[STAVRINIDES, L. LOIZOU, A. LOIZOU, JJ.]

CHRISTODOULOS POUNNA,
Appellant-Defendant,

v.

BUS COMPANY OF DHALI "I FILIA" LTD.,
Respondent-Plaintiff.

(*Civil Appeal No.* 5066).

Motor Transport—"Carrying passengers for reward at separate fare"—Section 2 of the Motor Transport (Regulation) Law, 1964 (*Law No.* 16 *of* 1964)*—Carrying passengers for a particular journey at a lump sum—Under agreement with a specified person to carry his children and other children nominated by such person—Driver knowing that the other children were not to be carried free of charge but each one would be paying his fare, not directly to the driver, but to the said specified person—This is "carrying passengers for reward at separate fare".*

Appeal—Findings of fact—Appeal turning on findings of fact made by trial Courts—Principles upon which the Court of Appeal will act—Restated—Findings of fact in the instant case amply warranted by the evidence adduced at the trial—No reason for the Court of Appeal to interfere therewith.

Statutes—Construction—"Carrying passengers for reward at separate fare" ("μεταφέρων ἐπιβάτας ἐπὶ κομίστρῳ κατ' ἐπιβάτην")*—Section 2 of the Motor Transport (Regulation) Law,* 1964 (*Law No.* 16 *of* 1964)*—Interpretation.*

Words and Phrases—"Carrying passengers for reward at separate fare" ("μεταφέρων ἐπιβάτας ἐπὶ κομίστρῳ κατ' ἐπιβάτην")*—Section 2 of Law No.* 16 *of* 1964 (supra).

The appellant (defendant) was at all material times the owner of a taxi which was not licensed under the relevant Law (*viz.* the Motor Transport (Regulation) Law, 1964, *supra*) to "carry passengers for reward at separate fare". On October 10, 1971, the appellant entered into a written agreement with a certain Haralambous to carry in the said taxi his children and any other children (pupils) nominated by him for a period of three months from Dhali to Nicosia and back to Dhali each day. The agreed fare for the whole period was

£54. The trial Judge found that the appellant was well aware that the other children were not to be carried free of charge but each one would be paying his fare, not directly to him, but to the said Haralambous. It is common ground that the appellant's said taxi was not licensed to " carry passengers for reward at separate fare " and that on October 11, 1971, early in the morning, acting under the said agreement, he did transport a number of pupils of the English School from Dhali to Nicosia and later on picked them up from their school and returned them to Dhali. The issue in the instant case is whether the transport of the pupils on October 11, 1971 as aforesaid amounts to " carrying passengers for reward at separate fare ".

Dismissing the appeal, the Court :—

Held, (1). To our mind it is unnecessary to go into the English authorities as the wording of the phrase " carrying passengers for reward at separate fare " is clear and unambiguous.

(2) The driver who enters into an agreement with a specified person for a particular journey for a lump sum, well knowing or contemplating that the person with whom he entered into the agreement will collect from other passengers their own shares of the fare, is " carrying passengers for reward at separate fare " *i.e.* (" μεταφέρει ἐπιβάτας ἐπὶ κομίστρῳ κατ' ἐπιβάτην ") within the meaning of section 2 of the relevant Law No. 16 of 1964 (*supra*). The fact that the total fare was handed over to the appellant by one of the parents (*viz.* the said Haralambous) does not change the position, so long as the other parents are contributing for the other passengers. Payment per passenger does not mean that each one should pay direct ; it is enough if he is providing his own share of the fare.

Appeal dismissed with costs.

The facts of the case fully appear in the judgment of the Court dismissing this appeal against a ruling of a District Judge of Nicosia.

Cases referred to :

Roussou v. *Theodoulou and Others* (reported in this Part at p. 22, *ante*).

1972
June 13
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CHRISTODOULOS POUNNA
v.
BUS COMPANY OF DHALI "I FILIA" LTD.

Appeal.

Appeal by defendant against the ruling of the District Court of Nicosia (Evangelides, Ag. D.J.) dated the 31st March, 1972, (Action No. 4428/71) whereby he was found guilty of disobedience to an Order of the Court and was sentenced to pay a fine of £10.

F. Kyriakides with *P. Demetriou* and *S. Papaleontiou* (*Mrs.*), for the appellant.

L. Clerides with *Ch. Kyriakides*, for the respondent.

STAVRINIDES, J. : The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J. : This is an appeal from the ruling of a District Court Judge of Nicosia, whereby the appellant was found guilty of disobedience to an Order of the Court dated 9.10.1971, and sentenced to £10 fine.

The facts of the case relevant to the determination of the issues before us are these. The respondents—plaintiffs are a transport company duly licensed under section 7 of the Motor Transport (Regulation) Law 16/1964, to carry passengers from Dhali to Nicosia and back. The appellant—defendant, who is a resident of Dhali, is the owner of a taxi, under registration No. TFH.990, which was not licensed under the aforesaid Law to carry passengers for reward at separate fares. The respondents had instituted an action praying, *inter alia*, for an injunction restraining the appellant-defendant, his agents and servants, from carrying passengers from Dhali to Nicosia or back.

On the 16th August, 1971, on the application of the respondents an interim order was issued restraining the appellant from carrying passengers from Dhali to Nicosia and back. It was in effect an absolute prohibition and on the 9th October, by consent, this order was varied and replaced by the following order :

«Ὁ ἐναγόμενος-καθ' οὗ ἡ αἴτησις διὰ τοῦ παρόντος προσωρινοῦ διατάγματος ἐμποδίζεται ἀπὸ τοῦ νὰ ἐκτελῇ δρομολόγια ἀπὸ Δάλι εἰς Λευκωσίαν καὶ τἀνάπαλιν μὲ τὸ αὐτοκίνητόν του, ἀρ. ἐγγραφῆς TFH990 μεταφέρων ἐπιβάτας ἐπὶ κομίστρῳ κατ' ἐπιβάτην».

" (The defendant-respondent by the present interim order is restrained from maintaining a line from Dhali

to Nicosia and back with his vehicle, registration TFH990, carrying passengers at separate fares)."

In fact there is no dispute as to what this part of the order was intended to convey ; it was, in effect, using phraseology to be found in section 2 of the aforesaid Law 16/1964, as amended by Law 45/1971.

On the 12th October, 1971,the applicants applied to the District Court for the imprisonment of the appellant alleging that on the 11th October, 1971, he did disobey the aforesaid order of the Court and that on that day he drove his car from Dhali to Nicosia and back carrying for reward at separate fares passengers " ἐπὶ κομίστρῳ κατ' ἐπιβάτην ". On that day the defendant, early in the morning, had transported a number of pupils of the English School from Dhali to Nicosia and later on picked them up from their school and returned them to Dhali. This, the trial Judge found, was not an isolated journey. There were a number of pupils of the English School residing at Dhali and at the beginning of the school year the parents of the pupils had agreed with the respondents to carry their children every day from their homes to their school and back and each parent was paying them a certain sum of money. After the order of the Court of the 9th October, 1971, *i.e.* on the 10th October, 1971, the appellant entered into a written agreement, *Exhibit* A, with one of those parents, a certain Haralambos Haralambous, to carry in the said taxi his children and any other pupils nominated by him, for a period of three months. The agreed fare was £54 for the whole period, payable in monthly instalments of £18 each. The trial judge found as a matter of fact that the appellant was well aware when he had agreed as above, that the other children were not to be carried free of charge but each one would be paying his fare, not directly to him, but to the said Haralambous. These findings of fact were amply warranted by the evidence before the judge and we see no reason to interfere with them. The principles upon which this Court interferes with the findings of fact of trial Courts have been repeatedly stressed and I need not go extensively into the matter ; suffice it to refer to the latest of the decisions of this Court where the whole position is reviewed with reference to previous authorities. See *Olga Charalambous Roussou* v. *Christodoulos Theodoulou and Others* (reported in this Part at p. 22, *ante*).

The main ground upon which this appeal was argued, however, was that the finding that the agreement between the appellant and the said Haralambous is not an agreement

for a lump sum but an agreement for carrying passengers "ἐπὶ κομίστρῳ κατ' ἐπιβάτην" (for reward at separate fare), is erroneous in law. Ancillary to this ground was the argument that the trial Judge was erroneously guided by English authorities, which were not applicable to the facts of the present case, as being authorities interpreting a different statute.

The reference by the trial Court to the English authorities was due to the manner in which the case was presented by counsel for respondents and the reply thereto by counsel for appellant. These English decisions deal with the interpretation of the Road and Traffic Acts, 1930-1934, sections 72 and 25, where similar expressions are used. It is only fair to say that the trial judge after dealing with a number of these decisions and commenting upon them, pointed out the specific statutory provision which they were interpreting and concluded by saying that he considered that, though those English decisions were not quite decisive they were helpful, in arriving at a proper interpretation of it.

To our mind it is unnecessary to go into these English authorities as the wording of the order and the meaning and effect of the words "μεταφέρων ἐπιβάτας ἐπὶ κομίστρῳ κατ' ἐπιβάτην" (carrying passengers for reward at separate fares) are clear and unambiguous. The only proper interpretation that could be given to them is the one which the trial Judge gave them, independently of whether he was helped in that respect by those English authorities or not. The driver who enters into an agreement with a specified person for a particular journey for a lump sum, well knowing or contemplating that the person who has entered into the agreement will collect from other passengers their own shares of the fare, is carrying passengers for reward at separate fares. The fact that the total fare was handed over to the appellant by one of the parents does not change the position, so long as the other parents are contributing for the other passengers. Payment per passenger does not mean that each one should pay direct; it is enough if he is providing his own share of the fare.

For these reasons we are satisfied that the ruling of the trial judge appealed from is a correct and proper one. In the result the appeal is dismissed with costs.

Appeal dismissed with costs.