

1980 September 25

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

GEORGHIOS CHRISTOU HAVATZIA,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4158*).

5 *Criminal Law—Sentence—Driving without a policy in respect of third party risks—£100 fine and six months’ disqualification—Mitigating factors—Financial position of appellant, a professional driver, aged 64, with no recent similar previous convictions—Effect of financial burden on appellant of the said sentences renders them manifestly excessive—Fine reduced—Disqualification affirmed.*

10 *Disqualification—Disqualification from driving—Constitutes part of the punishment—Six months’ disqualification for careless driving and for driving without a policy in respect of third party risks—Affirmed.*

Criminal Law—Sentence—“No recent similar previous convictions”—Weight.

15 The appellant was found guilty, on his own plea, of the offences of careless driving and of using a motor-vehicle without having in force a policy in respect of third party risks and was sentenced to a fine of £70 on the first count and a fine of £100, together with a sentence of disqualification from driving for a period of six months, on the second count.

20 He was 64 years of age, a professional driver and had no recent similar previous convictions. The offences in question arose out of an accident, at a road junction, in the course of which the appellant knocked down a pedestrian with his lorry.

Upon appeal against sentence:

25 *Held, (1) (after dealing with the weight to be attached to the*

statement “the appellant has no recent similar previous convictions”) that bearing in mind the past record of the appellant in relation also to his age and the fact that he is a professional driver and the financial burden that the six months’ disqualification from driving entails on him as well as his general financial position, the fine of £100 which has been imposed on count 2 should be reduced to £10.—as the aggregate effect of the financial burden on the appellant of the two types of sentences imposed for the second count renders the sentence thereon, viewed also in conjunction with the rest of the monetary sentences imposed on him, manifestly excessive. 5 10

(2) That disqualification constitutes part of the punishment and must, like every punishment, be justified by reference to the facts of the case and the personal circumstances of the accused; that the disqualification imposed in this case was appropriate in the circumstances; and that, accordingly, the appeal relating to the disqualification order must fail. 15

Appeal partly allowed.

Cases referred to:

Mirachis v. Police (1965) 2 C.L.R. 28; 20

Miltiadous v. Police (1970) 2 C.L.R. 81.

Appeal against sentence.

Appeal against sentence by Georghios Christou Havatzia who was convicted on the 16th July, 1980, at the District Court of Nicosia (Criminal Case No. 2202/80) on one count of the offence of driving without due care and attention, contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law No. 86/72), on one count of the offence of driving without having in force a policy in respect of third party risks, contrary to section 3(1)(2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and on two counts of the offences of driving without a motor vehicle licence and without a road worthiness certificate in force, contrary to regulations 16(1) 64(1)(4) and 71 of the Motor Vehicle and Road Traffic Regulations, 1973 and was sentenced by Nicolaou, D.J. to a fine of £70.—on the careless driving count, a fine of £100.—and six months’ disqualification on the third party risks count, 25 30 35

no sentence was passed on the motor vehicle licence count, and a fine of £15.—on the road worthiness certificate count.

Ch. Loizou, for the appellant.

A. Evangelou, Counsel of the Republic, for the respondents.

5 A. LOIZOU J. gave the following judgment of the Court. This is an appeal against the sentences imposed on a number of counts in a traffic prosecution on the ground that they are manifestly excessive. The appellant was found guilty on his own plea on four counts and sentenced as follows:

10 On count 1 for driving a motor-vehicle on a road without due care and attention, £70.—fine. On count 2 for using a motor-vehicle on a road without having in force a policy in respect of third party risks, £100.—fine, and disqualified from holding or obtaining a driving licence in respect of a motor-
15 vehicle for a period of six months from today. On count 3 for driving a motor-vehicle without its licence being in force, no sentence was imposed and on count 4, £15.—fine for using a motor-vehicle without a road worthiness certificate.

20 The arguments advanced on behalf of the appellant were however directed as against the sentences imposed on the first two counts.

The facts of the case are as follows:

The appellant who is 64 years of age is a professional driver. On the 18th January 1980, at 3.30 p.m. he was driving his
25 motor-lorry under registration number A.G. 367 along Makarios II square in Nicosia in the direction of the junction of Salamis and Stassinou avenues and Theodotou street. At the junction which is controlled by traffic lights, the appellant proceeded, as lights were green in his direction turning slowly left into
30 Salamis avenue. In doing so he struck with his lorry a pedestrian who was pushing a bicycle on his nearside by the corner some 25 ft. in Salamis avenue. The point of impact was one and a half feet from the pavement. The pedestrian, a 75 year old man was seriously injured. The learned trial Judge in
35 passing sentence took a serious view of the way the appellant drove his vehicle and negotiated a bend by overtaking much too closely to, and so showing indifference to the safety of, the pedestrian.

The appellant was stated to have no recent similar previous convictions. We take this statement to mean that the appellant should be dealt with as a man with no previous convictions; in our view that is how an accused person should be treated if statements to that effect are made by the prosecution with regard to previous convictions. 5

Having gone through the record and bearing in mind the past record of the appellant in relation also to his age and the fact that he is a professional driver and the financial burden that the six months disqualification from driving entails on him as well as his general financial position, we have come to the conclusion that we should reduce the fine imposed on count 2 to £10.—as in our view the aggregate effect of the financial burden on the appellant of the two types of sentences imposed for this count renders the sentence thereon, viewed also in conjunction with the rest of the monetary sentences imposed on the appellant, manifestly excessive. We do not interfere with the disqualification imposed, which we consider as appropriate in the circumstances. No doubt as stated in the cases of *Panayiotis Efstathiou Mirachis v. The Police*, (1965) 2 C.L.R. 28; and *Andreas Miltiadous v. The Police* (1970) 2 C.L.R. 81, disqualification constitutes part of the punishment and must, like every punishment, be justified by reference to the facts of the case and the personal circumstances of the accused. 10 15 20

For all the above reasons the appeal is allowed to the extent indicated. 25

Appeal partly allowed.