

1957 Present : Basnayake, C.J., and L. W. de Silva, A.J.

PERERA AND MUNASINGHE, LTD., Appellant, and THE ATTORNEY-GENERAL, Respondent

*S. C. 692—D. C. Colombo, 36,071/M*

*Motor Traffic Act, No. 14 of 1951—Section 236—Action for recovery of damages for injury to public property—Quantum of evidence.*

In an action in which it is sought to recover the cost of the repairs to any class of public property referred to in section 236 of the Motor Traffic Act, the plaintiff must establish that the injury in respect of which proceedings have been instituted was caused by reason of an offence under the Motor Traffic Act.

APPEAL from a judgment of the District Court, Colombo.

*J. A. L. Cooray*, for Defendant-Appellant.

*V. S. A. Pullenayegum*, Crown Counsel, for Plaintiff-Respondent.

August 30, 1957. BASNAYAKE, C.J.—

This is an action by the Attorney-General against the defendant, a limited liability company, in which he seeks to recover a sum of Rs. 1,850 being the costs of the injury caused to culvert No. 7/17 on a highway known as Parakaduwa-Bovilla-Digowa Road. It is alleged in paragraph 9 of the plaint that a cause of action has accrued to the Crown by virtue of the provisions of section 236 of the Motor Traffic Act, No. 14 of 1951. That section provides as follows :—

“ If by reason of any offence under this Act any injury is caused to any highway, or bridge, . . . . the Department or authority may cause such injury to be repaired, and may, either before or after the repairs are effected, recover the estimated or actual cost thereof from the owner of the motor vehicle which caused the injury. ”

The Attorney-General states that a motor lorry bearing registered number CL 8041 whilst being driven by one H. M. Pabilis Singho collided with and caused injury to the culvert in question, and that the driver Pabilis Singho when charged in case No. 12,337 of the Magistrate's Court of Avissawella for—

- (a) driving the lorry No. CL 8041 on the Digowa-Bovilla Road outside the area of operation specified in the revenue licence for that lorry in breach of section 186 of the Motor Traffic Act, No. 14 of 1951, and
- (b) driving lorry No. CL 8041 the tare and load of which was 5 tons 16 cwt. 2 qrs. 14 lbs. on the Digowa-Bovilla Road on which the maximum weight allowed was only 2½ tons in breach of section 7

of the Regulations made by the Minister of Transport and Works under sections 145, 146 and 239 of the Motor Traffic Act, No. 14 of 1951.

pleaded guilty and was fined Rs. 10 in respect of each charge.

The infirmity in the plaintiff's case is that the evidence adduced does not establish that the injury was caused by reason of an offence under the Motor Traffic Act, No. 14 of 1951. The learned counsel for the Crown invites us to infer that the defendant's vehicle caused the damage from the mere fact that the lorry in question had a tare and load of 116 cwts. We are unable to accede to this submission. In an action in which it is sought to recover the cost of the repairs to any class of public property referred to in section 236 of the Motor Traffic Act, No. 14 of 1951, the Crown must establish that the injury in respect of which proceedings have been instituted was caused by reason of an offence under the Motor Traffic Act. This the plaintiff has failed to do in the instant case.

We accordingly set aside the judgment of the learned District Judge and allow the appeal with costs.

L. W. de SILVA, A.J.—I agree.

*Appeal allowed.*

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