

ANTONIS ANASTASSIADES,

*Appellant,*

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ANTONIS  
ANASTASSIADES

v.

v.

THE POLICE

THE POLICE,

*Respondents.*

*(Criminal Appeal No. 3463).*

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*Road Traffic—Careless driving—Section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Whether notion of driving without due care and attention in the said section 6, can apply to a situation involving the manner of carrying passengers—Boy getting on to truck with driver's permission—Four other children getting thereon whilst truck was driven slowly—One such child falling off and injured—No lack of due care and attention established either by direct evidence or by proper inference—Fact that driver allowed said boy to travel on the truck not considered as a sufficient proof of such lack of due care and attention.*

*Road Traffic—Carrying passengers in a vehicle without fixed seats—Regulation 51(e) of the Motor Vehicles Regulations, 1959–1970—Boy getting on to a truck with driver's permission—Offence committed.*

*Criminal Procedure—Sentence—Conviction for offences on two counts and sentence imposed only on the first count—Appeal against conviction on first count allowed and dismissed on second count—Imposition of sentence on second count by Court of Appeal.*

*Careless Driving—See, under "Road Traffic".*

*Carrying passengers without fixed seats—See, under "Road Traffic".*

The Appellant was convicted of the offences of driving a motor vehicle without due care and attention contrary to s. 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and of carrying passengers in a vehicle without fixed seats, contrary to regulation 51(e) of the Motor Vehicles Regulations, 1959–1970. He was sentenced to pay a fine of £7 in respect of the former offence, but no sentence was passed on him in respect of the latter.

1973

Sept. 27

—  
ANTONIS  
ANASTASSIADES

v.  
THE POLICE

While Appellant was driving his truck one child got thereon with his permission and four other children, having taken advantage of the fact that the truck was proceeding very slowly, got on to the trunk too. As the truck was proceeding very slowly along a rural road, one of the children fell off and was injured.

Regarding Appellants conviction for the first offence counsel for the Appellant submitted that the fact that his client permitted one of the boys to travel on the truck was not sufficient in order to establish beyond reasonable doubt that the Appellant was driving without due care and attention. Counsel stressed that the trial Judge did not reject Appellant's explanation that the other children climbed on the truck without his permission having taken advantage of the fact that the truck was proceeding very slowly. He further submitted that the notion of driving without due care and attention relates only to the management of a vehicle from the point of view of driving it and it does not apply to the manner of carrying passengers in a vehicle.

Counsel for the Respondents argued that the provision about driving without due care and attention, in the aforesaid s.6, is applicable to a situation such as the one in the present case and referred, in this respect, to Wilkinson's Road Traffic Offences, 7th ed. p. 232 and to the case of *Pawley v. Wharldall* [1965] 2 All E.R. 757.

*Held, I. With regard to the conviction on the first count:*

1. We do not think that it is necessary to decide definitely whether the notion of driving without due care and attention, in section 6, can apply to a situation involving the manner of carrying passengers in a vehicle, because, even if we were to assume that it can so apply, we do not think that there has been established, in this respect, either by direct evidence or by proper inference, that there was any lack of due care and attention on the part of the Appellant.

2. We do not consider as sufficient proof of such lack of due care and attention the fact that he allowed one of the boys to travel on the trunk.

*Held, II. With regard to the conviction on the second count:*

It has been established beyond any doubt that the Appellant permitted one of the children to get on to the truck; therefore,

we find no difficulty in dismissing his appeal in so far as the second count is concerned.

*Appeal allowed in part.*

Cases referred to:

*Pawley v. Wharldall* [1965] 2 All E.R. 757.

**Appeal against conviction.**

Appeal against conviction by Antonis Anastassiades who was convicted on the 30th May, 1973 at the District Court of Nicosia (Criminal Case No. 12106/71) on one count of the offence of driving without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and on one count of the offence of carrying passengers in a vehicle without fixed seats contrary to regulations 51(e) and 66 of the Motor Vehicles Regulations, 1959-1970 and section 3 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Hji Nicolaou, Ag. D.J. to pay a fine of £7 on count 1 and no sentence was imposed on him on count 2.

*A. Eftychiou*, for the Appellant.

*A. Evangelou*, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLIDIS, P.: The Appellant appeals against his convictions in respect of the offences of driving a motor vehicle without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, and of carrying passengers in a vehicle without fixed seats, contrary to Regulation 51(e) of the Motor Vehicles Regulations, 1959-1970. He was sentenced to pay a fine of £7, in respect of the former offence, but no sentence was passed on him in respect of the latter, because apparently the trial Court took the view that this was not necessary, as both offences arose out of the same facts.

The facts of this case are, briefly, that on the 12th August, 1971, while the Appellant was driving his truck, which was loaded with a barrel containing water, five children had got on to the back of the truck, where the barrel was; as the truck was proceeding very slowly along a rural road, one of the children, a four years old girl, fell off and was injured.

It has been established beyond any doubt that the Appellant permitted one of the children, a twelve years old boy, to get on to the truck; therefore, we find no difficulty in dismissing his

1973  
Sept. 27

—  
ANTONIS  
ANASTASSIADES  
v.  
THE POLICE

1973  
Sept. 27

—  
ANTONIS  
ANASTASSIADES  
v.  
THE POLICE

appeal in so far as the second of the aforesaid offences is concerned.

In relation to the Appellant's conviction for the first offence, counsel for the Appellant has submitted that the fact that his client permitted the aforementioned boy to travel on the truck was not sufficient in order to establish beyond reasonable doubt that the Appellant was driving without due care and attention; counsel stressed that the trial Judge did not reject the Appellant's explanation that the other children climbed on the truck without his permission, having taken advantage of the fact that the truck was proceeding very very slowly; it was submitted, also, that the notion of driving without due care and attention relates only to the management of a vehicle from the point of view of driving it and it does not apply to the manner of carrying passengers in a vehicle.

On the other hand, counsel for the Respondents has argued that the provision about driving without due care and attention, in section 6 of Cap. 332, is applicable to a situation such as the one in the present case and he has referred us, in this respect, to Wilkinson's *Road Traffic Offences*, 7th ed., p. 232, as well as to the case of *Pawley v. Wharldall* [1965] 2 All E.R. 757. That, however, was a case where the charge was based on section 3 of the Road Traffic Act, 1960, in England (which corresponds, more or less, to our section 6 of Cap. 332) and the offence charged was that of driving without reasonable consideration for other road users; and it is quite clear that both such sections create two distinct offences, that of driving without due care and attention and that of driving without reasonable consideration for other road users (see, also, in this connection Terrell's *Law of Running-Down Cases*, 3rd ed., 184).

In the present case we do not think that it is necessary to decide definitely whether the notion of driving without due care and attention, in section 6, above, can apply, in certain circumstances, to a situation involving the manner of carrying passengers in a vehicle, because, even if we were to assume that it can so apply, we do not think that there has been established, in this respect, either by direct evidence or by proper inference, that there was any lack of due care and attention on the part of the Appellant; we do not consider as sufficient proof of such lack of due care and attention the fact that he allowed the twelve years old boy to travel on the truck, nor do we find as

safe, for the purposes of proof of guilt, the inference of the trial Judge—who did not find definitely that the Appellant knew of the presence of the other children on the truck—that, having seen children on the road, the Appellant should have anticipated, if he was prudent, that some of them might have got on to the truck, because it was being driven very slowly and children had climbed on to the truck in similar circumstances in the past. We have, therefore, decided to set aside the conviction of the Appellant as regards the first offence and, so, to acquit him of driving without due care and attention.

Due to the setting aside of the conviction of the Appellant on the first count the sentence passed on him in respect thereof has to be set aside, too; but, as no sentence was passed on the Appellant in relation to the second count and as the appeal regarding conviction on that count has been dismissed, we think that the only proper course for us is to impose again a sentence of a fine of £7 on Appellant regarding the second count; and to order him, also, to pay £13 costs of the prosecution (as he was ordered to do by the trial Court).

This appeal is, therefore, allowed in part and the judgment of the trial Court is varied accordingly.

*Appeal allowed in part.*