

1945

Present: Jayetileke J.

FERNANDO, Appellant, and DISSANAYAKE P. S. 2095).
Respondent.

931—*M. C. Negombo, 16,318.*

Negligent driving—Bad case of— Court should not hesitate to cancel accused's licence—Motor Car Ordinance, No. 45 of 1938, s. 75 (1).

In a bad case of negligent driving the Magistrate should not hesitate to exercise the power conferred on him by section 75 (1) of the Motor Car Ordinance to cancel the licence of the accused.

A PPEAL against a conviction by the Magistrate of Negombo.

H. W. Jayawardene, for the accused, appellant.

T. K. Curtis, C.C., for the Crown.

Cur. adv. vult.

December 11, 1945. JAYETILEKE J.—

The accused is a motor car driver. He was charged as follows:—

(1) That you did, within the jurisdiction of this Court, at Mahimagodella on April 16, 1945, being the driver of military truck No. 344733 drive the same on the public road negligently or without reasonable consideration for other persons using the highway and thereby collide with bus No. Z. 1171 and cause damage to the said bus in breach of section 88 (3) of Ordinance No. 45 of 1938 and thereby committed an offence punishable under section 152 (3) of Ordinance No. 45 of 1938:

Or in the alternative—

(2) At the same time and place aforesaid you did being the driver of military truck No. 344733 which was being overtaken by bus Z 1171 fail to allow the said bus to overtake his truck and thereby collide with the bus Z 1171 in breach of section 85 (2) of Ordinance No. 45 of 1938 and thereby committed an offence punishable under section 158 of Ordinance No. 45 of 1938.

(3) At the same time and place aforesaid you did fail to stop military truck No. 344733 immediately after the accident mentioned in counts (1) and (2) above in breach of section 97 (1) (a) (i) of Ordinance No. 45 of 1938 and thereby committed an offence punishable under section 158 of Ordinance No. 45 of 1938.

(4) At the same time and place aforesaid you did fail to report the accident referred to in counts (1) and (2) referred to above to the Officer-in-charge of the nearest Police Station in breach of section

97 (1) (iv) of Ordinance No. 45 of 1938 and thereby committed an offence punishable under section 158 of Ordinance No. 45 of 1938.

After trial he was convicted on all four counts and sentenced to pay the maximum fines prescribed* by the Ordinance and also to pay certain sums as compensation to the injured persons. The appeal was not pressed on the facts but Mr. Jayawardene contended (1) that the conviction on the alternative count was wrong, (2) that the fines imposed were too severe. The first point taken by him is entitled to succeed, but with regard to the sentence I am of opinion that the Magistrate has erred on the side of leniency if he had in mind the provisions of section 75 (1) of the Motor Car Ordinance, No. 45 of 1938 (Vol. 2—Supplement to the Legislative Enactments, 1939). The evidence shows that the accused was driving a military truck along the Negombo-Dambadeniya road when an omnibus with a full load of passengers came from behind. The driver of the omnibus sounded the horn and the accused signalled to him to pass but when the omnibus was almost abreast of the truck the accused moved the truck to his right and deliberately obstructed the way. The two vehicles collided, the omnibus was badly damaged and several persons in it were injured. One cannot conceive of a more wicked act than that of the accused in giving the signal to pass and without warning deliberately obstructing the way. Such conduct ought to be visited with the maximum punishment provided by law. Rash and negligent driving is a menace to the road to-day. Civilian drivers are following the bad example of the military drivers who drive at a break-neck speed without the slightest regard to the safety of those using the road. The war is over now and there does not seem to be any necessity for driving at an excessive speed. The Police have, perhaps, too much work on their hands at the present moment to put a stop to this nuisance. When bad cases like the present one come up before the Courts I am definitely of opinion that the Magistrates should not hesitate to exercise the powers conferred on them by section 75 (1) of the Motor Car Ordinance. It reads:—

(1) Subject to the provisions of sub-section (2), any Court before which a person is convicted of any offence under this Ordinance, or of any offence under any other written law committed in connection with the driving of a motor car, may in addition to any other punishment which it may lawfully impose for that offence—

(a) if a person convicted is the holder of a certificate of competence issued or deemed to be issued under this Ordinance, suspend the certificate for a specified period not exceeding two years, or cancel the certificate ; or

(b) if the person convicted is not the holder of a certificate of competence, declare him to be disqualified for obtaining a certificate for a specified period.

The provisions of this section have presumably escaped the attention of the Magistrate. The accused in this case is not, in my opinion, a fit person to be in charge of a dangerous vehicle like a motor car. I think

he is a menace to the roads and his licence should be cancelled. While affirming the convictions and sentences on counts (1), (3), and (4), and the order for compensation to the injured persons, I would direct that the licence of the accused be cancelled. The conviction and the sentence on count (2) are set aside.

Varied.
