicated. Section 212 (2) is not, in my opinion, open to such a construction; the words " the date of the Tribunal's decision " are clear and unambiguous. The phraseology is markedly different from that adopted in sections 184 and 754 of the Civil Procedure Code. Section 184 requires a Court to " pronounce judgment in open Court either at once or on some future day of which notice shall be given ". Section 754 requires a petition of appeal to be presented within a specified number of days " from the date when the decree or order appealed against was pronounced ". It will be seen on the other hand that the sub-sections of section 211 of the Motor Traffic Act contemplate a giving of the decision of the Tribunal to be followed by the Secretary giving notice of such decision to the parties to the appeal. It is not contemplated that the parties should have prior notice of the date on which the decision will be given. Nor again is it provided in section 212 (2) that the period of 21 days should run from the date on which the parties receive notice of the decision of the Tribunal. It seems quite clear from an examination of sections 211 and 212 that the calculation of the appealable time has nothing to do with " the date on which the parties receive notice of the decision ". To read the words " the date of the Tribunal's decision " appearing in section 212 (2) as though they were " the date of service of notice of the Tribunal's decision " would be to do far more than interpret the words. What is more, there are clear indications that the words were not intended to have that meaning if one considers section 210 which provides for the manner of preferring appeals to the Tribunal against any determination or order of the Commissioner. Section 210 (3) reads—

" Every statement of appeal shall be transmitted to the Secretary to the Tribunal within fourteen days of the service on the appellant—

- (a) of notice of the determination or order against which the appeal is preferred, in a case where the notice sets out the reasons therefor; or
- (b) in any other case of the statement of reasons referred to in section 63 or section 97, as the case may be ".

Here then is a definite provision that the appealable period runs not from the date of the determination or order but from the service of notice of the determination or order. It is not for me to say why a distinction

was drawn in the two cases, but a distinction plainly exists. I would point out, however, that if it takes the Secretary to the Tribunal from the 11th July to the 24th July to send out the written notice of the Tribunal's decision to the parties, a day may come when an aggrieved party who wishes to appeal against the Tribunal's decision will barely have time to peruse the decision if he wants to be sure of lodging his appeal within the prescribed time. Mr. H. V. Perera asked what the position of a party adversely affected would be if he received notice of the decision only after 21 days had passed. I am relieved that such a question does not call for an answer in this appeal. I would only add that delay in giving the notice is bound to cause hardship, and such delays should be scrupulously avoided.

I uphold the preliminary objection and reject this appeal. The appellants must pay the respondent its costs.

Appeal rejected.
