Supreme Court of Ceylon
No. 57 (Final) of 1951.

District Court, Colombo.
No. 1370.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

P. P. THAMBUGALA of 445, Dematagoda Road,
Colombo.....*Plaintiff—Respondent.*

AND

THE CEYLON MOTOR INSURANCE ASSOCIATION LIMITED
of Iceland Building, Galle Face, Colombo.....*Defendant—Appellant.*

RECORD
OF PROCEEDINGS

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Supreme Court of Ceylon
No. 57 (Final) of 1951.

District Court, Colombo.
No. 22799.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

P. P. THAMBUGALA of 445, Dematagoda Road,
Colombo.....*Plaintiff—Respondent.*

AND

THE CEYLON MOTOR INSURANCE ASSOCIATION LIMITED
of Iceland Building, Galle Face, Colombo.....*Defendant—Appellant.*

RECORD
OF PROCEEDINGS

No. 1.

Journal Entries.

IN THE DISTRICT COURT OF COLOMBO

JOURNAL

(1) The 5th day of April, 1950.

Messrs. Jayasekera & Jayasekera file appointment (1*a*) and plaint (1) together with Document marked " A " (1*b*) letter dated 21–5–46.

Plaint accepted and summons ordered for 19th May, 1950.

Sgd. H. A. DE SILVA,
District Judge.

(2)
28– 4–50 Summons issued on defendant W.P.

(3)
19– 5–50 Summons served

Proxy filed. Answer on 23/6.

Intld. H. A. DE S.,
D.J.

(4)
23– 6–50 Messrs. Jayasekera & Jayasekera for plaintiff.

Messrs. Abrahams for Defendant Company.

Answer filed.

Trial before Mr. K. D. de Silva.

Intld. H. A. DE S.,
D.J.

(5)
23– 6–50 Trial 10-10-50.

Intld. K. D. DE S.,
A.D.J.

(6)
7– 9–50 Proctors for plaintiff file plaintiff's list of witnesses and documents and move for summons,

No. 1.
Journal Entries.
5-4-50 to 10-6-52.
—*continued*

Proctors for defendant receive notice.

Allowed.

Intld. K. D. DE S.,
A.D.J.

(7)
20- 9-50 Summons issued on 5 witnesses by plaintiff.

(8)
29- 8-50 Proctors for plaintiff move to file plaintiff's additional list of witnesses.

Proctors for defendant received notice.

File.

Intld. K. D. DE S.,
A.D.J.

(9)
10-10-50 Trial *vide* (5)

Messrs. Jayasekera & Jayasekera for plaintiff.

Messrs. Abrahams for defendant Company.

Defendant's list of documents filed.

Vide proceedings.

Judgment on 24-10-50.

Intld. K. D. DE S.,
A.D.J.

(10)
24-10-50 Judgment (10) delivered in open Court.

Intld. K. D. DE S.,
A.D.J.

(11)
Decree entered.

(12)
24-10-50 Proctors for Plaintiff file application for Execution of Decree together with copy decree (12*a*) and move for the issue of writ against the defendant.

Why was certified copy of decree issued on 24-10-50 when the decree was signed only on 25-10-50 ?

Intld. K. D. DE SILVA,
A.D.J.

Copies of decrees for Execution purposes are not issued per Court. They are made by Proctors and certified by them as " true copy " and produced before the Secretary who certifies same on their request. They are not compared with the decree in the case and no fee is charged.

Intld. (Illegibly)

(13)

25–10–50 Proctors for defendant-appellant tender petition of appeal (13*a*) of the defendant against the judgment of Court dated 24-10-50 with stamps Rs. 13.50 for certificate in appeal (13*c*) and Rs. 27 for S. C. Decree (13*b*) and move for a voucher for Rs. 200 as security for costs of appeal.

They also tender an application for two typewritten copies (13*d*) and move for a voucher for Rs. 40 for two briefs.

They also tender notice of security with stamps Rs. 7.50 affixed with copies of notice and petition of appeal for service. (13*e*–13*f*).

Stamps affixed to blank forms and cancelled.

Accept.

Issue voucher for Rs. 200.

Issue voucher for Rs. 40.

Notice for 3–11–50.

Intld. K. D. DE S.,
A.D.J.

24–10–50 Vouchers for Rs. 200 and Rs. 40 issued.

(14)

25–10–50 Proctors for defendant-appellant file petition (14*a*) and affidavit (14*b*) on behalf of the defendant-petitioner and for reasons stated therein move that the Court be pleased to make order,

No. 1.
Journal
Entries.
5-4-50 to
10-6-52.
—*continued*

(*a*) that the plaintiff-respondent's application for execution be dismissed, and

(*b*) in the alternative to (*a*) that the Court be pleased to order that execution be stayed—Proctors for plaintiff-respondent received notice for 3–11–50.

Call on 3–11–50.

Intld. K. D. DE S.,
A.D.J.

(15)
25–10–50 Proctors for defendant-appellant move that the petition of appeal being accepted by Court, he would on 3–11–50 or soon thereafter tender Rs. 200 as security for costs of appeal and tender a sufficient sum of money to cover the expenses of serving notice of appeal. Proctors for plaintiff-respondent received notice with copy of Petition of Appeal for 3–11–50.

Call on 3–11–50.

Intld. K. D. DE S.,
A.D.J.

(16)
26–10–50 Notice issued for 3/11.

(17)
3–11–50 Messrs. Jayasekera & Jayasekera for plaintiff-respondent.

Mr. P. Abraham for defendant-appellant.

Case called *vide* (14) and (15).

Notice of security served on Proctor for plaintiff-respondent.

He is present. Amount offered is accepted.

Issue notice of Appeal on bond being perfected and filed.

Intld. H. A. DE S.,
D.J.

By consent stay execution pending decision in Appeal.

Intld. H. A. DE S.,
D.J.

(18)
3–11–50 Proctors for defendant-appellant tender Security Bond (18*a*) together with Notice of Appeal (18*b*) to (18*e*) and Kachcheri Receipts No. S/8 074574 dated 25–10–50 and No. S/8 074573 dated 25–10–50.

File.

Issue notice for 8/12.

Intld. H. A. DE S.,
D.J.

(18*a*)
K.R. S/8 2063/074574 dated 25–10–50 for Rs. 200 being security filed.

(18*b*)
K.R. No. 2062/074573 dated 25–10–50 for Rs. 40 being copying fee filed.

(19)
3/11—Notice of appeal issued.

Sgd. .....

(20)
13–11–50 *Vide* Memo from the typing branch an additional fee of Rs. 20 from appellant and full fees of Rs. 30 from respondent required for typing the copies of the Record in this case.

Call for

Sgd. .....
D.J.

(21)
20–11–50 Vide (20) above. Issue two vouchers with covering letters.

(22)
30–11–50 K.R. A/9 No. 2423/81881 of 27–11–50 for Rs. 20 filed.

(23)
30–11–50 K.R. A/9 No. 2488/82046 of 28–11–50 for Rs. 30 filed.

(24)
8–12–50 Messrs. Jayasekera & Jayasekera for plaintiff-respondent.

Messrs. Abrahams for defendant-appellant.

No. 1.
Journal Entries.
5-4-50 to 10-6-52.
—*continued*

Notice of appeal served on Proctors for plaintiff-respondent.

Forward record to Supreme Court.

Sgd. .....
D.J.

(25)
7- 2-51 Record forwarded to Registrar, S.C., with two briefs.

Sgd. .....,
Secretary.

(26)
3- 6-52 Registrar, Supreme Court, returns record after the decision of the appeal which is dismissed with costs.

Proctors to note.

Sgd. .....,
D.J.

(27)
10- 6-52 Registrar, Supreme Court, requests that the original record in this case be forwarded as it is required by him in connection with the Appeal to the Privy Council.

Forward.

Sgd. .....,
D.J.

No. 2.
Plaint of the Plaintiff.
5-4-50.

No. 2.

Plaint of the Plaintiff.

IN THE DISTRICT COURT OF COLOMBO

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... Plaintiff.

Vs.

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD., Fort, Colombo, presently of Iceland Building, Galle Face, Colombo ..... Defendant,

This 5th day of April, 1950.

No. 2.
Plaint of the Plaintiff.
5-4-50.
—*continued*

The plaint of the plaintiff abovenamed appearing by Lionel Dias Abeykoon Jayasekera, practising under the name, style and firm of Jayasekera & Jayasekera, with his assistant E. A. Jayasekera, his Proctors, states as follows :—

1. The defendant is a limited liability Company duly registered in Ceylon under the Companies' Ordinance and having its principal place of business in Colombo, within the jurisdiction of this Court and the cause of action hereinafter set forth also arose within the said jurisdiction. The plaintiff also resides at Colombo within the said jurisdiction.

2. The plaintiff on 10th June, 1946, sued one K. Stephen Perera in D. C. Colombo, case No. 17,020/M to recover a sum of Rs. 15,000 as damages for the injuries sustained by him as a result of the negligent driving of car No. X 4851 belonging to the said K. Stephen Perera by a driver in the course of and within the scope of his employment as driver of the said Stephen Perera. The plaintiff was knocked down and run over by the said car due to the said negligence.

3. The said car No. X 4851 was duly insured at or about the time of the accident with the defendant Company.

4. The plaintiff by his letter of the 21st May, 1946, gave due notice of the action to the defendant Company in terms of section 134 of the Motor Car Ordinance 45 of 1938. A copy of the said letter marked " A " is filed herewith and is pleaded as part and parcel of this plaint.

5. Judgment was entered in the said case No. 17,020/M of this Court on the 25th day of June, 1948, in plaintiff's favour against the said K. Stephen Perera, the defendant in the said case in a sum of Rs. 10,000, legal interest and costs.

6. The said K. Stephen Perera appealed to the Supreme Court against the said judgment in the said case and the appeal was dismissed on the 11th day of November, 1949, and the Decree of the District Court has become final.

7. The plaintiff states that on the Decree in the said case there is now due and owing to the plaintiff a sum of Rs. 13,881.22 which sum the defendant is in law liable to pay the plaintiff in terms of the statutory obligations imposed by section 133 of the said Motor Car Ordinance.

8. The defendant Company has wrongfully and unlawfully refused to pay to the plaintiff the said sum though thereto requested and a cause of action has thus accrued to the plaintiff to sue the defendant Company for the recovery of the sum of Rs. 13,881.22 with legal interest.

Wherefore the plaintiff prays that the Court be pleased to enter judgment in plaintiff's favour—

No. 2.
Plaint of the Plaintiff.
5-4-50.
—*continued*

(*a*) in the said sum of Rs. 13,881.22 with legal interest thereon from date hereof till payment in full,

(*b*) for costs, and

(*c*) for such further and other relief in the premises though not herein expressly prayed for, as to this Court shall seem meet.

JAYASEKERA & JAYASEKERA,
Proctors for Plaintiff.

Memorandum of Documents Produced and Filed with the Plaint.

Letter dated 21st May, 1946, marked " A " (copy).

Memorandum of Documents Relied on by the Plaintiff. 10

(1) Plaint, Answer, Issues, Proceedings, Decree in Action No. 17020/M of this Court.

(2) Correspondence between Plaintiff and Defendant.

Sgd. JAYASEKERA & JAYASEKERA,
Proctors for Plaintiff.

Settled by :

MR. N. K. CHOKSY, K.C.,

MR. J. FERNANDO PULLE,
Advocates.

No. 3.
Answer of the Defendant.
23-6-50.

No. 3. 20

Answer of the Defendant.

IN THE DISTRICT COURT OF COLOMBO

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff.*

Vs.

THE CEYLON MOTOR INSURANCE ASSOCIATION, LIMITED
of Iceland Buildings, Galle Face, Colombo ..... *Defendant.*

On this 23rd day of June, 1950.

The answer of the defendant abovenamed appearing by Prosper Abraham and Vernon Bertrand Stanislaus Abraham, practising in partnership under the name and style of Abrahams, its Proctors, states as follows :—

1. The defendant admits the averments contained in paragraph 1 of the plaint save and except that it denies that any cause of action has arisen in favour of the plaintiff.

2. The defendant is unaware of and therefore denies the averments contained in paragraph 2 of the plaint.

3. Answering to paragraph 3 of the plaint the defendant denies the averment contained therein.

4. Answering to paragraph 4 of the plaint the defendant admits receipt of the letter referred to but denies that it has thereby been given notice of action as required by section 134 of the Motor Car Ordinance No. 45 of 1938.

5. The defendant is unaware of the averments contained in paragraphs 5 and 6 of the plaint and denies them.

6. Answering to paragraph 7 of the plaint this defendant states that it is unaware of the amount, if any, due on the decree referred to.

7. Still further answering to the said paragraph this defendant states that the liability referred to is not a liability covered by a policy of insurance issued by the defendant Company as the person driving the car at the time of the said accident was an " excluded driver " being a person other than an insured or a person driving with an Insured's express or implied permission.

8. Still further answering the defendant denies that it has become liable to the plaintiff in any sum whatsoever under section 133 of the Motor Car Ordinance or otherwise or that any cause of action has accrued to the plaintiff to sue the defendant for any sum at all.

9. As matters of law the defendant pleads—

(*a*) that the plaint discloses no cause of action,

(*b*) that in any event no sum is payable by the defendant as notice of action as required by section 134 (*a*) of the Motor Car Ordinance has not been given.

Wherefore the defendant prays—

(*a*) that plaintiff's action be dismissed with costs,

No. 3.
Answer of the Defendant.
23-6-50.
—*continued*

(*b*) for such other and further relief as to this Court shall seem meet.

Sgd. V. B. S. ABRAHAMS,
Proctors for Defendant.

Settled by :

G. T. SAMARAWICKREME, Esq.,

N. E. WEERASOORIYA, Esq., K.C.,
Advocates.

No. 4.
Issues.

No. 4.

Issues.

10th October, 1950.

Mr. Adv. E. G. Wickremanayake with Mr. Adv. J. Fernandopulle for the plaintiff instructed.

Mr. Adv. N. E. Weerasooriya, K.C. with Mr. Adv. G. T. Samarawickreme and Mr. Adv. Wannasundera for the defendant instructed.

Mr. Wickremanayake states that in terms of section 134 (*a*) of the Motor Car Ordinance 45 of 1938, his client wrote letter of 21–5–46, to the defendant Company, intimating to them that an action would be filed against the owner of the car and that the defendant sent him the reply dated 23rd May, 1946, and that D.C. 17,020/M of this Court was filed on June 10, 1946.

Mr. Weerasooriya states that he seeks to avoid liability only on the ground that the letter written by the plaintiff on 21–5–46 does not constitute valid notice.

The following admissions are recorded :—

(1) That the plaintiff did on 10th June, 1946, institute action No. 17,020/M for the recovery of Rs. 15,000 as damages from K. Stephen Perera being the owner of the car No. X 4851 for injuries sustained by him as a result of being knocked down by the said car.

(2) That by decree entered in this Court in the said case on 25th June, 1948, the plaintiff was awarded a sum of Rs. 10,000, legal interests and costs.

(3) That the judgment of this Court was affirmed in appeal on 11-11-49. No. 4. Issues. —*continued*

(4) That the car X 4851 belonging to K. Stephen Perera was insured with the defendant Company under Policy No. 9432 between the dates 20th April, 1945 and 20th April, 1946.

(5) That the accident concerned took place on 1st September, 1945.

It is agreed that the admissions made will apply only as between the plaintiff and the defendant in the action and not as between the defendant and any other party.

Mr. Wickremanayake suggests the following issues :—

(1) Was the letter dated 21-5-46, sent by the plaintiff to the defendant Company, sufficient notice under the provisions of section 134 of Ordinance 45 of 1948 ?

(2) If so, is the defendant liable to pay plaintiff the sum of Rs. 13,881.22 with legal interest thereon from 5th April, 1950 ?

Mr. Weerasooriya suggests the following further issues :—

(3) If issue 1 is answered in the negative is this action maintainable ?

Mr. Weerasooriya concedes that if issue (1) is answered in the affirmative, issue (2) should also be answered in the affirmative.

Mr. Wickremanayake concedes that if issue (1) is answered in the negative, plaintiff's action be dismissed with costs.

Mr. Wickremanayake marks letter dated 21st May, 1946, written by the plaintiff to the defendant P 1, and the reply by the defendant, dated 23rd May, 1946, P 2. He says he is not calling any witnesses. Plaintiff's case closed reading in evidence P 1 and P 2.

Mr. Weerasooriya says he is not leading any evidence.

No. 5.

No. 5. Addresses to Court.

Addresses to Court.

Mr. Weerasooriya addresses : The letter on which my learned friend relies is not notice under section 134. In order to put forward that contention my reason is that once the third party gets a judgment against the insured he gets

No. 5. Addresses to Court. —*continued*

under the statutory provisions a right to proceed against the insurer without taking legal action against the insured ; that is under section 133. Under the statue the special right is really in practice tantamount to getting an execution of a decree against somebody else. If you wish to recover any sum of money you must get this decree and you must be given an opportunity of defending the action and after getting the decree you can take out execution. Where the statute claims to take away the right of another man under the common law, to defend himself it is essential that the provisions of such a statute must be strictly construed. Having that principle in view my submission is that where the statute says that there are certain conditions precedent to this right to execute my decree against the insurer I am entitled to ask the Court to consider whether those statutory provisions have been fulfilled in terms of the statute. In that connection my learned friend indicates that if a notice is given in fact there are certain things that the insurer can do to protect himself, which is very important. Those arise under sections 136 and 137. As a party allied he has a further right under the common law of defending the action ; in any event whether he has a legal right to do so or not the insurer can himself see that the action is properly defended. If therefore he does not get the proper opportunity those three safeguards are lost to him. The safeguards under sections 136 and 137 and the general right he has to see that the action is properly defended, under the common law of taking over the defence in an action. ***Sections 136 and 137, page 140.*** Section 136 refers to the insurer getting a declaration of non-liability. Both parties come in and there is a time limit. Either he must bring an action within three months or he must give three month's notice. Similarly under section 137. And there are the same provisions in 137 in regard to the time within which things should be done and notice to be given. There are certain points in the answer. There are breaches of conditions and they come under conditions of Policy under section 137. In our answer we referred to certain breaches of certain conditions. We have not filed any action under section 137. Our position is that we could not do so and we cannot now in law agitate that question. The notice must be specific because if we so desire to take certain steps we must take these steps for the protection of our own interests. The fact that somebody else is bringing an action is no reason for us too to protect ourselves unless we know definitely that proceedings are to be taken. With regard to section 134 and the English law, the English law is different from the corresponding section 134. *Section 10, sub-section 2 of the Road Traffic Act, 1934.* I find our section is much more specific in that it particularises certain things much more than the English Act. But even under the English Act it has been held that the notice must be a formal notice ; that the notice referred to some intention in one's mind on the receipt of certain instructions from somebody else is not sufficient. To intimate to the insurer, if I may put it in another form, that a third party or his agent had an intention of bringing an action, or that the agent has received instructions from the third party to bring the action, is not sufficient. The third party may instruct his proctor ; that is a matter between the proctor and the third party. It may be instructions as to when or where or how these instructions are to be carried out ; it is a thing entirely between themselves. A man may have, similarly, some

intention in his mind which he may not give effect to. P 1 is the plaintiff's proctor's letter. The intention or instruction is not notice of the intended action. The particulars necessary for the action that is going to be filed must be given. It will have to state definitely the particulars which are necessary even though you had the plaint giving the particulars which you have formulated in actually bringing the action. The particulars on which the action would be based should be included. We are not concerned with the instructions which Messrs. Jayasekera & Jayasekera receives from his client. We are only concerned with what is going to be done in regard to this particular incident. A letter that an action is to be filed within a certain time is not notice. They must say either that they have filed an action in a certain court or on a certain day. It can be either before or after. P 1 is defective because it merely says " we have received instructions from our client to do certain things," which is not the notice contemplated. That is the receipt of instructions as between the third party and his solicitor. It is the intention of the third party. Can this be construed to mean giving notice ? *Shawcross on Motor Insurance—page 297, 1949, 2nd edition.* Our section says, " notice of the action had been given to the insurer by a party to the action ". Here you see " notice must be given " ; the other is " the insurer had notice ". According to our own section " notice must be given " but according to the English section " had notice of the bringing of the proceedings ". Then it says, " given by a party to the action " ; here it merely says " the insurer had notice of the proceedings ". There must be notice of the action not merely notice of the bringing of the proceedings. Although one is entitled to give notice seven days before you can give it any time you want and you must give it within seven days. Notice of the proceedings is what the English law says. Bringing is synonymous with action ; it means that there is a suit pending. How can you say what you are going to do before you have done it. That is exactly what this section means. It means give a man specific notice of the action you propose to bring, not the fact that you have the intention of taking certain proceedings. There are certain points which make the English section much more general than our section. According to the English section it is sufficient if notice is given through some party, not necessarily to the party. It must be by a party. Dealing with this matter the mere assertion of liability and repudiation by others is not sufficient. 2 *Law Times, 1860, page 632.* There also where there was negligence it was necessary to give notice. Two points arise ; one whether in that specific case the notice was necessary and the other whether the writing was sufficient notice. They had no doubt at all as to whether the words used constituted insufficient notice on them. They took that view without hearing the other side. All the facts are stated. He says he has suffered damages ; he says his instructions are to commence legal proceedings if no satisfactory arrangement is made. 113 *English Reports, page 72—Norris vs. Smith.* The point is that the notice was provided for. The alleged notice under the statute. If the notice is given to a party it may even be less specific because he only will know what he has done. If a notice is given to a party that you are going to take action against him he requires very little notice. Notice must be certain and definite otherwise it is not a notice ; it is not the notice contemplated by you. You can't tell a man an action is going to follow because this is not a notice of an action. You

No. 5. Addresses to Court. —*continued*

cannot put your difficulties to him and ask him for his observations. It is a conditional notice, not an absolute notice. You can't tell a man that if the amount is not paid I am going to take action. There were two parties against whom he brings this action. There was the man who was negligent for driving and ourselves the insurers who took upon ourselves the liability. There was the driver, the owner and on fulfilment of certain conditions, ourselves. In P 2 Your Honour will see what we took the letter P 1 to mean. The alleged accident took place on 1st September, 1945. The letter is written on 23rd May, 1946, and we write to say that this accident had not yet been reported. It is very important to consider how one is going to read P 2. When we got P 1 we had known nothing about this accident and there is a conditional statement in the letter " if it is not settled within a certain time ". There was no further correspondence until the action between Stephen Perera and the plaintiff. We regarded P 1 as not purporting to be a notice under section 134. If you are going to construe this document and find out how you are going to read it the point in my view is that it did not purport to be a notice under section 134. His submission is that it was a conditional notice and not an absolute notice more particularly because a third party was involved in this transaction. It was really a notification of an intention to take legal steps and not notice of the action. Whether the action is filed or whether the action is merely in contemplation and you give the notice before the actual filing of the action the notice must be the same. If you give notice of one action and file another action that is not notice of the action you file. Suppose I write and give all particulars saying action is to be instituted in the District Court of Colombo and on certain grounds of convenience the action is to be instituted in the District Court of Kegalle, that is not notice of the action because it is a different action. You cannot say that merely because an action permits you to give notice before the commencement of the action it permits you to give notice different to the action which you are going to file. In this letter it is not said where they are going to file the action. Does the statute expect us to search the records of the various courts of this Island as to where this action is to be filed ? This document P 1 does not even say where the action is to take place. Furthermore Mr. Thambugalla is a gentleman residing at Mawanella and Stephen Perera is also of Mawanella and the action has been taken in Mawanella. You might literally call it a technical objection but it is an objection because the rights are reserved to the insurer to protect himself. Does the law object to the right to ascertain for ourselves where the action is going to be filed ? The action may have taken place at Tangalle or Batticaloa or somewhere and the action may have been filed in any of those courts. It does not state where the action is to be filed and in what Court. It does not state even who the driver is or whether the driver is to be a party in these proceedings. It does not state in fact who will be the defendant to the action. It does not state the court, the place or the party. It does not state when the action is going to be filed. All it tells us is " if it is not settled on the 31st instant we are instructed to file action."

Mr. Wickremanayake correcting his learned friend states that P 1 states specifically the action is to be filed against the owner of the car.

Mr. Weerasooriya continues : We are given an opportunity under sections 136 and 137. I can bring an action three months after the institution of the action against the insured to protect myself. If I do not know when the action against the insured is being filed how can I ascertain from what period the three months will begin. It may be filed immediately, it may be filed just before the prescribed period, it can be first September, 1945, and it can be heard on 31st July, 1947. Am I to be searching for the court records ? I do not know where they are. Am I to be precipitate in my action ? Am I to protect myself against an action which the third party may bring against the owner ? Why should I do it ? I am an insurance company. Suppose this matter is settled ? or suppose the third party advises us " look here, you have no case—do not bring this action ?" In most of the cases the insurance companies will not try to displease the customer by suing him and it will not like to involve itself in the costs of litigation. Is there any obligation on the part of the insurance to ascertain when the action has been filed or whether or not it has been filed in order to bring his own action within a specific time ? *1938—2 King's Bench Division, page 167—Cross vs. British Oak Insurance Company.* In this case there was a certain right to make a counter-claim in which notice was to be given. No notice of the counter-claim was given. This is, I confess, a case where the specific terms of a notice was considered, but it emphasises that there must be a valid notice without which you cannot succeed. They have given notice of the action : the insurers were aware of the action. It is not stated that they originally gave notice to the third party. I did not say that this case specially gave notice. What I say is that the insurance company knew all about the action : this was proved beyond doubt. It might then be said that " you knew all about this action, and what are you talking about this notice ?" The contract in this case deals with the scheme of the act, so that this case definitely emphasises the necessity of giving a notice. *83 Lloyd's Law List Reports, Page 91—Weldrick vs. Essex & Suffolk Equitable Insurance Society.* At page 101 there is a particular reference about this question of notice. It is important that you have specific particulars in the notice of the action which the third party has brought in order that you may avail yourself of the statutory rights which are given by the same statute to protect yourself and that protection must be taken within a certain time in a certain way and all the provisions of those sections must be complied with in order to avail yourself of the notice. The respective condition is in section 161. Even without such specification one can say what notice of action, what notice of action should be. Apart from anything else it is the intention of a claim in a general sense. It is one thing to say there is claim I intend to bring against you. Very soon there is nothing as to whether one might not split the difference. His submission is that where the claim is made against the insurance company it is the business of the insurance company to take the necessary steps. Claims are made which are never followed up. It can happen that a person who has been a victim of an accident may not follow it up with an action. It may be just a measure to see whether some adjustment might be made by the company. One has also to bear that in mind. It is not an individual claim ; it is not an isolated transaction. It might happen that you get several letters on the same day. His submission is that notice must be given within the meaning of section 161. It

No. 5. Addresses to Court. —*continued*

is conditional on the claim not being settled and does not refer to the section and furthermore two days later we wrote back to say we know nothing about this matter. They did not write back to us to say we are not concerned with so and so when we could not contact so and so. They merely say that such and such is the case that they are filing action against us.

Mr. Wickremanayake replies : In the earlier sections of the statute to begin with, section 127 provides that all vehicles must be insured and no vehicle will be licensed until it is protected by insurance, both for the protection of the public as well as for the protection of the insurance company. If there is an accident one well knows that the insurance company is behind the owner of the car. In the light of that one looks to the insurance company. The notice sent is a notice dated 21st May, in which we have set out all that was necessary to be set out in the action itself against Stephen Perera. The date of the accident, the negligence of the driver, the owner of the car, they are all mentioned to the Insurance Company. We also intimated that unless a settlement was made on or before the 31st we are instructed to file action. Under section 134 there is no requirement as to the form of notice of necessity or what particulars should be given in that notice, and to that extent this section differs from a number of other ordinances which have been considered in some of the cases my learned friend cited. The sole purpose of the existence of this section is in order to give insurance companies notice that an action is to be filed or has been filed so that they may protect themselves under sections 136 and 137 if they have any grounds on which they can protect themselves to disclaim liability. Under 136 or 137 the insurance companies are enabled to institute proceedings in order to meet the declaration of non-liability before the action is filed against the owner of the car. There is no time limit and that is why under section 134 the notice to the party who proposes to bring the action can be given either before the commencement of the action or within seven days after. Whatever time you give it before, if the Insurance Company wants to protect itself it can bring its action for non-liability at any time before action is filed. In order that a declaration of non-liability may be got the facts must be given. The facts are given, the date of the accident, the owner of the car and the negligence of the driver are all given. It is not sufficient to find out the name of the driver ; so long as the driver was employed by him it would be sufficient. Wherever I am going to file the action it is immaterial for the purpose of our action if they contest the claim. When a report is made to them they must go into facts. If the Insurance Company had added another paragraph and asked for the information they wanted such information would have been furnished. An insurance company is protected by sections 136 and 137, and as against the person who has suffered the injury, whose damages it guarantees for premiums they receive. When any accident takes place the claim against the insured would be met by the Insurance Company. The only way they can seek to get out of the liability is by showing that the insured himself is not entitled to that guarantee. Stephen Perera has forfeited his right by reason of certain contracts between the insurer and the insured. If there has been under section 136 a non-disclosure then it can get declaration that it is not liable in respect of anything at all. Under section 137

it will only be in relation to breaches of the conditions of the policy. If there is a breach of the condition of the policy then they can turn round and get exemption from liability under that policy. Generally they are not liable to pay. Here Stephen Perera is the person who has met with the accident. If it is a matter of searching records they can conveniently write to the proctor. They search all the records available. Is there anything to prevent their filing their action under sections 136 and 137 ? If they wanted to wait till the 31st and save themselves the trouble of finding out the record they could have written to the insured or to me. All the references given by my learned friend are unsound. Here the Insurance Company says that they repudiate liability on the ground that this is the first intimation and that every policy provides that the insured shall inform the Insurance Company of any accident. Even if the action was filed he did not rectify the notice because there was nothing to rectify in it. The claim is a heavy claim for Rs. 15,000. Any prudent man would take the necessary steps to find out what is happening or take steps to take proceedings. The fact that no notice was given by the insured to the Company of the accident is not relevant. The basis on which their claim is set out is that they are not liable. They think that because the insured has failed to inform them of the accident it is a breach of the conditions of the policy. Really it is not a breach of the conditions of liability. When he found that there was a claim for Rs. 15,000 any prudent man would have taken steps to find out the particulars of the accident. The only reason for the notice itself is because without the notice the Company would be prejudiced in making its applications under 136 and 137. For this and no other reason is the notice given. That being the position the notice compels them to take notice under 136 and 137. So far as the *Law Times* judgment is concerned, of 1860, this action is intended to give an opportunity of making amends.—*130 English Reports, page 172.*

Intld. K. D. DE SILVA,
A.D.J.

10-10-50.

(*Adjourned for Lunch*)

10th October, 1950

(*After Lunch*)

Mr. Wickremanayake continues his address : Re *Law Times* 632 cited by my learned friend—the notice in that case is similar to notice under section 461 C.P.C. So is 113 *English Reports* 72. The relevant provision of law required certain particulars to be given, and the notice had not furnished those particulars.

With regard to the 1938, 2 *K.B.D.*, page 167—the English Road Traffic Act does not provide that notice shall be given. In that case it was held that constructive notice was not enough. In that case it was stated that the

No. 5. Addresses to Court. —*continued*

" Insurer had notice of the bringing of the proceedings ". It was therefore sought to be argued that " had notice " only meant " was aware of ". It was held in that case that " had notice " meant " was aware of ", and as they were aware of the action they had notice of the action.

Re 83 *Lloyd's Law List Law Reports*, p. 91. There again no notice was given at all. A letter was written, which was sought to be construed as a notice, and it was very different to the letter in this case. There again they repudiated the claim on the ground that Jean Welerich was a mistress of Mohamed and an employee of Mohamed. That case was decided on facts. The notice given in that case is no notice at all. It was said there, just as it was said in the 2 *K.B.* case, that they must be given notice of the intention to institute action. My learned friend seems to rely on the words " unless our client's claim is settled on or before the 31st instant ". There is a case decided locally under the Urban Councils' Ordinance reported in 40 *N.L.R.* 474—re section 230 of the Urban Councils' Ordinance Cap. 195, Vol. 5, page 283. This is a case where notice was given in these conditional terms, as my learned friend calls them. The notice given is similar to P 1. In that case, 113 *English Reports* 72, cited by my learned friend, the notice was held to be valid.

The other argument about where the action is to be brought, I say, is utterly irrelevant.

Mr. Weerasooriya replies : Re 40 *N.L.R.* 474. The relevant provisions of law sets out the particulars to be included in the list. The section that is considered has the words " notice *of the* action " which is to be brought against the third party. The words in the letter sent to us are " unless the claim is settled on or before the 31st, we are instructed to file action against the owner ". In the 40 *N.L.R.* case the claim is made direct to the Council, and the Council must pay. It would not have the same meaning as " we have instructions to sue you in default of payment ". This is not a conditional notice similar to the one in the 113 *English Reports* 72. In the 40 *N.L.R.* case, it is direct to the party. The words here are, " unless you settle we are instructed to sue the owner ". There is nothing consequential in the 40 *N.L.R.* case. It states, " if you do not pay, we will file action against you ". I do not admit that the 40 *N.L.R.* case weakens my argument. I do not concede that the notice required under that provision is more stringent than the notice required here.

Section 40 of the Code sets out what the requisites of a plaint are. It is less stringent. Section 230 of the Urban Councils' Ordinance merely states that you must state the cause of action and abode of the plaintiff and his Proctor or Agent. Chief Justice Abrahams was considering a section which states that you must give notice in writing of certain facts. If the letter gave notice of a cause of action and the name and place of abode of the intended plaintiff, that was all required. Nothing else. It is very much less stringent. It is very necessary to consider the letter. It gave notice of three facts, cause of action, name and place of abode of the plaintiff. The notice contemplated

by the Urban Councils' Ordinance is that the defendant should be informed that an action will be filed and in that notice the cause of action and the name and abode of the plaintiff should be mentioned. But that is an action to be filed against the Council. That is why greater latitude is given in the section. If in the notice given under section 134 some of the facts are omitted, that would not do. The Court where the action is to be instituted must also be given to enable me to take other steps. I do not say that Chief Justice Abrahams agreed with any of the authorities that I cited. In the case of *Norris vs. Smith* also the Council was going to be sued. Notice of the action is not merely notice of the cause of action and the name and place of abode of the plaintiff, because notice of the action should contain a number of other particulars, viz., the place and the date on which the action will be filed. These are the two essential differences in view of the section 230. Every fact that is necessary in regard to the action that is going to be filed against a third party is distinguished from stating in writing the cause of action. The reason for section 230 is different from the reason for section 134. The reason for section 230 is given in section 230 itself. In the present case the notice does not state even the place of accident. In regard to giving notice of action proposed to be instituted against a third party, the construction must be necessarily strict. The whole purpose of this section is that you cannot sue on a different cause of action. Notice of the action is " notice of the particular action " and not notice of any action. The section does not distinguish between the notice that should be given before the action is filed and after the action is filed. He cannot say he filed it, but he must say that he will be filing it on some particular day. Section 40 of the Code gives what should be stated. What is important is identity of the action, and not identity of the claim or cause of action. We have undoubtedly followed the English Acts, but in doing so we have really changed. The English Acts have interpreted those words to mean definite notice and not formal notice, All that the English Acts required is notice of the bringing of the proceedings. Other than giving the number of the case, every other particular can be given in the notice. P 1 is nothing more than a letter of demand or a threat to file action. Letter of demand is not sufficient. By giving general information or sending a letter of demand the obligation cannot be put on me to file an action at once.

P 1 and P 2 tendered.

Judgment on 24–10–50.

Sgd. K. D. DE SILVA,
A.D.J.

10–10–50.

No. 6.
Judgment of the District Court.
24-10-50.

No. 6

Judgment of the District Court

JUDGMENT

24th October, 1950.

The plaintiff instituted case No. 17,020/M of this Court on June 10, 1946, against one K. Stephen Perera to recover a sum of Rs. 15,000 as damages for injuries sustained by him when he was knocked down by car No. X 4851 belonging to the said K. Stephen Perera, while it was being driven by his driver in the course of and within the scope of his employment. This accident took place during the currency of Insurance Policy No. 9432 issued in respect of the car in question, by the defendant Company. Prior to the institution of that action the plaintiff by his letter of May 21, 1946 (P 1) claims to have given the requisite notice to the insurer in terms of section 134 of the Motor Car Ordinance No. 45 of 1938 (hereinafter referred to as the Ordinance). Judgment was entered in that case for the plaintiff in the sum of Rs. 10,000 with legal interest and costs on June 25, 1948. Stephen Perera appealed from that judgment, but his appeal was dismissed on November 11, 1949. The amount due on the decree at the time of the institution of this case was Rs. 13,881.22. This sum remains unpaid up to date. In terms of section 133 of the said Ordinance, the plaintiff contends, the defendant as insurer of the vehicle is liable to pay this claim. Alleging that the defendant Company had wrongfully and unlawfully refused to pay him the amount due on the decree, the plaintiff instituted this action against them claiming the same. Defendant Company filed answer denying their liability pleading, *inter alia*, that at the time of the accident the car was being driven by a person who was an "excluded driver" and that due notice as required by section 134 (*a*) of the Ordinance had not been given to the defendant.

At the trial Mr. N. E. Weerasooriya, K.C., the learned counsel for the defendant, stated to Court that his client sought to avoid liability solely on the ground that due notice under section 134 (*a*) had not been given. Neither side called any witnesses, but certain admissions were recorded and Mr. E. G. Wikremanayake, the learned counsel for the plaintiff, read two documents, P 1 and P 2, in evidence. Both counsel addressed the Court at length on the question of law involved.

According to section 133 (1) of the Ordinance, when a decree is entered against the assured in the circumstances set out therein "the insurer shall, subject to the provisions of sections 134 to 137, 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 the costs and any sum payable in respect of the interest on that sum under the decree." Section 134 (*a*), however, enacts that no sum shall be payable by an insurer under the provisions of section 133 "in respect of any decree, unless before or within seven days after the

commencement of the action in which the decree was entered, notice of the action had been given to the insurer by a party to that action."

The notice relied on by the plaintiff in this case is the letter P 1 of May 21, 1946, addressed to the defendant by the plaintiff's Proctors. It reads :—

" Re Car No. X-4851

Dear Sir,

We are instructed by Mr. P. P. Thambugala of Manikkawa Walauwa in Mawanella to file an action for the recovery of Rs. 15,000 against Mr. Kodituwakku Aratchige Stephen Perera of Mawanella being damages sustained by our client as a result of the above case knocking down our client on the 1st September, 1945, by reason of the negligent and careless driving on the part of his driver.

We are given to understand that the above car has been insured with your Company.

Our client is still under treatment and unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car."

The defendant Company acknowledged the receipt of this letter by their letter P 2 of May 23, 1948, in which they stated that they were totally ignorant of the accident until then, and advised the plaintiff's Proctors to communicate with the assured direct as he had failed to report the accident in terms of the conditions of the Policy.

Mr. Weerasooriya maintained that the letter P 1 merely indicated an intention on the part of the plaintiff to sue the assured under certain conditions and that it did not contain the necessary particulars contemplated in the notice under section 134 (*a*). The section itself does not prescribe the form of the notice. Mr. Weerasooriya's contention is that this notice when given before the action is filed should contain all the particulars of a plaint required under section 40 of the Civil Procedure Code (Cap. 86). He dwelt at length on the necessity of embodying full particulars in the notice. On receiving this notice, he argued, the insurer would be able to safeguard his position in three different ways. That is to say, he could take steps under sections 136 and 137 to obtain a declaration of non-liability by instituting legal proceedings for the purpose, secondly he can see to it that the action is properly defended, and thirdly he can take over the defence himself. There is no doubt that these are advantages that the insurer can avail himself of on receiving notice of the contemplated action against the assured. Mr. Weerasooriya also argued that in the letter P 1 relied on by the plaintiff there was no certainty that legal proceedings would definitely be taken and at most, he contended, it was only a conditional notice. He cited English

No. 6. Judgment of the District Court. 24-10-50. —*continued*

cases in support of his contention that conditional notice was not sufficient. One of these is the case of *Mason vs. Brikenhead Improvement Commission*, 2 *Law Times, 1860 page 632*. In this case the plaintiff sought to recover damages for injuries sustained by him by reason of the negligence of the servants of the defendants. But under the provisions of a certain Act such an action is not maintainable, " unless notice in writing, signed by the attorney of the plaintiff, and specifying the cause of such action shall have been given to the defendants 30 days before such action shall be communicated ". That case was instituted on November 12, 1859, and on May 30, 1859 the plaintiff's attorney addressed a letter to the defendants setting out the circumstances under which the plaintiff was injured, and proceeded to state : " My instructions are to commence legal proceedings if no satisfactory arrangement is made ". It was held that the notice was not good. But the reasons why it was so held do not appear from the judgment.

In the case of *Norris vs. Smith*, 113 *English Reports, page 72*, the defendant was a clerk of the trustees entrusted with certain public duties. The plaintiff sued the defendant for alleged libel. But before instituting such an action 30 days' notice had to be given under the provisions of a certain statute. The notice relied on by the plaintiff in that case was a letter addressed by his attorney to the defendant in the following terms :—

> " I am directed by Mr. John Norris, of P. street to request you will forthwith give up the names of the person or persons said to have made a complaint to the trustees for lighting, etc., of the Parish of St. Luke, and upon which you did, on the 23rd July last, serve Mr. Norris with a notice charging him with keeping a disorderly house, etc. ; and unless you do, Mr. Norris will consider you the author of such notice (which I conceive to be libellous), will take proceedings against you accordingly. Probably you will favour me with the names of the gentlemen, said to be traders, who, in your company and presence, forcibly entered Mr. Norris' house. An answer is requested."

This notice was held to be insufficient, and Patteson J. observed that this was only a conditional notice and not an absolute one. Therefore, Mr. Weerasooriya submits that the notice contained in P 1 too is conditional by reason of the words " and unless our client's claim is settled on or before the 31st instant " appearing therein. He also relied strongly on the case of *Weldrich vs. Essex & Suffolk Equitable Insurance Society, Ltd.—83 Lloyd's List Law Reports, page 91* That was an action brought against an Insurance Company under the Road Traffic Act of 1934, which corresponds to our Motor Car Ordinance. The provision in that Act which corresponds to our section 134 (*a*) is section 10 (2). In that case the insurer appears to have repudiated his liability and, accordingly, the plaintiff's solicitors wrote a letter to the insurer as follows :—

> " We understand your Society has repudiated liability, and we shall be grateful to have your confirmation thereof in writing, because you will

appreciate, we shall have to take proceedings as against Mohamed, and as against the owner of the other vehicle and at the same time give notice to the Motor Insurers Bureau of your repudiation of liability."

It is clear that the main purport of this letter was to obtain confirmation of the defendant's alleged repudiation of liability. In the process of that inquiry the solicitors went on to say that they will have to sue Mohamed and the owner of the other vehicle. But it is not possible to say that that letter was meant to be a notice under the relevant provision of law. Section 10 (2) (*a*) of the Road Traffic Act reads :—

10 " No sum shall be payable by an insurer under the foregoing provisions of this section in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which judgment was given, the insurer had notice of the bringing of the proceedings."

In regard to this provision Shawcross in his book on *Motor Insurance* observes at page 298 (2nd Edition) :

" The question as to what form the notice is to take is more difficult. Since it is merely provided that the insurer must have had notice, and there is no requirement that notice shall be served or either given by any particular person, it is submitted that neither written nor express notice
20 is necessary. On the other hand, it is submitted that there must be actual notice and that constructive notice would not be held to be sufficient."

The only material difference between this provision and section 134 (*a*) of our Ordinance appears to be that the notice contemplated by the latter should be given by a party to the action whereas according to the former it is not so necessary. So that, according to section 134 (*a*), it is not even obligatory that the notice should be in writing. From this it would appear that the notice contemplated is not one of a very formal nature. Mr. Weerasooria's contention that the notice should contain all the particulars of a plaint according to section 40 (Cap. 86) cannot be supported. It is certainly very desirable from the Insurer's
30 point of view to set out the Court in which the action is to be filed and the date on which it would be filed, but these particulars cannot be insisted on without doing violence to the language of section 134 (*a*). In P 1 the name of the assured, the number of the vehicle and the cause of action are set out clearly. If further information is required by the Insurer, it is his business to obtain them. Nor will it be so difficult to obtain such information . Once the Insurer is given notice of the contemplated action against the assured, there is nothing to prevent him from instituting legal proceedings under sections 136 and 137 of the Ordinance to obtain a declaration of non-liability. For that purpose he need not wait till the action against the assured is filed. If he is sufficiently vigilant he can also
40 obtain the necessary information to enable him to take charge of the defence in the case against the assured.

No. 6. Judgment of the District Court. 24-10-50. —*continued*

In the local case of *Dulfa Umma vs. Urban District Council, Matale*, reported in *40 N.L.R. at page 474*, a notice of action similar to P 1 was considered. In the letter relied on as the requisite notice in that case the Proctor for plaintiffs set out the circumstances under which the damages were claimed and proceeded to state :

> " My clients estimate the damages sustained by them at Rs. 500 and instructed me to demand the same from your Council, with further instructions to sue your Council in default of payment for the recovery of the same with costs of suit."

In appeal the counsel for the defendant Council contended that the notice was not in order and that it was rather a threat of criminal proceedings. He also cited the English case of *Norris vs. Smith* referred to earlier and probably argued that the notice was a conditional notice and not an absolute one. Abrahams, C.J. who decided the appeal, in dealing with this argument observed :

> " Then it was contended that the letter of August 30, was not a proper notice but might be taken rather as a threat of criminal proceedings which would leave the door open to negotiations between the parties. In support of this argument I was referred to *Norris vs. Smith* which led me to the consideration of *Lewis vs. Smith*. Both these cases are distinguishable from this case on the facts. I do not think that one should demand a particular form of words for a notice. The question as to whether there was an actual notice of the intention to institute an action, should be decided by seeing whether the injury complained of is properly stated, and an intimation disclosed that an action will be brought claiming some specified relief. The fact that the communication states that the action will be instituted unless the claim is met does not I think remove it from the category of notices to place it in the category of a mere letter of courtesy, the writing of which indicated that negotiations for a rectification of the wrong are expected."

When P 1 is considered in the light of the tests laid down by Abraham, C.J. above, it must be held that this document falls within the category of notices.

Mr. Weerasooria also submitted that the notice given to the party to be sued need not be so exhaustive as one directed to a third party like an insurer. I am unable to agree with that contention as no such conclusion can be drawn from the language used in section 134 (*a*). Accordingly I hold that the notice contained in P 1 complies with the requirements of section 134 (*a*) and that is sufficient notice. Hence the plaintiff is entitled to succeed. I answer the issues as follows :—

Issue No. 1—Yes.

Issue No. 2—Yes.

Issue No. 3—Does not arise.

No. 6. Judgment of the District Court. 24-10-50. —*continued*

Therefore I enter judgment for plaintiff as prayed for with costs.

Sgd. K. D. DE SILVA,
A.D.J.

24-10-50.

Judgment delivered in open Court in the presence of: Mr. Billimoria takes notice on behalf of the Proctor for plaintiff and Wanigasooriya on behalf of the 10 defendant.

Sgd. K. D. DE SILVA,
A.D.J.

24-10-50.

No. 7.

No. 7. Decree of the District Court. 24-10-50

Decree of the District Court.

Decree

IN THE DISTRICT COURT OF COLOMBO

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff.*

Vs.

20 THE COLOMBO MOTOR INSURANCE ASSOCIATION, LTD., Fort, Colombo, presently of Iceland Buildings, Galle Face, Colombo ..... *Defendants.*

This action coming on for final disposal before K. D. de Silva, Esquire, Additional District Judge of Colombo, on this 24th day of October, 1950, in the presence of Mr. Adv. E. G. Wickremanayake with Mr. Adv. J. Fernandopulle, instructed by Messrs. Jayasekera & Jayasekera, Proctors, on the part of the plaintiff, and Mr. N. E. Weerasooriya, K.C., with Mr. Adv. Samarawickrema, instructed by Messrs. Abrahams & Abrahams, Proctors, on the part of the defendant; It is ordered and decreed that the defendant do pay to the plaintiff the

No. 7. Decree of the District Court. 24-10-50. —*continued*

sum of Rs. 13,881.22 with legal interest thereon from 5th April, 1950, till payment in full and the costs of this action.

This 24th October, 1950.

Sgd. K. D. DE SILVA,
Additional District Judge.

No. 8. Petition of Appeal of the Defendant to the Supreme Court. 25-10-50.

No. 8.

Petition of Appeal of the Defendant to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. No. (57) D.C. Colombo, Case No. 22,799/M

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff.*

Vs.

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD., of Iceland Building, Galle Face, Colombo ..... *Defendant.*

And

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD. of Iceland Building, Galle Face, Colombo .....*Defendant-Appellant.*

Vs.

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff-Respondent.*

To

THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 25th day of October 1950.

The Petition of Appeal of the Defendant-Appellant appearing by Prosper Abraham and Vernon Bertrand Stanislaus Abraham, practising in partnership under the name, style and firm of Abrahams, its Proctors, sheweth as follows :—

1. The plaintiff respondent filed this action against the appellant Company seeking to recover a sum of Rupees Thirteen thousand Eight hundred and Eighty-one and Cents Twenty-two (Rs. 13,881.22) being the amount of decree obtained by him against one K. Stephen Perera, and which sum plaintiff-respondent claimed was payable by the defendant Company as insurer of the said K. Stephen Perera under section 133 of the Motor Car Ordinance No. 45 of 1938,

2. The defendant-appellant filed answer denying that it was liable *inter alia* on the ground that due notice as required by section 134 (*a*) of the Ordinance had not been given to them.

3. After trial on 10th day of October, 1950, the learned District Judge delivered judgment on 24th day of October, 1950, in favour of plaintiff as prayed for with costs.

4. Aggrieved by the said judgment the defendant-appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal :—

(*a*) The said judgment is contrary to law and against the weight of evidence.

(*b*) The defendant-appellant respectfully submits that the letter P 1 does not constitute a valid notice of the action under section 134 (*a*) of the Ordinance.

(*c*) The defendant-appellant submits that the provisions of section 134 (*a*) must be read in conjunction with the other sections of the chapter of the Ordinance in order that its true meaning and effect may be ascertained.

(*d*) It is submitted that the alleged notice contained in P 1 does not on the face of it purport to be a notice given under the section.

(*e*) It is submitted that at least a certain and definite intimation of action being instituted should be given.

(*f*) It is respectfully submitted that the notice required is notice of the particular action and all such details as are necessary to identify the action should be given in it.

(*g*) It is further submitted that the letter P 1 does not set out particulars such as the place of accident and the Court and therefore is insufficient notice to enable the Company to ascertain definitely the action and to take necessary steps to safeguard its interests.

(*h*) It is respectfully submitted that the learned District Judge has misdirected himself in stating that in P 1 the cause of action is set out clearly in as much as the place of the accident is not set out therein.

(*i*) It is submitted that the letter P 1 is at the most no more than constructive notice of the action and is insufficient in law,

No. 8.
Petition of Appeal of the Defendant to the Supreme Court.
25-10-50.
—*continued*

(*j*) It is submitted that the learned District Judge has misdirected himself in saying : " If further information is required by the insurer, it is his business to obtain them."

(*k*) It is further submitted that the learned District Judge has also misdirected himself in holding that the fact that the Company can take action under sections 136 and 137 of the Ordinance even before an action against the assured has the effect of moderating the requirements of the notice.

(*l*) The defendant-appellant respectfully submits that no greater burden should be cast on insurance companies than are imposed by law as an increase of burdens will be reflected in the increase in premiums and is against public interest.

(*m*) It is respectfully submitted that the letter P 1 is no more than a letter of demand and can in no way be considered " notice of the action " as contemplated by the section.

(*n*) Lastly it is submitted that in any event notice by a firm of Proctors is not notice by a party to the action as required by the Ordinance.

Wherefore the defendant-appellant prays :—

(*a*) That the judgment of the learned District Judge be set aside and plaintiff's action be dismissed, with costs.

(*b*) For costs.

(*c*) For such other and further relief in the premises as to this Court shall seem meet.

Sgd. V. B. S. ABRAHAM,
,, PROSPER ABRAHAM,
Proctors for Defendant-Appellant.

No. 9.
Judgment of the Supreme Court.
20-5-52

No. 9.

Judgment of the Supreme Court.

S.C. No. 57—D.C. COLOMBO, No. 22,799/M

CEYLON MOTOR INSURANCE ASSOCIATION, LTD. ..... *Appellant.*

Vs.

P. P. THAMBUGALA ..... *Respondent.*

Present : NAGALINGAM, A.C.J. & SWAN, J.

Counsel : H. V. PERERA, Q.C., with G. T. SAMARAWICKREMA for Defendant-Appellant.

E. B. WICKREMANAYAKE, Q.C., with J. N. FERNANDOPULLE, for Plaintiff-Respondent.

Argued on : 7th May, 1952.

Delivered on : 20th May, 1952.

NAGALINGAM, A.C.J.—

This is an appeal by the defendant Company who is an insurer against third party risks of one K. Stephen Perera in respect of motor vehicle bearing registration No. X 4851 from a judgment entered against it decreeing the payment of a sum of Rs. 13,881.22, legal interest and costs to the plaintiff-respondent who claimed the sum on the basis that he has sustained injuries as a result of the negligent driving of the motor vehicle referred to. The only point for determination is whether notice sufficient and adequate in terms of section 134 of the Motor Car Ordinance No. 54 of 1938, had been given to the appellant ; for it is conceded by the respondent that if no such notice had been given then the appellant Company would not be liable to him.

As is well known, prior to the enactment of the provisions of the Ordinance relative to third party risks, there were cases where, though the injured party secured a judgment against the owner of the motor vehicle the reckless and negligent driving of which caused the injury, it was found that the decree was an empty one in the sense that the judgment-debtor was financially incapable of satisfying the debt. The result of the situation thus arising was sought to be remedied by the legislature by passing an enactment embodying provisions intended to protect Society against such unfortunate consequences. The legislature for the first time in the history of our country passed the Ordinance above referred to, whereby it made it essential for an owner of a motor vehicle to effect insurance against third party risks before putting the vehicle on the road ; insurance could be effected only with a person or firm termed under the Ordinance an authorised insurer, that is to say, one whose ability to meet a third party liability was considered satisfactory. In the light of these observations it must be abundantly clear that the provisions of the law should, if there be any ambiguity be construed beneficially in favour of an injured party rather than in favour of the insurer, but I am satisfied that on a plain construction of the provisions of the Statute no resort need be had to this principle, for the enactment construed according to its plain language is clear and satisfies the tests both of the spirit of legislation and the letter of the law.

Section 133 of the Ordinance imposes the liability upon an insurer to satisfy decrees obtained by an injured third party against the assured in respect

No. 9. Judgment of the Supreme Court. 20-5-52. —*continued*

of a vehicle that has been insured with it, subject to certain limitations contained therein which I shall notice presently, provided, of course, it has issued a certificate of insurance as required by section 128 (4). Section 134, however, makes the insurer's liability under section 133 dependent upon his being given notice by the third party, and the relevant provision of the section runs as follows :

> " No sum shall be payable by the insurer under the provisions of section 133—(*a*) in respect of any decree, unless before or within seven days after the commencement of the action in which the decree was entered, notice of the action had been given to the insurer by a party to the action."

Notice under this provision may be given either before commencement of the action or within seven days after the commencement of the action, and the notice thus required to be given is "notice of the action." Difficulty is said to arise in construing this provision because the notice that is to be given is stated to be notice of the action, and the question has been raised what is meant by " the action." Where the notice is given after the commencement of the action, it is easy enough to identify the action by the action that has been filed, and it would be possible not only to specify the particular Court where the action has been instituted but also to particularize the suit by furnishing the specific number assigned to it ; but where notice is given before the commencement of the action, it is said that notice cannot be given of the action because in fact there was no action in existence at the date of the giving of notice so as to permit of a notification of the particular Court or even of any number that may be assigned to it. But it seems to me that when the section refers to " the action " it means the action in which the decree was entered as indicated in the earlier part of the section, and what the section requires is that notice should have been given of the action in which the decree was entered and that notice would be adequate if the action that is filed subsequently can be identified as the action in contemplation of which notice had been given.

Ordinarily speaking, the requisites necessary to identify an action are : (*a*) the name of the plaintiff and perhaps his address ; (*b*) the name and address of the defendant ; (*c*) the nature of the injury and the cause of action that gives rise to the claim ; (*d*) the relief or quantum of damages that is claimed. It has, however, been urged on behalf of the appellant that while these requirements may be sufficient where the legislature requires notice to be given of an action in the generality of enactments, (see the case of *Dulfa Umma et al vs. U. D.C., Matale*[1])—nevertheless in this particular instance under this particular Ordinance the notice that is contemplated requires at least one other particular, in the absence of which the notice cannot be regarded as sufficient within the meaning of that section. It is said that, inasmuch as the action notice of which may be given in the terms set out above is capable of being filed in more than one Court, the particular Court wherein it is proposed to institute the action should also be furnished, though not necessarily, as argued in the lower Court, the date on which it is proposed to file the action or all the essentials that have to be stated in a plaint in respect of such a cause of action in terms of the Civil

Procedure Code. There is nothing express in the section itself which requires that the forum wherein the action would be instituted should be notified to the insurer, but it is sought to argue that such a term is implied not because of anything contained in the section itself but because of the supposed objects the legislature must have had in mind in framing this provision. One of the objects, it is said, was to enable the insurer either to assist the assured in his defence or to take over the defence himself in terms of the contract between the insurer and the assured in respect of the action instituted by the third party against the assured. It is conceded that one of the other objects would be to enable the insurer to obtain a declaration of non-liability under section 136 or 137 of the Ordinance ; but a perusal of the provisions of sections 136 and 137 leave no room for doubt that the particular forum where the action is to be instituted by the third party against the assured is unnecessary to enable the insurer under either of those sections to obtain a declaration of non-liability, and it must not be forgotten that section 133 itself expressly refers to the liability accruing to the insurer under it as being subject to the provisions *inter alia* of section 136 and 137.

The question, then, narrows itself down to a determination as to whether the contention that the particular forum should be expressly stated in the notice to the insurer in order that he may take over the defence or assist in the defence of the action instituted against the assured is entitled to succeed. In the ordinary run of cases, one would expect the assured to be the first person to communicate with the insurer in regard to the accident which gives rise to the third party claim, and one would also expect that as it is one of the conditions of liability as between the insurer and the assured, that the assured would also notify the insurer of the particular action commenced against him by the third party for the recovery of damages.

In this case, there is a total absence of evidence as to whether the insurer received notice from the assured, and the case has to be decided on the footing that the insurer, as stated by him, did not receive any notice from the assured either of the accident or of the proceedings commenced against him. It seems to me that the provision as regards notice to the insurer has been framed by the legislature against a background of knowledge that there is always a condition in the Policy issued to the assured that the insurer will not be liable to the assured unless notice is given forthwith of the accident and of the proceedings, if any, against him, for if there be a violation of this condition the insurer ceases to be liable for any claim that the assured may make against the insured in respect either of his own vehicle or of damages payable by him to a third party.

But what, then, if in fact the assured fails to notify the insurer of either the accident or of the proceedings commenced against the assured in respect of a third party claim ? It seems to me that the legislature has been alive to such a contingency and has provided section 130 to meet such a situation. Further, on general principles, the insurer would have a right of recourse against the insured where owing to the default of the latter the former has become liable to make payment. Looking at the question from a practical point of view, any authorised insurer alive to his obligations and alive to the circumstance that it

No. 9. Judgment of the Supreme Court. 20-5-52. —*continued*

has been recognised as an authorised insurer would, if he pursued a policy of business honesty, at least ask the third party who has given him notice of the action before institution of the action to notify it and to give it particulars of the action when instituted, but as I have already indicated, such a course would hardly arise for normally the assured would keep the insurer informed of these relevant facts, but of course in determining the question any consideration of what ordinary business morality should dictate to an insurance company cannot and need not be taken into consideration. One has simply to construe the provisions of the Statute. Construing the provision as I have already indicated, there is nothing in the section which requires that the forum should be notified.

It would be convenient at this stage to look at the notice itself, which was sent to the appellant by the respondent, which runs as follows :—

" The Manager,

The Ceylon Motor Insurance Co.,

Fort, Colombo.

Re Car No. X-4851

Dear Sir,

We are instructed by Mr. P. P. Thambugala of Manikkawa Walauwa in Mawanella, to file an action for the recovery of Rs. 15,000 against Mr. Kodituwakku Aratchige Stephen Perera of Mawanella, being damages sustained by our client as a result of the above car knocking down our client on the 1st September, 1945, by reason of the negligent and careless driving on the part of his driver.

We are given to understand that the above car has been insued with your Company.

Our client is still under treatment and unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car.

Yours faithfully,

Sgd. Jayasekera & Jayasekera.

The notice specifically gives the name and address of the plaintiff who proposes to file the action, the name of the person against whom it is proposed to file the action and his address, the cause of action including specific reference to the number of the motor vehicle and the amount claimed. It seems to me that these are all the particulars that the section requires to be furnished. It is true that the notice does not state where the action is proposed to be filed but, as I said earlier, I do not think the phrase " notice of action " involves in it any

content as regards the forum where the action is to be instituted. I am therefore of opinion that the notice sufficiently complies with the requirements of the section.

Another ground urged against the sufficiency of the notice is said to be that the notice is not absolute in its terms but is vague in that it leaves uncertain whether the action would be filed or not, depending on whether the claim would be settled or not. The basis of this argument is that the terms of the notice are capable of being construed as meaning that the settlement of the claim is to be made by either the owner of the vehicle or the insurer. I do not think that the notice is capable of such a construction. The intimation that the action would be filed unless the claim was settled prior to a particular date clearly has reference to a settlement being effected by the insurer and not by the assured. That is the plain meaning of the notice and, what is more, that is the meaning in which the notice was understood by the insurer himself, as is apparent from his reply P 2, and the only ground upon which he refutes the claim made is that the insured " had failed to report the accident in terms of the conditions of the Policy issued to him." In this view of the meaning to be attached to the notice it cannot be regarded as one involved in any ambiguity. It is obvious that the notice intimates that unless the insurer pays the claim action would be filed, and that is a matter entirely within the insurer's knowledge, for where he does not settle the claim he would know that the action would be filed after the date specified. I therefore hold that the notice P 1 is sufficient and adequate in terms of section 133 of the Ordinance.

For the foregoing reasons I would affirm the judgment of the learned District Judge and dismiss the appeal with costs.

Sgd. C. NAGALINGAM,
Acting Chief Justice.

SWAN, J. I agree.

Sgd. S. C. SWAN,
Puisne Justice.

No. 10.

Decree of the Supreme Court.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo
..... *Plaintiff-Respondent.*

No. 10- Decree of the Supreme Court. 20-5-52. —*continued*

Against

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD. of Iceland Building, Galle Face, Colombo ..... *Defendant-Appellant.*

Action No. 22,799/M. District Court of Colombo.

This cause coming on for hearing and determination on the 7th and 20th days of May, 1952, and on this day, upon an appeal preferred by the defendant-appellant before the Hon. Mr. C. Nagalingam, Q.C., Acting Chief Justice, and the Hon. Mr. S. C. Swan, Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that the judgment of the District Judge be and the same is hereby affirmed and the appeal is dismissed with costs.

Witness the Hon. Mr. Chellappah Nagalingam, Q.C., Acting Chief Justice, at Colombo, the 27th day of May, in the year of our Lord One thousand Nine hundred and Fifty-two, and of Our Reign the First.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, Supreme Court.

No. 11.

No. 11. Application for Conditional Leave to Appeal to the Privy Council. 23-5-52.

Application for Conditional Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff.*

Vs.

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD. of Iceland Buildings, Galle Face, Colombo ..... *Defendant.*

Between

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD. of Iceland Buildings, Galle Face, Colombo (Defendant-Appellant ..... *Petitioner.*

And

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo, presently of 80, Norris Canal Road, Colombo, and The Price

Control Station, 17, Barnes Place, Colombo, (Plaintiff-Respondent) ..... *Respondent.*

No. 11. Application for Conditional Leave to Appeal to the Privy Council. 23-5-52. —*continued*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 23rd day of May, 1952.

The humble petition of The Ceylon Motor Insurance Association, Limited, the defendant-appellant abovenamed, appearing by Prosper Abraham, Charles Joseph Oorloff and Vernon Bertrand Stanislaus Abraham, carrying on business in partnership under the name, style and firm of Abrahams, its Proctors, states as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 20th day of May, 1952, the defendant-appellant is desirous of appealing therefrom.

2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to and is of the value of over Rs. 5,000.

3. Notice of this application has been duly given in terms of Rule 2 of the Rules in the schedule to the Appeals (Privy Council) Ordinance to the plaintiff-respondent.

Wherefore the appellant prays for conditional leave to appeal against the said judgment of this Court dated the 20th day of May, 1952, to Her Majesty the Queen in Council.

Sgd. ABRAHAMS,
Proctors for Defendant-Appellant.

No. 12.

No. 12. Decree granting Conditional Leave to Appeal to the Privy Council. 26-5-52.

Decree Granting Conditional Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD. of Iceland Buildings, Galle Face, Colombo ..... *Defendant-Appellant.*

Against

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo, pre-

No. 12. Decree granting Conditional Leave to Appeal to the Privy Council. 26-5-52. —*continued*

sently of 80, Norris Canal Road, Colombo, and The Price Control Station, 17, Barnes Place, Colombo ..... *Plaintiff-Respondent.*

Action No. 22,799/M (S.C. No. 57 (Final) of 1951) — District Court of Colombo.

In the Matter of an Application dated 23rd May, 1952, for Conditional Leave to Appeal to Her Majesty the Queen in Council by the Defendant-Appellant abovenamed against the decree dated 20th May, 1952.

This matter coming on for hearing and determination on the 26th day of May, 1952, before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the appellant and there being no appearance for the respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (*a*) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (*b*) and (*c*) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir Alan Edward Percival Rose, KT., Q.C., Chief Justice, at Colombo, the 2nd day of June, in the year of our Lord One thousand Nine hundred and Fifty-two, and of Our Reign the First.

W. G. WOUTERSZ,
Deputy Registrar, Supreme Court.

No. 13.

No. 13. Application for Final Leave to Appeal to the Privy Council. 31-5-52.

Application for Final Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an Application for Leave to Appeal

under the provisions of the Appeals (Privy Council) Ordinance (Chap. 85).

No. 13. Application for Final Leave to Appeal to the Privy Council. 31-5-52. —*continued*

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo ..... *Plaintiff.*

D.C. Colombo, No. 22,799/M

Vs.

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD., of Iceland Buildings, Galle Face, Colombo ..... *Defendant.*

S.C. 57 of 1951 (Final)

Between

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD., of Iceland Buildings, Galle Face, Colombo .....*Defendant-Appellant.*

And

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo, presently of 80, Norris Canal Road, Colombo, and of The Price Control Station, 17, Barnes Place, Colombo ..... *Plaintiff-Respondent.*

On this 31st day of May, 1952.

The Petition of the Defendant-Appellant abovenamed appearing by Prosper Abraham, Vernon Bertrand Stanislaus Abraham and Charles Joseph Oorloff, carrying on business in partnership under the name, style and firm of Abrahams, its Proctors, states as follows :—

1. That the defendant-appellant on the 26th day of May, 1952, obtained Conditional Leave from this Honourable Court to Appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 20th May, 1952.

2. That in the order granting Conditional Leave to Appeal no conditions were imposed under Rule 3 (*b*) of the schedule Rules of the Appeals (Privy Council) Ordinance (Chapter 85) other than the usual conditions.

3. That the defendant-appellant has—

(*a*) on the 27th day of May, 1952, deposited with the Registrar of this Court the sum of Rs. 3,000 being the security for costs of appeal under Rule 3 (*a*) of the schedule Rules and hypothecated the said sum of Rs. 3,000 by bond dated 31st day of May, 1952, for the due prosecution of the appeal and the payment of all costs that may become payable to the plaintiff-

No. 13. Application for Final Leave to Appeal to the Privy Council. 31-5-52, —*continued*

respondent in the event of the appellant not obtaining an order granting him Final Leave to Appeal or of the Appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the appellant to pay the plaintiff-respondent's costs of appeal ; and

(*b*) On the 27th day of May, 1952, deposited the sum of Rs. 300 in respect of the amounts and fees as required by paragraph 8 (*a*) of the Appellate Procedure (Privy Council) Order 1921, made under section 4 (1) of the aforesaid Ordinance.

Wherefore the defendant-appellant prays that it be granted Final Leave to Appeal against the said judgment of this Honourable Court dated the 20th day of May, 1952, to Her Majesty the Queen in Council.

Sgd. ABRAHAMS,
Proctors for Defendant-Appellant.

No. 14. Decree granting Final Leave to Appeal to the Privy Council. 4-6-52.

No. 14.

Decree Granting Final Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD.,
of Iceland Buildings, Galle Face, Colombo ..... *Defendant-Appellant.*

Against

P. P. THAMBUGALA of 445, Dematagoda Road, Colombo, presently of 80, Norris Canal Road, Colombo, and The Price Control Station, 17, Barnes Place, Colombo ..... *Plaintiff-Respondent.*

Action No. 22,799/M (S.C. No. 57 (Final) of 1951) — District Court of Colombo.

In the Matter of an Application by the Defendant-Appellant abovenamed dated 2nd June, 1952, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree dated 20th May, 1952.

This matter coming on for hearing and determination on the 4th day of June, 1952, before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the applicant and there being no appearance for the respondent.

No. 14.
Decree granting Final Leave to Appeal to the Privy Council.
4-6-52.
—*continued*

The applicant having complied with the conditions imposed on him by the order of this Court dated 23rd May, 1952, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Sir Alan Edward Percival Rose, KT., Q.C., Chief Justice, at Colombo, the 9th day of June, in the year of our Lord One thousand Nine hundred and Fifty-two, and of Our Reign the First.

Exhibits

No. P 1
Letter from Messrs. Jayasekere & Jayasekere to the Manager, the Ceylon Motor Insurance Co.
21-5-46

PART II.

EXHIBITS.

P 1.

Letter from Messrs. Jayasekera & Jayasekera to the Manager, the Ceylon Motor Insurance Co.

P 1

(Copy)

33, Belmont Street,
Hulftsdorf,
Colombo, 21st May, 1946.

"A"

THE MANAGER,
THE CEYLON MOTOR INSURANCE CO.,
FORT, COLOMBO.

Re Car No. X-4851

Dear Sir,

We are instructed by Mr. P. P. Thambugala of Manikkawa Walauwa in Mawanella to file an action for the recovery of Rs. 15,000 against Mr. Kodituwakku Aratchige Stephen Perera of Mawanella, being damages sustained by our client as a result of the above car knocking down our client on the 1st September, 1945, by reason of the negligent and careless driving on the part of his driver.

We are given to understand that the above car has been insured with your Company.

Our client is still under treatment and unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car.

Yours faithfully,
Sgd. JAYASEKERA & JAYASEKERA.

True Copy.

Sgd. JAYASEKERA & JAYASEKERA,
Proctors.

P 2.

Exhibits

No. P 2. Letter from the Manager, the Ceylon Motor Insurance Co. to Messrs. Jayasekere & Jayasekere. 23-5-46.

Letter from the Manager, the Ceylon Motor Insurance Co., to Messrs. Jayasekera & Jayasekera.

P 2

2nd Floor,
Hongkong Bank Building, Fort.
P.O. Box No. 32,

Colombo, 23rd May, 1946.

Our Ref. No. 1384.

MESSRS. JAYASEKERA & JAYASEKERA,
Proctors, S.C. & Notaries,
33, Belmont Street, Colombo.

Dear Sirs,

Re Accident to Car No. X-4851

We are in receipt of your letter of the 21st instant claiming Rs. 15,000 as damages alleged to have been suffered by your client Mr. P. P. Thambugala as a result of being knocked down by car No. X-4851 on 1st September, 1945.

We have hitherto been totally ignorant of any accident in which the above car had been involved, and this is the first intimation we have of an accident to the above or an impending third party claim.

Since the insured has failed to report the accident in terms of the Conditions of the Policy issued to him, we would advise you to communicate with the owner of the vehicle direct in the matter.

Yours faithfully,
THE CEYLON MOTOR INSURANCE ASSOCIATION, LTD.

Sgd. (Illegibly)
Manager.

Supreme Court of Ceylon
No. 57 (Final) of 1951.

District Court, Colombo.
No. 22799.

In Her Majesty's Privy Council on an Appeal from
The Supreme Court of Ceylon

BETWEEN

P. P. THAMBUGALA of 445, Dematagoda Road,
Colombo.....*Plaintiff—Respondent.*

AND

THE CEYLON MOTOR INSURANCE ASSOCIATION LIMITED of Iceland Building, Galle Face,
Colombo.....*Defendant—Appellant*

RECORD OF PROCEEDINGS

Printed by M. D. Gunasena & Co. Ltd., Colombo. 792-7/52