

A

**IN RE TEMO MAYA**

[SUPREME COURT, 1977 (Mishra Ag C.J.) 12th July]

**Revisional Jurisdiction**

*Criminal law—road traffic offence—driving without insurance—failure by driver to renew driving licence for 3 months—whether such failure invalidated insurance—whether covered for third party risks—Traffic Ordinance (Cap. 152) s.23(1)—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s.4(1)(2).*

B

A driver who failed to renew his driving licence for some months was not a person entitled to drive and be insured under the terms of a third party policy. This still, however, left open the question whether there was in force a policy of insurance in respect of third party risks.

C

**Held:** 1. Breach of a stipulation in the policy by a driver failing to renew his licence did not make the policy completely inoperative. It merely made it voidable at the instance of the insurance company. (*Murtaza Khan v. R* followed and applied)

2. At the time of driving, the policy of insurance though voidable effectively covered a third party against risks contemplated by the Ordinance.

D

Case referred to:

*Murtaza Khan v. R.* 11 F.L.R. 161.

Revisional jurisdiction of the Supreme Court exercised in relation to a conviction for driving uninsured.

E

MISHRA J.: [12th July 1977]

The accused was charged with three offences. The first count charged him with careless driving contrary to section 37 of the Traffic Ordinance, the second with driving without a driving licence contrary to section 23(1) of that Ordinance and the third with using a motor vehicle while uninsured in respect of third party risks contrary to section 4(1) and (2) of the Motor Vehicles (Third Party Insurance) Ordinance.

F

He pleaded guilty and was convicted on all counts. On the first count he was fined \$25 in default one month's imprisonment, on each of the second and third counts, \$10 in default 10 days' imprisonment. He was in addition disqualified, as required by section 4(2) of the Motor Vehicles (Third Party Insurance) Ordinance, from holding or obtaining a driving licence for a period of 12 months.

G

The learned magistrate feels that he may have been in error in holding, in respect of the third count, that there was at the relevant time no policy of insurance in respect of third party risks covering the accused and the vehicle driven by him. He has, therefore, referred the matter to this Court for it to decide whether or not an error has been made and, if so, whether or not this Court's revisional powers should be exercised to rectify it.

H

The incident from which these charges arose occurred on 21 December 1976.

- A The vehicle in question was covered by a third party policy issued by the New Zealand Insurance which was not due to expire until 26 March 1977. The accused was driving the vehicle with the owner's permission. His driving licence (which was in fact a learner's permit), however, had expired on 1 October 1976 and he had omitted to have it renewed.

Clause 4 of the Policy is in following terms:

- B "4. Persons or Classes of Persons Entitled to Drive and Insured under this Policy:

(a) The Owner, and

- C (b) Any person who is driving on the Owner's order or with his permission: 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."

- D On 21st December 1976 the accused had been without a valid driving licence for more than thirty days and was, therefore, not a person "entitled to drive and insured under this policy". The sole question before the Court was: At the time of driving, was there in force in relation to the use of that vehicle by the accused a policy of insurance in respect of third party risks?

- E This aspect of the law was considered in Fiji in the case of *Murtaza Khan v. Reginam* (11 F.L.R. 161 at 166-7). Mills-Owens C.J. expressed the view that where a person who had held a licence permitting him to drive the vehicle but had omitted to renew it after its expiry, a breach of the stipulation in the policy referred to above would not make the policy completely inoperative. It would merely make it voidable at the instance of the insurance company. Until so avoided, it would hold good.

- F He said,

"On the other hand, in my view very clear language would be required to turn a stipulation that a driver must hold a current driving licence into a fundamental term of the policy. One test is whether such a stipulation is material to the risk. It can be understood, for example, that an insurance company would not wish to insure against fire, or would wish to impose a heavy premium on, a person who has already had many fires, or a person with previous convictions for dishonesty, but it is difficult to perceive that the risks under a motor vehicle third party policy are any greater than usual in the case of a man who is liable to forget to renew his driving licence."

- G On the construction of section 11 of the Ordinance the learned judge said—

- H "the section presupposes a case of non-liability under the policy by reason of the company being entitled to avoid or cancel the policy (or having avoided or cancelled it); and then compels the company to satisfy any judgment obtained against the insured by the third-party; with, possibly, a

right in the company to recover what it has been compelled to pay from the insured. The object, very clearly, is to provide for compensating the third party by way of imposing a statutory obligation on the insurance company to do so, but not by way of extending the indemnity afforded by the policy *vis-a-vis* the insured." A

In the instant case the only allegation against the accused with regard to the policy consists of his omission to renew his driving permit within the specified time. There is no suggestion that he was in any way disqualified from doing so. B

It would appear, therefore, that, at the time of the driving, the policy of insurance, though voidable, effectively covered a third party against risks contemplated by the Ordinance. That being so, the conviction on the third count was, in my view, erroneously recorded. It is quashed and the order of disqualification is set aside. The fine imposed, if already paid, shall be refunded to the accused. C

*Conviction quashed.*