

1966 Present : Sansoni, C.J., and Sri Skanda Rajah, J.

JAYASEKERA, Appellant, and THE CEYLON INSURANCE
CO., LTD., Respondent

S. C. 67/64—D. C. Colombo, 56408/M

Motor car—Policy of insurance—Passengers in a motor vehicle in which passengers are not carried for fee or reward—Immunity of insurer from liability to them—Motor Traffic Act (Cap. 203), ss. 100 (1) (b), 105.

Section 100 (1) (b) of the Motor Traffic Act should be read along with the proviso which is part of the same sub-section. The proviso restricts the general words "any person" in section 100 (1) (b), and subsection (ii) of the proviso expressly omits liability in respect of the death of or bodily injury to persons being carried in motor vehicles which do not carry passengers for fee or reward.

An insurance policy was issued by the defendant company to the owner of a private motor car in respect of any accidents in connection with that car. It included a statement that, in consideration of the payment of an additional premium, the insurer undertook to pay compensation for bodily injury sustained by any person while travelling in the motor car. Plaintiff was injured when travelling in that car and, having obtained judgment and decree against the owner in an earlier action No. 2,271 for a sum of Rs. 17,000 as damages, sued the defendant company in the present action for the recovery of that sum and costs in terms of section 105 of the Motor Traffic Act.

Held, that the decree entered in case No. 2,271 in favour of the plaintiff, who was a passenger in a motor vehicle in which passengers were not carried for fee or reward, was not a decree in respect of a liability which was required by section 100 (1) (b) to be covered by a policy of insurance. Section 105 (1), therefore, could not apply to the decree in case No. 2271.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *L. C. Seneviratne* and *B. Eliyatamby*, for the plaintiff-appellant.

N. E. Weerasooria, Q.C., with *H. Wanigatunga*, for the defendant-respondent.

Cur. adv. vult.

September 17, 1966. SANSONI, C.J.—

On the 20th August 1956 the plaintiff was travelling in motor car No. EL 4830 belonging to S. S. Nagahawatte when it met with an accident. Nagahawatte had been insured by the defendant in respect of any accidents in connection with that car. The plaintiff was injured and he sued Nagahawatte for damages in D. C. Case No. 2271/X after giving due notice to the defendant that he was filing action. He got judgment, which was affirmed in appeal, for Rs. 17,000 and costs.

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The plaintiff did not recover any part of this money and he therefore brought this action against the defendant claiming the damages and costs awarded to him in the earlier action.

The defendant pleaded that the plaint did not disclose a cause of action and that it was not liable as insurer to pay the plaintiff any part of the sum decreed in the earlier case. When issues were being framed at the trial, Counsel for the plaintiff stated that the liability he sought to impose on the defendant was that set out in s. 105 of the Motor Traffic Act, Cap. 203. After trial, the plaintiff's action was dismissed and he has appealed.

It should be mentioned that the first endorsement on the policy issued by the defendant to Nagahawatte stated that in consideration of the payment of an additional premium, the defendant undertook to pay compensation for bodily injury sustained by any person while travelling in this motor car. It is this endorsement coupled with the provisions of the Act that the plaintiff relies on to make the defendant liable.

Certain sections in Part VI of the Act need to be considered in this connection. S. 100 (1) (b) states that a policy of insurance in relation to the use of a motor vehicle must be a policy, which *inter alia* "insures, in accordance with the provisions of paragraph (c), such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle on a highway". There is a proviso to subsection (1) which is important :

" Provided that nothing in this sub-section shall be deemed to require any such policy to cover—

- (ii) except in the case of a motor vehicle in which passengers are carried for fee or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise ; or
- (iii) any contractual liability."

Section 105 reads :—

- " (1) If after a certificate of insurance has been issued under section 100 (4) to the persons by whom a policy has been effected, a decree in respect of any such liability as is required by section 100 (1) (b) to be covered by a policy of insurance (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of sections 106 to 109, pay to the persons entitled to the benefit of the decree any sum payable thereunder

in respect of that liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum under such decree.

- (2) In this section, "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy."

Mr. Jayewardene argued that the words "in respect of any such liability as is required by section 100 (1) (b) to be covered by a policy of insurance" occurring in s. 105 (1) must be strictly confined to s. 100 (b) which speaks of "any liability which may be incurred by him or them in respect of the death or bodily injury to any person"; and that those words in s. 100 (1) (b) cannot be controlled or limited by the terms of the proviso which I have earlier quoted. In other words, the argument ran, all persons who are covered by the policy, including the plaintiff who is covered by the first endorsement, are entitled to enforce the provisions of s. 105 (1) because the decree entered in the plaintiff's favour was in respect of such a liability as is required by s. 100 (1) (b) (unaffected by the proviso) to be covered by a policy of insurance.

Mr. Weerasooria replied that one should read s. 100 (1) (b) along with the proviso which is part of the same subsection. It then follows that the liability that is required by s. 100 (1) (b) to be covered by a policy of insurance in respect of motor vehicles in which passengers are *not* carried for fee or reward, such as the motor car belonging to Nagahawatte, does not include liability in respect of the death of or bodily injury to persons being carried in such a vehicle.

In my view, the proviso restricts the general words "any person" in s. 100 (1) (b), and subsection (ii) of the proviso expressly omits liability in respect of persons being carried in vehicles which do not carry passengers for fee or reward from the liability which is required to be covered by a policy of insurance. Therefore, when we come to consider the operation of s. 105 (1) it is clear that the decree entered in case No. 2271/X in favour of the plaintiff, who was a passenger in a motor vehicle in which passengers are not carried for fee or reward, was not a decree in respect of a liability which was required by s. 100 (1) (b) to be covered by a policy of insurance. If it had not been for the proviso to s. 100 (1) the plaintiff would have succeeded in this case, because of the first endorsement in the policy. But the proviso cannot be overlooked in construing the true meaning and effect of s. 100 (1) (b). Section 105 (1), therefore, does not apply to the decree in case No. 2271/X.

Mr. Jayewardene relied on the decision in *Barnet Group, Hospital Management Committee v. Eagle Star Insurance Co., Ltd.*¹, but the question considered there was different. It was decided there that a policy which complied with all the requirements of the Road Traffic Act, 1930 and included any cover beyond that made compulsory by the Act was a policy issued under the Act.

¹ (1959) 3 A. E. R. 210.

For these reasons, which are substantially the reasons which the learned District Judge gave, the plaintiff's action fails and this appeal must be dismissed with costs in both courts.

SRI SKANDA RAJAH, J.—I agree.

Appeal dismissed.

