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PERISTERONO-
PIGHI
TRANSPORT
CO. LTD.

v.

TOUMAZOS TH.
TOUMAZOU

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

PERISTERONOPIGHI TRANSPORT CO. LTD.,

Appellants-Plaintiffs,

v.

TOUMAZOS TH. TOUMAZOU,

Respondent-Defendant,

(Civil Appeal No. 4868).

Motor Transport—Breach of statutory duty—Vehicle operated without licence in violation of the Motor Transport (Regulation) Law 1964 (Law No. 16 of 1964)—Remedies available to licensees—Damages—Injunction.

Motor Transport (Regulation) Law 1964, (Law No. 16 of 1964)—Licensees and wrongdoers thereunder—Respective rights and obligations—Remedies available to licensees against wrongdoers—Intention of the legislature that licensees should be protected adequately against wrongdoers, i.e. persons operating on the same route vehicles in violation of said statute without the licence required thereunder—Requirement to use a motor vehicle according to the conditions of its licence, imposes not only a mere public duty, but also a duty enforceable by an individual aggrieved, in the instant case by the duly licensed plaintiffs-appellants—That being so, independently of any penalties enforceable at the instance of the Authority created by the statute.

Statutory duty—Breach of—Remedies available—Damages—Injunction—Whether in a given case an individual can sue in respect of a breach of statutory duty—General rules applicable.

Breach of statutory duty—See supra passim.

Civil Wrongs—See supra passim.

Torts—See supra passim.

The appellants at all material times to these proceedings were operating a bus service from Peristeronopighi village to Famagusta under the required licence, issued to them under the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964). The respondent on the other hand, without obtaining such licence, was operating on the same route

a bus service, using for the purpose bus DY.334. Hence, the appellants brought the present action in the District Court of Famagusta against the respondent, claiming damages for breach of statutory duty and an injunction restraining the defendant (respondent) from so operating the vehicle in question. The District Court dismissed the action on the broad ground that defendant's (respondent's) conduct in violation of the Motor Transport (Regulation) Law 1964 gave to the plaintiff no right to a civil claim against the defendant. It is against this dismissal of the action that the plaintiffs took the present appeal.

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It was argued on behalf of the appellants that although the object of the statute in question (*supra*) was to regulate motor transport for the benefit of the public in general, nevertheless in order to achieve his purpose, the legislator created a class of persons—the licensees under the statute—whom he subjected to certain conditions and limitations in the exercise of their trade, as against certain privileges and benefits conferred by, or resulting from, their licence. These persons—it was further submitted—have a special interest in the proper application of the statute ; and any damage suffered due to the violation of its provisions by a wrongdoer, a person belonging to the aforesaid class of licensees is entitled to sue the wrongdoer for damages and/or injunction independently of any penalties enforceable at the instance of the public authority created by the statute.

Upholding the appellants' submission and allowing the appeal the Court :—

Held, (1). In the case in hand, we have a defendant who knowingly used a motor vehicle under his control for the transport of individual passengers for reward, in violation of express statutory provisions and contrary to the state of things which the statute created and was intended to preserve ; a defendant who continued doing so for a period of at least five months, on a route covered by the licence issued to the plaintiffs (now appellants) under the statute, causing damage to them as statutory licensees for the transport of passengers on the same route, according to the conditions of their licence.

(2) In these circumstances we think that it is the intention of the legislator that the licensees should be protected against such a wrongdoer ; and we moreover think that, as this case

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shows, the penalties provided in the statute apparently do not afford an adequate remedy for the protection of the statutory licensees.

(3) Viewing the statute in the circumstance in which it was made and to which its provisions relate, we think that the requirement to use a motor vehicle according to the conditions of its licence, imposes not only a public duty but also a duty enforceable by an individual aggrieved. The statute can thus be more effectively enforced, which must have been the intention of the legislator in this connection.

(4) We hold, therefore, that the plaintiffs (now appellants) are entitled to sue the defendant (now respondent) for the damage caused to them by violating the statute in the way he did ; and that they (the plaintiffs) are entitled to succeed on their claim for an injunction restraining the defendant (respondent) from causing them damage by violating the provisions of the Motor Transport (Regulation) Law 1964 (Law No. 16 of 1964) under which they operate their licensed vehicles ; and that they are also entitled to recover damages against the defendant as assessed by the District Court (viz. £252) for the loss caused to them by the breach of his statutory duty.

(5) We allow the appeal and set aside the judgment of the trial Court dismissing plaintiffs' action. There will be judgment for the plaintiffs against the defendant for £252 (21 weeks period at £12 per week), with costs here and in the District Court. The plaintiffs (appellants) may apply for the injunction sought if still necessary.

*Appeal allowed with costs
here and in the Court below.*

Cases referred to :

Solomons v. R. Gertzenstein Ltd. and Others [1954] 2 Q.B. 243
at p. 256 per Somervell, L.J. *followed* ;

Reffell v. Surrey County Council [1964] 1 All E.R. 743 at p. 746
per Veale, J., *followed* ;

Kelly v. W. R. N. Contracting, Ltd., and Another (Burke Third Party) [1968] 1 All E.R. 369.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Famagusta (Pikis, D.J. and Christoforides, Ag. D.J.)

dated the 12th December 1969 (Action No. 583/69) whereby their claim for damages against the defendants for, *inter alia*, operating a vehicle contrary to the legislation regulating the use of the said vehicle and for an injunction restraining the defendants from so operating the vehicle in question was dismissed.

Ch. Mylonas, for the appellants.

L. Papaphilippou for the respondent.

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The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellants (plaintiffs in the action) are a private limited company registered in Cyprus under the Companies Law, Cap. 113, in August, 1965. From its memorandum and articles of association which were put in evidence as *exhibit* 1, it is apparent that the company was formed by the six persons who became its original shareholders, for the purpose of carrying on their respective transport business in co-operation, instead of competition, with each other.

The trial Court described the formation of this company in these words :

“ A number of drivers conducting bus services to several destinations from the village of Peristeronopighi, apparently decided to form this company considering it to be to their mutual benefit to eliminate competition between them. Most of them were employed by the company as drivers to man the buses of the company ; at a subsequent stage the defendant was employed by the company in a similar capacity.”

Article 9 of their articles of association expressly and emphatically provided that :—

«Οὐδείς ἐκ τῶν μελῶν τῆς Ἑταιρείας θὰ δικαιούται νὰ διενεργῇ οἰανδήποτε ἐργασίαν ἀμέσως ἢ ἐμμέσως παρεμφεροῦς ἢ παραπλησίας φύσεως σχετιζομένης ἢ ἀνταγωνιζομένης πρὸς τὴν Ἑταιρείαν.»

“ (None of the members (shareholders) of the company shall be entitled to carry on any business directly or indirectly of a similar or parallel nature connected or competitory to the business of the company.”

The articles of association further provided that the Board of Directors shall be entitled in their absolute discretion and without ascribing any reason for doing so, to decline any transfer or registration of shares whether

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paid up or otherwise ; and that a representative of the Pancyprian Union of Professional Transport Owners (P.E.E.A.) shall perform the duties of Managing Director of the company. This sufficiently indicates the nature of the contract under which the parties thereto formed themselves into a private company.

The respondent (defendant in the action) was one of the original shareholders ; and subsequently one of the drivers of the company as stated above. His employment as a driver, however, was terminated in July, 1968, in a way which led to a claim on his part, decided eventually by the Arbitration Tribunal, where he was awarded £136.— compensation against the appellants ; but he continued to be a shareholder of the company as stated in paragraph 2 of the defence, where he complains that as a shareholder he is the “ minority ”.

A few months later, in December, 1968, the respondent acquired omnibus DY 334 which was already licensed for the transport of passengers on contract, as distinguished from the transport of passengers on authorised route trips by duly licensed vehicles. In March, 1969, he transferred the registration of this vehicle to his wife ; but he retained its control until August, 1969, when the vehicle was sold to a third person. Subsequently the respondent acquired a seven-seater van under registration BC 366 and had under his control private car BJ 997 for business purposes.

The manner in which bus DY 334 was being operated by the respondent and his wife led the appellants to the filing of the present action on March 11, 1969, with a claim—

- (a) for damages for operating the vehicle in question in competition to the company's business, contrary to the company's memorandum and articles of association and contrary to the legislation regulating use of the vehicle in question ;
- (b) an injunction restraining the defendant from so operating the vehicle in question ; and
- (c) a declaration that the respondent is not entitled to collect fares for the transport of passengers on the route in question.

Together with their action, the appellants applied for an interim order restraining the respondent from operating bus DY 334 on the regulated route for passengers between Peristeronopighi village and Famagusta town, pending the

hearing and determination of the action. The application was supported by an affidavit sworn by the secretary of the company wherein the facts upon which the application was based were stated. The appellants obtained *ex parte*, on March 12, 1969, an interim order upon filing a security bond in the sum of £300 as directed by the Court. The order was made returnable on March 24, 1969, and an endorsed copy was served on the defendant on the following day, March 13.

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The respondent opposed the interim order, supporting his opposition by an affidavit wherein he stated that bus DY 334 is not registered in his name ; and contending that in any case the provisions in the articles of association of the company prohibiting him from acting in the way complained of, were in restraint of trade and, therefore, of no validity.

After a strongly contested hearing, the Court eventually reserved its decision on May 31, 1969 ; and made its ruling on June 26, 1969. The learned trial Judge after dealing with the factual as well as the legal aspect of the application before him in a careful and elaborate judgment, decided to make the interim injunction absolute, upon raising the security from £300.- to £500. The respondent appealed from that decision ; but his appeal was dismissed on December 18, 1969, (Civil Appeal No. 4824 between the same parties, reported in this Part at p. 67 *ante*).

Pending the hearing of the appeal against the interim order, the action went to trial which ended on December 12, 1969, with the dismissal of plaintiffs' action for the reasons stated in the detailed and carefully considered judgment of the District Court, which is the subject-matter of this appeal. " We find—the District Court say— that article 9 of the articles of association is void, because it infringes the provisions of section 27 (1) of Cap. 149 (the Contract Law). Likewise we have come to the conclusion that Law 16/64 (regulating motor-transport) confers no civil remedy to the plaintiffs ". This is the foundation of the trial Court's judgment ; and the main question upon which this appeal turns.

We find it unnecessary to deal in detail with the factual aspect of the case which was fully considered and clearly stated in the judgment of the trial Court. We propose to take the material facts upon which this appeal falls to

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be decided, from the findings of the trial Court which were hardly contested ; and which are amply supported by the evidence.

“ The defendant admitted—the trial Court say—having in his possession ‘ bus DY 334 and minibus BC 366 and further admitted that on a great number of occasions these vehicles were used to carry passengers. He disputed however, that he ever received a direct reward from his passengers and maintained that the only use to which he put his car was use on hire in accordance with his licence.”

After dealing with the evidence on the point and the contentions based thereon, the trial Court add :—

“ We have seen plaintiffs’ witnesses and were well impressed by them. We accept their evidence. On the other hand the version of the defendant as to the use to which he put ‘ bus DY 334 is most unconvincing We find that the defendant was conducting a ‘ bus service from Peristeronopighi to Famagusta and on occasions to Nicosia and Lefkoniko. We cannot exclude the possibility that the defendant was co-operating with a certain Sahis whenever this course was found to be to their mutual advantage. Moreover we find that in Sahis defendant found what appeared to him to be a cover of legality ”.

The trial Court then proceeded to make their findings on the damage “ to which the plaintiffs will be entitled had they been successful.” It was right that the trial Court should proceed to assess the damages so that we do not have to return the case to the trial Court for the purpose. This is one more case demonstrating the usefulness of this practice. Regarding damages the trial Court say :—

“ It has been established to our satisfaction that during the first five months of the year 1969, the defendant has been using ‘ bus DY 334 for the purpose of carrying passengers to Famagusta and Lefkoniko and occasionally to Nicosia. There is evidence before us indicating that this position may have continued after the month of May, 1969, but in view of the evidence of P.W.1 (Kyriacos Skettos) we feel that the only justifiable finding is the one we have just made On the totality of the evidence we feel justified to rule that the use of van BC 366 was no source of damage to the plaintiffs We find as a fact from the evidence before us that during the first five months

of 1969 the defendant put to use 'bus DY 334 and occasionally as indicated above car BJ 997 to purposes competing with those of the company Therefore, from all the evidence before us and having given the matter our full consideration we hold that the daily fall in the takings of the plaintiffs from the acts of the defendant in using 'bus DY 334 and occasionally car BJ 997 as he did, was £2.- per working day. This loss extended over the first five months of the year 1969 at the rate of £2.- per working day, six days a week. Even though the plaintiffs succeed in establishing an infringement by the defendant of the provisions of Law 16/64 we are of the view that the provisions of the Law confer no civil remedy to the plaintiffs."

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The District Court having held that defendant's conduct in violation of the Motor Transport (Regulation) Law (No. 16 of 1964) gave to the plaintiffs no right to a civil claim against the defendant, proceeded to deal with the other legal question *i.e.* whether Article 9 of the articles of association of the plaintiffs is an agreement in restraint of trade, falling within the provisions of section 27 (1) of the Contract Law, Cap. 149 ; it came to the conclusion that the question should be answered in the affirmative ; that the agreement did not fall within the exceptions in section 27 (2) ; and that plaintiff's claim based on that article must fail. They dismissed the action with costs, making a declaration on the counter-claim that the provisions of Article 9 of the articles of association are void ; and awarded the defendant his cost in the counter-claim.

Against this judgment, the plaintiffs took the present appeal on a number of grounds stated in their notice of appeal, which however, may be summarised in two :—

1. That the trial Court erred in holding that the plaintiffs could not sue the defendant for the damage caused to them by using his motor vehicles for the transport of passengers for reward, contrary to the provisions of the Motor Transport (Regulation) Law 16 of 1964 ; and

2. That in view of the evidence, the trial Court erred in holding that Article 9 of the plaintiffs' articles of association, is void as an agreement in restraint of trade, not falling within the exceptions in section 27 (2) of the Contract Law.

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The appeal before us was, however, solely argued on the first ground, consequently, we shall not deal with the second ground, leaving the legal aspect of the question entirely open to argument, if raised in another case. Regarding the first ground, it was submitted on behalf of the appellants that although the object of the statute in question (Law 16/1964) was to regulate motor transport—answering a “long-felt need”, as the trial Court put it,—for the benefit of the public in general, nevertheless in order to achieve his purpose, the legislator created a class of persons, the licensees under the statute, whom he subjected to certain conditions and limitations in the exercise of their trade, as against certain privileges and benefits conferred by, or resulting from their licence. These persons—it was submitted—have a special interest in the proper application of the statute ; and for any damage suffered from the violation of its provisions by a wrongdoer, a person belonging to the class of licensees is entitled to sue the wrongdoer for such damage, independently of any penalties enforceable at the instance of the public authority concerned.

The submission we think, is well founded. Without going back to the very old cases where the Courts started formulating guiding principles for such matters, more than two hundred and fifty years ago (1704) when Holt C.J. expressed the view that “it would be a fine thing to make a law by which one has a right but no remedy, but in equity”, we would refer to the case of *Solomons v. R. Gertzenstein Ltd. and Others* [1954] 2 Q.B. p. 243, where the matter was considered on appeal from a judgment of Lord Goddard, C.J. and where the presiding judge, Somervell, L.J. after dealing with several cases in which the English Courts attempted to shape and lay down such guiding principles, had this to say (at p.256) :—

“I hope that these citations are sufficient to establish that there is no rule of thumb formula and one must, as Atkin L.J. said, consider the Act.”

He was referring to a citation made earlier in his judgment where Atkin L.J. formulated the question in these words (at p. 255) :

“Therefore the question is whether these regulations (creating a statutory duty) viewed in the circumstances in which they were made and to which they relate, were intended to impose a duty which is a public duty only, or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved.”

Some ten years later in *Reffell v. Surrey County Council* [1964] 1 All E.R. 743, Veale, J., dealing with a claim for damages for injuries to a school-girl resulting from breach of a statutory duty on the part of the public authority, had this to say (at p.746) :—

“ I think that the best approach to this question is that set out in Dr. Charlesworth’s book on Negligence (4th Edn. 1962 p.454, para.963). It has been said that no universal rule can be formulated which will answer the question whether in any given case an individual can sue in respect of a breach of statutory duty. In addition to the general rules set out in the preceding section, however, the most important matters to be taken into consideration appear to be : (a) Is the action brought in respect of the kind of harm which the statute was intended to prevent ? (b) Is the person bringing the action one of the class which the statute desired to protect ? (c) Is the special remedy provided by the statute adequate for the protection of the person injured ? If the first two questions are answered in the affirmative and the third in the negative then, in the most cases, the individual can sue.”

Kelly v. W.R.N. Contracting, Ltd., and Another (Burke Third Party) [1968] 1 All E.R. p. 369 where the claim against the third party rested on the breach of the Traffic Signs Regulations and General Directions, is another recent case in point.

In the case in hand, we have a defendant who knowingly used motor vehicles under his control, for the transport of individual passengers for reward, in violation of express statutory provisions and contrary to the state of things which the statute created and was intended to preserve ; a defendant who continued doing so for a period of at least five months, on a route covered by the licence issued to the plaintiffs under the statute, causing damage to them (the plaintiffs) as statutory licensees for the transport of passengers on the same route, according to the conditions of their licence. In these circumstances we think that it is the intention of the legislator that the licensees should be protected against such a wrongdoer ; and we moreover think that, as this case shows, the penalties provided in the statute, apparently do not afford an adequate remedy for the protection of the statutory licensees. Viewing the statute in the circumstances in which it was made and to which its provisions relate, we think that the requirement

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to use a motor vehicle according to the conditions of its licence, imposes not only a public duty but also a duty enforceable by an individual aggrieved. The statute can thus be more effectively enforced, which must have been the intention of the legislator in this connection.

We therefore hold that the plaintiffs are entitled to sue the defendant for the damage caused to them by violating the statute in the way he did. And that they (the plaintiffs) are entitled to succeed on their claim to have the defendant restrained from causing to them damage by violating the provisions of the Motor Transport (Regulation) Law under which they operate their licensed vehicles ; and that they are also entitled to recover damages against the defendant as found by the trial Court, for the loss caused to them by the breach of his statutory duty. We allow the appeal and set aside the judgment of the trial Court dismissing plaintiffs' action. There will be judgment for the plaintiffs against the defendant for £252.— (21 weeks period at £12 per week) —with costs here and in the District Court. The plaintiffs may apply for the injunction sought if still necessary.

*Appeal allowed with costs here
and in the Court below.*