

**QUEENSLAND INSURANCE COMPANY LIMITED**

v.

**NITYA NAND AND ANOTHER**

[SUPREME COURT, 1973 (Mishra J.), 5th July]

Civil Jurisdiction

*Insurance—motor vehicle policy—oral report of accident—whether such report constitutes notification under Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s. 16(1).*

The defendant whose vehicle had been involved in an accident went to the plaintiff's office the following morning and orally reported the matter to the plaintiff's resident officer in Lautoka and produced his certificate of insurance.

It was held that such a report in the circumstances constituted notification under the Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s. 16(1). There was no necessity for such a notification to be in writing.

(*Herbert v. Railway Passengers Assurance Co.* [1938] 1 All E.R. 650 distinguished).

Action in the Supreme Court for recovery of money paid to the injured party by the plaintiff company.

*G. P. Lala* for the plaintiff.

*C. Gordon & S. Prasad* for the defendants.

MISHRA J. [5th July 1973]—

The plaintiff, an insurance company, claims from the defendants \$1,744.50 paid by it on their behalf to one Suresh Chandra Verma s/o Jagjit Singh by virtue of a certificate of insurance issued by it to them under the Motor Vehicles (Third Party Insurance) Ordinance. It is alleged that the defendants' motor vehicle was involved in an accident on 7th June, 1963 resulting in injuries to the said Suresh Chandra Verma but that the defendants did not notify the plaintiff company of the accident until 22nd August, 1964 when it received from the defendants' solicitors a copy of the writ issued on behalf of the said Suresh Chandra Verma. This failure to notify it forthwith of the accident, the plaintiff company alleges, is in contravention of the provisions of section 16(1) of the Motor Vehicles (Third Party Insurance) Ordinance and the amount paid out by the plaintiff under the certificate of insurance is, therefore, recoverable under subsection (4) of that section.

The defendants had by their defence denied several of the allegations contained in the Statement of Claim but they conceded at the trial that the only issue before the court was whether or not the defendants had in fact notified the plaintiff of the accident as required by the Motor Vehicles (Third Party Insurance) Ordinance.

Section 16(1) of that Ordinance reads as follows:—

“16(1) On the happening of any accident affecting a motor vehicle and resulting in the death of or personal injury to any person, it shall be the duty of the owner forthwith after such accident, or if the owner was not using the motor vehicle at the time of the accident, it shall be the duty of the person who was so

A using the vehicle forthwith after the accident, and of the owner forthwith after he first becomes aware of the accident, to notify the insurance company of the fact of such accident, with particulars as to the date, nature, and circumstances thereof, and thereafter to give all such other information and to take all such steps as the insurance company may reasonably require in relation thereto whether or not any claims have actually been made against the owner or such other person on account of such accident."

B The only witness to testify on behalf of the plaintiff company was one Vijay Nand its chief clerk at Suva. He said that the company insisted on a form being filled whenever an accident of this nature was reported and that in this case no such form had been filled by the defendants. He, however, admitted that he had no personal knowledge of the practice followed by the plaintiff company's office at Lautoka in 1963 where Lautoka accidents were normally reported. The company's resident officer at Lautoka in 1963 was one Mr Sharma. In cross-examination he said:

C "An insured person generally comes to the office and makes a verbal report and then is handed a form to fill. As oral notification is a notification of an accident. Either the owner or the driver can notify. Sometimes the form is filled there and then, at other times the form is taken away and returned later."

D The 1st Defendant in his evidence said that he had been driving the vehicle in question on 7th June, 1963 at the time of the accident and that his own brother Bhagwan Datt had been with him. He and his brother had both gone to the plaintiff company's office in Burns Philp's building in Lautoka the very next morning between 8.00 a.m. and 9.00 a.m. and had informed a man at the counter of the accident and had shown him his certificate of insurance. The man had inspected the certificate and had told them to come back if and when they received any formal claim on behalf of the injured person. Bhagwan Datt supported this evidence in detail. He had been working as a mechanic for Burns Philp's motor garage for a considerable time and personally knew the plaintiff company's resident officer, Mr Sharma. According to E him the man to whom the report was made and who inspected the certificate of insurance was Mr Sharma himself.

This evidence remains uncontradicted and I find it proved on a balance of probability that an oral report of the accident was made to Mr Sharma at the plaintiff company's office at Lautoka on 8th June 1963.

F Learned counsel for the plaintiff submits that an oral report of this nature does not constitute "notification" under section 16(1) of the Motor Vehicles (Third Party Insurance) Ordinance. He contends that such a notification ought to be formal in nature implying thereby that it ought to be in writing. In support of this contention he cites *Herbert v. Railway Passengers Assurance Company* [1938] 1 All E.R. 650. That case dealt with the provisions of section 10(2)(a) of the Road Traffic Act 1934 of England which are somewhat similar to the provisions of section 16(2) of the G Motor Vehicles (Third Party Insurance) Ordinance. These provisions require notice to be given to the insurance company as soon as any claim or action is brought against an insured person in respect of any accident. In the case cited, the insured person had casually mentioned the accident to another person who was not proved to be under any duty to pass that information on to the insurance company. Giving his judgment Porter J. said:

H "It may be that there are other grounds which may want consideration, but, if an agent is an agent to effect a policy, and conducts the negotiations for effecting the policy, and if afterwards to that person clear notice were given, I should think that an insurance company, whatever their legal liabilities,

