1958 *Present :* Weerasooriya, J., and Sansoni, J.

THE UNITED INDIA FIRE AND GENERAL INSURANCE CO., LTD., Appellant, *and* WEINMAN, Respondent

S. C. 75—D. C. (Inty.) Colombo, 3,7015/M

Addition of parties—Policy of insurance in respect of third parties—Right of insurer to be added as party in a collision case—Motor Traffic Act, No. 14 of 1951, s. 105 (1)—Civil Procedure Code, s. 18 (1).

An insurer in respect of third party risks under the Motor Traffic Act is not entitled to be added as a party under section 18 of the Civil Procedure Code in an action for damages resulting from a collision with a motor car unless he can show that his legal rights would be prejudiced if judgment were to be entered against the party or parties on the record.

APPEAL from an order of the District Court, Colombo.

Walter Jayawardene, with *Neville Wijeratne*, for the party-intervenient-appellant.

V. A. Kandiah, with *D. J. Tampoe*, for the plaintiff-respondent.

No appearance for the 1st and 2nd defendants-respondents.

Cur. adv. vult.

March 12, 1958. WEERASOORIYA, J.—

The plaintiff-respondent filed this action against the 1st defendant-respondent, Mrs. Z. Ahamat, and the 2nd defendant-respondent for the recovery of a sum of Rs. 20,000. This sum is claimed as damages sustained by the plaintiff by reason of a collision which took place on the 27th November, 1953, between a motor cycle ridden by the plaintiff and a motor car bearing registration number C. L. 5975 belonging to the

1st defendant and driven in a rash and negligent manner by the 2nd defendant while acting within the scope and in the course of his employment under the 1st defendant. The 1st defendant filed answer specially denying that she was the owner of the motor car and generally denying certain other averments (including those relating to the employment of the 2nd defendant and his rash and negligent driving of the car). As personal service of summons could not be effected on the 2nd defendant the Court ordered substituted service. He was absent on the day appointed in the summons so served for his appearance in Court, nor has he taken any step up to date to indicate that (if he is aware of these proceedings) he is in any way interested in them. The case now stands fixed for trial.

In the meantime the intervenient-appellant, the United Indian Fire and General Insurance Company, Limited, applied by way of motion supported by affidavit to be added as a party defendant. The plaintiff opposed this motion and the District Judge after inquiry made order disallowing it. The present appeal is from that order.

Mr. Jayawardene for the appellant referred us to section 18 (1) of the Civil Procedure Code as the only provision under which the appellant could be brought into the action and as empowering the Court in its discretion, *inter alia*, to join as a party any person whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action. I conclude from the observations of the learned Judge in disallowing the appellant's motion that he did not consider that the appellant's presence is necessary for the purpose stated in section 18 (1). If his view is correct he had no jurisdiction to add the appellant as a party and no question of discretion arises.

Mr. Jayawardene submitted, however, that the appellant is, by reason of the interest which he has in the subject matter of the action, a necessary party and should be added as a defendant.

The main ground urged in the affidavit of the Branch Manager of the appellant company for the intervention of the appellant is that at the date of the collision there was in force a comprehensive policy of insurance in respect of motor car C. L. 5975 issued by the company in favour of one Mr. Hajreem Ahamat and that "in accordance with law and the terms of the said policy the company might become liable to satisfy any decree that might be entered . . . . in the plaintiff's favour against the 2nd defendant". Apparently the appellant is indifferent as regards the outcome of the action against the 1st defendant. The relationship between the 1st defendant and the party insured is not in evidence. As regards the action against the 2nd defendant, it is a matter for speculation how a decree for damages entered against him "might" in accordance with the terms of the said policy render the appellant liable to satisfy it since the appellant has not thought it proper to disclose the particular terms of the policy which, by operation of the appropriate law, would bring about such a liability. At any rate, under the

appropriate law which, it is common ground, is contained in the provisions of section 105 (1) of the Motor Traffic Act, No. 14 of 1951, it is clear that the appellant would not be liable except under a decree that has been entered against the person insured by the policy, who in the present case is shown to be Mr. Hajreem Ahamat.

In the case of *Appuhamy v. Loku Hamy* [1] the plaintiff claiming to be entitled to an undivided half share of certain allotments of land sued the defendant in ejectment. The defendant failed to file answer and the matter had been fixed for *ex parte* trial when certain third persons claimed title to the entirety of the land and applied to be added as parties. Despite the objection of the plaintiff the District Judge allowed the application but in appeal this Court reversed the order, on the ground, as appears from the judgment of Lawrie, J., that a judgment against the defendant declaring the plaintiff entitled to, and ordering him to be placed in possession of, half of the lands in suit could not prejudice the rights of the intervenients since they were not in possession of any of the lands. According to this ruling it is not sufficient for a party seeking to come into an action to show that he has an interest in the subject matter of the litigation by virtue of some legal right which he asserts, but he must also show that such right would be prejudiced if judgment were to be given against the party or parties on the record. In *Ibrahim Saibo v. Mansoor et al.* [2] a decree had been obtained in ejectment by the plaintiff against his tenant, and the question arose whether in the execution of the decree a sub-tenant in occupation who was not a party to the action could be forcibly removed by the Fiscal or his officer acting under section 324 (1) of the Civil Procedure Code. This was answered in the negative by a Bench of five Judges who also expressed the view that while there would have been a misjoinder of parties had the plaintiff filed the action against the sub-tenant also as a defendant, it was open to the plaintiff, after action had been filed, to move the Court under section 18 of the Civil Procedure Code to add the sub-tenant as a party and that such an application should normally be allowed. Although the specific ground or grounds on which the application should normally be allowed are not stated, the *ratio decidendi* would seem to be that a decree for ejectment against the tenant also affects the legal rights of the sub-tenant, though he is not a party to the action, inasmuch as the constructive delivery of possession that is made to the judgment creditor in the execution of the decree under the proviso to section 324 (1) (in lieu of vacant possession by removal of the sub-tenant) effectively terminates the sub-tenant's right to possession, as held in the same case, though he is still left with his remedy under section 327 of the Civil Procedure Code against summary ejectment without a hearing at a stage subsequent to that contemplated in section 324 (1).

Under English law the provision corresponding (although not in identical terms) to section 18 (1) of the Civil Procedure Code is Order 16, rule 11. In *Amon v. Raphael Tuck & Sons, Ltd.* [3] the defendants on the

[1] *(1892) 2 Ceylon Law Reports 57.* [2] *(1953) 54 N. L. R. 217.*
[3] *(1956) 2 W. L. R. 372.*

record applied under that rule to have a certain party joined in the action against the will of the plaintiff, and it was held that the test to be applied is: "would the order for which the plaintiff was asking in the action directly affect the intervener, not in his commercial interests, but in the enjoyment of his legal rights?"

I am unable to take the view that the test applied in the above cases is satisfied by the vague statement that in the circumstances relating to the issue of the policy of insurance in respect of the motor car involved in the collision the appellant "might" become liable to satisfy a decree entered against the 2nd defendant. But, as already shown by me, even the remote possibility of such a liability is negatived on the express terms of section 105 (1) of the Motor Traffic Act, which is the only provision under which the liability of the appellant was said to arise.

Mr. Kandiah, who appeared for the plaintiff-respondent, went further and submitted that even if the appellant's liability to satisfy a decree that may be entered against the 2nd defendant directly arises under section 105 (1), no ground has been made out for the appellant being added as a party defendant because of certain other provisions of the Motor Traffic Act, particularly sections 107, 108 and 109. In the view which I have taken it becomes unnecessary to deal with this submission.

The appeal is dismissed with costs payable to the plaintiff-respondent.

SANSONI, J.—I agree.

Appeal dismissed.