1958
Nov. 21,
Dec. 10, 22
1959
Jan. 19

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

THE POLICE, *Appellants*,

v.

ANDREAS CHRISTOU AND ANOTHER, *Respondents.*

(*Case stated No.* 129).

Motor Traffic—Motor Vehicles—Driving and permitting to drive without being covered by a policy of insurance against third party risks—Motor Vehicles (Third party Insurance) Laws 1954 *and* 1957, *Section* 3 (1) *and* (2).

"Omnibus"—"Public service motor vehicle"—"Motor Lorry"—Motor Vehicle—Registered as an "Omnibus" to carry either passengers or goods—But used only for the transport of goods and so adapted—Therefore, at the material time it was used as a "Motor Lorry"—The Motor Vehicles and Road Traffic Law, 1954, *Section* 2*—The Motor Vehicles Regulations* 1951 *to* (*No.* 2) 1957 *Reg.* 2 *and Reg.* 31 (2) (*a*) *and* (*b*).

Policy of insurance against third party risks—Insurance Company on risk provided driver is duly licensed and the vehicle is used for carrying goods but not for carriage of passengers for hire or reward.—Driving licence enabling holder to drive all classes of vehicles including a "Motor Lorry" but excluding an "Omnibus"—Motor Vehicles Regulations 1951 *to* (*No.*2) 1957, *Reg.* 26 *and* 31 (1) *and* (2)*—Registration is not the test for the classification of Motor Vehicles in connection with the validity of driving licences.—Therefore the holder:* (1) *is entitled to drive a motor vehicle which, although registered as an "Omnibus", was in fact being used—and so adapted—as a "Motor Lorry", and* (2) *is covered by the policy.*

Condition in a Policy—Evidence—Evidence on behalf of the insurers whether "on risk" or not.—Not to be acted upon where condition is clear.

The first respondent was charged with the offence of driving a motor omnibus without having in force a policy of insurance in respect of third party risks contrary to section 3 (1) and (2) of the Motor Vehicles (Third Party Insurance) Laws 1954 and 1957. The second respondent was charged under the same Laws with the offence of permitting the first respondent to drive the said motor vehicle without having the requisite insurance cover in respect of third prty risks. The motor vehicle in question was registered under Part II of the Motor Vehicles Regulations 1951 to (No.2) 1957 as an Omnibus to carry either sixteen passengers or 23 1/2 cwt. of goods. It thus could be used for a dual purpose, but in fact it had always been used and was being used at the material

time only for the purpose of carrying goods. It appears that the vehicle had been adapted for the transport of goods. The driver (first respondent) was the holder of a driving licence under the relevant Regulations entitling him to drive all classes of vehicles with the exception of an "Omnibus". There was at the material time in force a policy of insurance against third party risks covering the use of the vehicle for carrying goods *viz.* use as a "Motor Lorry" but excluding use for carriage of passengers for hire or reward *viz.* excluding use of the vehicle as an omnibus". The Insurance Company would not be "on risk" in case the driver was not a person duly licensed under the relevant Laws and the Regulations. The point in this case was whether on those facts the Court of trial was right in holding that neither of the respondents had committed the offence with which he was charged because at the material time, the driver (first respondent) was entitled under his driving licence to drive the vehicle in question and, consequently, on the evidence there was cover against third party risks. A further point was taken that evidence, given at the trial on behalf of the insurers to the effect that in the circumstances they considered themselves "on risk", was not admissible.

Held : (1) The first respondent was the holder of a licence entitling him to drive a "Motor Lorry", that is a motor vehicle so adapted as to show that its primary purpose is the carrying of goods. At the material time he was driving such a vehicle *viz.* a vehicle of the "Motor Lorry" class coming within Regulation 31 (2) (b), and not a public passenger vehicle of the "Omnibus" class coming under Regulation 31(2) (a) which was excluded from his licence.

(2) Consequently, he was permitted to drive the vehicle in question in accordance with the licensing regulations and, the policy being in force, there was cover against third party risks.

(3) The fact that the vehicle was registered as an "Omnibus" is immaterial. Registration is not the test for the classification of motor vehicles in connection with the validity of driving licences.

(4) A representative of the insurance Company gave evidence before the Court of trial, to the effect that in his opinion the insurers were at the material time "on risk". Evidence of this nature could not be acted upon because the condition of the policy is clear and the question to be determined was whether in the circumstances the first respondent was permitted to drive the vehicle in accordance with the licensing Laws of Cyprus. Therefore, this is not a case to which *Carnill v. Rowland* (1953) 1 All E.R.486 applied.

Decision of the Magistrate affirmed.

Case referred to:

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

Case stated.

The respondents were acquitted and discharged by the District Court of Nicosia (sitting at Morphou, Orphanides, Magistrate, Case No. 325/58) on the 29th of September 1958 of the following charges:

Respondent No. 1 of driving a motor vehicle without having in force a policy of insurance in respect of third party risks contrary to the provisions of the Motor Vehicles (Third Party Insurance) Laws 1954 and 1957, and respondent No.2 of permitting respondent No.1 to drive the aforesaid motor vehicle without having in force a policy of insurance in respect of third party risks contrary to the aforementioned Laws. On the application of the Attorney-General under the provisions of section 146 of the Criminal Procedure Law, Cap. 14, a case was stated by the learned Magistrate.

J. Ballard for the Appellants.

The respondents although duly notified did not appear.

Cur. adv. vult.

The facts and the points of law involved are fully set out in the judgment of the Court which was delivered by:

BOURKE, C.J. : This matter arises as the result of an application for a case stated made by the Attorney-General to the Magistrate at Morphou under section 146 of the Criminal Procedure Law Cap. 14. The respondents have had due notice but did not appear.

The first respondent was charged with the offence of driving a motor omnibus without having in force a policy of insurance in respect of third party risks under the provisions of the Motor Vehicles (Third Party Insurance) Laws, 1954 and 1957. At the same time the second respondent was charged under the same Laws with the offence of permitting the first respondent to drive his motor omnibus without having the requisite insurance cover in respect of third party risks.

The learned Magistrate came to the conclusion that on the facts the necessary insurance was in force and the respondents were accordingly acquitted and discharged.

On the 7th February, 1958, the first respondent, who was employed by the second respondent as a driver, drove on a road a motor vehicle belonging to the second respondent who had authorised him to drive it on the occasion. The vehicle was registered under the Law as an omnibus to carry either 16 passengers or 23 1/2 cwt. of goods. It thus could be used for a dual purpose but in fact it had been used and was being used at the material time for the purpose of carrying goods. It appears that it had been adapted for the transport of goods.

The owner had taken out a policy covering third party risks in respect of the vehicle, which was in force and which admittedly extended to the use of the vehicle for the carrying of goods but not for the carrying of members of the public as passengers in return for payment, that is to say, as an omnibus in the ordinary sense of the word. The relevant clauses taken from the certificate of insurance are as follows:-

"Persons or classes of persons entitled to drive:

(a) The policy holder.

(b) Any other person provided he is in the policy holder's employ and is driving on his order or with his permission. 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 so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle.

Limitations as to use.

Use in connection with the policy holder's business.

Use for social domestic and pleasure purposes.

Use for the carriage of passengers (other than reward or for hire).

The policy does not cover.

Use for racing pacemaking reliability trial or speed testing.

Use whilst drawing a trailer except the towing of any one disabled mechanically propelled vehicle.

Use for the carriage of passengers for hire or reward."

The first respondent was the holder of a driving licence which entitled him to drive all classes of vehicles including a motor lorry but excluding an omnibus. Regulation 31 of the Motor Vehicles Regulations, 1951, to (No.2) 1957 reads as follows:—

"31. (1) A driving licence shall, unless expressed to be valid for all classes of motor vehicles, be valid only for the class or classes of motor vehicles specified therein, but may by endorsement of the licence by the Registrar be extended to any other class of motor vehicles.

(2) For the purposes of this Regulation motor vehicles are classified as follows, namely,

(a) Omnibus,

(b) Motor lorry........".

And then follow eight further classifications of vehicles. Regulation 26 reads—

"26. Subject to the provisions of Regulations 42 and 44 no person shall drive a motor vehicle on a road unless he is the holder of a driving licence, and no person shall employ, suffer or permit any person to drive a motor vehicle on a road unless the person so employed, suffered or permitted is the holder of a driving licence".

The argument for the appellants is that the vehicle was registered as a motor omnibus and the fact that it was registered for the purpose of carrying a certain number of passengers or a specified weight of goods did not render it any less an omnibus within the meaning of regulation 31 (2) (a). The driver held a licence to drive which was not valid for the omnibus class of motor vehicle : consequently he was not a person permitted in accordance with the licensing regulations to drive this particular vehicle and the insurance company was not on risk having regard to the terms of the proviso in the policy quoted above. The fact that the vehicle had been adapted and had been used and was being used at the material time for one of the purposes for which it was registered, namely, the carriage of goods, did not affect the issue.

In support of this proposition reference has been made to various definitions. "Motor omnibus" in Regulation 2 of the Motor Car Regulations, 1951, to 1953, is defined to mean, unless the context otherwise requires,—

"a public service motor car having seating accommodation for more than six passengers".

"Public service motor car", which words occur in that definition, was defined in the same regulation but this was deleted by regulation 3 of the Motor Vehicles (Amendment) Regulations, 1954. *There is, however, a definition of "public service motor *vehicle*" in section 2 of the Motor Vehicles and Road Traffic Law, 1954, as follows :—

"public service motor vehicle" means a motor vehicle used for the conveyance of passengers, whether used also for the carriage of goods or not, for hire or reward whether under contract to any person or plying for hire generally.".

In the same section "motor lorry" is defined as meaning:—

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*Note : By the Motor Vehicles (Amendment) Regulations, 1954, Reg. 1, the Motor Car Regulations 1951 to 1953, referred to therein as "the principal Regulations" may be cited together with the amending Regulations as "The Motor Vehicles Regulations" 1951 to 1954. And by Regulation 2 of the amending Regulations the principal Regulations have been amended by the substitution of the words "Motor Vehicle" for the words "Motor Car" wherever they occur.

"a motor vehicle which is so constructed or adapted as to show that its primary purpose is the carriage or haulage of goods or merchandise but does not include a light van, that is to say, a motor vehicle not exceeding thirty horse power nor exceeding two tons unladen weight, primarily designed for the carriage of goods".

Now on the face of it the vehicle driven by the first respondent was a motor vehicle so adapted as to show that its primary purpose was the carriage of goods. If it is to be regarded as coming within the class of motor vehicle referred to in regulation 31 (2) (b), that is, a "motor lorry", then the first respondent was licensed under Law to drive it. But it is argued that it was registered as a motor omnibus and that "omnibus" in regulation 31 (2) (a) must be given the artificial meaning provided for the words "motor omnibus" in the definition quoted above. This meaning, it is said, allows for use of the vehicle for the conveyance of passengers and also the carriage of goods and stress is laid upon that. If the words "public service motor vehicle," which are the subject of definition, occurred in the definition of "motor omnibus," this contention could perhaps be more readily appreciated; but, as has been seen, they do not. Moreover the old definition of "public service motor car" differs materially from the present definition of "public service motor vehicle". It is submitted that a motor vehicle classed in regulation 31 (2) (a) as an "omnibus" must take its character from its registration. It seems to us that if the regulation-making authority had intended to make registration the test for the classification of motor vehicles in connection with the validity of driving licences, it would have said so or employed some words to make this clear. There is no reference to registration in regulation 31 ; and it is significant that the classification in paragraph (a) thereof is "omnibus" and not "motor omnibus" which has under the law a special meaning. An omnibus, in its ordinary meaning, is a public passenger vehicle. The presumption is that the single word "omnibus" was employed with deliberation. It is likely that greater strictness would be observed in the granting of a licence to the driver of a public passenger-carrying vehicle. The first respondent did not have such a driving licence but he did hold a licence entitling him to drive a "motor lorry", that is, a motor vehicle so adapted as to show that its primary purpose is the carrying of goods. And on the facts he was driving such a vehicle on the occasion under reference in the charge, that is to say, a class of vehicle coming within regulation 31 (2) (b), and not a public passenger vehicle, which comes within regulation 31 (2) (a). In the opinion of this Court the learned Magistrate came to a correct conclusion. Since the driver was permitted to drive in accordance with the licensing regulations, the policy was in force and there was cover against third party risks.

We think, however, that this was not a case to which

Carnill v. Rowland (1953) 1 All E.R. 486, applied. A representative of the insurance company was heard to testify before the trial Court as follows:

> "It has been brought to my knowledge that this vehicle is registered as an omnibus, which also allows the carrying of goods. It is my opinion that the Insurance is valid if at the material time the vehicle was being used for the carrying of goods only. The question of registration is not material as far as the liability of the Insurance Co. is concerned. What is of importance is the use of the vehicle at the time of the alleged offence. I have obtained instructions from my Head Office in London to testify to this effect".

Evidence of this nature could not be acted upon because the condition of the policy is clear and the question to be determined was whether in the circumstances the first respondent was permitted to drive the vehicle in accordance with the licensing laws of Cyprus. The decision of the learned Magistrate is confirmed.

Decision of the Magistrate affirmed.