[BOURKE, C.J., and ZEKIA, J.]

THE POLICE

Appellants,

v.

AGHISILAOS KARAVIAS, OF KYRENIA

Respondent.

(Case Stated No. 120)

1958
March 21
April 18

THE POLICE
v.
AGHISILAOS
KARAVIAS

Motor Traffic—Motor Vehicles—Insurance against third party risks—Using motor vehicle on a road without being covered by third party insurance—Motor vehicles (Third party Insurance) Laws, 1954 and 1957, Section 3.

Learner's Licence—Motor Vehicles Regulations, 1951 to 1955, reg. 38 (1) and (3)—Holder of such licence driving without being accompained by a licensed driver contrary to reg. 38 (1); and without "L" plates affixed to the vehicle contrary to reg. 38 (3)—Whether covered by policy whereby liability of insurers is subject to the condition that "the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a Court of Law..."

Evidence—Condition in a policy—Construction—Evidence on behalf of insurers whether "on risk" or not—When admissible—Judicial notice of what transpired in another case—Not permissible even if tried by the same judge.

The Respondent was charged with the offence of driving a motor vehicle on a road without being covered by an insurance policy in respect of third party risks, contrary to Section 3 of the Motor Vehicles (Third Party Insurance) Laws, 1954 and 1957. He was acquitted at the close of the case for the prosecution on the ground that no case was made out against him. At the material time the Respondent was driving a motor car on a road while he was the holder of a learner's licence issued in accordance with the provisions of regulation 38 of the Motor Vehicles Regulations 1951 to 1955. (This regulation is set out in the judgment of the Court, *post*). He did so without being accompanied by a qualified driver, contrary to regulation 38 (1), and without having "L" plates affixed to the vehicle, contrary to reg. 38 (3). The material part of the Respondent's licence (following the provisions of regulation

38) permits him to "drive a motor car when a driver duly licensed to drive such a car is sitting beside him.....". There was at the time a policy in force in respect of the user of the vehicle, which provided against third party risks in accordance with the Motor Vehicles (Third Party Insurance) Law, 1954. (Besides the holder, the policy covered any person driving with the holder's order or permission. No point arose in this case with regard to the last mentioned condition). The cover was subject to the following condition in the policy: "Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a Court of law or by reason of any enactment.....".

On those facts the trial judge discharged the Respondent at the close of the case for the prosecution. The trial judge considered that the meaning of the condition was not clear and, applying the "*contra preferentem*" rule, formed the opinion that the purpose of the condition was to exclude only "the persons who never had a licence and those who had a licence but were disqualified" at the material time. He accordingly held that, as the Respondent was the holder of a valid learner's licence, the fact that he was driving without being accompanied by a licensed driver (and without having "L" plates affixed to the car) could not exclude the liability of the insurance company and that, therefore, the Respondent being covered by the policy had not committed the offence with which he was charged. Having formed the view that the condition in the policy was not clear, the judge allowed himself to be influenced in his decision by taking notice of what had transpired in another case he had determined in which the facts were similar and the agent of the company there concerned gave evidence to the effect that he considered by the policy and that his company admitted liability.

Upon a case stated on the Application of the Attorney-General, the Court:

Held: (reversing the order of the trial judge):

(1) The holder of a learner's licence is not permitted to drive a motor car unless a duly licensed driver is sitting beside him. Therefore, the Respondent was not "permitted to drive the motor vehicle" within the meaning of the condition in the policy.

This condition is clear and could only be construed to exclude the liability of the insurers. There is nothing doubtful in the meaning of the words therein nor is there any reason for thinking that those words were open to the construction accepted by the Court below, viz. that the person insured would only be excluded from the cover if he never had a driving licence at all or having had a licence was disqualified under the Law.

(2) The fact that no "L" plates were affixed to the car does not enter into the question, for that is a separate requirement under reg. 38 (3) which no doubt carries a sanction for its infringement.

(3) The judge ought not to have taken notice of facts proved or evidence offered in another and separate trial even if it was held before him.

Per curiam : If in the instant matter the condition in the policy could be regarded as doubtful it would have been open to the trial Court to hear evidence of the representative of the insurers concerned whether they regarded themselves liable or not under the policy.

Carnill v. *Rowland* (1953) 1 All E.R. 486, *referred to.*

The order of acquittal set aside and the case remitted to the Lower Court with a direction to proceed with the trial in accordance with the law and in the light of this decision.

Cases referred to :

Carnill v. *Rowland* (1953) 1 All E.R. 486.

Case stated.

Case stated by S. EVANGELIDES, D.J. of the District Court of Kyrenia on the application of the Attorney-General. At the close of the case for the prosecution in case No. 26/58. the trial judge on the 23rd January 1958 acquitted and discharged the Respondent on a charge of driving a motor vehicle on a road without being covered by an insurance policy in respect of third party risks, contrary to Section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954.

J. Ballard, Crown Counsel for the Appellant.

The Respondent did not appear.

Cur. Adv. Vult.

The facts sufficiently appear in the judgment of the Court, which was read by :

BOURKE, C.J. : This is a case stated on application of the Attorney-General by the Judge of the District Court at Kyrenia. The respondent was charged with the offence of driving a motor vehicle on a road without being covered by an insurance policy in respect of third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954. He was acquitted of the offence at the close of the case for the prosecution on the ground of no case.

The facts as given are that the respondent was driving a motor car while he was the holder of a learner's driving licence. He did so without being accompanied by a qualified driver and without having "L" plates affixed to the vehicle. There was a policy in force in respect of the user of the vehicle and it provided against third-party risks; it was

taken out with the General Insurance Company of Cyprus Ltd. It covered any person who was driving with the policy holder's order or permission. The cover was subject to the following conditions in the policy:

"Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulations in that behalf from driving the motor vehicle".

The learned Judge considered that the meaning of the clause was not clear and the *contra preferentem* rule, by which the policy ought to be construed most strongly against the insurers, should be applied. The opinion was formed, and acted upon, that the purpose of the proviso was "to exclude the persons who never had a driving licence and those who had a licence and were disqualified." Accordingly since the respondent had a learner's licence, the fact that he was driving when not accompanied by a licensed driver and did not have "L" plates affixed to the car, could not exclude the insurance company from liability and the respondent being therefore covered by the policy had not committed the offence alleged. Having formed the view that the condition in the policy was not clear, the learned Judge allowed himself to be influenced in his decision by taking notice of what had transpired in another case he had determined in which the facts were similar but the policy was taken out with a different company. It appears from the case stated that in this earlier matter the agent of the company there concerned gave evidence to the effect that he considered the accused to be covered by the policy and his company admitted liability. He was also heard to say that his principals in London had informed him that they considered the policy to be valid and operative at the time the accused was driving the car in spite of the fact that there was this same condition in the policy and the accused had a learner's licence and was not accompanied by a qualified driver and no "L" plates were attached to the car: he was also allowed to depose that his company had asked the opinion of other insurance companies in England and they all agreed that they would be "on risk" in such circumstances.

In the case as stated the Judge informs us that he had *Carnill* v. *Rowland*, (1953) 1 All E.R. 486, in mind; but there is nothing in that case to suggest that it is a permissible course to follow to take notice of facts proved or evidence offered in another and separate trial held by the Court. If in the instant matter the condition could be regarded as doubtful it was open to the Court to hear the evidence of the representative of the insurance company concerned. It is as well to set out what was held in *Carnill* v. *Rowland* as indicated by the headnote to the report :—

> " where a condition in a policy was clear and could only be construed to exclude the liability of the insurers, the court was bound to act on that construction notwithstanding a statement by the insurers that they regarded themselves as being " on risk ", but where, as here, the meaning of the words was doubtful and the insurers expressed the view that what was attached to the motor cycle satisfied the conditions of the policy and stated that they would have accepted liability if an accident had occurred, the respondent could not be found guilty of driving an uninsured vehicle, and the justices had rightly dismissed the charge against him.".

In that case a cover note insuring the respondent against third-party risks in relation to the user of a motor cycle combination by him contained the words: " Exclusion and special conditions: sidecar permanently attached." The respondent removed the passenger-carrying sidecar body, but left the chassis and a third wheel attached to the motor cycle and drove the motor cycle in that condition. He was charged before justices with driving an uninsured vehicle, contrary to the Road Traffic Act, 1930, s. 35 (1), and at the hearing a representative of the insurers stated in evidence that, in spite of the removal of the passenger-carrying body, the insurers considered themselves " on risk ". The meaning of " sidecar permanetly attached " was regarded as open to two constructions—it was arguable one way or the other whether or not there was a sidecar attached at the material time. That being so, it was right for the justices to take into account the view expressed by the insurance company as one of the material factors for them to consider; and the insurance company having said that what was attached to the

cycle satisfied the conditions of the policy, there was no reason to say that the respondent was uninsured at the time he was stopped.

The question that falls to be resolved is whether the condition in the policy is or is not clear in relation to the circumstances and having regard to the provisions of the law in Cyprus governing learner's licences. Such provisions differ from those affecting provisional licences to drive in England, which are issued subject to conditions prescribed in paragraph 3 of regulation 16 of the Motor Vehicles (Driving Licences) Regulations, 1950.

Regulation 38 of the Motor Vehicles Regulations, 1951 to 1955, reads as follows :—

"38 (1) The Registrar may, on payment of the fee of five shillings, issue to an applicant a learner's licence as in Form G of the First Schedule hereto which will entitle him, when accompanied for the purpose of instruction by a licensed driver sitting beside him (except in the case of a motor cyclist who need not be accompanied by a pillion-rider, but if so accompanied, the pillion-rider must be a person licensed to drive a motor bicycle) to drive a motor car of the class or type stated therein for a period not exceeding three months from the date of the issue of the licence within the area or on the road specified in the licence, and to be tested within the aforementioned period. If the applicant takes the test and fails to pass or fails to take the test within the aforesaid period, he may at any time thereafter obtain a further licence on payment of a further fee of two shillings and a half and again be tested.

(2) No person other than the licensed driver accompanying him for the purpose of instruction under paragraph (1) of this regulation may be carried on any motor vehicle driven by the holder of a learner's licence;

Provided that a motor vehicle specially adapted as an instructional vehicle and having a second set of controls operated by a licensed driver may carry as passengers *bona fide* students learning to drive.

(3) Whenever an applicant for a driving licence is driving a motor car for the purpose of being tested or

whenever the holder of a learner's licence is driving any motor car, there shall be affixed to the car so as to be easily visible two plates or discs, one of which shall be on the front and one on the back, displaying the letter "L", and which must conform with the provisions set out in the Fourth Schedule."

The material part of a learner's licence, as given in the Form provided, permits the holder—

> "to drive a (motor car) when a driver duly licensed to drive such a car is sitting beside him, for a period of three months from this date, upon the following roads or in the following area only ....
>
> This licence does not authorise the holder to drive a (motor car) when carrying any passenger ....."

Turning to the condition in the policy, it is pertinent to ask: What was the respondent permitted to do by virtue of the learner's licence he held? The answer is clear that he was permitted to drive a car only when a duly licensed driver was sitting beside him for the purpose of instruction. The absence of "L" plates does not, in our opinion, enter into the question, for that is a separate requirement under regulation 38 (3) which no doubt carries a sanction for its infringement. Under paragraph 1 of regulation 38, the holder of a learner's licence is only "entitled" to drive when accompanied for the purpose of instruction by a licensed driver sitting beside him and this provision is incorporated in the express terms of the licence itself. Under the licensing laws of this Colony the holder of a learner's licence is not permitted to drive a motor car unless a duly licensed driver is sitting beside him. We can see nothing doubtful in the meaning of the words of the condition in the policy or any reason for thinking that those words were open to the construction accepted by the Court below, viz. that the person insured would only be excluded if he never had a driving licence at all or having had a licence was disqualified under the law. In the view of this Court the condition in the policy is clear and could only be construed in the circumstances under consideration to exclude the liability of the insurers.

The order of acquittal is accordingly set aside and the case

remitted to the Lower Court with a direction to proceed with the trial according to law and in the light of this decision.

Order of acquittal set aside and the case remitted to the Lower Court with a direction with the trial according to law and in the light of this decision.