

SOUTH AFRICA / JUDGMENT

S v Cronjé (571/03) [2004] ZASCA 73; 2005 (1) SACR 31 (SCA) (10 September 2004)

[2004] ZASCA 73

COURT

Supreme Court of Appeal

BEFORE

Nugent JA, Erasmus AJA, Ponnann AJA

CASE / FILE NUMBER

571/03

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REPUBLIC OF SOUTH AFRICA

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Reportable Case Number : 571 / 03

In the matter between L CRONJÉ APPELLANT and THE STATE RESPONDENT
Coram : NUGENT JA, ERASMUS and PONNAN AJA

Date of hearing : 17 AUGUST 2004 Date of delivery : 10 SEPTEMBER 2004

SUMMARY Road Traffic Regulations – Regulation 232 does not purport to lay down a standard for the determination of the actual mass or massload of a vehicle – whether the maximum permissible mass or massload has been exceeded is a question of fact. _____

J U D G M E N T

_____PONNAN AJA[1] The appellant was convicted in the Magistrates' Court on two charges, being contraventions, respectively, of regulations 234 and 236 of the National Road Traffic Regulations, 2000,[1] and both offences being taken as one for the purposes of sentence, he was sentenced to a fine of R3 000,00 or in default of payment thereof to imprisonment for a term 6 months. An appeal to the High Court (Pretoria) in respect of each conviction only, not having met with any success, the appeal now serves before this Court with the leave of the court a quo.[2] Both offences were allegedly committed on 24 October 2002 on the N4, a public road. The state alleged that the appellant operated a bus with registration letters and numbers CWV 330 GP in circumstances where the permissible maximum axle mass load of the vehicle of 10 200 kg was exceeded in contravention of regulation 234 in that the actual mass load was 12 020 kg (Charge 1) and that the permissible vehicle mass of the vehicle of 16 700 kg was exceeded in contravention of regulation 236 in that the actual mass was 18 260 kg (Charge 2).[3] At the commencement of the

trial, a document (Exhibit A) was adduced on behalf of the appellant in which the following formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, were recorded:

'1 On 25 October 2002 the accused operated a bus with licence number CWV 330 GP on the N4 a public road in the district of Middleburg.

2 The bus was a Mercedes Benz Passenger Coach issued with a roadworthy certificate authorising the bus to carry 45 passengers excluding the driver and fitted with pneumatic tyres.

3 The information plate of the bus reflected the following information

Gross axle mass (front): 6 500 kg

Gross axle mass (rear): 20 500 kg

Gross vehicle mass: 27 000 kg.

4 The notice in terms of regulation 245 reflected the following information:

45 seated passengers

0 standing passengers.

5 It is common cause that the State complied with the provisions of determining the mass of the axles as well as the vehicle, in terms of the National Road Traffic Act, 1996 [Act 93 of 1996] and Regulations, subject to paragraph 8. 6 It is common cause that the accused complied with the provisions of the National Road Traffic Act, 1996 and Regulations, subject to paragraph 8. 7 The mass of the front axle according to the mass-measuring bridge was 6 240 kg, the rear axle 12 020 kg and the total mass 18 260 kg, which is accepted as correct. 8 The dispute to be determined by the Court is, whether in law, the mass of a bus (passenger vehicle) must be determined by applying the prescribed statutory mass as determined in regulation 232 or the permissible maximum masses in terms of regulation 234 to regulation 237 by means of determining the actual mass on a mass-measuring bridge. 9 In the premises, the accused also dispute[s] mens rea in relation to the argument in paragraph 8.'

[4] Section 75 of the Act empowers the Minister to make regulations inter alia regarding:

- (i) The maximum mass, laden or unladen, of any vehicle ... and the maximum mass of any vehicle or any part thereof supported by the road or any specified area thereof, when any such vehicle is operated on a public road (ss d); (ii) The regulation of the operation and control of any vehicle on a public road, its construction ..., mass ..., body and load and the conditions on which it may be used (ss m); (iii) The protection of any public road, the mass, tyres and load of any vehicle in relation to any specified bridge or ferry,... (ss o); (iv) The determination of the number of passengers for the transport of which a certain class of motor vehicle is adapted and the number which may be transported, the general safety, comfort and convenience of passengers carried on or by such motor vehicle ... (ss s); and

(v) The additional duties for operators of specified classes of motor vehicles or operators engaged in activities which require additional safety measures for the protection of the public (ss z).

[5] Regulation 232 headed 'Mass of person and luggage for determining mass of load', to the extent here relevant reads:

'For the purposes of establishing the maximum mass of persons and luggage which may be conveyed on a motor vehicle –

(a) the mass of a person together with his or her personal effects shall, subject to

the provisions of regulation 231 be taken as 63 kg; and

(b) in the case of a motor vehicle which is fitted with –

(i) a luggage compartment, the mass of luggage shall be calculated at the rate of 100 kg per cubic metre; or

(ii) a roof rack, the mass of luggage shall be calculated at the rate of 75 kg per square metre of area of the roof rack:'

[6] Regulation 234 headed 'Permissible maximum axle massload of vehicle', reads:

'1 No person shall operate on an public road a minibus, bus, tractor or goods vehicle if the permissible maximum axle massload of such vehicle is exceeded. 2 The permissible maximum axle massload of a vehicle shall be the least of the mass limits determined by –

(a) Regulation 238 (1) in respect of a vehicle fitted with pneumatic tyres ...

(b) Regulation 239 (1) (a) (ii); and (c) Regulation 240 (a), (b) and (c).'Regulation 236 headed 'Permissible maximum vehicle mass', reads:

'1 No person shall operate on a public road a minibus, bus, tractor or goods vehicle if the permissible maximum vehicle mass of such vehicle is exceeded. 2 The permissible maximum vehicle mass of a vehicle shall be the least of the mass limits determined by –

(a) the sum of all the permissible maximum axle massloads and axle unit massloads of the vehicle as contemplated in regulations 234 and 235;

(b) regulation 239 (1) (a) (i);

(c) regulation 239 (2);

(d) regulation 239 (3); and

(e) regulation 241:

Provided that the permissible maximum vehicle mass of such vehicle shall not exceed 56 000 kilograms.’[7] It was submitted on behalf of the appellant that for the purpose of determining whether those regulations have been contravened regulation 232 requires it to be assumed that each passenger on the vehicle at the relevant time weighs no more than 63 kg, and that the luggage on the vehicle weighs no more than 100 kg per cubic metre of luggage space. The effect of the submission is that regulations 234 and 236 will not be contravened if the vehicle is carrying no more than the permissible number of passengers (in this case 45) irrespective of the actual massload on the axles and the actual mass of the vehicle.[8] I do not agree. Regulation 232 does not purport to lay down a standard for determining the actual mass of a vehicle, or the actual massload on its axles. In terms it purports only to prescribe a norm for establishing the 'maximum mass of persons and luggage' that may be conveyed on a vehicle. Whether the maximum permissible mass of the vehicle or the massload on the axles has been exceeded is a question of fact, which regulation 232 does not purport to determine. The purpose of regulation 232 is instead to provide a norm for determining whether a vehicle, once it is loaded, will ordinarily fall within certain standards that are provided for in the regulations.[9] Finally, it was argued on behalf of the appellant that he lacked mens rea. The statutory contravention was admitted by him. No further evidence was adduced by the appellant. Regulations 245 (1) (b) (vii) and (viii) prohibit the operation on a public road of a mini-bus, bus or goods vehicle unless the permissible maximum vehicle mass referred to in regulation 236 and the permissible maximum axle massload referred to in regulation 234, expressed in kilograms, is displayed in a conspicuous place on the vehicle in question. The appellant, who was a bus operator, should have known, in each instance, the permissible maximum vehicle mass, as also, the permissible axle massload permitted by the regulations for a vehicle of the type driven by him. To suggest in those circumstances, as happened in this case, that the State had failed to establish the requisite mens rea on the part of the appellant is wholly untenable. The trial court as also the court a quo quite correctly rejected that argument as being devoid of any substance. In that, neither can be faulted. [10] It follows that the appeal must fail and in the result it is dismissed

V M PONNANACTING JUDGE OF APPEAL

CONCURRING:NUGENT JAERASMUS AJA

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