

v.

THE STATE

[HIGH COURT, 1989 (Tuivaga CJ) 22 August]

Appellate Jurisdiction

Traffic- third party policy of insurance- whether statutory liability of insurer a defence to criminal proceedings for driving without being covered by a third party policy- Traffic Act (Cap. 176) Section 23 (1)- Motor Vehicles (Third Party Insurance) Act Cap. 177, Sections 4 (1) and (2).

Interpretation of Statutes- whether an earlier edition of an Act is repealed by a subsequent edition of the same Act.

On appeal against convictions in the Magistrates' Court for driving whilst not insured against third party risks it was argued that the charge was defective since the Act referred to had been repealed and that as the insurer was bound to indemnify an injured third party there was in force a valid third party policy. The High Court dismissed the appeal and HELD: (i) that the Traffic Act though renumbered had not been repealed or replaced and (ii) that the civil liability of the insurer was not relevant to the insured's culpability. (*Editor's note: see also Interpretation Act- Cap. 7- Section 18*).

No case was cited.

V.P. Ram for the Appellants
R. Perera for the Respondent

Appeals against convictions entered in the Magistrates' Court.

Tuivaga CJ:

The record compiled in this appeal only indicates one appellant whereas at the hearing of the appeal it was made clear that two appellants were concerned. Both these appellants are now named in the title to this appeal.

The appeal records in this case have been poorly prepared. This has caused much confusion and difficulty for the appellate Court. It is the trial Court's responsibility to ensure that appeal records are properly prepared.

It appears both appellants are appealing only against their convictions for traffic offences, in the case of 1st appellant for driving a motor vehicle without a driving licence and driving the said motor vehicle in contravention of Section 4(1) & (2) of the Motor Vehicles (Third Party Insurance Act) (Cap. 177) and in the case of 2nd appellant for permitting 1st appellant to drive a motor vehicle whilst he was not covered for third party risks.

The facts of this case are not disputed and are adequately summarised in the judgment of the trial Court as follows:

A "The hearing of this case was consolidated with that of 981/88 as it is the same incident of driving that has given rise to both the cases. I will call the accused in this case i.e. 982/88 the first accused and the accused in the other case i.e. 981/88 the second accused.

B There are two counts against the Accused 1 namely: (1) that on 13/11/88 he drove a motor vehicle on Nasekula Road without being the holder of a Driving Licence and (2) that on 13/11/88 he drove a motor vehicle registered number BK678 on Nasekula Road when there was not in force in relation to the said motor vehicle by him a policy of insurance in respect of third party risks.

C There are also 2 counts against the Accused 2 viz (1) that on 13/11/88 she permitted Riyaz Hussein (i.e. Accused 1) to drive a motor vehicle on Nasekula Road when the said Riyaz Hussein was not the holder of a Driving Licence and (2) that on 13/11/88 permitted Riyaz Hussein (i.e. Accused 1) to drive a motor vehicle registered No. BK678 on Nasekula Road, when there was not in force in relation to the use of the said motor vehicle by Riyaz Hussein a policy of insurance in respect of third party risks.

D At the trial it transpired in the evidence that on 13/11/88 around 11p.m. when PC 228 Indra Prasad was travelling along Nasekula Road, a vehicle travelling very fast had overtaken his vehicle at a bend. As it arose his suspicion he followed it and stopped it. When he asked for the Driving Licence the driver had said that he had none. The Accused 1 was the driver. There was another passenger beside him in the front seat. It was Accused 1's mother. Mother was asked to take the control of the vehicle from there. Both of them came to the police station on the following day. He interviewed them and checked the car licence and certificate of insurance. The owner of the car was one Thipait Hussein."

E Counsel for appellants relied on his written submissions which were first made before the learned Magistrate. In these submissions he argued that there was no legal basis under which both appellants could be convicted on the aforesaid charges.

F The issues raised in counsel's submissions were twofold and these were summarised by the learned Magistrate as follows:

G "(1) The charges under Section 23(1) of the Traffic Act in both the cases are laid under Section 23(1) of the Traffic Act Cap. 152. Cap. 152 had been replaced by the Traffic Act Cap. 176 which was an Act "to consolidate and amend the law relating to Traffic and

the Control of Transport". Since 1985 it has suffered a repeal following the consolidated and amendment Act. Hence the first count in both the cases i.e. the charges under Section 23(1) are laid under a non existent law and hence no conviction can be entered.

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(2) There was in existence a valid policy of insurance covering third party risks at the time when Accused 1 drove the vehicle, despite the limitations placed in the insurance policy by the insurers as such limitations are not valid and the insurer is under absolute liability."

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The learned Magistrate ruled against the above submissions and convicted both appellants accordingly.

There are two grounds of appeal with respect to first appellant, viz:

- (i) that the learned Magistrate erred in law in convicting the first appellant in that the charge was wrongly laid
- (ii) that the learned Magistrate erred in law and in fact in holding that there was not in existence at the time a valid policy of insurance covering Third Party risks.

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No formal grounds of appeal with respect to second appellant appear on the record.

D

However, it seems that the case for second appellant stands or fall on the fate of the appeal by the first appellant.

It was submitted that the charge against first appellant was wrongly laid under Section 23(1) of the Traffic Act (Cap. 152) (1967 Laws of Fiji- Revised Edition) which was enacted in 1965 and since and at the material time was replaced by the Traffic Act (Cap. 176) (1985 Laws of Fiji- Revised Edition).

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An Act of Parliament which was in force and continues to be in force when a Consolidation Act with respect to the same subject matter is passed remains valid until repealed or edited out of the Statute book. There is nothing in the material before this Court to suggest that the Traffic Act (Cap. 152) has in fact been repealed by Parliament or by Decree or any other authorised action taken in relation to it.

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Traffic Act (Cap. 176) is substantially the same legislation as Traffic Act (Cap. 152), the effective date of both Acts being 29 October, 1965. In Maxwell's "Interpretation of Statutes" at page 21 it is stated that:

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"In the construction of a consolidation Act, the presumption that Parliament does not intend to alter existing law applies with particular force. For the object of the Act was merely to "reproduce the law" as it stood before."

A In these circumstances it was equally open to the prosecution to charge first appellant under the Traffic Act (Cap. 152) which so far as this Court is aware still remains part of the statute law of the land.

The first ground of appeal therefore fails.

As regards the second ground of appeal it is common ground that first appellant who was only 16 years of age at the material time was never at any time the holder of a driving licence.

B In these circumstances the onus is on the 1st appellant to show that he was covered in regard to his driving of the said motor vehicle BK678 for third party insurance. 1st appellant was clearly not able to discharge this onus in view of paragraph 4 of the Third Party Policy produced as an exhibit by the prosecution in Court and which reads as follows:-

C "4. Persons or class of persons entitled to drive and insured under this policy-

(a) The Owner, and

D (b) Any person who is driving on the Owner's order or with his permission:

E Provided that the person driving holds a licence permitting him to drive a motor vehicle for every purpose for which the use of the above motor vehicle is limited under paragraph 5 below or at any time within the period of thirty days immediately prior to the time of driving has held such a licence and is not disqualified for holding or obtaining such a licence."

F However, Mr. Ram, Counsel for the appellants has submitted that the above-quoted paragraph was not sufficient on the proper construction of the relevant provisions of the Motor Vehicles (Third Party Insurance) Act (Sections 9, 10 & 11) to absolve the insurance company from liability for third party risks in relation to the driving by the 1st appellant of motor vehicle BK678. Mr. Ram summarised his argument in this way:-

"From the above (statutory) provisions it is clear that the liability of the insurance company cannot be avoided by:

G (a) any stipulation in the policy to the contrary; or

(b) any act of default on the part of the insured or the driver.

The fact that the insurer is able to recover in case of breach from the insured adds weight to the absolute liability of the insurer. The resultant effect of the above provisions is that any conditions

restricting liability are of no effect and for the purposes of a third party claim the third party is able to recover from the owner and/or the insurer. In other words for the purposes of this trial the policy is to be looked at as if those restrictions or conditions such as appear under paragraph 4 of the Policy do not exist. That being so, there was always in force a policy of insurance which complies with the provisions of the Motor Vehicles (Third Party Insurance) Act. Such is the position here.

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In the circumstances this Court cannot confuse the civil liability of the Insurer as against the insured with the statutory provisions which cannot be avoided by any subterfuge nor can any such condition be held to be a circumventing provision. The end result is that there was at all times a policy in existence in relation to the vehicle as complies with the provisions of the Act.

B

Both the accused persons must therefore be acquitted on the second count in each case."

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Whilst the argument put forward is interesting enough I do not think it represents the state of the law as it exists at present. In my view Sections 4(1) and (2) of the Motor Vehicles (Third Party Insurance) Act are quite clear in their purport and effect. They provide as follows:

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"4. (1) Subject to the provisions of the next succeeding section, no person shall use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of that motor vehicle by such person or other person as the case may be such a policy of insurance in respect of third party risks as complies with the provisions of this Act.

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(2) Any person acting in contravention of this section is guilty of an offence and shall be liable to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified from holding or obtaining a driving licence for a period of twelve months from the date of conviction.

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If the above provisions are read with paragraph 4 of the insurance policy in relation to the motor vehicle in question the conclusion is inescapable that a person such as 1st appellant who had never held or qualified to hold a driving licence was not at the material time covered for third party risks. The policy states clearly that it does not cover any person who is outside the specified category of entitlement for insurance cover. With respect I find Mr. Ram's argument too

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A tortuous and illogical for acceptance. If his argument is correct it would mean that the insurance company is precluded from contracting out of any liability for third party risks even in the most unreasonable of circumstances. I do not think that that represents the current legal policy regarding third party insurance and any change needed to that policy would require proper and clear legislation.

I agree therefore with the learned Magistrate in rejecting Mr. Ram's argument on the liability of the insurance company in this case for third party risks.

B It is clear too that on the facts of this case when 2nd appellant permitted 1st appellant to drive motor vehicle BK678 when he did not hold or qualify to hold a driving licence she was aiding and abetting the commission of an offence and was therefore as much criminally culpable as 1st appellant.

C In these circumstances 2nd appellant was also properly convicted by the trial Court.

In the result and for the reasons I have given I find no merit in the appeal by both 1st and 2nd appellants.

Each of these appeals is therefore dismissed.

D (*Appeals dismissed.*)

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