[2012] UKPC 33
Privy Council Appeal No 0062 of 2011

JUDGMENT

The Presidential Insurance Company Limited (Appellants) *v* Resha St. Hill (Respondent)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Phillips
Lady Hale
Lord Mance
Lord Dyson
Lord Wilson

JUDGMENT DELIVERED BY LORD MANCE ON

16 August 2012

Heard on 30 April 2012

Appellant
Alan Newman QC
Shastri V C Parsad

(Instructed by Simons Muirhead & Burton)

Respondent
Andrew Goddard QC
Simon Crawshaw

(Instructed by William Sturges)

LORD MANCE

1. The respondent to this appeal is the innocent victim of a motor accident on 8 June 2005 caused by a collision between the car in which she was a passenger and another car owned by Edwin Hogan but being driven by Dexter Denny with Mr Hogan's consent. The accident was Mr Denny's fault, but Mr Denny himself had no insurance to drive the car, and Mr Hogan's insurance taken out in respect of the car with the appellant insurance company in November 2004 was limited expressly to "The Policy Holder & Carlos Hogan (only)".

2. When joined as co-defendant by the respondent in proceedings to recover damages for her personal injuries, the appellant relied upon this limit as a defence. The respondent in answer invoked the provisions of s.4(7) of the Motor Vehicle Insurance (Third Party Risks) Act, which in its form as amended in 1996 provides:

> "(7) Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licensed trailer with the consent of the person insured specified in the policy in respect of any liability which the policy purports to cover in the case of those persons."

3. On the basis of s.4(7), Gregory Smith J on 25 July 2008 struck out the appellant's defence, and the Court of Appeal (Mendonca, Bereaux and Narine JJA) on 15 February 2011 upheld his decision. The appellant appeals with leave of the Court of Appeal, granted on the ground that the question involved is one that by reason of its great general or public importance or otherwise ought to be considered by the Board. There is no doubt about the importance of the point. Despite public awareness of the issue for at least thirty years, there is in Trinidad and Tobago still no equivalent of the Motor Insurers Bureau or any other facility to ensure that the victims of negligent but uninsured drivers do not go uncompensated.

4. Prior to the 1996 amendment, the wording of s.4(7) read:

> "(7) Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons

> specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons."

5. This wording was closely similar to that of s.36(4) of the United Kingdom Road Traffic Act 1930, which provided:

> "Notwithstanding anything in any enactment, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons."

The opening wording of s.4(7) of the unamended Trinidad and Tobago statute made it perhaps even better fitted than the English wording to fulfil the section's purpose - since this was to address the common law obstacle (deriving from the doctrines of privity of contract and consideration) which stood in the way of enforcement of an insurance in favour of persons who were purportedly insured under it but were not the policy holder taking out the policy. Some judges had found ways around this obstacle, for example by using the concept of trust, but these were of uncertain reliability.

6. The position before and after the enactment of s.36(4) in 1930 was explained by Atkinson J in *Digby v General Accident, Fire and Life Assurance Corporation Ltd.* [1940] 1 KB 643, 648-649:

> "Before the Road Traffic Act, I930, the provision in a policy for extended insurance was of very doubtful value. That extended provision conferred no benefit on the policyholder, and the persons it purported to benefit, not being parties to the contract, could not claim under it, That, I think, was finally decided in *Vandepitte v Preferred Accident Insurance Corporation of New York.* [1933] AC 70".

Atkinson J then cited with approval Branson J's analysis of s.36(4) in an earlier case, to the effect that:

> "The section does not, in my opinion, impose any statutory liability upon the insurer. It only gives to 'persons specified' a statutory right to sue upon the contract which, apart from statute, they did not possess."

Atkinson J concluded:

> "I entirely agree with that view. It means that an authorised driver claiming by virtue of s.36 is claiming on the contract contained in the policy. Although not a party to the contract, he is given by the statute the rights of a party".

7. In the House of Lords in *Digby* [1943] AC 121, Lord Wright at p141 encapsulated the position:

> "In any case, any person driving another's car at that other's request would desire and expect to be covered by insurance. It was to meet this desire and expectation that the extended insurance was introduced and was made available to such drivers by sub-s. 4 of s. 36 of the Act, which imposes on the insurer the extended liability in favour of other parties if the policy purports to cover them, as this policy does."

The qualification "if the policy purports to cover them, as this policy does" is important. The purpose of s.36(4) was not to impose on any insurer a liability which it had not purported to undertake. On the contrary, it was to facilitate enforcement of the indemnity which insurers had undertaken to the policyholder to provide to other persons.

8. When the present policy was taken out in November 2004, there was no authority on the meaning of the amended s.4(7). But on 9 June 2006 Kokaram J decided in *Benjamin v Jairam* that its "plain and obvious effect" was to write into the insurance policy as persons covered by it a class of persons driving with the consent of the person insured specified in the policy, so that it was "therefore impossible for an insurer …. to avoid liability by asserting the existence of a named driver only policy where the insured has given his consent to a person not specified in the policy to drive the insured's vehicle". That decision was followed by Gregory Smith J and approved by the Court of Appeal in the present case.

9. Submissions were made below and have been repeated before the Board in relation to two particular aspects of the amended wording of s.4(7). First, the respondent submits that the phrase "specified in the policy" refers to the phrase "the person insured" and no more, on each occasion when the second phrase appears; the first phrase does not, in other words, refer to "persons driving or using the vehicle or licensed trailer …..". Accordingly, it is submitted that the persons

driving or using the vehicle or licensed trailer need only to be doing so with the consent of the person insured; they need not be "specified in the policy".

10. Second, the respondent submits that, in the concluding words "in respect of any liability which the policy purports to cover in the case of those persons", the phrase "in the case of those persons" refers not to "persons driving or using the vehicle or licensed trailer ….", but only to "the person insured". The use of the plural "in the case of those persons" does no more, it is submitted, than reflect the fact that there might be more than one person insured under the policy. In support, it is pointed out that s.4(1) provides that, to comply with the Act, a policy must be one which

> "insures 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 any death of or bodily injury …."

11. The Board cannot agree with the Court of Appeal's view that the respondent's argument on this second aspect is persuasive. Whatever the merits of the submission on the first aspect, the Board considers that the retention of the plural "those persons" at the end of the amended s.4(7) points strongly towards a conclusion that the amended section was (like its unamended predecessor) not intended to impose on any insurer a liability which the policy did not purport to cover in respect of the person insured or the persons driving or using the vehicle with his or her consent. The deletion of the words "or classes of persons" which had appeared at the end of the unamended subsection was appropriate because the subsection as amended no longer refers to "classes of persons specified in the policy". Instead it covers two categories of persons – the person insured and the persons driving or using the vehicle or licensed trailer. The deletion of "or classes of persons" left at the end of the subsection the words "in the case of those persons", which refer naturally to both those two categories. The draftsman cannot sensibly have overlooked this.

12. The argument that the final phrase "in the case of those persons" refers solely to "the person insured" and not also to the "persons driving or using the vehicle" pre-supposes that the legislator used the plural to refer to a singular concept which he understood in a plural sense, when there is an obvious express plural to which any reader would naturally think he was also referring. It further contemplates that the legislator intended to provide cover to anyone driving or using with the consent of the policyholder or of anyone else in respect of whom the policy purported to grant cover. In the Board's view, however, the phrase "the person insured" refers solely to the policyholder under the post-1996, just as it did under the pre-1996 wording.

13. The Board also notes in this connection that the Act refers, in ensuing provisions, to "the person by whom the policy is effected" (s.4(8)), "the insured" to whom the policy is to be delivered within one week of the issue of a certificate (s.4(9)), "the owner of a motor vehicle …. insured under this Act" (s.4A) and "the person insured" (s.8(2)). In each of these cases the Act appears to be referring to the policy holder taking out and paying for the insurance. That is consistent with the view which the Board takes of the words "the person insured" as they are used in s.4(7) in its amended form. The Board in saying this recognises that in other provisions phrases such as "any person insured" (s.11), "the persons insured thereby" (s.12(1)) and "the insured" (s.16) also appear in a sense embracing anyone covered by the policy.

14. The first aspect, on which much attention was focused before the Board, is not in the Board's view critical. Under the unamended wording, the phrase "specified in the policy" qualified both "the persons" and "classes of persons". There is much to be said for the view that under the amended wording the same phrase also refers both to "the person insured" where that first appears and to the whole of the newly inserted second phrase "persons driving or using the vehicle or licensed trailer with the consent of the person insured". On that basis the word "specified" would underline the need for the policy wording to purport to cover the persons driving or using the vehicle or trailer with the policyholder's consent. But, even if it only qualifies the last three words of the second phrase, that does not affect the strength of the conclusion to be drawn on the second aspect, namely that s.4(7) does not intend to override policy language, by obliging insurers to meet liability incurred by drivers not within the scope of the policy cover, but to whose driving or use of the vehicle the policyholder has consented.

15. It is relevant to look at the scheme of the amended Act more widely. S.4 as a whole is concerned with the requirements of a policy complying with the Act and its issue. It is in later sections that the Act addresses certain conditions and terms which are not to affect or restrict insurer's liability to indemnify in respect of their insured's liability to injured persons. Thus, s.8(1) renders of no effect any condition excluding insurers from liability under the policy "in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim". However, s.8(2) enables an insurer to include and enforce a policy provision entitling the insurer to recover from the person insured any sums which the insurer may have had to pay to the injured person under s.8(1). Likewise, s.12(1) invalidates in respect of claims by injured persons policy restrictions relating to matters such as the age or physical or mental condition of persons driving the vehicle, or the condition of the vehicle, or the number of persons or weight or physical characteristics of the goods that the vehicle carries, or the times at which or areas within which the vehicle is used, etc. Again, there is in s.12(2) a protective provision, to the effect that nothing in s.12(1) obliges the insurer to pay any sum other than in discharge of the liability to the injured person

and that an insurer who pays any such sum only by virtue of s.12(1) may recover the same from the person whose liability is thereby discharged.

16. Accordingly, it can be said with some force that, if the legislator had intended to achieve the purpose which the courts below have attributed to s.4(7), the natural way to achieve this would have been to expand or add to s.12, by invalidating so much of any policy as purported to restrict the insurance to exclude any person driving or using the vehicle with the policyholder's consent, as respects such liabilities as are required to be covered by a policy under section 4(1)(b). The Board notes that, when the Bermudan legislator, as long before as 1943, addressed the slightly different issue of policies purporting to exclude cover in respect of persons driving with the knowledge and consent of the insured, but not permitted by law to drive, it did so by adding to s.12, as noted by the Board in *Suttle v Simmons* [1989] 2 Ll.L.R. 227.

17. Further, it can be said, with even greater force, that, if s.4(7) had the suggested purpose, the legislature would have been expected to provide (as s.12 does) that any sum paid solely by virtue of that section to discharge liability incurred by a person "driving or using the vehicle ….with the consent of the person insured" could be recovered from any "person insured" who had consented to the vehicle being driven by a driver who was excluded from driving by the policy terms. In other words, there would have been a provision to like effect to that which the legislator was careful expressly to include in both ss.8(2) and 12(2). It is clear in this connection that s.8(2) was and is focused solely on the consequences of s.8(1).

18. The amendments made in 1996 did however add after s.4 a new s.4A, reading:

> "4A. Notwithstanding any other law, the owner of a motor vehicle licensed to ply for hire and insured under this Act is deemed to be the employer of any person driving the motor vehicle at the time of an accident as a result of which a person has suffered death, bodily injury or damage to property unless it is shown that at the time of the accident that the vehicle was the subject of larceny."

This new provision clearly expanded the scope of insurers' liability, by deeming the insured owner of any vehicle licensed to ply for hire to employ any person driving it at the time of the accident, unless the vehicle had been stolen. This avoids any arguments about vicarious liability, but only in respect of motor vehicles licensed to ply for hire. Since the provision only applies if the vehicle has not been stolen, its primary application must be to situations where the vehicle was

being driven with the owner's consent, but arguments could arise as to whether it was being driven on the owner's behalf as an employee, rather than, for example, in the course of an activity carried on as independent contractor. Accordingly, if s.4(7) had the effect accepted by the courts below of covering any situation in which an insured owner had consented to anyone else driving the insured vehicle, regardless of any limitation in the policy of the persons authorised to drive, then s.4A would seem to have been largely if not entirely unnecessary.

19. More generally, the consequences of the interpretation put on s.4(7) in the courts below appear somewhat surprising. First, it would make insurers liable even if the policyholder consented to a driver who was not within the scope of the policy driving or using the vehicle on the basis that he had his own separate insurance cover, and even if he did in fact have his own insurance cover. There would in this latter situation be potential double insurance, and insurers could on the face of it end up having to share any liability. Second, as the Board has noted in paragraph 12 above, the respondent's argument contemplates that the legislator intended to provide cover to anyone driving or using with the consent of the policyholder or of anyone else in respect of whom the policy purported to grant cover.

20. Third, and perhaps even more significantly, insurers customarily rate motor insurance policies by reference to the driving experience and claims history of those permitted to drive the vehicle insured. If s.4(7) exposes insurers, contrary to the express terms of their policies, to having to indemnify any person injured by anyone driving the vehicle with the consent of the person insured, even though the policy precludes the insured from extending cover to such driver by giving such consent, then insurers would face an open-ended exposure. A named driver(s) clause could no longer have its traditional significance for rating, or indeed much significance at all, unless insurers were expected to undertake the very different and difficult task of assessing the moral risk that their policyholders might, contrary to the policy wording, permit others to drive. Further, even assuming that some implied right would exist to recover from the policyholder sums paid to discharge a liability incurred by such other drivers, that would be cold comfort in many cases, and certainly of no real assistance to insurers in rating policies. It would seem unlikely under this scenario that policy holders could continue to expect to receive the benefit or full benefit of the reduction in premium which normally follows from agreement to a limitation of policy cover to only one or more specified drivers.

21. Reading the language of s.4(7) as amended by itself, it is in the Board's view clear that it cannot have the effect which the courts below attributed to it. The most powerful argument in favour of the approach of the courts below is, however, that the amendment of s.4(7) must have been intended to achieve something. It is difficult to see what that was if the amended provision merely confirms that

persons driving or using the vehicle or licensed trailer with the consent of the policyholder can claim under the policy if and to the extent that it purports to cover them. The purpose must have gone beyond making express reference to the newly required cover in respect of licensed trailers.

22. Bearing in mind the terms of s.4(1)(b), it is difficult to think that the phrase "or classes of persons specified in the policy" can have been giving rise to difficulty or that it was felt necessary in some way to clarify that, where the policy covered persons driving or using a vehicle with the policyholder's consent, such persons themselves had an enforceable right under s.4(7) to claim indemnity from the insurers. The appellant suggests that the amendment caters for situations where a driver or user of the vehicle falls within the scope of the policy cover, but the policyholder has withdrawn his consent to him actually driving or using the vehicle. Not only must that be a rare situation, it seems to the Board improbable that the purpose of the amendment to s.4(7) was to confer or confirm a limitation on insurers' liability to meet claims in respect of liability incurred by persons falling within the classes of person covered by the express policy terms.

23. The textual changes do not therefore make clear the purpose of the amendments to s.4(7). The respondent submits that assistance can, however, be obtained as to the general background and as to the mischief which the legislation was addressing by looking at the reports of the proceedings in Parliament: see e.g. *Gopaul v Iman Bakash* [2012] UKPC 1, para 3 per Lord Walker, and *R (Jackson) v. Attorney General* [2005] UKHL 56, [2006] 1 AC 262, para 97 per Lord Steyn. But Lord Steyn was careful to distinguish this principle from the more radical separate principle recognised in *Pepper v Hart* [1993] AC 593. He said of the former principle that "the use of Hansard material to identify the mischief at which legislation was directed and its objective setting" was permissible, but that "trying to discover the intentions of the Government from Ministerial statements in Parliament is constitutionally unacceptable". The separate principle in *Pepper v Hart* [1993] AC 593 only allows a court to have regard to go further in looking at statements in Parliament where (a) legislation is ambiguous or obscure or leads to absurdity, (b) the Parliamentary material relied upon consists of one or more statements by a minister or other promoter of a bill together with such other statements and material as are necessary to understand such statements and (c) the statements relied upon are clear.

24. It is therefore permissible as a first step to look at Hansard to try to identify the mischief at which the amendment of s.4(7) was aimed and its objective setting. The Board was referred to debates on 20 September and 11 October 1996. The Board sets out in an Annex the most material passages, together with two passages from a later debate on 5 November 2006 at the committee stage before the Senate just before the passing of the Bill. For convenience of reference the Board has added alphabetical numbering from (A) to (T).

25. The Board has considerable difficulty in extracting any clear message from these passages as to the aim or scope of what was intended to be achieved by the amendment to s.4(7) of the pre-1996 Act. A major part of the difficulty arises because the explanations given cover at the same time, and are in many respects more appropriately addressed to, the new clause which became s.4A in the Act. This is true of the passages marked (C), (F), (G), (H) and (I). Indeed, the Attorney General, when he eventually came to introduce clause 6 (s.4A in the Act) at (N), (O) and (P), acknowledged that it was "intended to fill the loopholes in respect of some of these matters", that is the matters he had earlier referred to under the headings (C), (F) to (I). The passage at (I) in fact includes an express reference to maxi taxis, which clearly anticipates the later discussion of clause 6 (s.4A). The same problem exists in relation to the passages at (S) and (T). The references in the passage at (C) to a loophole relating to a person driving with consent not being necessarily a servant or agent of the policyholder is not specifically related to any amendment, and again fits most naturally with clause 6 (s.4A of the Act). The references in the passages at (F) to (I) and at (S) to persons driving without consent and to deeming them to be driving as servant or agent of the policyholder or deeming the policyholder to have given consent all only fit with clause 6 (s.4A), and not with clause 5(f) (amending s.4(7)). No-one suggests that the amended s.4(7) says anything to impose on insurers liability in respect of persons driving *without* the policyholders' consent.

26. One comes closer to statements supporting the respondent's case is in the passages at (F) where the Attorney General was again addressing the problem that a person driving with consent were not necessarily a servant or agent of the owner. But again s.4(7) does not purport to make such a person a servant or agent, and it is s.4A which does. The last sentence of the passage at (G) could be read as supporting the respondent's case, but it is in the context of an immediately preceding sentence dealing with the problem of lack of consent, with which s.4(7) does not deal on any view, while s.4A can do. The final passage at (T) is perhaps closest of all to the respondent's case. But it too is immediately preceded in the passage at (S) by a statement that the purpose of s.4(7) is to deal with situations where there is no consent. That is not in fact what s.4(7) can or does on any view do, and is more appropriately related to s.4A.

27. In the upshot the Board considers that perusal of Hansard throws no clear light on what Parliament may have understood by s.4(7). The explanations given by the Bill's promoters regarding the purpose and aims of s.4(7) were very far from clear, and give little if any assistance on which reliance can now be placed. This is so even in so far as they are sought to be relied upon to show the background and mischief at which the amendment of s.4(7) was directed. The criteria of clarity required by *Pepper v Hart* are not on any view satisfied. There appears therefore to have been little if any obvious point in the amendment of s.4(7), although the Board notes that the Hansard debate does suggest that some

other minor amendments were also undertaken which can have had no or apparently very limited effect, to meet unmeritorious points being raised by insurers, for example the amendments explained in the passages at (K), (L) and (M).

28. The Board's continuing concern about the lack of any obvious explanation for the amendment of s.4(7) in 1996 did however led it after the oral hearing to ask the parties to instigate further enquiries into the legislative background. The Board had noted reference by the Attorney General during the second reading of the Bill to consideration of the matter by the Law Commission. In the event, however, the only records located in this regard were a letter dated 28th December 1992 from Attorneys at Law, Jamadar & Kangaloo, inviting the Law Commission to review areas of the Motor Vehicle Insurance (Third Party Risks) Act, including "whether the defences of unauthorised driver and/or unauthorised user should be available to insurance companies vis-à-vis injured third parties and if so in what circumstances", and a note by the former Chairman of the Law Commission, Justice Persaud, dated 28th June 1993.

29. Jamadar & Kangaloo's letter referred to two cases, *Gloria Phillips v Motor and General Insurance Co Ltd* H.C.A. 71 of 1985 and *Velma Germaine Eligon v N.E.M. (West Indies) Ltd.* H.C.A. 686 of 1974. Both cases identified the effect of s.12. In the latter case the policyholder permitted someone with an ordinary (not a taxi) driving licence to drive his taxi for the driver's own purposes. The policy only covered the policyholder and persons in his employ, which the driver was not. Apart from that problem, the policy required any person driving to be licensed to drive a taxi, which the driver was not. So the driver's claim to indemnity failed. The judge said that the creation of a Motor Insurers Bureau was necessary.

30. The eight page note prepared by the Chairman of the Law Commission does not mention this suggestion or area. However, it referred to *Suttle v Simmons* and also to *Harker v Caledonian Insurance Co Ltd* [1980] 1 Ll.L.R. 556 as cases where the Board had emphasised that phrases such as "such liability as is required to be covered" refer to the minimum statutory cover required under an Act, like the present, permitting compulsory cover with a limit.

31. In these circumstances, no real assistance is found in the Law Commission material with which the Board has been provided. It sheds no direct light on the thinking behind s.4(7). The case of *Eligon* may have been part of the background to s.4A introduced in 1996, but that is all that can be said of it. If anything, the material does, however, show that a general awareness of the operation of s.12. This, as the Board has said, was the natural section on which to build, had the intention been to provide compulsory insurance cover, regardless of the policy

definition of the persons covered, in respect of anyone driving or using an insured vehicle with the policyholder's consent.

32. In summary, the natural meaning of the actual text of the Act as amended is itself, in the Board's view, clear. The only real question is whether some other meaning should be adopted, because of the absence of any convincing indication as to why s.4(7) was amended at all. However, no real assistance is gained, from Hansard or the Law Commission material or elsewhere, to support the view that the quite radical effect proposed by the respondent and accepted by the courts below was understood or intended when the 1996 amending Act was passed.

33. In the result, the Board concludes that the natural meaning of the amended s.4(7) must prevail, and that the appeal should be allowed, the judgment entered in favour of the respondent against the appellant set aside, and the defence pleaded by the appellant restored accordingly.

34. The present issue is clearly of great interest and significance for motor insurers and the Board was informed that it has been fought by the appellant as a test case, the outcome of which is awaited in a large number of other cases. In the circumstances, it was submitted on behalf of the respondent at the close of the oral hearing that her costs should in any event be borne by the appellant. The Board is sympathetic to this submission, but will allow 14 days for the appellant to make any contrary submissions, with liberty to the respondent to reply within a further 14 days to any such submissions, if any are made. Failing any such submissions by the appellant, there will be an order that (1) the costs orders made in favour of the respondent, Resha St. Hill, in the courts below do stand and that (2) the appellant do pay the respondent's costs of and occasioned by the appeal to the Privy Council.

ANNEX

(para 20 of judgment)

(Hansard, 20 September, p.423)

(A) "Mr. Speaker, the purpose of this Bill is to seek to redress the difficulties and injustices which are suffered by persons who are injured, or suffered damage, as a result of motor vehicular accidents."

(Hansard, p.424)

(B) This Bill is going to make it very difficult for insurance companies to avoid liability for accidents for which they are responsible, but which they have, in the past, used construction of principles to say that the insurance policies do not cover the particular accident. Quite apart from the provision that the court would have a discretion to hear matters in which there is an action filed both against the tortfeasors and against the insurance company, the Bill attempts to redress other injustices which some insurance companies have caused to victims of motor vehicular accidents.

(C) Some of the clauses, in effect, would place statutory restrictions on insurance companies being able to avoid insurance liability. As a matter of fact, one of the reforms is that in cases where the vehicle is being driven by a person whom the owner knows as the driver of that vehicle, the driver would be deemed to be the agent of the owner. Under the present law, many owners and insurance companies avoid liability for accidents, although the owners know who was driving the vehicle and, in effect, consented to the person driving the vehicle. However, because of the principles of common law, the fact that a person knows that someone is driving his vehicle does not necessarily mean that at the time of the accident, the person was acting as a servant and/or agent of the owner. Some insurance companies have used that loophole to avoid claims in favour of victims."

(Hansard, 11 October, pp.539-542)

(D) " Now if I may go to clause 5(f) which is deleting subsection (7) and substituting a new clause [s.4(7) in the Act]. I am doing this in order to show how this Government has decided to take these areas of law to try to see how the ordinary person can benefit from the spirit and intention of legislation and to prevent, as in this case, insurance companies from trying to contract out of the intention of the Act.

(E) The new subclause (7) [s.4(7) in the Act] says:

"Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licensed trailer with the consent of the person insured specified in the policy in respect of any liability which the policy purports to cover in the case of those persons."

(F) What has happened in the past is that when the time came for some insurance companies to pay, there would be all sorts of allegations that the facts do not make the company liable because the person who was driving the vehicle was not the servant or agent, or was not driving with the consent of the owner. The way the law was drafted and the way the law had developed, there were many esoteric submissions, questions and even judgments to the effect that if one did not have the consent of the owner one could not be liable, and even if the person may know that someone was driving the vehicle, that person was not the servant and/or agent of the owner.

(G) So what this clause attempts to do is to prevent insurance companies from saying, "well, we insured the owner or his servant or agent and the name of the driver is not on the policy." An insurance company would say, "listen, if you are the owner, you must say who is going to drive this vehicle and we are going to put the name of that person on the policy." When an accident occurs, the owner would say, "well, that person who was driving, a person who is not named in the policy, was not driving with my consent." Therefore the insurance company would say, "that person who was driving the car, his name was not on the motor insurance policy."

(H) This piece of legislation is saying that the person who is driving the vehicle would be deemed to be the person driving with the consent of the owner. So that many of those insurance companies which avoided people who were injured and who became vegetables and who could not work again and could not get any moneys from the insurance companies, in the future when those situations occur, people would be able to get compensation from the insurance companies.

(I) I do not think I need to tell you, Mr. Speaker, because you have been involved in the practice of law and you have seen the two sides of the coin and people who have seen two sides of the coin can be considered to be fortunate. In private practice one sees, as a lawyer, that there are so many people who are injured in motor vehicular accidents and who should have received compensation from the

insurance companies, having regard to the spirit and intention of the ·legislation, but who did not receive because some of the companies argued that their names were not on the policies; that when the person was driving the vehicle he was not the servant and/or agent. For example, in respect of a maxi taxi, the owner of the vehicle would say, the person was driving for his own purposes at the time and, in effect, he would not be regarded as driving with the authority of the owner. These amendments, really, are to try to get away and to finish with all those arguments, to have the full intent of the law delivered to the injured party.

(J) Clause 7 of the Bill really deals with the question of security and it is related to section 3 of the Act, because under section 3, it says:

> " .. .it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act."

So this is to amend the security provision io order to increase it to $300,000.

(K) Clause 8 might seem to be a very small amendment, but it has caused a lot of difficulties and has deprived many people of compensation over the years.

Section 8 says:

> "Any condition in a policy or security issued or given for the purposes of this Act, providing that no liability shall arise under the policy or security, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such claims as are mentioned in section 4(l)(b)."

(L) This section 8 was intended to try to prevent insurance companies from contracting out of the Act. The words, "such claims as are mentioned" have been construed, used, misused and abused. It has given redress in favour of insurance companies because they said that claims did not mean liability, therefore the insurance company could have contracted out of liability.

(M) So that the word "liability" instead of "claims" is an important amendment in order to try to give redress. This simple amendment would, in effect, provide a lot of redress for injured parties.

(N) I did not mention clause 6 [s.4A in the Act as passed], but it is another clause which is intended to fill the loopholes in respect of some of these matters. Clause 6 states:

> "For the purposes of this Act owner of a motor vehicle licensed to ply for hire and insured under this Act is deemed to be the employer of any person driving the said motor vehicle at the time of an accident as a result of which a person has suffered death, bodily injury or damage to property."

(O) What used to happen is that a maxi taxi driver owner would have some independent arrangement with the driver of the vehicle and when the maxi taxi gets into an accident, the owner says that the driver is not employed by him; he is an independent contractor; it is an independent contractor relationship; it is not servant or agent relationship.

(P) What we are saying, in respect of those kinds of vehicles, the person is deemed to be the employer of any person driving the vehicle, so that there can be no question when a maxi taxi vehicle gets into an accident and people are injured, the passengers of the vehicle will be able to sue the owner, the driver and the insurance company, and the insurance company would not be able to say that it is not liable because the person who was driving the vehicle was not a servant or agent, but was an independent contractor. Similarly, the owner would not be able to say that the person was not driving as his employee.

(Q) In summary, it is a Bill which intends to reform the law of insurance in the area where persons are injured in motor vehicular accidents and where they would have claims against insurance companies. It is a law which would make it more difficult for insurance companies to avoid liability. It is a law which would, in effect, give an option to an injured party to sue in one action the insurance company and the tortfeasor so that much time would be saved in not having to go through two sets of actions.

(R) It is a law which will, in effect, expand the meaning of "road" and include "trailers". It is a law which would, in fact, provide relief for persons who have to undergo emergency operations; it is a law

which would ensure that claims which have to be paid by insurance companies, whether they be property damage claims, personal injuries claims or a series of claims, it would also make the insurance company liable to pay the cost that the injured party has to pay to the lawyers. It is a maximum amount, plus the legal cost which the injured party has to pay for fighting the case, if I may use that expression."

(Hansard, 5 November 1996, Senate, committee stage, p.440)

(S) [In relation to the clause which became s.4(7):] "The purpose of this clause is to prevent some insurance companies from taking the point that the person who is driving the vehicle did not have the consent of the insured and therefore is making it very difficult, if not impossible, for that point to be taken in order to ensure that the victim gets coverage. Therefore, in my view it expands the range of persons required to be indemnified under third-party insurance coverage.

(T) It will mean that not just persons specified in the policy shall be indemnified as is now the case, but persons who are driving or using the vehicle with the consent of the person insured specified in the policy. Normally what could have happened was that some insurance companies could have said that the driver's name is not mentioned in the policy, although the driver was driving with the consent or with the permission of the insured, points used to be taken that since he was not a specified driver in the policy there was not coverage for it, and this is an attempt to remedy that kind of situation."