

1939

Present : Soertsz A.C.J.

DHANAPALA *v.* MOHAMED IBRAHIM.

208—M. M. C. Colombo, 72,529.

Motor car—Driver of car accompanied by licensed driver—Charges of negligent driving, driving without a certificate and driving a car with defective brakes—Guilt of accused—Motor Car Ordinance, No. 20 of 1927, ss. 60 (3), 39 (1), 11 (1).

Where the accused who drove a motor car, while a person licensed to drive was seated by his side, was charged—

(1) with having driven the car negligently, (2) with driving a motor car without a certificate of competence, (3) with driving a motor car with defective brakes,—

Held, that the mere presence of the licensed driver did not exempt the accused from liability for negligent driving or driving a car with defective brakes.

Held, further, that the accused was not guilty of driving a car without a certificate of competence in view of the proviso to section 39 (1).

A PPEAL from an acquittal by the Municipal Magistrate of Colombo.

D. Jansze, C.C., for complainant, appellant.

No appearance for accused, respondent.

Cur. adv. vult.

June 20, 1939. SOERTSZ A.C.J.—

The accused in this case was charged with certain offences under the Motor Car Ordinance, No. 20 of 1927. He was charged with having

driven a motor car negligently, punishable under section 57 (3), new section 60 of the Ordinance, secondly, with driving a motor car without a certificate of competence, punishable under section 37 (1), new section 39 (1) of the said Ordinance, and thirdly, with driving a motor car with defective brakes, punishable under section 10 (1), new section 11 (1) of this Ordinance.

It would appear that the accused was driving this motor car while a person licensed to drive it was seated by his side. Notwithstanding the support, moral and other, that this proximity of a duly licensed driver might be assumed to have given this driver who had no licence, he succeeded in a short space of time in going on the wrong side of the road, knocking down a man called Ramakutty, an employee of a hotel who was standing within a foot of the kerb, and then showing that he was no respecter of persons, he knocked down a beggar—I am informed that the driver contributed to this part of the achievement by interfering with the driving wheel himself—and then eventually either one or other or both of them succeeded in knocking over a bicycle, and quite pleased with their performance they brought the car to a standstill. In these circumstances the charges I have mentioned were laid against the accused. But the learned Magistrate, to whom an extract from some Australian case which is reported in some digest was cited, made up his mind that that case applied and enabled him to acquit the accused on the ground that, while the accused was on this frolic of his, there was seated by him a duly licensed driver.

Now it is perfectly clear that if this is good law, that the consequences must be startling. One has only to take the precaution of having a licensed driver by one's side in order to be able to knock down every second man one came across and to plead that one was not liable because there was a licensed driver by one's side. The section itself 57 (3) which is the new section 63 says that anyone who drives a car negligently is liable to be dealt with under that section regardless of how that person was situated at the time he was driving, whether he was driving in splendid isolation or whether he had a licensed driver seated by him at the time. The matter is however different in regard to the charge preferred against the accused that he drove without a certificate of competence. In that case the proviso to section 37 (1) new section 39 (1) enables a person to drive without a certificate of competence provided a licensed driver is by his side so that the accused was rightly acquitted of that charge. In regard to the other charge of driving with defective brakes it does not make any difference whatever that, at the time the car which the person charged with driving, is found with its brakes defective, the licensed driver is also present in the car. In regard to that offence the person actually driving is liable as the driver under section 85 (1).

I therefore, affirm the acquittal entered by the Magistrate in regard to the charge of driving without a certificate of competence. I set aside the order of acquittal in regard to the other two charges and send the case back for the Magistrate to impose such sentence as he thinks fit after addressing himself to the matter.

Varied.