

1956

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

PEDURU FERNANDO, Appellant, and R. B. J. AMARASEKERA
(S. I. Police), Respondent

S. C. 1,186—M. C. Negombo, 6,187

*Motor vehicle—Omission to provide an efficient braking system—Elements of offence—
Motor Traffic Act, No. 14 of 1951, ss. 192, 216, 239.*

Failure to maintain the braking system of a motor vehicle in a state of efficiency in breach of Regulation 4 of the Motor Traffic (Use of Vehicles) Regulations is an offence which is separate and distinct from the offence of omitting to provide the vehicle with an efficient braking system in breach of Regulation 6 of the Motor Traffic (Construction of Vehicles) Regulations.

Comments on *Thomas Singho v. S. I. Police, Gampaha* (1954) 55 N. L. R. 395.

APPEAL from a judgment of the Magistrate's Court, Negombo.

Stanley de Zoysa, with *P. Naguleswaran*, for the accused appellant.

George Candappa, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 6, 1956. H. N. G. FERNANDO, J.—

The appellant has been convicted on a charge of using or driving an omnibus without an efficient braking system in breach of Regulation 6 of the Motor Traffic (Construction of Vehicles) Regulations (*Gazette* 27.2.1952) read with sections 192, 216 and 239 of the Motor Traffic Act, 1951. According to the evidence for the prosecution, the vehicle was equipped with both a mechanical and a hydraulic system of braking, and each system was capable of operation by two means, namely, by the hand brake and the foot brake. There was no allegation in the evidence of the Examiner that either system, as a system, was not efficient, and he rightly conceded that Regulation 6 only requires one such system provided it can be operated by hand and by foot. It seems to me therefore that in regard to its braking equipment the construction of the vehicle was such as to be in compliance with the Regulation; for in my opinion the purpose of that Regulation is only to require that a vehicle *must be equipped* with at least one efficient braking system with two means of operation, the efficiency of the system being determined by the soundness or correctness of the principle on which it operates, and not by the question whether any particular component of the system is operating at optimum efficiency. An electric lighting system installed in compliance with standard requirements would not I take it be described as an *inefficient* system merely because some of the light switches have ceased to operate smoothly.

Here the evidence was that the foot brakes were 75% efficient, but the efficiency of the hand brakes was nil—indicating that the means of operation by foot had become defective or inefficient, a situation for which provision is made in Regulation 4 of the Motor Traffic (Use of Vehicles) Regulations published in the same *Gazette* :—

“ Every windscreen wiper required by regulation made under this Act to be fitted to a motor vehicle and every part of every braking system and of the means of operation thereof fitted to a motor vehicle and the steering gear fitted to a motor vehicle shall, at all times, while such vehicle is used on any highway, be maintained in good and efficient working order ”.

The accused should therefore have been charged for a breach of the latter regulation which deals with the maintenance of the braking systems of vehicles *in a state of efficiency*.

I should make a few observations with regard to the judgment in *Thomas Singho v. S. I. Police, Gampaha*.¹ The attention of the Court was not drawn in that case to the regulation to which I have just referred, —a regulation which to my mind fulfils the purpose which (so far as brakes are concerned) was served by section 5 of the repealed Ordinance of 1938 and makes punishable the use of a vehicle the brakes of which are not in *efficient working order*.

I also do not agree that the Legislature did not intend that a failure to equip a motor vehicle with an efficient braking system in terms of Regulation 6 of the Motor Traffic (Construction of Vehicles) Regulations should be punishable as an offence. Although sub-section (2) of section 216 does not cover the *use* of a vehicle without an efficient braking system, that sub-section provides that “ if anything is omitted to be done in connection with a motor vehicle in contravention of . . . any regulation ”, the owner and the driver will be guilty of an offence. In my view the terms cited are wide enough to include the case of a vehicle in relation to which there has been an omission to provide an efficient braking system or any other equipment which is required by the regulations to be fitted to motor vehicles.

After consideration, I think the accused in the present case was entitled to rely on the fact that the charge against him was laid under the wrong regulation, and on the fact that the evidence led by the prosecution did not establish the charge actually framed. He must therefore be acquitted

Appeal allowed.

¹ (1951) 55 N. L. R. 395.
