

1963

*Present: H. N. G. Fernando, J.**N. M. BANDA, Petitioner, and K. S. S. PERERA, Respondent**S. C. 16 of 1963—Application for Revision in M. C. Negombo, 13400**Motor Traffic Act—Section 136 (4)—Suspension of driving licence—Duty of Court to call upon the accused for his explanation—Gravity of the offence of driving a motor vehicle without an effective policy of insurance.*

An order of suspension of a driving licence should not be made without first giving the accused an opportunity of giving his explanation.

If, because of special circumstances, an order of suspension of the driving licence is not made under section 136 (4) of the Motor Traffic Act when a person is convicted of driving a motor vehicle without an effective policy of insurance, a substantial fine should be imposed.

APPPLICATION to revise an order of the Magistrate's Court, Negombo.

A. Wijesekera, with D. S. Wijesinghe, for accused-appellant.

R. I. Obeyesekere, Crown Counsel, for Attorney-General.

March 6, 1963. H. N. G. FERNANDO, J.—

The accused was charged in this case firstly with driving a motor vehicle without a revenue licence and secondly for driving the same vehicle without an effective policy of insurance in respect of its use.

—He pleaded guilty and was fined Rs. 10 on the 1st count and warned and discharged on the 2nd count. In addition, the learned Magistrate made order suspending the driving licence for a period of three months.

Counsel for the accused relies on *Ramson v. Ahamath*¹ and submits that the order of suspension of the driving licence should not have been made without first giving the accused an opportunity of giving his explanation.

I agree with the decision cited and would, therefore, set aside *pro forma* the order of suspension and remit the case to the Magistrate in order that he may hear the accused in regard to the matter of the suspension.

At the same time attention is drawn to sub-section (4) of section 136 of the Motor Traffic Act which requires a suspension order for at least 12 months to be made unless for special reasons to be recorded the Court decides either not to make the order or to reduce the period of suspension. Sub-section (4) indicates the gravity of the offence of driving a motor vehicle the use of which is not covered by insurance, and it seems to me that, if because of special circumstances an order of suspension is not made, an offence of this type should be punished with a substantial fine within the limits permitted by the Act.

Case remitted for consideration of sentence.
