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

YIANNIS GEORGHIOU SHAMBOULIS

Appellant,

v.

THE POLICE

Respondents.

(Criminal Appeal No. 2144)

1958
Feb. 3, 14

YIANNIS G. SHAMBOULIS
v.
THE POLICE

Motor Traffic—Motor Vehicle—Insurance against third party risks—Driving motor vehicle without being covered by insurance—Disqualification "special reasons"—Driver's failure to make proper enquiries as to insurance—Absence of "special reasons"—Motor Vehicles (Third Party Insurance) Law, 1954, section 3.

Under the terms of an insurance policy covering the use of a motor vehicle against third party risks the persons entitled to drive the vehicle were (a) the policy holder, and (b) any other person provided he is in the policy holder's employ and is driving on his order and with his permission. The appellant, a prospective purchaser, was given the vehicle by the policy holder, a firm, for trial and was handed the insurance certificate by a partner of the firm who told him that the use of the vehicle by him was covered by the insurance. He was convicted of the offence of driving the motor vehicle whilst not being covered by an insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954, and it was submitted on his behalf that there were "special reasons" within section 3 (3) of the Law, enabling the Court to refrain from imposing disqualification for holding a driving licence.

Held: The appellant's belief that he was covered by the insurance did not amount to "special reasons" within the meaning of section 3 (3) of the Motor Vehicles (Third Party Insurance) Law, 1954, since it was not based on reasonable grounds. The appellant ought to have made proper enquiries to ascertain whether he was covered by the insurance and ought not to have relied on what the partner of the firm told him.

Appeal dismissed.

Cases referred to :

(1) *Rennison* v. *Knowler* (1947) 1 All E.R., 302.
(2) *Labrum* v. *Williamson* (1947) 1 All E.R., 824.
(3) *Quelch* v. *Collett* (1948) 1 All E.R., 252.

1958
Feb. 3, 14

YIANNIS G. SHAMBOULIS
v.
THE POLICE

Appeal against conviction and sentence.

The appellant was convicted by the District Court of Kyrenia (Case No. 1218/57) on the 13th December, 1957, of the offence of driving a motor vehicle on a road without being covered by insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954, and was sentenced by Evangelides, D.J., to a fine of £1 and disqualified for holding or obtaining a driving licence for 12 months. His appeal against conviction was dismissed on the ground that since he took the vehicle in question for trial with a view to purchase, he was not one of the persons in the policy holder's employment, the only class of persons entitled under the insurance policy to drive the vehicle apart from the policy holder, and therefore he was not covered by the insurance policy.

Lefkos Clerides for the appellant.
J. Ballard for the respondents.

The judgment of the Court was delivered by:

BOURKE, C.J.: The appellant was convicted by the District Court at Kyrenia of the offence of driving a motor vehicle on a road when he was not 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 sentenced to pay a fine of £1 and was disqualified from holding or obtaining a driving licence for a period of twelve months. The learned Judge of trial considered that the circumstances did not reveal any special reasons within the meaning of the section.

It appears that on the 7th September, 1957, the appellant was found driving the vehicle, a covered van, on the Kormakitis—Myrtou road and that in the body of the van were ten passengers. He was also charged with and convicted of the offence of carrying these passengers in a vehicle having no properly constructed seats, contrary to regulations 46 (f) and 53 (c) of the Motor Vehicles Regulations 1951-57. When stopped on the road he produced the certificate of insurance, exhibit 1, which disclosed that the holders of a policy covering the use of the vehicle were Messrs. Mikri Keravni & Ghoghos, a firm which runs a driving school and also omnibuses between Nicosia and Enghomi. Under this

insurance the persons entitled to drive the vehicle were (a) the policy holder and (b) any other person provided he is in the Policy holder's employ and is driving on his order and with his permission (clause 5 (b) of the certificate). About the 3rd September, 1957, the appellant was given the van by the firm mentioned for trial with a view to purchase by him. If he did not find it satisfactory the arrangement was that he could return it on payment of £10. A deposit of £50 was paid, the purchase price being fixed at £200. On the 14.9.57, the appellant did buy the van and the policy was transferred to him. At the time the vehicle was given to the appellant for trial he was handed the insurance certificate, exhibit 1, by a partner of the firm and was told that he was covered by the insurance. The appellant in his defence made the case that he thought that he was insured on the 7th September and only learned to the contrary a few days after that date. It was considered by the lower Court that he should have made proper enquiries to ascertain that he was in fact insured as driver and should not have relied upon what he was told when he was given the certificate: he was not in the policy holders' employ and he was not covered by the insurance.

It is argued upon this appeal that the appellant was employed by the policy holders and therefore was covered by insurance having driven the vehicle with their permission. Reference has been made to cases as quoted in Bingham on Motor Claims Cases, 3rd edn. pp. 528—530. In those cases the driver was not under contract of service but was commissioned to drive by the insured for a particular purpose and it was held that he could properly be regarded as being employed for the purpose of a similar clause in the policy as arises for consideration in the instant case. But in the present case it was not a question of the appellant undertaking to drive as an agent for the insured or to do anything on their behalf; he took the vehicle for his own objects to try it out on the roads in order to satisfy himself as to whether he should purchase it. Quite plainly he was not in the employ of the insured firm, which handed over the van for trial and test by the appellant for his own purposes.

It is then submitted that the circumstances amounted to special reasons and the order for disqualification should be set aside. It has been suggested that this is a case of an

obscure phrase in a policy which might lead a person to believe he was covered when a court ultimately decided he was not. But in the first place there is no obscure phrase here and further the appellant never suggested in evidence that he had been misled by anything appearing in the certificate or that he had read it all. He testified that he was not employed by the insured and left it to be understood that he thought he could legally drive the van because he had been given the certificate and was told that he could drive it. As was said in *Rennison* v. *Knowler* (1947) 1 All E.R., 302, 304: "If he (the person who uses a motor vehicle) does not understand his policy, he can seek guidance and instruction, but if he neither informs himself of its provisions nor gets advice as to what it covers, we are unable to see that he has any reasonable ground for believing that the policy covers something which it does not. Belief, however honest, cannot, in our opinion, be regarded as a special reason unless it is based on reasonable grounds." It is the obvious duty of the user of a motor vehicle to see that he is insured and to that end to make himself acquainted with the contents of his policy. Reference may also be made in this context to *Labrum v. Williamson* (1947) 1 All E.R., 824 Even in the circumstances in *Quelch* v. *Collett* (1948) 1 All E.R., 252, there was no question about it that it was no defence that the respondent thought he was covered by insurance. In the present case it is evident that the appellant in so far as he gave his mind to the matter at all, acted upon what he had been told as to insurance cover by the partner in the firm interested to sell him the van. He never even made the case that he had taken the trouble to read the certificate given to him and was misled by any phrase in it. As the learned Judge of trial said in his judgment, it was the appellant's "duty to make proper enquiries to find out whether the use by him was covered by the insurance. He should not have relied on what persons of the class of witness No. 2 for the prosecution (the partner in the firm)—I mean from the point of literacy—have told him."

We find no merit whatsoever in this appeal which is therefore dismissed.

Appeal dismissed.