

11/85

No.7 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

BANKERS & TRADERS INSURANCE
CO.LTD.

Appellant
(Second Defendant)

- and -

NATIONAL INSURANCE CO.LTD.

Respondent
(First Defendant)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Appellant

LINKLATERS & PAINES,
Barrington House,
59/67 Gresham Street,
London, EC2V 7JA

Solicitors for the
First Respondent

No. of Document	Description of Document	Date	Page No.
9	Memorandum of Appeal by 1st Defendant	24th October 1981	18
10	Reasons for Judgment	14th April 1983	20
11	Order	14th April 1983	29
12	Order granting 2nd Defendant Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong	14th November 1983	31

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page No.
1	Order of Court in Johor Bahru High Court Civil Suit No.82 of 1975	7th August 1975	33
2	Insurance Policy of 2nd Defendant	13th June 1968	35
3	Insurance Policy of 1st Defendant	6th August 1968	42

DOCUMENTS TRANSMITTED TO
JUDICIAL COMMITTEE BUT NOT
REPRODUCED

Description of Document	Date
Written submission of Plaintiffs to trial Judge	15th October 1980
Written submission of 1st Defendant to trial Judge	Undated
Written submission of 2nd Defendant to trial Judge	27th September 1980
Notice of Motion by 2nd Defendant for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong	16th August 1983
Affidavit of Lim Kok Ming in support of Motion and exhibits thereto	20th May 1983
Order granting conditional leave to appeal to His Majesty the Yang di-Pertuan Agong	10th September 1983

In the
High Court
in Malaya
at Johore
Bahru

No.1
Specially
Indorsed
Writ
14th November
1976

(continued)

2. Bankers and Traders Insurance
Co.Ltd.
P.O.Box 8,
Singapore 1.

WE COMMAND YOU, that within twelve days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Abdul Hafidz bin Haji A. Rahman of Sungei Sam, Serkat, Pontian, Johore and Mohamediah bin Jali of Kampong Sungei Dinar, Serkat, Pontian, Johore.

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AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS ROHANI BT. MOHD. DALI,
Senior Assistant Registrar of the High Court
in Malaya the 14th day of November, 1976.

20

STATEMENT OF CLAIM

WHEREUPON the Plaintiffs claim :-

- a. The said Judgment sum of \$44,098.00;
- b. Interest thereon on the said sum of \$44,098.00 calculated at 6% per annum from the date of 7th day of August, 1975;
- c. Interest thereon at 6% per annum from the date of Judgment until payment or realisation;
- d. Costs; and
- e. Such further or other relief as this Honourable Court may deem fit.

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Dated and delivered this 11th day of
November, 1976.

K.C. Koh & Co.
Solicitors for the Plaintiffs

And the sum of \$ (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$ (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or his/their

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advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

In the High Court in Malaya at Johore Bahru

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Provided that if it appears from the indorsement of the Writ that the Plaintiff is/are resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, or if the Defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his/their advocate and solicitor or agent.

No.1 Specially Indorsed Writ 14th November 1976

(continued)

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This Writ was issued by whose address for service is Solicitors for the said Plaintiff who resides/carries/carry on business at

This Writ was served by me at

on the day of 19 .
at the hour of

Indorsed this day of 19 .

(Signed)

(Address)

In the
High Court
in Malaya
at Johore
Bahru

No. 2

STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

No.2
Statement
of Claim
28th
January
1976 [sic]

CIVIL SUIT NO. 681 OF 1976

Between

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Plaintiffs

and

1. NATIONAL INSURANCE CO.LTD.
2. BANKERS AND TRADERS INSURANCE
CO.LTD. Defendants 10

STATEMENT OF CLAIM

1. On or about the 15th day of June, 1969 at about 9.00 p.m. the First and Second Plaintiffs were lawfully walking on the left side along the Johore Bahru/Pontian road, going in the direction of Pontian, when arrived at or near the 26th milestone of the said road they were run into and knocked down by one Ko Beng Lai the driver of motor car No. JF 5143. 20

2. The First Defendants are a limited insurance company and the insurers of motor car No. JE 8143 under Certificate of Policy Number 08/3/PC 51891 which policy provides inter alia that they as insurers will indemnify the insured of the said motor car No. JE 8143 whilst personally driving a motor car not belonging to him and not hired to him under a hire purchase agreement. 30

3. The Second Defendant are also a limited insurance company and the insurers of motor car No. JF 5143 under Certificate of Policy Number 12a/KLV/2769.

4. The Plaintiffs who suffered injuries and consequential loss and commenced action against Ko Beng Lai the driver of motor car No. JF 5143 who was also the insured of motor car No. JE 8143 vide Johore Bahru High Court Civil Suit No.82 of 1975 and on the 5th day of April, 1975 the Plaintiffs obtained interlocutory Judgment and on the 7th day of August, 1975 damages were assessed. 40

5. The First Plaintiff was awarded \$13,000.00 for General damages, \$1,440.00 for Special damages, \$8,460.00 for loss of future earnings and \$260.00 for interest on General Damages and the Second Plaintiff was awarded \$10,000.00 for General Damages, \$1,440.00 for special damages, \$6,760.00 for loss of future earnings and \$200.00 for General Damages and Party and Party costs was taxed at \$2,500.00 plus \$38.00 allocatur fee.

In the
High Court
in Malaya
at Johore
Bahru

No.2
Statement
of Claim
28th
January
1976 [sic]

6. By an A.R. Registered letter dated 5th November, 1975 to the First Defendant and another A.R. Registered letter dated 24th December, 1975 to the Second Defendant, the Plaintiffs' through their Solicitors sent sealed Copy of the Order of Court of Johore Bahru High Court Civil Suit No.82 of 1975 and demanded the Judgment Sum plus costs amounting to a total sum of \$44,098.00 to be paid within seven (7) days and the Defendants have failed and/refused to comply as required under Section 80 of the Road Traffic Ordinance, 1958.

(continued)

7. WHEREUPON the Plaintiffs claim :-
- a. the said Judgment sum of \$44,098.00
 - b. interest thereon on the said sum of \$44,098.00 calculated at 6% per annum from the date of 7th day of August, 1975;
 - c. interest thereon at 6% per annum from the date of Judgment until payment or realisation;
 - d. Costs and
 - e. such further or other relief as this Honourable Court may deem fit.

Dated this delivered this 28th day of
January, 1976.

Sd. K.C.Koh & Co.
Solicitors for the Plaintiffs

In the
High Court
in Malaya
at Johore
Bahru

No. 3

DEFENCE OF 1ST DEFENDANT

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

No.3
Defence
of 1st
Defendant
10th March
1977

JOHORE BAHRU CIVIL SUIT NO.681 OF 1976

Between

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Plaintiffs

And

1. NATIONAL INSURANCE CO.LTD.
2. BANKERS AND TRADERS INSURANCE CO. LTD. Defendants 10

STATEMENT OF DEFENCE OF 1ST
DEFENDANT

1. The 1st Defendant are authorised insurers within the meaning assigned to the term by Section 76(1) of the Road Traffic Ordinance 1958.

2. The 1st Defendant on the 1st day of August, 1968 issued to one Ko Beng Lai a policy of Motor Insurance bearing No.08/3/PC 51891 (hereinafter referred to as the said policy) in respect of motor vehicle No. JE 8143 for the period 1.8.1968 to 31.7.1969. Section II of the said policy reads :- 20

2. In terms of and subject to the limitations and for the purposes of this Section the Company will indemnify:

- a) Any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver (i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply (ii) is not entitled to indemnity under any other policy 30
- b) the Insured whilst personally driving a private Motor Car (but not a motor cycle) not belonging to him and not hired under a hire purchase agreement 40

Condition 4 of the said policy reads as follows :-

In the High Court in Malaya at Johore Bahru

"In the event of any occurrence which may give rise to a claim under this Policy the insured shall as soon as possible give notice thereof to the Company with full particulars....."

No.3
Defence of 1st Defendant
10th March 1977

10 3. The Defendants will refer to the said policy for its full term and effects at the trial of this action.

4. The said Ko Beng Lai met with an accident on 15.6.1969 whilst driving motor vehicle No. JF 5143. As the said Ko Beng Lai did not notify the 1st Defendant until some eleven (11) months after the said accident, the 1st Defendant repudiated liability on the grounds that there was a breach of condition 4 of the said policy.

(continued)

20 5. The 1st Defendant refer to paragraph 5 of the Statement of Claim and say that the amounts awarded to the Plaintiffs in Johore Bahru Civil Suit No.82 of 1975 against the said Ko Beng Lai was not a judgment in respect of any liability as is required to be covered by a policy under Section 75(i) (b) of the Road Traffic Ordinance and consequently the 1st Defendant is not required under Section 80(1) of the said Ordinance to satisfy the said judgment.

30 6. The 1st Defendant contends that the indemnity granted by the 1st Defendant to the said Ko Beng Lai under Section II 2(b) of the said policy was a contractual liability and as such was outside the purview of section 75(1) of the Road Traffic Ordinance and consequently section 80(1) of the said Ordinance has not application.

40 7. The 1st Defendant refer to paragraph 6 of the Statement of Claim and admit receipt of the letter dated 5.11.1975. However by a letter dated 14.11.1975 the 1st Defendant's Solicitors denied liability on the part of the 1st Defendant for reason already set out above.

8. Save and except as hereinbefore admitted the 1st Defendant deny each and every allegation in the Statement of Claim as if the same were set out seriatim and specifically traversed.

50 9. The 1st Defendant say that the Plaintiff's action herein is misconceived and without any foundation and ought to be dismissed with costs.

In the
High Court
in Malaya
at Johore
Bahru

Dated this 10th day of March, 1977.

Sd: Devadas & Co.
SOLICITORS FOR THE 1ST DEFENDANT

No.3
Defence
of 1st
Defendant
10th March
1977

(continued)

No.4
Defence
of 2nd
Defendant
12th March
1977

No. 4

DEFENCE OF 2ND DEFENDANT

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 681 OF 1976

Between

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Plaintiffs

10

And

1. NATIONAL INSURANCE CO.LTD.
2. BANKERS AND TRADERS INSURANCE
CO.LTD. Defendants

DEFENCE OF THE 2ND DEFENDANTS

1. The 2nd Defendants have no knowledge of the facts alleged in Paragraph 1 of the Statement of Claim.

2. The 2nd Defendants admit that they issued a policy of motor insurance bearing policy No.12A/KLV/2769 (hereinafter referred to as the said policy) to one Kwang Shi Ching in respect of his motor car No.JF 5143 for the period from 23rd July, 1968 to 22nd July, 1969, but say that their said policy did not cover Ko Beng Lai, the driver of motor car No. JF 5143 at the time of the alleged accident and the said policy was therefore not on risk

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at the material time.

In the
High Court
in Malaya
at Johore
Bahru

3. Subsection 2(a) of Section II of the said policy provides as follows :

"2. In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify

No.4
Defence
of 2nd
Defendant
12th March
1977

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a) any Authorized Driver who is driving the motor vehicle provided that such Authorized Driver

(continued)

i) shall as though he were the Insured observe fulfil and be subject to the terms of this Policy in so far as they can apply,

ii) is not entitled to indemnity under any other policy. "

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4. The 1st Defendants, being an authorized insurers within the meaning assigned to the term by Section 76(1) of the Road Traffic Ordinance 1958, did on the 1st day of August, 1968 issued to the said Ko Beng Lai, a policy of motor insurance bearing No.08/3/PC 51891 in respect of motor vehicle No. JE 8143 for the period from 1st August, 1968 to 31st July, 1969 which policy provides, inter alia that the 1st Defendants would indemnify the said Ko Beng Lai not only whilst driving motor car No. JE 8143 but also whilst personally driving a private motor car not belonging to him and not hired to him under a Hire Purchase Agreement during the said period when the policy was in force.

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5. As motor car JF 5143 did not belong to the said Ko Beng Lai and was not hired to him under a Hire Purchase Agreement at the time of the alleged accident, the said Ko Beng Lai was entitled to indemnity under the policy issued to him by the 1st Defendants whilst driving motor car JF 5143 at the material time and the 2nd Defendants' said policy was therefore not on risk and did not cover the said Ko Beng Lai.

6. The 2nd Defendants are under no legal obligation to satisfy the alleged judgment obtained by the Plaintiffs against the said Ko Beng Lai in Civil Suit No.82 of 1975.

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7. The 2nd Defendants further say that, even if their said policy was no (sic) risk at the material time (which is denied), the 2nd Defendants

In the
High Court
in Malaya
at Johore
Bahru

No.4
Defence
of 2nd
Defendant
12th March
1977

(continued)

are under no statutory duty or otherwise to satisfy the said alleged judgment as the Plaintiff had failed to give to the 2nd Defendants notice of commencement of proceedings in Civil Suit No.82 of 1975 as required under Section 80(2)(a) of the Road Traffic Ordinance 1958 (No.49 of 1958).

8. Save as hereinbefore expressly admitted the 2nd Defendants deny each and every allegation contained in the Statement of Claim as if the same were herein set out seriatim and specifically traversed.

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Dated and Delivered this 12th day of March, 1977.

Sd: Leong Wai Yin & Co.
SOLICITORS FOR THE 2ND DEFENDANTS

No.5
Statement
of Agreed
Facts
Undated
1980

No. 5

STATEMENT OF AGREED FACTS

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 681 OF 1976

20

Between

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Plaintiffs

And

1. NATIONAL INSURANCE CO.LTD.
2. BANKERS & TRADERS INSURANCE CO.LTD. Defendants

STATEMENT OF AGREED FACTS

1. On or about the 15th day of June, 1959 at about 9.00 p.m. the First and Second Plaintiffs were walking along the Johore Bahru/Pontian road, going in the direction of Pontian, when at or near the 26th milestone of the said road they were run into and knocked down by Motor Car No. JF 5143 driven by one Ko Beng Lai.

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2. The First Defendants are a limited insurance company and the Insurers of Motor

Car No. JE 8143 under Certificate of Policy Number 08/3/PC.51891.

In the High Court in Malaya at Johore Bahru

3. The Second Defendants are a limited insurance company and the Insurers of Motor Car No. JF 5143 under Certificate of Policy Number 12A/KLV/2769.

No.5
Statement
of Agreed
Facts
Undated
1980

10 4. The Plaintiffs sustained personal injuries and consequential loss commenced action against Ko Beng Lai the driver of Motor Car No. JF 5143 who was also the Insured of Motor Car No. JE 8143 vide Johore Bahru High Court Civil Suit No.82 of 1975 and on the 5th day of April, 1975 the Plaintiffs obtained Interlocutory Judgment and on the 7th day of August, 1975 damages were assessed.

(continued)

20 5. The First Plaintiff was awarded \$13,000-00 for general damages, \$1,440-00 for special damages, \$8,460-00 for loss of future earnings and \$260-00 for interest on general damages and the Second Plaintiff was awarded \$10,000-00 for general damages, \$1,440-00 for special damages, \$6,760-00 for loss of future earnings and \$200-00 for interest for general damages and Party and Party costs was taxed at \$2,500-00 plus \$38-00 allocatur fee.

30 6. By an A.R. Registered letter dated 5th November, 1975 to the First Defendant and another A.R. Registered letter dated 24th December, 1975 to the Second Defendant, the Plaintiffs through their Solicitors sent sealed copy of the Order of Court of Johore Bahru High Court Civil Suit No.82 of 1975 and demanded the Judgment sum plus costs amounting to a total sum of \$44,098.-00 to be paid within seven (7) days and the Defendants have failed and/or refused to comply as required under Section 80 of the Road Traffic Ordinance, 1958.

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Dated this day of, 1980.

Sd: Illegible
Solicitors for the Plaintiffs.

In the
High Court
in Malaya
at Johore
Bahru

No. 6

FORMAL JUDGMENT

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

No.6
Formal
Judgment
28th July
1981

CIVIL SUIT NO.681 OF 1976

Between

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Plaintiffs

And

1. NATIONAL INSURANCE CO.LTD.
2. BANKERS AND TRADERS INSURANCE CO.LTD. Defendants

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BEFORE THE HONOURABLE DATO MOHD YUSOFF
BIN MOHAMED, HIGH COURT, JOHORE BAHRU

IN OPEN COURT

J U D G M E N T

The 28th day of July, 1981.

This action having been tried before the Honourable Mr. Justice Mohd. Yusoff bin Mohamed on the 20th day of October, 1980.

It is adjudged that the 1st Defendant do pay to the 1st and 2nd Plaintiffs the sum of Ringgit Forty-four Thousand and Ninety-eight (\$44,098.00) and their costs of action to be taxed. 20

And it further adjudged that the 1st Defendant do pay the Plaintiffs interest at the rate of 8% per annum from 28th July, 1981 till the date of realisation.

Dated this 28th day of July, 1981

SENIOR ASSISTANT REGISTRAR 30
HIGH COURT, JOHORE BAHRU

REASONS FOR JUDGMENT

In the High Court in Malaya at Johore Bahru

IN THE HIGH COURT OF MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 681 OF 1976

Between

- 1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
- 2. MOHAMEDIAH BIN JALI Plaintiffs

And

- 10 1. NATIONAL INSURANCE CO.LTD.
- 2. BANKERS & TRADERS INSURANCE CO.LTD. Defendants

No.7
Reasons for Judgment
28th July
1981

J U D G M E N T

MOHD. YUSOFF BIN MOHAMED - JUDGE

The Plaintiffs obtained judgment in Civil Suit No.82 of 1975 against one Koh Beng Lai as Defendant for damages in respect of personal injuries sustained by him in a running down case for a total sum of \$44,098.00 including costs. At the time of accident on 15th of June 1969, Koh Beng Lai was driving motorcar No. JF 5143 belonging to one Kwang Shi Chiang. The motorcar was insured by the 2nd defendant (Bankers & Traders). At the relevant time Koh Beng Lai was also covered by an insurance issued by the 1st Defendant (National Insurance) whilst personally driving a motor car not belonging to him, his employer or his partner.

The insurance policies of the 1st and the 2nd defendants in respect of third party liability were in all material respects identical and the relevant clauses of the policies which were in issue are as hereunder:

Section II - Liability to Third Parties

2. In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify

a) any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver

40 i) shall as though he were the Insured observe fulfil and be subject to the

In the
High Court
in Malaya
at Johore
Bahru

Terms of this Policy insofar
as they can apply

No.7
Reasons for
Judgment
28th July
1981

ii) is not entitled to indemnity
under any other policy

b) the insured whilst personally driving
a motor car not belonging to or
hired (under a hire purchase agree-
ment or otherwise) to him or his
employer or his partner.

(continued)

On 5th of November and 24th of December, 10
1975, the plaintiffs served the Order of the
Court in respect of the award on the 1st and
2nd Defendants respectively, demanding the
judgment sum. Both the defendants refused
to pay alleging that neither policy was at
risk at the time of the accident. The
Plaintiffs now seek to enforce the order under
section 80 of Part IV of the Road Traffic
Ordinance, 1958, against either or both of them.

The issues to be decided were whether: 20

- a) The policy of the 1st or the 2nd
defendants was on risk at the
material time of the accident; and
- b) whichever defendant found to be
liable could they call for rateable
contribution from the other
defendants.

There seemed to be no denial by the
1st or the 2nd defendants that the plaintiffs'
rights to recover the judgment sum from 30
either of them was unimpeded unless there
were repudiations on any of the events as
set out in section 80(2) and (3) of the
Ordinance. In this case there was no evidence
of such repudiation. Speaking on the duty
of the insurers to satisfy judgment against
persons insured in respect of third party
risks as referred to in the marginal note of
section 80(1) of the Ordinance, Ong Hock Thye
C.J. (as he then was) said, such rights or 40
statutory benefits conferred on the third
party was made compulsory; see - New Zealand
Insurance Co.Ltd. v. Sinnadorai (1969) 1 MLJ
183.

It would have been a straight forward
case, had there been only one insurance
company involved in the claim. The difficulty
here arose because of the co-existing cover
issued by both the Defendants. By extension
of the policy the 1st defendants (National 50

Insurance) covered the assured, Koh Beng Lai, while driving a friend's motorcar - clause 2(b). At the same time, the 2nd defendant's policy (Bankers & Traders) also covered as an extension to its policy, a friend driving the assured's Kwang Chi Chiang, motorcar - clause 2(a). This situation gave rise to both parties repudiating liability on the ground that each policy cancelled the other.

In the
High Court
in Malaya
at Johore
Bahru

No.7
Reasons for
Judgment
28th July
1981

Rowlatt J. in *Weddell v. Road Transport & General Insurance Co.Ltd.*, (1932) 2 K.B. 563 treated such a situation by determining the extension policy as primary or secondary cover. At page 567 he said :

(continued)

"The general purpose of the proviso seems to be to make such extensions operate only as secondary cover, available only in the absence of other insurance regarded as primary....."

In analysing *Weddell's* case (*Shawcross on Motor Insurance* @ 519) suggested that the primary object of third party liability cover is to insure the assured driving of any vehicle specified in the policy. The driver driving a motorcar belonging to another is not a party to the owner's policy and has no right directly enforceable by him thereunder. In my view, that proposition sets out the proper requirements of section 75(1) of the Road Traffic Ordinance in that a policy of insurance provides indemnity to such person or class of persons (the assureds) as specified in the policy in respect of any liability which may be incurred by him or them. Where, therefore the friend, as in this case Koh Beng Lai, has his own policy covering his driving of another vehicle that policy is clearly the primary cover liable for the damages arising from his driving. And if the terms of his policy with the 1st defendant (National Insurance) provide adequate cover to indemnify him which I think it did, the 1st defendant (National Insurance) would then be liable for the whole of the amount of the judgment obtained against him, the insured. For these reasons there was no necessity to decide on the second issue.

In these circumstances I find that the 1st defendants (National Insurance) was on risk at the time of the accident and therefore liable for the judgment obtained by the plaintiffs against the insured under section 80 of the Ordinance.

In the
High Court
in Malaya
at Johore
Bahru

Sd:
(DATUK MOHD. YUSOFF B. MOHAMED)
JUDGE, HIGH COURT,
MALAYA, JOHORE BAHRU

No.7
Reasons for
Judgment
28th July
1981

(continued)

SOLICITORS:

1. Mr. R.Padmanabhan
(Dato K.C. Koh & Partners) Plaintiffs
2. Mr. N.Ramachandran
(Messrs. Devadas & Co.) 1st Defendant
3. Mr. Joseph Gay
(Leong Wai Yin & Co.) 2nd Defendant 10

In the
Federal
Court

No. 8

NOTICE OF APPEAL BY
1ST DEFENDANT

No.8
Notice of
Appeal by
1st Defen-
dant
25th August
1981

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 170 OF 1981

BETWEEN

NATIONAL INSURANCE CO. LTD. Appellant/
1st Defendant 20

AND

1. ABDUL HAFIDZ BIN HAJI A. RAHMAN
2. MOHAMEDIAH BIN JALI Respondents/
Plaintiffs

(In the matter of Civil Suit No.681 of 1976
In the High Court in Malaya at Johore Bahru

Between

1. Abdul Hafidz bin Haji A. Rahman
2. Mohamediah bin Jali Plaintiffs

And

30

1. National Insurance Co. Ltd.
2. Bankers and Traders Insurance
Co.Ltd. Defendants)

NOTICE OF APPEAL

In the
Federal Court

10 TAKE NOTICE that the National Insurance Co.Ltd., the Appellant/1st Defendant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Datuk Mohamed Yusoff bin Mohamed given at Johore Bahru on the 28th day of July, 1981 appeals to the Federal Court of Malaysia against the whole of the said decision.

No.8
Notice of
Appeal by
1st Defendant
25th August
1981

(continued)

Dated this 25th day of August, 1981.

Sd: Devadas & Co.

DEVADAS & CO.
SOLICITORS FOR THE APPELLANT/
1ST DEFENDANT

To: The Chief Registrar,
The Federal Court of Malaysia,
KUALA LUMPUR.

and to:

20 The Senior Assistant Registrar,
High Court, Malaya,
JOHORE BAHRU.

and also to:

30 The Plaintiffs/Respondents and/or their
Solicitors,
Messrs. K.C.Koh & Co.,
Advocates & Solicitors,
23rd Floor, Tun Abdul Razak Complex,
Jalan Ah Fook,
Johore Bahru.

and also to :

The 2nd Defendants and/or their Solicitors,
Messrs. Leong Wai Hin & Co.,
Advocates & Solicitors,
No.59F, 2nd Floor,
Jalan Ah Fook,
JOHORE BAHRU.

40 This Notice of Appeal is filed on behalf of
the 1st Defendant/Appellant abovenamed by
Messrs. Devadas & Co., Advocates & Solicitors,
of No.10, Lorong Gereja, Malacca.

liable and under Section 80 of the Act to further satisfy judgments obtained against him.

In the
Federal
Court

3. The Learned Judge in applying English principles applicable in the 1930s failed to appreciate that the present Act had considerably altered the law.

No.9
Memorandum
of Appeal
by 1st
Defendant
24th October
1981

10 4. Even applying principles applicable prior to the Act the Learned Judge should have found that the question of determining liability between two insurers could only arise after the owner's insurance had satisfied the judgment obtained by the Third Party and only in a subsequent suit between the respective insurers - never in a suit by the Third Party.

(continued)

20 5. The Appellants could only be held liable (if at all) and only proportionately on the basis (which had to be determined) that the Appellants' insured drove the vehicle in question solely for his own purpose and without the consent of the owner.

WHEREFORE the Appellants pray that the Appeal be allowed with costs.

Dated the 24th day of October, 1981.

Sd: Devadas
Solicitors for the Appellants

To:

30 The Chief Registrar,
The Federal Court of Malaysia,
KUALA LUMPUR.

and to:

The Senior Assistant Registrar,
High Court, Malaya,
JOHORE BAHRU

and also to:

40 The Plaintiffs/Respondents and/or their
Solicitors,
Messrs. K.C.Koh & Co.,
Advocates & Solicitors,
23rd Floor, Tun Abdul Razak Complex,
Jalan Ah Fook,
Johore Bahru.

and also to:

In the
Federal
Court

No.9
Memorandum
of Appeal
by 1st
Defendant
24th October
1981

(continued)

The 2nd Defendants and/or their Solicitors,
Messrs. Leong Wai Hin & Co.,
Advocates & Solicitors,
No.59F, 2nd Floor,
Jalan Ah Fook,
JOHORE BAHRU.

This Memorandum of Appeal is filed on
behalf of the 1st Defendant/Appellant above-
named by Messrs. Devadas & Co., Advocates &
Solicitors, of No.10, Lorong Gereja, Malacca. 10

No.10
Reasons for
Judgment
14th April
1983

No.10
REASONS FOR JUDGMENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHORE BAHRU
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.170 OF 1981

Between

National Insurance Co.Ltd. Appellants/
1st Defendants

And

20

1. Abdul Hafidz bin Haji A.Rahman
2. Mohamediah bin Jalil Respondents/
Plaintiffs

(In the matter of Civil Suit No.681 of
1976 in the High Court in Malaya in
Johore Bahru

Between

1. Abdul Hafidz bin Haji A.Rahman
2. Mohamediah bin Jalil Plaintiffs

And

30

1. National Insurance Co.Ltd.
2. Bankers and Traders
Insurance Co.Ltd. Defendants)

Coram: Salleh Abas, CJ Malaya
Wan Suleiman, FJ
George Seah, FJ

JUDGMENT OF THE COURT

In the
Federal
Court

No.10
Reasons for
Judgment
14th April
1983

10 The plaintiffs were injured in a road traffic accident by a motorcar JF 5143 driven by one Ko Beng Lai. They sued Ko and subsequently obtained an interlocutory judgment against him which was later assessed at \$44,098.00. Ko did not pay the judgment sum and, after obtaining no response from the defendants who were insurers in respect of the use of the aforesaid motorcar by Ko, the plaintiffs availing themselves of section 80 of the Road Traffic Ordinance, 1958 (F.M.49 of 1958), (the Ordinance), sued both of them. Although both the defendants agreed that the plaintiffs were entitled to have their judgment satisfied under section 80, each is denying liability and claiming the other to be liable therefor.

(continued)

20 Motorcar JF 5143 which was driven by Ko and caused injuries to the plaintiffs was not owned by Ko, but by one Kwang Shi Ching who insured it with the second defendants. Under this policy the second defendants undertook to indemnify the insured (Kwang Shi Ching) in the event of accident caused by or arising out of the use of this car against all sums which he (the insured) shall become legally liable to pay in respect of death or bodily injuries caused to any person. The policy also contained the usual extension clause relating to an authorized driver in that the second defendants undertook to indemnify any authorized driver who was driving the car provided that he was not entitled to indemnify under any other policy. (See Section II, clause 2(a) (ii) of the second defendants' policy at page 53 of the Record). In the context of this policy Ko, not being the owner of motorcar JF 5143, was at the most an authorized driver; the term "authorized driver" not being defined by the policy, to mean any person driving the insured vehicle with the permission of the insured or the policy holder.

50 However, Ko was also covered by a policy issued by the first defendants in respect of his own motorcar, which was registered as JE 8143. Under this policy the first defendants in addition to undertaking to indemnify Ko in respect of the use of his own motorcar by himself or by an authorized driver also undertook to indemnify him whilst personally driving a private motorcar not belonging to him (See Section II, clause 2(b) of the first defendants' policy at page 55 of the Record). Thus because

In the
Federal
Court

No.10
Reasons for
Judgment
14th April
1983

(continued)

Ko was covered by the first defendants' policy in respect of his own motorcar with an extension of cover in respect of any other motorcar, the second defendants averred in their statement of defence that their policy did not cover Ko and that they were therefore not liable under section 80 of the Road Traffic Ordinance to satisfy the plaintiffs' judgment. They also contended that the failure of the plaintiffs to give them a notice of the commencement of the proceedings against Ko as required under subsection (2) (a) of section 80 of the Ordinance absolved them from the obligation to satisfy the judgment and that the first defendants, being the insurer of Ko, must be the one who should satisfy the judgment. 10

The first defendants on the other hand averred in their statement of defence that they were under no obligation to satisfy the adjudged sum because (i) Ko did not notify them of the occurrence of the accident as required by condition 4 of the policy and liability thereunder was thereby repudiated; and (ii) because their liability for Ko is not a liability in respect of which the plaintiffs' 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 Ordinance. 20 30

At the trial before the learned trial judge the plaintiffs and both the defendants agreed on a statement of facts and invited the learned judge to give his decision on the basis of these facts. He accordingly held that the first defendants were liable to satisfy the judgment as their policy was the one which was on risk. Hence this appeal.

In this appeal counsel for the first defendants strenuously argued that it was the policy of the second defendants which was on risk, and not his client's and as such the second defendants were "the insurer" who must comply with section 80 of the Ordinance. 40

An insurance policy is essentially a contract of indemnity between the insured (policy holder) and his insurer. In the absence of any statutory provisions, no person who is not a party to the contract, though entitled to the benefits under it can obtain such benefits directly from the insurer. In England the first inroad into this common law principle of privity of contract was made by the Third Parties (Rights against Insurers) Act, 1930. Under section 1 of the Act in certain 50

10 circumstances the insured's right against his insurer was transferred to the third party, to whom the liability insured under the policy was incurred. It was against this background that the Road Traffic Act 1930 replaced by a series of Acts until the present Road Traffic Act 1972 was passed. The provisions relating to compulsory insurance against third party risk contained in our Road Traffic Ordinance are modelled on the corresponding provisions in the English Road Traffic Acts. Section 80 of our Ordinance which forms the basis of the plaintiffs' suit in this case is in pari materia with section 149 of the English 1972 Act, which itself is a re-enactment of section 207 of the 1960 Act and section 10 of the 1934 Act.

In the Federal Court

No.10
Reasons for Judgment
14th April 1983

(continued)

20 This case is purely a matter of construction of section 80(1) of our Road Traffic Ordinance, which is as follows :

30 "80.(1) If, after a certificate of insurance has been delivered under subsection (4) of section 75 of this Ordinance to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 75 of this Ordinance (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments. "

50 Without this provision the plaintiffs can have no direct right of action against the defendants in respect of the bodily injuries caused to them arising out of the use of the motorcar JF 5143. By virtue of this provision the plaintiffs have a compulsorily insurable claim. But against whom? In view of the double insurance and the disclaimer by each of the defendants, the issue which the Court must determine is this: Who, in the circumstances of

In the
Federal
Court

this case, is the "insurer" within the
meaning of that provision to satisfy the
compulsorily insurable claim?

No.10
Reasons for
Judgment
14th April
1983

Section 80(1) of the Ordinance with
its complex sentence is by no means an easy
section to construe. But it is clear from
it that the insurer liable to satisfy the
judgment under the section must be the one
who -

(continued)

- (1) have delivered a certificate of insurance under subsection (4) of section 75; 10
- (2) has undertaken to indemnify his insured against such liability as is required to be covered under paragraph (b) of subsection (1) of section 75 (being a liability covered by the terms of the policy); and
- (3) the judgment it has to satisfy is one which is given against any person insured by the policy. 20

The agreed statement of facts is silent on the question of delivery of certificates of insurance. Since this is not an issue to this case, we assume that each of the defendants has delivered their certificate of insurance to their respective insured, thus rendering both the policies effective for the purpose of the Ordinance. However, up to this point we cannot just yet determine which of the two defendants is the "insurer" within the meaning of section 80 (1) of the Ordinance. 30

We must now consider condition (2) above. The liability to be covered under section 75 (1)(b) of the Ordinance is, to quote the words of the section -

"any liability which may be incurred by him or them (i.e. person or persons or classes of persons specified in the policy) in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road. " 40

(the bracketed words and underlining are ours).

The injuries suffered by the plaintiffs were not caused by Ko's own motorcar JE 8143

but by motorcar JF 5143. It is arising out of the use of the latter motorcar that the injuries to the plaintiffs were caused. As this car was insured with the second defendants, it is their policy which was on risk and likewise as the judgment to be satisfied is one in respect of liability which arose out of the use of the said motorcar JF 5143, it is the second defendants who must be "the insurer" within the meaning of section 80(1) of the Ordinance. This fact excludes the applicability of the first defendants as "the insurer". Even if we look at the policies, the system adopted by any insurance company with respect to motorcar insurance is that the company insures a particular car protecting its owner and its authorized driver in case of injuries to a third party; the premium being calculated partly on value and partly on engine capacity. The decisive factor which is the subject matter of the insurance is the specified motorcar. It is because of the use of the motorcar that an insurance is required. (Section 74 of the Ordinance and see Tattersall v. Drysdale (1))

In the
Federal
Court

No.10
Reasons for
Judgment
14th April
1983

(continued)

The expression "any person insured" used in section 80(1) of the Ordinance has a wider meaning than the words "the insured" used in the policies. "The insured" refers only to the policy holder, whilst "any person insured" does not only refer to the policy holder, or the insured but also extends to any authorized driver. The question whether Ko was an authorized driver and therefore insured by the second defendants' policy was never pleaded, nor was it in issue in the Court below. Even before us it was only raised in passing. What the second defendants contended in the Court below was that their policy was not on risk because Ko was covered by the first defendants policy and as such they were not liable under section 80 of the Ordinance to satisfy the judgment. It was at the prompting of their counsel's submission that the learned trial judge in fact defined in his judgment the issues which he was called upon to decide. These are whether -

"(a) the policy of the first or the second defendants was on risk at the material time of the accident; and

(1) (1935) 2 K.B.174 &175

In the
Federal
Court

(b) whichever defendants found to be
liable could they call for rateable
contribution from the other
defendants. "

No.10
Reasons for
Judgment
14th April
1983

(See page 45 of the Appeal Record)

(continued)

Thus it is clear from the agreed statement
of facts and the parties' submissions on these
facts and their pleadings that their under-
standing was that Ko was an authorized driver.
That being the case, Ko must be "a person
insured by the" second defendants' policy, and
as such the second defendants must be "the
insurer" within the meaning of section 80 of
the Ordinance to satisfy the plaintiffs' judgment.

10

The policy issued by the second defendants
in respect of an authorized driver is qualified
by a proviso to the effect that the second
defendants would not be liable to indemnify
such a driver if he is entitled to an indemnity
under any other policy. Can they now rely upon
this proviso? What effect the proviso has upon
the construction of section 80(1) of the
Ordinance? In other words, is Ko still "a
person insured" by the second defendants'
policy within the meaning of that section, despite
the fact that according to the policy the
second defendants would not indemnify him
because of his cover by the first defendants?
In our view for the purpose of section 80, this
proviso has to be ignored. The proviso and
indeed the whole clause relating to an authorized
driver is a contractual matter between the
second defendants and their insured, the owner
of motorcar JF 5143, whilst the liability to
satisfy the judgment is statutory and therefore
must prevail over any contractual stipulations.
The matter is made clear by section 80(1) itself
which provides that the insurer shall pay the
person entitled to the benefit of the judgment
"notwithstanding that the insurer may be entitled
to avoid or cancel or may have avoided or
cancelled the policy."

20

30

40

A great deal of confusion seems to creep
into the case because of the failure to
appreciate the difference between the statutory
obligation of an insurer under section 80(1) to
satisfy a judgment given against a person insured
by its policy on the one hand and the insurer's
contractual obligation to indemnify its insured
and/or his authorized driver on the other. If
Ko had paid the plaintiffs and thereafter sued
the second defendants under section 75(3) of the
Ordinance for an indemnity of the sum he had so
paid the proviso may well be a relevant issue.

50

(See Austin v. Zurich General Accident and Liability Insurance Co.Ltd) (2)

In the
Federal
Court

10 Almost every authority cited to us in this appeal deals with the question of contributions and indemnity between insurers and their insured and authorized drivers. None is on the question of liability to satisfy judgment obtained by a third party. Similarly, if the second defendants having paid the plaintiffs were to sue Ko for the recovery of the sum so paid or sue the first defendants for a rateable contribution of the said sum, the proviso is equally important. And if it is held that Ko was not covered by the second defendants' policy, he is entitled to turn to the first defendants, who under their policy covered him whilst even driving a motorcar belonging to another person. But all these issues are

20 issues which are relevant only as between the insurers and the insured and authorized drivers. They are not relevant in a suit between the injured third parties and the insurers. In such a suit the expression in section 80(1) of the Ordinance saying "notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy" renders such issues irrelevant.

No.10
Reasons for
Judgment
14th April
1983

(continued)

30 The plaintiffs' right to the satisfaction of the judgment by the second defendant is not absolute as it is expressly stated in section 80(1) of the Ordinance to be "subject to the provisions of this section." One of the provisions relied upon by the second defendants in their statement of defence is subsection (2)(a). Under this subsection the second defendants would not be liable to pay the judgment sum "unless before or within

40 seven days after the commencement of the proceedings in which the judgment was given the insurer (i.e. second defendants) had notice of the proceedings." (The bracketed words and underlining are ours). The second defendants said in the statement of defence that they were under no statutory duty to satisfy the said judgment, "as the plaintiffs had failed to give to the second defendants notice of commencement of proceedings in Civil Suit No.82 of 1975 as

50 required under section 80(2)(a) of the Road Traffic Ordinance, 1958 (No.49 of 1958)". But

(2) (1945) 1 K.B.250

In the
Federal
Court

No.10
Reasons for
Judgment
14th April
1983

(continued)

this defence was abandoned by them at the trial. (See page 19 of the Appeal Record). The parties simply agreed between themselves to submit for the Court's ruling certain agreed issues without calling evidence. At the risk of repetition counsel for the second defendants defined the issues to be as follows :-

"The issues to be decided by this Honourable Court are as follows:

- (a) whether the policy of the first defendants or the second defendants were on risk at the material time of the accident; 10
- (b) whichever defendants are found to be liable to satisfy the judgment sum and costs, could they call for contribution from the other for 50 percent in view of the Condition 7 of the policy of insurance."

Thus we cannot see how the second defendants should be allowed to raise this question again after having abandoned it. 20

In conclusion, we hold that the plaintiffs' right to the satisfaction of their judgment is not affected by any of the provisions of section 80 of the Ordinance. We therefore allow the appeal which means that the second defendants must satisfy the plaintiffs' judgment. As to the question of costs, the second defendants must bear the costs of the plaintiffs and the first defendants in the court below and here. The deposit should be refunded to the first defendants, who have won this appeal. 30

TAN SRI DATO' JUSTICE MOHAMED
SALLEY BIN ABAS
(Salleh Abas)
CHIEF JUSTICE, MALAYA

Johor Bahru,
14th April, 1983 40

Note: Hearing at Johor Bahru on 8th March, 1983.

Counsel:

For appellants - Encik P.Devadas (M/s Devadas & Co.)

For 1st & 2nd respondents - Dato K.C.Koh
(M/s K.C.Koh & Co.)

In the
Federal
Court

IN OPEN COURT
THIS 14TH DAY OF APRIL, 1983

O R D E R

No.11
Order
14th April
1983

(continued)

THIS APPEAL coming on for hearing on the 8th day of March, 1983 in the presence of Encik P.Devadas of Counsel for the Appellant/1st Defendant and Dato K.C.Koh of Counsel for the 1st and 2nd Respondent/Plaintiffs and Mr. B.T.Lee of Counsel for the 2nd Defendant AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Encik P. Devadas of Counsel for the Appellant/1st Defendant and Dato K.C.Koh of Counsel for the 1st and 2nd Respondent/Plaintiffs and Encik Cheah Foong Choh of Counsel for the 2nd Defendant IT IS ORDERED that the Appeal be and is hereby allowed and that the 2nd Defendant Bankers and Traders Insurance Co.Ltd. do pay to the 1st and 2nd Respondent/Plaintiffs the sum of Ringgit Forty-four thousand and ninety-eight (M\$44,098.00) only together with interest thereon at the rate of 8% per annum from 7th day of August, 1975 until the date of realisation AND IT IS ORDERED that the costs of the Appellant/1st Defendant and of the 1st and 2nd Respondent/Plaintiff of this Appeal and of Johore Bahru High Court Civil Suit No.681 of 1976 be taxed and paid by the 2nd Defendant Bankers and Traders Insurance Co.Ltd. AND IT IS LASTLY ORDERED that the sum of \$500/- deposited into Court as security for costs of this Appeal by the Appellant/1st Defendant be refunded to them.

GIVEN under my hand and the seal of the Court, this 14th day of April, 1983.

Sd:

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA.
KUALA LUMPUR.

This Order is filed by Messrs. K.C.Koh & Co. of 23rd Floor, Tun Abdul Razak Complex, Jalan Ah Fook, Johore Bahru. Solicitors for the abovenamed 1st and 2nd Respondent/Plaintiffs.

No. 12

In the
Federal
Court

ORDER GRANTING 2ND DEFENDANT
FINAL LEAVE TO APPEAL TO HIS
MAJESTY THE YANG DI-PERTIAN AGONG

No.12
Order grant-
ing 2nd
Defendant
Final Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong
14th November
1983

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR (APPELLANT JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.170 OF 1981

Between

10 NATIONAL INSURANCE CO.LTD. Appellant/
1st Defendant

And

- 1. ABDUL HAFIDZ BIN HAJI 1st Respondent/
A. RAHMAN 1st Plaintiff
- 2. MOHAMEDIAH BIN JALIL 2nd Respondent/
2nd Plaintiff
- 3. BANKERS & TRADERS Applicant/3rd
INSURANCE CO.LTD. Respondent/
2nd Defendant

20 (In the matter of Civil Suit No.681 of 1976
In the High Court in Malaya at Johor Bahru

Between

- 1. ABDUL HAFIDZ BIN HAJI
- A. RAHMAN
- 2. MOHAMEDIAH BIN JALIL Plaintiffs

And

- 1. NATIONAL INSURANCE CO.LTD.
- 2. BANKERS & TRADERS
INSURANCE CO.LTD. Defendants)

30 CORAM: SALLEH ABAS, CHIEF JUSTICE, MALAYA
ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA
SYED AGIL, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT
THIS 14TH DAY OF MOVEMBER, 1983

O R D E R

40 UPON MOTION made unto the Court this day by Mr.
C.E.Lee of Counsel for the 3rd Respondent Bankers
& Traders Insurance Co.Ltd. in the presence of
Mr.P.Devadas of Counsel for the Appellant National
Insurance Co.Ltd. AND UPON READING the Notice of
Motion dated the 25th day of October, 1983 and the

In the
Federal
Court

No.12
Order grant-
ing 2nd
Defendant
Final Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong
14th November
1983

Affidavit of Mr.Lee Bian Tian solicitor
affirmed on the 21st day of October, 1983,
and filed herein in support of the Motion
AND UPON HEARING Counsel as aforesaid
IT IS ORDERED that the 3rd Respondent above-
named be and is hereby granted final leave
to Appeal to His Majesty the Yang di-Pertuan
Agong against the Judgment and Order of
the Federal Court dated the 14th day of April,
1983 AND IT IS ORDERED that the costs of
and incidental to this Application be costs
in the cause.

10

GIVEN under my hand and the Seal of the Court
this 14th day of November, 1983.

(continued)

Signed: (K.S.Tan)

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA

This Order is filed on behalf of the 3rd
Respondent abovenamed by their solicitors,
Messrs. Lee & Cheah incorporating Leong Wai
Ying whose address for service is the Penthouse
2-F, 5th Floor, Wong Shee Fun Building, Jalan
Wong Ah Fook, Johor Bahru.

20

EXHIBITS

1

ORDER OF COURT IN JOHOR
BAHRU HIGH COURT CIVIL
SUIT NO. 82 OF 1975

EXHIBITS

1

Order of
Court in
Johor Bahru
High Court
Civil Suit
No.82 of
1975
7th August
1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.82 OF 1975

Between

10 1. Abdul Hafidz bin Haji A.Rahman Plaintiffs
2. Mohamediah bin Jali

And

Ko Beng Lai Defendant

BEFORE THE HONOURABLE
MR. JUSTICE SYED OTHMAN

IN OPEN COURT
THIS 7TH DAY OF AUGUST, 1975

O R D E R

20 UPON MOTION preferred unto Court this day
by Mr. P.Vengadesan of Counsel for the abovenamed
Plaintiffs and the abovenamed Defendant appearing
in person AND UPON READING the Pleadings herein
and the Notice of Motion Entered No.14 of 1975
dated the 24th day of April, 1975 and the
Affidavit of Mr.P.Vengadesan affirmed on the
22nd day of April, 1975 and filed herein on the
24th day of April, 1975 and the Interlocutory
Judgment entered herein on the 5th day of April,
1975 AND UPON HEARING the evidence adduced by
30 the abovenamed Plaintiffs and what was alleged by
Counsel as aforesaid IT IS ADJUDGED that the
abovenamed First Plaintiff do recover against the
abovenamed Defendant the sum of Dollars Thirteen
Thousand (\$13,000-00) only by way of general
damages for pain and suffering and loss of amenities
together with interest thereon at the rate of six
percent per annum from the 26th day of March, 1975
being the date of service of Writ of Summons until
Judgment AND IT IS FURTHER ADJUDGED that the
40 abovenamed First Plaintiff do recover against the
abovenamed Defendant the sum of Dollars One thousand
four hundred and forty (\$1,440-00) only by way of
special damages AND IT IS FURTHER ADJUDGED that
the abovenamed First Plaintiff do recover against

EXHIBITS

1
Order of
Court in
Johor Bahru
High Court
Civil Suit
No.82 of
1975
7th August
1975

(continued)

the abovenamed Defendant the sum of
Dollars Eight thousand four hundred and
sixty (\$8,460-00) only by way of loss of
future earnings AND IT IS FURTHER ADJUDGED
that the abovenamed Second Plaintiff do
recover against the abovenamed Defendant
the sum of Dollars Ten thousand (\$10,000-00)
only by way of general damages for pain and
suffering and loss of amenities together
with interest thereon at the rate of six 10
percent per annum from the 26th day of March,
1975 being the date of service of the Writ
of Summons until judgment AND IT IS FURTHER
ADJUDGED that the abovenamed Second Plaintiff
do recover against the abovenamed Defendant
the sum of Dollars One thousand four hundred
and forty (\$1,440-00) only by way of special
damages AND IT IS ALSO ADJUDGED that the
abovenamed Second Plaintiff do recover against
the abovenamed Defendant the sum of Dollars 20
Six thousand seven hundred and sixty
(\$6,760-00) only by way of loss of future
earnings AND IT IS LASTLY ORDERED that the
costs of this action as between Party and
Party be taxed and paid by the abovenamed
Defendant to the abovenamed Plaintiffs.

Given under my hand and the Seal of
the Court, this 7th day of August, 1975.

Sd: Illegible

Senior Assistant Registrar, 30
High Court, Malaya,
Johore Bahru

P A R T II
ITEM NO. 2 Pages 53 to 59

CERTIFIED TRUE COPY

Bankers & Traders' Insurance Company Limited

(INCORPORATED IN AUSTRALIA)

P. O. BOX 8, SINGAPORE-1, P. O. BOX 995, KUALA LUMPUR, P. O. BOX 4, PENANG, P. O. BOX 122, ALOR STAR

P. O. BOX 257, JOHORE BHARU, P. O. BOX 1075, KOTA KINABALU, P. O. BOX 664, KUCHING.

FIRE - MARINE - ACCIDENT

RENEWAL CERTIFICATE No. 12A/KLVR/12520

Application having been made for renewal, the undermentioned Policy is hereby continued in force as stated hereunder subject to the printed conditions and stipulations thereof and to such other conditions as are written or endorsed thereon.

	\$	¢	Premium
Policy No. 12A/KLV/2769			
Sum Insured \$ 2,000.00	225	00	
In Name of Kwang Shi Ching & M/S. Hong Leong Finance Ltd., & f.t.r.r. & i. 215, Jalan Bakek, Pontian, Johore.			
Insuring Situated 1962 Opel Rekord 1680cc JF-5143.			
		50	Stamp Duty
	\$225	50	Amount Payable

Agency or Address 12M-106/102
Term of Policy 12

Months DUE DATE

22nd July, 19 70.

N. B.- THIS IS NOT A CASH RECEIPT. A SEPARATE CASH RECEIPT MUST BE OBTAINED FOR PREMIUM PAID.

Issued in lieu of and cancelling C/Note KL. 70642.

For BANKERS & TRADERS' INSURANCE CO., LTD.

hbc

Date, 8th August, 19 76.

EXHIBITS

2

Insurance
Policy of
2nd Defendant
13th June
1968

(continued)

HIRE PURCHASE AGREEMENT

It is hereby understood and agreed that W/s. Hong Leong Finance Limited.,
(hereinafter referred to as the Owners) are the owners of the Motor Vehicle and that the Motor Vehicle is the subject of a Hire Purchase Agreement made between the Owners of the one part and the Insured of the other part. It is further understood and agreed that any payment made in respect of loss or damage (which loss or damage is not made good by repair reinstatement or replacement) under Section I of this Policy shall be made to the Owners as long as they are owners of the Motor Vehicle and their receipt shall be a full and final discharge to the Company in respect of such loss or damage. It is also understood and agreed that notwithstanding any provision in the Hire Purchase Agreement to the contrary this Policy is issued to the Insured Namely Kwang Shi Ching as the principal party and not as agent or trustee for the Owners and nothing herein shall be construed as constituting the Insured an agent or trustee for the Owners or as an assignment (whether legal or equitable) by the Insured to the Owners for his rights benefits and claims under this Policy. It is lastly understood and agreed that the Insured shall not assign his rights benefits and claims under this Policy without the prior consent in writing of the Company.

Subject otherwise to the Terms of this Policy.

(continued)

"PMC" ENDORSEMENTSPASSENGERS EXCLUSION COVER:

Notwithstanding anything contained herein to the contrary, it is understood and agreed that the Company shall not be liable in respect of death of or bodily injury to any person (other than passengers being carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from any vehicle in respect of which indemnity is granted under this Policy at the time of the occurrence of the event out of which any claim arises.

Subject otherwise to the terms, provisions and conditions of this Policy.

SECTIONS III AND IV OF THE POLICY ARE HEREBY DELETED.LEARNER DRIVERS CLAUSE:

Notwithstanding anything herein contained to the contrary, it is understood and agreed that, unless the prior consent of the company is obtained in writing, learner drivers are not covered by this policy; and the company shall not be on risk whilst the vehicle insured is being driven by or is for the purpose of being driven by a learner driver.

NAMED DRIVERS CLAUSE:

Notwithstanding anything herein contained to the contrary, it is hereby understood and agreed that in the event of any claim arising under Section I of this Policy whilst the motor vehicle in respect of which indemnity is granted by this Policy is being driven by or is for the purpose of being driven by him or her the driver shall be:

- (i) any person under the age of 21.
- (ii) any person who is the holder of a provisional driving licence.
- (iii) any person other than:—
 - (a) The person or persons named in the schedule under named driver.
 - (b) a uniformed driver of the Automobile Association.

Provided always that neither of the persons named under (a) and (b) is under the age of 21 or the holder of a provisional driving licence. The Insured in respect of each and every event shall be responsible for the first \$200.00 — hereinafter known as the "Excess" — (or any less expenditure which may be incurred) of any expenditure for which provision is made hereunder.

For the purposes of this Endorsement the expression "event" shall mean an event or series of events arising out of one cause in connection with the use of the motor vehicle.

Provided that if the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith.

Provided further that the above Excess shall not apply to loss or damage caused by fire, external explosion, self-ignition, burglary, lightning, housebreaking or theft.

Provided further that (iii) above shall not apply in the event of the premium under the Policy for the current period having been calculated with a "No Claim" discount allowed on the basis that the Insured has had two or more years free of claim. Notwithstanding this proviso, however, immediately after the occurrence of any accident involving or likely to involve a claim under the Policy the "Excess" becomes again applicable.

Subject otherwise to the terms, exceptions and conditions of this Policy and Endorsements if any hereon.

EXCESS CLAUSE:

It is hereby understood and agreed that notwithstanding anything to the contrary contained in Sections I, and II respectively of this Policy the Insured in respect of each and every event shall be responsible for the first amount stated under excess (or any less expenditure which may be incurred) of any expenditure for which provision is made hereunder (including any payment in respect of costs and expenses) and of any expenditure by the Company in the exercise of its discretion under Condition 5 of this Policy.

If the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith.

For the purpose of this endorsement the expression "event" shall mean an event or series of events arising out of one cause in connection with any one motor vehicle in respect of or in connection with which indemnity is granted under this Policy.

Subject otherwise to the terms, provisions and conditions of this policy.

REPAIR PARTS CLAUSE. It is hereby declared and agreed that notwithstanding anything to the contrary contained in Section I of this Policy in the event of any vehicle described in the Schedule sustaining damage and of any part or accessory necessary to effect or complete the repair thereof not being obtainable from the Manufacturers or Distributors of or the Concessionaries or Authorised Agents for the said vehicle the Company shall be under no liability under the said section

- (i) to make any payment on the basis that the value or usefulness of the vehicle as a vehicle is lessened or destroyed by reason of the fact that such part or accessory is out of production and not obtainable.
- (ii) to make any payment in respect of such part or accessory in excess of:—
 - (a) the price of such part or accessory appearing in the Manufacturer's or Concessionaire's current Price List or if there be no entry therein.
 - (b) the price of such part or accessory appearing in the current issue of the I.C.M.E. Manual or if there be no entry therein.
 - (c) the price of such part or accessory appearing in the Price List last published by the Manufacturers or Concessionaires or last appearing in the I.C.M.E. Manual in which a price is shown for the said part or accessory or if it be impossible by the methods laid down in (ii) (a) (b) and (c) above to determine the price then.
 - (d) 50 per cent of the actual cost of such part or accessory being specially manufactured

Subject otherwise to the terms, exceptions and conditions of the within Policy.

HIRE PURCHASE AGREEMENT. If to the knowledge of the Company the Motor Vehicle is the subject of a Hire Purchase Agreement any payment made in respect of loss or damage (which loss or damage is not made good by repair reinstatement or replacement) under Section I of this Policy shall be made to the owner described in the Agreement whose receipt shall be a full and final discharge to the Company in respect of such loss or damage.

Subject otherwise to the terms, provisions and conditions of the Policy.

INTOXICATING LIQUOR OR DRUGS EXCLUSION CLAUSE: Notwithstanding anything to the contrary contained in the Policy it is hereby understood and agreed that the Company shall not be liable in respect of any accident loss damage or liability caused contained or incurred whilst any motor vehicle in respect of which indemnity is provided by this Policy is being driven by the Insured (or by any other person with the general knowledge and consent of the Insured or his representative) whilst under the influence of intoxicating liquor or drugs.

Subject otherwise to the terms conditions and exceptions of the Policy.



Bankers & Traders' Insurance Company Limited.

(INCORPORATED IN AUSTRALIA)

SINGAPORE OFFICE

G. P. O. Box 8

KUALA LUMPUR OFFICE

P. O. Box 995

PENANG OFFICE

P. O. Box 4

KOTA KINABALU OFFICE

P. O. Box 1075

EXHIBIT 2
Insurance
Policy of
2nd Defendant
13th June
1968
(continued)

KUCHING OFFICE

P. O. Box 664

J. B. OFFICE

P. O. Box 257

ALOR STAR OFFICE

P. O. Box 122

PRIVATE MOTOR CAR POLICY

Whereas the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to BANKERS & TRADERS' INSURANCE COMPANY LIMITED (hereinafter called "the Company") for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance.

Now this Policy Witnesseth:-

That in respect of events occurring during the Period of Insurance and subject to the terms exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy).

SECTION I - LOSS OR DAMAGE

- The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon.
 - by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear
 - by fire external explosion self-ignition or lightning or burglary housebreaking or theft
 - by malicious act
 - whilst in transit (including the processes of loading and unloading incidental to such transit) by
 - road rail inland waterway lift or elevator
 - direct sea route across the straits between the island of Penang and the mainland.
- At its own option the Company may pay in cash the amount of the loss or damage or may repair reinstate or replace the Motor Vehicle or any part thereof or its accessories or spare parts. The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts. The Insured's estimate of value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage.
- If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained.
- The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that :-
 - the estimated cost of such repair does not exceed the Authorised Repair Limit
 - a detailed estimate of the cost is forwarded to the Company without delay.

EXCEPTIONS TO SECTION I.

- The Company shall not be liable to pay for
- consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages
 - damage to tyres unless the Motor Vehicle is damaged at the same time.

SECTION II - LIABILITY TO THIRD PARTIES

- The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of
 - death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the insured and excluding liability to any person being a member of the Insured's household who is a passenger in the Motor Vehicle unless such person is being carried by reason of or in pursuance of a contract of employment
 - damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured or any member of the Insured's household.
- In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify
 - any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver
 - shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply
 - is not entitled to indemnity under any other policy
 - the insured whilst personally driving a motor car not belonging to or hired (under a hire purchase agreement or otherwise) to him or his employer or his partner.
- In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of such Section provided that such representatives shall as though they were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply.
- The Company will pay all costs and expenses incurred with its written consent.
- The Company may at its own option
 - arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section
 - undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section.
- Subject to the Limits of Liability the Company may at the request of the Insured arrange and pay for legal services for defence of any charge of causing death by driving the Motor Vehicle other than murder which may be brought against the Insured or any other person who is driving on the Insured's order or with his permission in respect of any death which may be the subject of indemnity under this Section.

SECTION III - MEDICAL EXPENSES.

The Company will subject to the Limits of Liability in respect of each person injured pay to the Insured the reasonable medical expenses incurred in connection with any bodily injury by violent accidental external and visible means sustained by the Insured or his driver or any occupant of the Motor Vehicle as the direct and immediate result of an accident to the Motor Vehicle.

SECTION IV - ACCIDENTS TO INSURED.

The Company undertakes to pay compensation to the Insured or his personal representative on the scale provided below for bodily injury as hereinafter defined sustained by the Insured

- (a) in direct connection with the Motor Vehicle or
- (b) whilst mounting into dismounting from or travelling in any private motor car

and caused by violent accidental external and visible means which independently of any other cause (excepting medical or surgical treatment consequent upon such injury) shall within three calendar months of the occurrence of such injury result in :-

	Scale of Compensation
(1) Death	\$10,000
(2) Total and irrecoverable loss of all sight in both eyes	\$10,000
(3) Total loss by physical severance at or above the wrist or ankle or both hands or both feet or of one hand together with one foot	\$10,000
(4) Total loss by physical severance at or above the wrist or ankle of one hand or one foot together with the total and irrecoverable loss of all sight in one eye	\$10,000
(5) Total and irrecoverable loss of all sight in one eye	\$ 5,000
(6) Total loss by physical severance at or above the wrist or ankle of one hand or one foot	\$ 5,000

In the event of the Insured being the holder of any Policy or Policies with the Company in respect of any other motor car or motor cars compensation shall be recoverable under one Policy only.

Payment shall be made under one only of sub-section (1) to (6) in respect of any one occurrence and the total liability of the Company shall not in the aggregate exceed the sum of \$10,000 during any one period of insurance.

PROVIDED ALWAYS that

- (a) the Insured is not less than 16 or more than 65 years of age at the time of such injury
- (b) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (1) intentional self-injury suicide or attempted suicide (whether felonious or not) physical defect or infirmity
- (2) an accident happening whilst the Insured is under the influence of intoxicating liquor or drugs.

NO CLAIM DISCOUNT.

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of this Policy the renewal premium for such part of the insurance as is renewed shall be reduce as follows :-

Period of Insurance	Discount
The preceding year	20%
The preceding two consecutive years	25%
The preceding three consecutive years	33 1/3%
The preceding four or more consecutive years	40%

If the Company shall consent to a transfer of interest in this Policy the period during which the interest was in the Transferor shall not accrue to the benefit of the Transferee.

If more than one motor vehicle is described in the Schedule the No Claim Discount shall be applied as if a separate Policy had been issued in respect of each such motor vehicle.

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY.

Nothing in this Policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this Policy or of any other person to recover an amount under or by virtue of the Legislation.

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation.

Insurance Policy
of 2nd Defendant
13th June 1968
(continued)

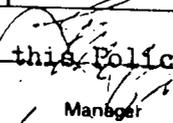
Issued in lieu of and cancelling C/Note KL. 11335.
hbc

CERTIFIED TRUE COPY

22/7

THE SCHEDULE

1

Period of Insurance: (a) From 23rd July, 1968 to 22nd July, 1969 (Both dates inclusive)						Policy No. 12A/KLV/2769
(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium.						Account No. 12M-106/102
Insured Name: Kwang Shi Ching Address: 215, Jalan Bakek, Pontian, Johore. Business or Profession: Merchant Hire Purchase Owners: M/s. Hong Leong Finance Limited. Excess: M\$300/-(Section 1). Date of Signature of Proposal and Declaration 13th June, 1968. <small>Warranted that Para 5. Persons or Classes of Persons entitled to drive and Para 6. Limitations as to use as stated and defined in the Certificate of Insurance are deemed to form part of this Contract.</small> Motor Vehicle: Any of the following:-					Premium : S/duty M\$225.00 .50 M\$225.50 ===== Engine & Chassis Nos. 17,0418278 & 162166962	
Registration Mark	Make And Type Of Body	Cubic Capacity	Year Of Manufacture	Seating Capacity including Driver	Insured's Estimate Of Value Including Accessories And Spare Parts	Named Driver
JF-5143	Opel Rekord Saloon	1680	1962	5	Vehicle: - g M\$2,000.00	(a). The Insured..... (b). Kwang Tee Ek
Subject to Hire Purchase Agreement attached.						
Subject to "PMC" Endorsements attached.						
It is understood and agreed that Subsection 2(b) of Section H of this Policy is deleted.						
Signed for and on behalf of the Company on 4th July, 1968 <div style="text-align: right;">  Manager </div>						
Limits of Liability: Limit of the amount of the Company's liability under Section I - 3 \$ 200 Limit of the amount of the Company's liability under Section II - 1 (a) in respect of any one claim or series of claims arising out of one event Unlimited Limit of the amount of the Company's liability under Section II - 1 (b) in respect of any one claim or series of claims arising out of one event Unlimited Limit of the amount of the Company's liability under Section H - 6 in respect of legal services for defence in the event of any charge \$2,000 Limit of the amount of the Company's liability under Section III in respect of each person injured arising out of one accident \$ 200 Authorised Repair Limit: \$200 Geographical Area: West Malaysia, The Republic of Singapore and that part of Thailand within 50 miles of the border between Thailand and West Malaysia. Legislation: "Road Traffic Ordinance 1958 (Federation of Malaya) Motor Vehicles (Third Party Risks & Compensation) Ordinance 1960 (Republic of Singapore) (The reference to Legislation in "Avoidance of Certain Terms and Right of Recovery" is limited to Sections 78, 79 and 80 of the Federation of Malaya Ordinance and Sections 6, 7 and 8 of the Singapore Ordinance)."						

GENERAL EXCEPTIONS.

The Company shall not be liable in respect of

1. any accident loss damage or liability caused sustained or incurred
 - (a) outside the Geographical Area
 - (b) whilst any motor vehicle in respect of which indemnity is provided by this Policy is
 - (i) being used otherwise than in accordance with the Limitations as to Use
 - (ii) being driven by or is for the purpose of being driven by him in the charge of any person other than an Authorised Driver
2. any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of nature invasion the act of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war strike riot civil commotion mutiny rebellion revolution insurrection military or usurped power or by any direct or indirect consequences of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accident loss damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim
3. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement
4. (a) any accident loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
 (b) any liability of whatsoever nature
 directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exception combustion shall include any self-sustaining process of nuclear fission
5. any accident loss damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

If a law or laws are named in a section of the Policy entitled "Avoidance of certain terms and right of recovery" or in the Policy Schedule under the heading of "Legislation" all references to specific Sections of such laws are deemed to be deleted so that the references to such law or laws are left to apply to each law in its entirety.

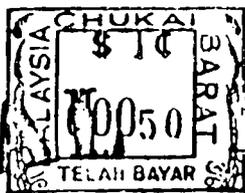
CONDITIONS

1. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.
2. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company.
3. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy.
4. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured shall have knowledge of any impending prosecution inquest or fatal enquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender.
5. No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
6. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current Period of Insurance) the Insured shall be entitled to a return of premium less premium at the Company's Short Period rates for the period the Policy has been in force.
7. If at the time any claim arises under this Policy there is any other insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expenses. Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under proviso (iii) of Section II - 2(a) of this Policy.
8. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
9. The due observance and fulfilment of the Terms of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

Insurance
Policy of
1st Defen-
dant
6th August
1968

INSURANCE POLICY OF
1ST DEFENDANT

PART II

ITEM NO. 3 Pages 60 to 64
4226

NATIONAL INSURANCE COMPANY LIMITED.

(INCORPORATED IN INDIA)

NATIONAL INSURANCE BUILDING

Registered Office: 7, Council House Street, Calcutta.

PRIVATE CAR POLICY

Whereas the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance.

Now this Policy Witnesseth:-

That in respect of events occurring during the Period of Insurance and subject to the terms exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy)

SECTION I— LOSS OR DAMAGE

1. The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon.
 - (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear.
 - (b) by fire external explosion self-ignition or lightning or burglary housebreaking or theft.
 - (c) by malicious act.
 - (d) whilst in transit (including the processes of loading and unloading incidental to such transit) by
 - (i) road rail inland waterway lift or elevator.
 - (ii) direct sea route across the straits between the island of Penang and the mainland.
2. At its own option the Company may pay in cash the amount of the loss or damage or may repair reinstate or replace the Motor Vehicle or any part thereof or its accessories or spare parts. The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts. The Insured's estimate of value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage.
3. If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained.
4. The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that:-
 - (a) the estimated cost of such repair does not exceed the Authorised Repair Limit.
 - (b) a detailed estimate of the cost is forwarded to the Company without delay.

EXCEPTIONS TO SECTION I.

The Company shall not be liable to pay for.

- (i) consequential loss depreciation wear and tear mechanical or electrical breakdown failure or breakages.
- (ii) damage to tyres unless the Motor Vehicle is damaged at the same time.

SECTION II — LIABILITY TO THIRD PARTIES.

1. The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of
 - (a) death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the Insured and excluding liability to any person being a member of the Insured's household who is a passenger in the Motor Vehicle unless such person is being carried by reason of or in pursuance of a contract of employment.
 - (b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured or any member of the Insured's household.
2. In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify
 - (a) any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver
 - (i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply. (ii) is not entitled to indemnity under any other policy.
 - (b) the Insured whilst personally driving a private motor car (but not a motor cycle) not belonging to him and not hired to him under a hire purchase agreement.
3. In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of such Section provided that such representatives shall as though they were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply.
4. The Company will pay all costs and expenses incurred with its written consent.

5. The Company may at its own option.

- (a) arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section.
- (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section.

6. The Company will subject to the Limits of Liability at the request of the Insured or may at its own option arrange and pay for legal services for defence in the event of any charge of manslaughter being brought against the Insured to any other person who is driving on the Insured's order or with his permission in respect of any death which may be the subject of indemnity under this Section.

SECTION III — MEDICAL EXPENSES

The Company will subject to the Limits of Liability in respect of each person injured pay to the Insured the reasonable medical expenses incurred in connection with any bodily injury by violent accidental external and visible means sustained by the Insured or his driver or any occupant of the Motor Vehicle as the direct and immediate result of an accident to the Motor Vehicle.

SECTION IV — ACCIDENTS TO INSURED

The company undertakes to pay compensation to the Insured or his personal representation on the scale provided below for bodily injury as hereinafter defined sustained by the Insured.

- (a) in direct connection with the Motor Vehicle or
- (b) whilst mounting into dismounting from or travelling in any private motor car and caused by violent accidental external and visible means with independently of any other cause (excepting medical or surgical treatment consequent upon such injury) shall within three calendar months of the occurrence of such injury result in:--

	Scale of Compensation	
(1) Death	\$10,000	} In the event of the Insured being the holder of any Policy or Policies with the Company in respect of any other motor car or motor cars compensation shall be recoverable under one Policy only.
(2) Total and irrecoverable loss of all sight in both eyes ..	\$10,000	
(3) Total loss by physical severance at or above the wrist or ankle of both hands or both feet or of one hand together with one foot	\$10,000	
(4) Total loss by physical severance at or above the wrist or ankle of one hand or one foot together with the total and irrecoverable loss of all sight in one eye	\$10,000	
(5) Total and irrecoverable loss of all sight in one eye ..	\$ 5,000	
(6) Total loss by physical severance at or above the wrist or ankle of one hand or one foot	\$ 5,000	

Payment shall be made under one only of sub-section (1) to (6) in respect of any one occurrence and the total liability of the Company shall not in the aggregate exceed the sum of \$10,000 during any one period of insurance PROVIDED ALWAYS that.

- (a) the Insured is not less than 16 or more than 65 years of age at the time of such injury.
- (b) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (1) intentional self-injury suicide or attempted suicide (whether felonious or not) physical defect or infirmity or (2) an accident happening whilst the Insured is under the influence of intoxicating liquor or drugs.

NO CLAIM DISCOUNT.

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of this Policy the renewal premium for such part of the insurance as is renewed shall be reduced as follows:

Period of Insurance	Discount
The preceding year	20 %
The preceding two consecutive years	25 %
The preceding three consecutive years	33 1/3 1/3 %
The preceding four or more consecutive years	40 %

If the Company shall consent to a transfer of interest in this Policy the period during which the interest was in the Transferer shall not accrue to the benefit of the Transferee.

If more than one motor vehicle is described in the Schedule the No Claim Discount shall be applied as if a separate Policy had been issued in respect of each such motor vehicle.

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this Policy or of any other person to recover an amount under or by virtue of the Legislation.

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation.

GENERAL EXCEPTIONS.

The Company shall not be liable in respect of.

1. Any accident loss damage or liability caused sustained or incurred.
 - (a) outside the Geographical Area.
 - (b) whilst any motor vehicle in respect of which indemnity is provided by this Policy is.
 - (i) being used otherwise than in accordance with the Limitations as to Use.
 - (ii) being driven by or is for the purpose of being driven by him in charge of any person other than an Authorised Driver.
2. any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of nature invasion the act of foreign enemies hostilities or war like operations (whether war be declared or not) civil war strike riot civil commotion mutiny rebellion revolution insurrection military or usurped power or by any direct or indirect consequences of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accident loss damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim.
3. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement.
4. (a) any accident loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss.
- (b) any liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exception combustion shall include any self-sustaining process of nuclear fission.
5. any accident loss damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

If a law or laws are named in a section of the Policy entitled "Avoidance of certain terms and right of recovery" or in the Policy Schedule under the heading of "Legislation" all references to specific Sections of such laws are deemed to be deleted so that the references to such law or laws are left to apply to each law in its entirety..

Insurance Policy
of 1st Defendant ---
6th August 1968
(continued)

MOTOR DEPARTMENT**NATIONAL INSURANCE CO., LTD.**

(INCORPORATED IN INDIA — ESTABLISHED 1906)

(Registered Office: 7, Council House Street, Calcutta 1.)

ENDORSEMENTS

Attaching to PRIVATE MOTOR CAR Policy No. 08/3/PC.51891 Issued on 6.8.68.
To { Mr. Ko Beng Lai.
Johore.

Authorised Repair Limit:Endorsement No. 08/3/97177.

It is hereby understood and agreed that the Authorised Repair Limit of \$200/- (Dollars Two Hundred) mentioned within the Schedule of this Policy is reduced to \$100/- (Dollars One Hundred only).

Loss Of/Damage To Parts And Accessories.Endorsement No. 08/3/97178.

Notwithstanding anything stated herein to the contrary it is understood and agreed that the Company shall not be liable to pay for loss of or damage to accessories, standard fittings, parts and spare parts by burglary, house-breaking or theft unless the Motor Vehicle is stolen at the same time.

Exclusion Of Passenger Risk.Endorsement No. 08/3/97179.

It is hereby declared and agreed that notwithstanding anything to the contrary contained in Section II of this Policy the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from any vehicle in respect of which indemnity is provided under this Policy at the time of the occurrence of the event out of which any claim arises.

Compulsory Excess (Endt. 2f)Endorsement No. 08/3/97180.

Notwithstanding anything herein contained to the contrary, it is hereby understood and agreed that in the event of any claim arising under Section I of this Policy whilst the motor vehicle in respect of which indemnity is granted by this Policy is being driven by or is for the purpose of being driven by him in the charge of:-

- (i) any person under the age of 21.
- (ii) any person who is the holder of a provisional driving licence.
- (iii) any person other than:-
 - (a) The Insured.
 - (b) Ong Tian Teok.
 - (c) a uniformed driver of the Automobile Association.
 - (d) -

Provided always that neither of the persons named under (a) and (b) is under the age of 21 or the holder of a provisional driving licence.

the Insured in respect of each and every event shall be responsible for the first \$200/- — hereinafter known as the "Excess" — (or any less expenditure which may be incurred) of any expenditure for which provision is made hereunder.

For the purpose of this Endorsement the expression "event" shall mean an event or series of events arising out of one cause in connection with the motor vehicle.

Provided that if the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith.

Provided further that the above Excess shall not apply to loss or damage caused by fire, external explosion, self-ignition, burglary, lightning, housebreaking or theft.

Provided further that (iii) above shall not apply in the event of the premium under the Policy for the current period having been calculated with a "No Claim" discount allowed on the basis that the Insured has had two or more years free of claim. Notwithstanding this proviso, however, immediately after the occurrence of any accident involving or likely to involve a claim under the Policy, the "Excess" becomes again applicable.

Hire Purchase.Endorsement No. 08/3/97181.

It is hereby declared and agreed that M/s. Tong Bee Co., (M) Ltd., J.B. (hereinafter referred to as the Owner) is the Owner of the Vehicle described in the Schedule of this Policy and that the said vehicle is the subject of a Hire Purchase Agreement made between the Owners of the one part and the Insured of the other part and it is further declared and agreed that the said Owners are interested in any monies which but for this endorsement would be payable to the Insured under the policy in respect of the loss of or damage to the said Vehicle (which loss or damage is not made good by repair reinstatement or replacement) and such monies shall be paid to the said Owners as long as they are Owners of the vehicle and their receipt shall be a full and final discharge to the Company in respect of such loss or damage.

Save as by the above endorsements expressly agreed nothing herein shall modify or affect the rights or liabilities of the Insured or the Company respectively under or in connection with this Policy or any term provision exception or condition hereof.

Dated at Kuala Lumpur. on 6th August, 1968.

For NATIONAL INSURANCE COMPANY LIMITED.

Company: NATIONAL INSURANCE COMPANY, LIMITED

Insured: Name Mr. Ko Beng Lai.
Address 297, Jalan Alsagoff, Pontian, Johore.

Period of Insurance: (a) From 1st August, 1968. to 31st July, 1969. (both dates inclusive) **Business or Profession Planter.**

(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium.

Motor Vehicle: Any of the following:

Registration Mark	Make	Type of Body	Horsepower Cubic Capacity	Year of Manufacture	Seating Capacity including Driver	Insured's Estimate of Value including Accessories and Spare Parts
JE.8143.	Morris Minor 1000.	Saloon.	1098cc.	1966.	4.	\$4,000/-
<p>AGAINST COMPREHENSIVE COVER Superseding C/Note No 08/3/68960 dt.1.8.68. Subjects to End't No 08/3/97177-81 attached.</p>						

Limits of Liability:

Limit of the amount of the Company's liability under Section I-3	\$ 200
Limit of the amount of the Company's liability under Section II-1 (a) in respect of any one claim or series of claims arising out of one event	Unlimited
Limit of the amount of the Company's liability under Section II-1 (b) in respect of any one claim or series of claims arising out of one event	Unlimited
Limit of the amount of the Company's liability under Section II-6 in respect of legal services for defence in the event of any charge	\$2,000
Limit of the amount of the Company's liability under Section III in respect of each person injured arising out of one accident	\$ 200

Authorised Repair Limit: \$200/.

Geographical Area:

Federation of Malaya, the State of Singapore and that part of Thailand within 50 miles of the border between Thailand and the Federation of Malaya.

Legislation:

Road Traffic Ordinance 1958 (Federation of Malaya) Motor Vehicles (Third-Party Risks & Compensation) Ordinance 1960 (State of Singapore) (The reference to Legislation in "Avoidance of Certain Terms and Right of Recovery" is limited to Sections 78, 79 and 80 of the Federation of Malaya Ordinance and Sections 6, 7 and 8 of the Singapore Ordinance).

Authorised Driver:

- Any of the following:—
- (a) The Policyholder.
- (b) Any other person who is driving on the Policyholder's order or with his permission.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle.

Limitations as to Use:

Use only for social, domestic and pleasure purposes and for the Policyholder's business. The Policy does not cover use for hire or reward, racing, pace-making, reliability trial, speed-testing, or the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the Motor Trade.

Date of Signature of

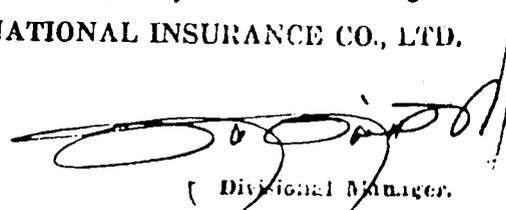
Proposal and Declaration: 1.8.68.

Premium: \$224.40
Stamp.....50
\$224.90

at Kuala Lumpur, on the 6th day of August, 1968

For NATIONAL INSURANCE CO., LTD.

MS. "No receipt other than the official receipt of the Company shall be valid unless it is countersigned by the Company's representative and contains the words 'received under' and 'paid'".



(Divisional Manager.



INDIAN BRANCHES & SUB-OFFICES



NATIONAL
INSURANCE COMPANY, LIMITED.
ESTABLISHED 1906
Room 7, Second Floor M. C. A. Building
67, AMPANG ROAD,
P. O. BOX 182
KUALA LUMPUR

PRIVATE CAR POLICY

AG. IM. 6-A

Policy No. 08/3/PC 51891.

Name of Insured Mr. Ko Beng Lai

Premium \$ 224.40

Stamp Duty 50 \$224.90

Vehicle No. JE.8143.

Renewal Date 1st August, 1969.

N.B.—The Policy with its conditions should be carefully read to ascertain if it is in accordance with the proposer's requirements, if there be other insurances on the same property it is important that all the policies describe it in similar terms.

Communications in regard to this policy should be made through the issuing office above.



Sub-Branch Office:
83-K, Jalan Munshi Abdullah,
MALACCA.
(P. O. Box 250 Tel: 2319)

Asian Printers Penang.

EDMURAY-1 Dunoon Office)	Kesturi Building Jambheji Tata Road, Chorungate.	NEW DELHI (Divisional Office)	"Gobind Mansion" 59, Connaught Circus.
A. Madras	1711, S. Opp. Bala, Manuman, Gandhi Road	Aligarh	Prakash Bhawan, Street No. 14,
Bombay	Near G.P.O., Mumbai Road.	Agra-3	City Station Road,
Bombay-1	605, Marikvadi, Sir-Patni Road,	Alwar	Prakash Rest House, Kanshi Chowk,
Bombay-2	36, Jawahar Road, Main-dala Crossing.	Amritsar	Dheer Bazar,
Bombay-3	Chourasia Building, Jambheji Road, Gandhi Bagh.	Bharuvala	13, Sector 17E, Main Bazar,
Bombay-4	Chandni Chanson, 386, L. Narayan Park, Laxmi Road.	Chandigarh-1	Mirza Small Road, 123, New Transport Yard,
Bombay-5	Gheeya Chambers, 4 Gheeya Kura Road.	Chennai	Lal Chand Sondhi S. Jiding, G.T. Road,
BOMBAY-6 (Divisional Office)	2, 29, Mount Road,	Coimbatore	24-168, Katurba Gandhi Road,
Bombay-7	3-111 Bazar Road, Mambacherry,	Kota	79, Shopping Centre
Bombay-8	68, 108, Bazar Road,	Ludhiana	Harbhagwan Mandir Bldg., Near Clock Tower,
Bombay-9	4, Krishna Raendra Circle.	Patna-1	Rajendrapur,
Bombay-10	7-13, Raja Rao Street, Ward No. 11, New Extension,	Shimoga-1	Han Singh High Street,
Bombay-11	Bazar Road.	Varanasi-1	Kol 1003, Raj Devi Natra. Bulana's,

FOREIGN BRANCHES & SUB-OFFICES

Bombay-12	1-11, Far House, 3, Dussart Street,	PENANG	5, Union Street,
Bombay-13	11-14, B. B. Road, 67, Ampang Road.	POH	2, Jalan Ali Pichay,
		MALACCA	83-K, Jalan Munshi Abdullah,
		SINGAPORE-1	3, C. K. R. Place,

FOREIGN CORRESPONDENTS

Messrs. F. J. W. & Co. Ltd., London.

MARINE CLAIM SETTLING AGENTS

Messrs. A. K. Watson & Co., London.

1. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.

2. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company.

3. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy.

4. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured shall have knowledge of any impending prosecution inquest or fatal enquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender.

5. No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.

6. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current period of insurance) the Insured shall be entitled to a return of premium less premium at the Company's Short Period Rates for the period the Policy has been in force.

7. If at the time any claim arises under this Policy there is any other insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expenses Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under proviso (ii) of Section II—2 (a) this Policy.

8. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

9. The due observance and fulfilment of the Terms of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy

EXHIBITS
3
Insurance
Policy of
1st
Defendant
6th August
1968
(continued)

No.7 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

BANKERS & TRADERS INSURANCE
CO.LTD.

Appellant
(Second Defendant)

- and -

NATIONAL INSURANCE CO.LTD.

Respondent
(First Defendant)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Appellant

LINKLATERS & PAINES,
Barrington House,
59/67 Gresham Street,
London, EC2V 7JA

Solicitors for the
First Respondent