

IN THE SUPREME COURT OF FIJI

Revisional Jurisdiction

No. 22 of 1958

REGINA

v.

ETUATE KAVENI NAIVALU

Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236)—Certificate of Insurance required by section 6(4) to contain conditions—Certificate produced to court with no conditions embodied—Non-compliance with section 6(4) makes insurance policy of no effect for purposes of Ordinance although it might be valid between insurance company and the insured.

Held.—(1) The Certificate of Insurance was clearly issued with the Policy of Insurance, both printed on the same sheet of paper.

(2) If the Certificate is thus delivered to the insured person by the Insurance Company it contains the conditions and limitations which it is required to contain.

(3) The two documents produced to the trial Magistrate had clearly formed one complete document.

(4) The delivery of the Certificate and the Policy as one, satisfactorily complies with the law.

References:—

Shawcross on Motor Insurance (Second Edition).

English Road Traffic Act of 1930.

Motor Vehicles (Third Party Insurance) Ordinance.

LOWE, C.J. [8th September, 1958]—

The judgment in this case raised an issue of some importance.

I am in agreement with the learned Magistrate where he held that as the accused's learner's licence had expired, his policy of Third Party Insurance was not in force, and the accused was therefore guilty of an offence. However, the learned Magistrate dealt also with section 6(4) of the Motor Vehicles (Third Party Insurance) Ordinance, which is as follows:—

“ A policy shall be of no effect for the purposes of this Ordinance unless and until there is delivered by the approved insurance company to the person by whom the policy is effected a certificate, in this Ordinance referred to as a certificate of insurance, in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed.”

In his judgment the Magistrate said:

“ It is mandatory under section 6(4) for the certificate to contain the conditions subject to which the policy is issued. If the provisions of section 6(4) are not complied with then the policy shall be of no effect for the purposes of the Ordinance.”

There can be no doubt that the Magistrate has stated the law correctly in that respect.

He went on, in effect, to say that the conditions which are required to be in the certificate did not appear in that certificate and for that reason the accused was driving uninsured for the purposes of the Ordinance, although between the driver and his insurers there was a valid policy. The learned Magistrate was misled by not having before him the certificate of insurance as it is "delivered by the approved insurance company to the person by whom the policy is effected".

What was produced was a certificate of insurance which did not contain any conditions and, printed on a separate piece of paper, a policy of insurance against third party risks, which policy did contain conditions. In fact, what was issued by the Insurance Company was a single document perforated down the middle with a certificate of insurance printed on one side and the conditions on the same side of the same sheet of paper. When the paper is reversed the third party insurance policy is printed on the right and a schedule on the left hand side. The conditions are actually on the back of the policy. The fact that the schedule is printed again on the face containing the certificate of insurance does not affect the position; it is there for reference, particularly by any police officer to whom it is required to be shown. The document issued by the Insurance Companies is a complete document containing the certificate of insurance and also the conditions. As the law requires that the certificate shall contain the conditions *when delivered to the insured persons* the present method of printing the policy and the certificate on the same side of one sheet of paper, and delivering the whole to the person insured, satisfactorily complies with the law as the certificate can be said clearly to contain the conditions.

Had a complete document been before the Magistrate I have no doubt that he would have arrived at a different conclusion from that which he expressed in his judgment. What was placed before him was, quite apparently, the policy face upwards, separated from the certificate of insurance, also face upwards. In such a position the policy has a straight, unperforated edge to the sheet of paper on which it is printed, abutting on to the perforated edge of the certificate if they are placed side by side. It is unfortunate that no one appeared for the accused, as the manner in which the document as a whole is delivered to the insured person (which is vitally material) would, no doubt, have been brought to the attention of the learned Magistrate. This was not done, even by the "insurance witness" whom the Magistrate called and it was natural that he would consider the documents before him as being separate and distinct which, of course, they were not when delivered by the Company. Had the Magistrate been asked to turn the policy face downwards and leave the certificate in view, it would have become at once apparent to him that the perforations on each fitted exactly. He would have then realized that the two had been issued as one document; the certificate containing the conditions and all limitations as required by the Ordinance.

I should add that, in his judgment, the learned Magistrate referred to Shawcross on Motor Insurance (second edition). I have read what the learned author has to say as to certificates of insurance and do not find him opposed to my view.

It is of interest to note that in the English Road Traffic Act of 1930, section 36(5) is in the same terms as is section 6(4) of the Motor Vehicles (Third Party Insurance) Ordinance and the form of certificate of insurance prescribed in the English Act does not set out or make provision for the embodiment of the conditions of a policy of insurance. So it is with the form prescribed in the instant case; the certificate of insurance shown in the schedule to the Motor Vehicles (Third Party Insurance) Regulations makes no provision nor in fact leaves any room for the embodiment, in the actual certificate, of the conditions. I can find no fault with the common sense manner in which the learned Magistrate dealt with the accused, on the relevant count, in the circumstances of the trial and I do not propose to interfere.