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SATISH CHANDRA MAHARAJ

v.

REGINAM

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[SUPREME COURT, 1983 (Tuivaga C.J.) 18th November]

Appellate Jurisdiction

Insurance—Road Traffic—Lapse of driving licence—Effect on third party insurance cover—Motor Vehicles (Third Party Insurance) Act (Cap. 177—1985 'Edn), Section 4(2).

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The appellant was convicted of driving a motor vehicle in respect of which there was not in force a valid policy of insurance covering third party risks. On appeal it was submitted that the effect of the lapse of a driving licence was to render the policy of insurance voidable rather than void.

Held: Mere non renewal of a driving licence resulted in the invalidation of the insurance policy.

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Cases referred to:

Ram Dayal v. R. 6 FLR 134

Michael Raman v. R. S.C. Cr. App. 27.1978

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Mrs A. Hoffman for the Appellant

S. Singh for the Respondent

TUIVAGA C.J.:

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Judgment

This is an appeal from the decision of the Suva Magistrate's Court which convicted and sentenced appellant on his own plea on a charge containing three counts of which only Count 3 is relevant for the purpose of this appeal. With respect to Count 3 which relates to the offence of driving a motor vehicle in contravention of third party policy risks contrary to section 4(1)(2) of the Motor Vehicles (Third Party Insurance) Act appellant was fined \$25 and disqualified from holding or obtaining a driving licence for a period of twelve months.

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The main issue raised in this appeal is whether

"The trial Magistrate was correct in law when he disqualified appellant from holding or obtaining a driving licence for twelve months on the ground that his third party policy insurance was not in force because his driving licence had at the material time expired."

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The short facts of the case were these:

On 15th January 1983 at about 1 a.m. appellant was seen driving out in a motor vehicle Reg. No. AE347 from a driveway along Fletcher Road and drove towards the City. A police vehicle was following behind appellant's car. The police driver noticed that appellant was driving in a zig zag manner and almost caused an accident with an oncoming car which was forced to swerve sharply to the left to avoid what would have been a certain collision. Appellant was stopped by the police and his car keys seized. Later it was discovered that appellant's driving licence was invalid because it had expired.

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Before proceeding to deal with the issue raised under the appeal it is necessary at the outset that it should be pointed out that this Court strictly has no jurisdiction to entertain this appeal in view of appellant's own plea of guilty to the charge of driving a motor vehicle in contravention of the third party policy risks contrary to section 4(1) and (2) of the Motor Vehicles (Third Party Insurance) Act. It is implicit in the particulars supporting the charge that on 15th January 1982 appellant drove his motor vehicle in respect of which the policy of insurance in respect of third party risks was not in force.

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Having pleaded guilty to such a charge it was mandatory upon the Court under section 4(2) of the Act to disqualify the appellant from holding or obtaining a driving licence for a period of twelve months unless the trial Court thought fit for special reasons to impose a shorter period or nothing at all. It would seem therefore that in view of appellant's plea the order of disqualification imposed by the trial Court was sound in law.

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However, the issue raised is one of some interest and further discussion is necessary. Counsel for appellant had argued that the policy of insurance in respect of third party risks relating to appellant's vehicle was in fact still in force at the time of the alleged offence notwithstanding that his driving licence had expired. It was said that even though his driving licence was invalid in not having been renewed before the night of the incident, this merely rendered the third party insurance policy voidable at the instance of the insurance company concerned, but not void. Accordingly it is argued that unless and until steps were taken to avoid the contract of insurance in respect of third party risks, appellant could not be said to have contravened the provisions of the Act in that regard. Counsel for appellant said that she relied on the case of *Ram Dayal v. R.* 6 F.L.R. 134 in support of her argument.

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Neither counsel for this appeal appeared to have noted a later case decided by Kermode J. in which *Ram Dayal's* case was considered and reviewed. The learned Judge said it was necessary to do so because there had been some uncertainty and misunderstanding of the Fiji authorities in particular as regards *Ram Dayal's* case. The case is *Michael Raman v. R.* Cr. App. No. 27 of 1978 in which commenting upon *Ram Dayal's* case the learned Judge said:

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"*Ram Dayal's* case was properly decided but the decision turned on the form of the policy then in existence. It is not now authority for cases where the driver is not licensed due to the form of the policies now issued to which I will shortly refer. It is still authority, however, for other cases where there has been a breach of a condition which makes the policy voidable at the instance of the insurer.

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In the instant case the policy was not exhibited in the Court below but it was produced in Court and the Magistrate did read it and has referred to it in his judgment

A where he has quoted para 4(b) of the policy.

It appears that after Ram Dayal's case the insurers changed their form of policy. The condition I referred to earlier when dealing with Ram Dayal's case is no longer a condition listed in the conditions at the back of present day policies. Instead the insurers have added a proviso to paragraph 4 which I set out in full:

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"4. PERSONS OR CLASSES OF PERSONS ENTITLED TO DRIVE AND INSURED UNDER THIS POLICY.

(a) The owner, and

(b) Any person who is driving on the driver's order or with his permission:

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Provided that the person driving holds a licence permitting him to drive a motor vehicle for every purpose for which the use of the above motor vehicle is limited under para. 5 below or at any time within the period of thirty days immediately prior to the time of driving has held such a licence and is not disqualified for holding or obtaining such a licence."

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This was a very substantial change of form. In 1959 the breach of a condition to like effect made the policy voidable. But by virtue of this proviso the legal position now is that a driver who holds no valid driving licence, or did not hold one within 30 days prior to the time of driving, or is disqualified from holding or obtaining a licence, is not covered by the policy at all. There would in fact be no policy in force covering such an unlicensed driver, because the policy does not extend to cover an unlicensed driver."

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In the course of his judgment the learned Judge considered a number of English authorities from which he reached the following interesting conclusion:

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English policies differ from Fiji policies in one respect. The usual English policies are issued in the form—"provided the driver holds *or has held* a driving licence and is not disqualified" or words to that effect (the underlining being mine). This form of policy is very much more favourable to third parties than the Fiji form of policy. There appears to be no logic in excluding from the policy drivers who have passed driving tests and have held a licence, but who are unlicensed at the relevant time or have not held a licence within 30 days prior to that time. If a driver has forgotten to renew his licence from 30 days he will still be covered by his policy—but not if the period is 31 days. The Ordinance seeks to protect third parties, and the real criteria should in my view be whether the driver is competent to drive the vehicle. Obviously he is not if he has been disqualified; but I fail to see the logic of exempting an insurer from liability where a competent driver previously licensed and not disqualified has omitted to renew his licence for more than 30 days. However, that is a condition insurers have imposed in their policies.

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Only legislation can now bring Fiji policies into line with English policies in this respect and, in the interests of third parties, a change of law would appear desirable."

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With respect I think it is clear from the foregoing that the proposition of law put forward on behalf of appellant and based entirely on Ram Dayal's case would not now be tenable

on behalf of appellant and based entirely on Ram Dayal's case would not now be tenable because of the difference in the form on contract of insurance in use.

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With respect I would also agree with the sentiment expressed by the learned Judge in *Michael Raman's* case (supra) upon the need for a change in the law pertaining to third party risks so that mere non-renewal of a licence would not by itself invalidate a third party policy so as to expose the unlicensed driver to a mandatory term of disqualification from driving as well as to remove the protection vested under such policy.

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For the reasons given above this appeal fails and is dismissed.

Appeal dismissed.

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