

11/85

No.7 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

BETWEEN

BANKERS & TRADERS INSURANCE  
CO. LTD.

APPELLANT  
(Second Defendant)

and

NATIONAL INSURANCE CO.LTD.

RESPONDENT  
(First Defendant)

RESPONDENT'S CASE

1. On the 15th day of June 1969 at about 9.00 p.m. (hereinafter referred to as "the material time") in Pontian, Johore Bahru, Malaysia there was a motor vehicle accident involving two pedestrians (not parties to the appeal and hereinafter referred to as "the injured parties") and a motor car bearing registration number JF 5143 and driven by one Ko Beng Lai, who was not the owner of the vehicle.
2. At the material time the said motor car No.JF 5143 was owned by one Kwang Shi Ching and was insured by the Appellants under their policy No.12A/KLV/2769. Section II of this policy covers liability to third parties.
3. Also at the material time the said Ko Beng Lai was the registered owner of a motor vehicle No.JE 8143 and insured by the Respondents by their policy No.08/3/PC. 51891.

4. It was never a part of the Appellant's case in the Courts below that the said Ko Beng Lai was not an authorised driver of motor vehicle No.JF 5143 at the material time.
5. The "injured parties" instituted proceedings against the said Ko Beng Lai vide Johore Bahru High Court Civil Suit No.82/1975 and obtained judgment for substantial amounts in respect of personal injuries and other loss.
6. Both the Appellants and the Respondents refused to meet the said judgment and the injured parties instituted Johore Bahru High Court Civil Suit No.681/76 against the Respondents as the 1st defendant and the Appellants as 2nd defendant for satisfaction of the judgment as required by Section 80 of the Road Traffic Ordinance, 1958.
7. On the 28th July 1981 Datuk Mohd.Yusoff b.Mohamed, J., gave judgment for the injured parties against the Respondents and ordered costs against them.
8. The Respondents appealed against the said decision of Yusoff, J., to the Federal Court of Malaysia vide Federal Court Civil Appeal No.170 of 1981.
9. On 14th April, 1983 the Federal Court (Salleh Abas, C.J.(Malaya), Wan Suleiman F.J., George K.S.Seah, FJ.,) allowed the appeal, set aside the judgment of Yusoff, J and ordered that the judgment in favour of the injured parties must be satisfied by the Appellants. On the question of costs, the Court ordered the Appellants

to pay the costs of the injured parties and the Respondents in Johore Bahru High Court Civil Suit No.681 of 1976 and the Respondents costs in Federal Court Civil Appeal No.170 of 1981.

10. Against this decision of the Federal Court the Appellants now appeal to their Lordships of Her Majesty's Privy Council.

11. The Appeal involves essentially the construction of section 75(1)(b) and Section 80 (1) of the Road Traffic Ordinance 1958 and the obligations imposed by statute on insurers to meet personal injury claims brought by third parties.

12. The Respondents contend that they are not under any obligation to satisfy the judgment obtained by the injured parties for the following reasons:

(i) The said Ko Beng Lai did not notify the Respondents of the occurrence of the motor accident as required by condition 4 of the policy of insurance and as such liability thereunder was repudiated.

(ii) The Respondents' liability towards Ko Beng Lai was not a liability in respect of which the injured parties judgment was obtained as it is not such a liability as is required to be covered by a policy under section 75 (1) (b) of the Road Traffic Ordinance 1958

(iii) The cover granted by the Respondents to the said Ko Beng Lai whilst he was driving a car not belonging to him and not hired to him is a contractual liability whereas the liability to satisfy the judgment under section 80 is statutory in nature.

(iv) In the circumstances the policy issued by the Respondents was not on risk at the material time and consequently they were not "the insurers" who must comply with section 80 of the Road Traffic Ordinance.

Dated this 2<sup>nd</sup> day of January, 1985



PERIASAMY DEVADAS  
Counsel for the Respondents