NOTES OF CASES

MOTOR INSURANCE — "PERMISSION TO DRIVE . . ."

Yong Moi and Anor. v. *Asia Insurance Co.*

Khoo Tiang Seng v. *People's Insurance Co.*

The inscrutable workings of fellowmen that befall a motorist on the merry way — the very exigencies which Insurance Companies with legal perspicacity provide against — often lead to cold formalities in the courtroom. Such an instance of uncertainty is contained in a clause commonly found in motor insurance policies stipulating that a driver other than the policy-holder is entitled to drive the vehicle provided he has the permission of the assured to do so.

Some light on this seemingly innocent clause is pertinently reflected in the two illuminating cases of *Yong Moi and Anor.* v. *Asia Insurance Co.*[1] and *Khoo Tiang Seng v. People's Insurance* Co.[2] In the much litigated field of insurance policies these two decisions invariably precipitated another victory against Insurance Companies.

The facts of *Yong Moi and Anor.* v. *Asia Insurance Co.* are briefly as follows. The owner of a car holding a valid third party insurance permitted his cousin Woo to drive to a wedding with his friends. During the journey, Woo fell ill and his friend Yong Choy took over the driving. Subsequently the car met with an accident in which Woo died of injuries. The administrators of Woo sued Yong Choy for negligence and succeeded. The judgment was not satisfied. The administrators then proceeded to recover from the Insurance Company.

The Insurance Co. sought to escape liability on the ground that the policy did not cover any liability which might be incurred by Yong Choy. The policy provided *inter alia* that the insurers "will indemnify any person who is driving such motor car on the insured's order or with his permission," and therefore Yong Choy was not entitled to such indemnity because at the material time he was not driving the car on the order or the permission of the owner (the insured). There was no adumbration of evidence to show that the owner gave permission to Yong Choy to drive. On the question whether there was implied consent, the Federal Court of Appeal unanimously came to the conclusion that as there was no express prohibition by the owner of any particular individual driving the car the irresistible inference was that there was an implied consent to the vehicle being driven by any other member of the deceased's (Woo) party who was a licensed driver.

The line of reasoning adopted by Thomson, Lord President, is instructive. Permission to drive a car is consent to the use of the chattel. This proposition is substantiated by the case of *Tappenden* v. *Artus*[3] and is fortified by the view of Lord Carmont quoted by the House of Lords in *McLeod* v. *Buchanan.*[4] In practice then, a covered policy is favoured. On the other hand, if there is an express prohibition of any particular individual driving the car, the Insurancce Co. will not be liable. To illustrate, if 'A' the assured expressly prohibits 'X' from driving the insured car

1. (I960) 30 M.L.J. 307.

2. [1965] 2 M.L.J. 17.

3. [1963] 3 All E.R. 213 where Diplock L.J. at p. 218 observed; "The erant of authority to use goods is itself to be considered as authority to do in relation to the goods all things that are reasonably incidental to their reasonable use. If the bailor desires to exclude the right of the bailee to do in relation to the goods some particular thing which is reasonably incidental to their reasonable use, he can, of course, do so, but he must do so expressly."

and 'X' persists, resulting in a collision, it was held in *Paget* v. *Poland*[5] that the policy did not cover 'X'.

The case of *Khoo Tiang Seng* v. *People's Insurance* Co.[6] must surely strike sober melancholy — for the decision was again manifested in favour of third party. In this case the proprietor of a certain company requested one Chua, a motor repairer to make repairs to the company's insured car. Chua repaired it and after test-driving it he took it back to the workshop. Later he decided to return the car to the owner and asked two of his friends to accompany him. On the way Chua and his friends decided to have lunch and Chua therefore drove past the owner's office to the place where he intended to have lunch. Subsequently the car was involved in a collision in which the plaintiff was injured. On a claim against the insurance company, counsel for the plaintiff submitted that there was evidence that the proprietor had, on previous occasions of repairs, not objected to the use of the car by Chua for going to lunch and hence there was implied consent to what Chua did on the day in question.

Counsel for the defendant vigorously argued that because Chua had used the car to go for lunch on previous occasions, it did not follow that there was implied consent on this occasion. The moment Chua changed his mind and decided to go for lunch instead of returning the car he was not using it for the purpose for which the car was entrusted to him, the car was thus driven without permission and hence the driver at the time of the accident was not an authorised driver within the scope of the policy. Therefore the plaintiff's claim must fail.

It is undoubtedly true that "the moment Chua changed his mind and decided to go for lunch instead of returning the car he was not using it for the purpose for which the car was entrusted to him...." But quaere, does the *purpose* in the use of the car matter in relation to a third party? If a third party insurance is in force, and if the driving of the car which causes the injury to the third party is a criminal act on, the part of the driver, the position is that the third party can recover from the insurer but the driver (should he also be insured) cannot.[7]

Choor Singh J. was unconvinced by the defendant's arguments and held that in the circumstances of the case,[8] the inference seemed irresistible that there was an implied consent to the car being used by Chua for going to lunch and therefore the car was being driven with the policy-holder's permission at the time of the accident and under the terms of the policy Chua was entitled to be indemnified by the defendant insurance company. The learned Judge felt that the principle involved was stated by Tan Ah Tah J. (as he then was) in *Yong Moi and Anor.* v. *Asia Insurance Co., Ltd.*[9]: "It is probably impossible to state in comprehensive terms any principle which will enable it to be determined in every case whether implied permission has been given to the third party to drive the car. The determination of the question depends upon the view that is taken of the matter after consideration of the circumstances of each case." The formulation of any principle is always a difficult process and even more so when we consider its application to loose concepts like "implied permission." Insurers will inevitably seek loop-holes in marginal cases to escape liability.

An entertaining and important illustration is *Kelly* v. *Cornhill Insurance* Co.[10]

4. [1940] 2 All E.R. 179 at p. 187: "I think that anyone who parts with the control of a motor vehicle without making any definite arrangement with the custodian as to use, impliedly permits all uses."

5. (1947) 80 LI.L.R. 283.

6. [1965] 2 M.L.J. 17.

7. An example is the driver's act which amounts to maliciously causing grievious bodily harm with intent. In *Hardy* v. *Motor Insurers Bureau* [1964] 2 All E.R. 742, the question raised was whether the scope of third party insurance required by s. 203(3) (a) of the Road Traffic Act 1960 extended to criminal acts. It was held that the section extends to any use of the motor vehicle whether innocent or criminal, murderous or playful. It may be noted that s. 203 (3) (a) of the (English) Road Traffic Act 1960 is virtualy identical to s. 4(1) (b) of the Singapore Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960.

8. *Khoo Tiang Seng* v. *People's Insurance Co., supra.*

9. (1963) 29 M.L.J. 329 at p. 531.

10. [1964] 1 All E.R. 322.

Any insurer with some modicum of prudence would not find it idle jesting to contend that the Insurance Co. remains liable on the policy only during the lifetime of the insured so that when he (the insured) meets his Maker the permission given by him automatically terminates. Though rather ingenious and forceful, this contention was rejected by a bare majority of the House of Lords in *Ketty's* case.

In that case, the owner of a motor car had insured his car against third party risks with the respondent insurance company. The policy, *inter alia,* read; "This policy insures:— (1) any person driving the insured car on the order of or with the permission of the insured...." The insured's son, who had been given permission to drive his father's son, met an accident while driving it 8 months after his father's death during the currency of the policy. The insurance company declined to reimburse the son's liability to third parties for damages. Counsel for the respondent strenuously argued that it was not possible for the father, as a matter of law, to give permission to drive his car which would be valid 8 months after his death, and that the permittor should have power during the period covered by the permission to revoke or cancel it. No authority was cited to support the arguments.[11] On that basis, it was maintained that any permission given by the assured during his lifetime ceased on his death or alternatively within a reasonable time thereafter. It may be noted that there was nothing in the policy which supported the argument that the word "permission" in the policy only meant permission which during its currency the assured had the power to revoke. Lord Reid observed that he could not accept the argument that the meaning of "permission" was so rigid that it could not refer in any context to a period after the death of the person giving the permission.[12] Lord Dilhorne pressed home the point when he said; "If Kelly (the appellant's father) had continued to live until after the date of the accident, there would seem to be no valid ground on which the respondents could have successfully repudiated liability." The dissenting judges were of the view that the father's permission to the son to use the car ceased on the father's death.[13]

Marginal cases as springboards to escape liability must inevitably arise. Should such opportunities occur, it is the duty of the court always to lean in favour of a valid policy, for after the insurance company had received the premium, the objection that there is no express or implied permission is often a technical one and usually embraces no real merit between the assured and the insurer. Furthermore, in the light of the objects and framework of compulsory third party motor insurance a decision in favour of the insurer would have the consequence that not only would the driver be liable to prosecution for driving uninsured, imprisonment and disqualification but also any person injured as a result of the driving would be deprived of the very protection under the mechanics of compulsory insurance. The injured party will be left without an effective remedy in the event of the negligent driver's impecuniosity.

The writer considers an insurance policy as a sort of matrimonial alliance in which insurers should find it increasingly difficult to divorce its obligation to pay. After all, if the insurance company should choose to speculate and profit by it, why should it escape from responsibility when the unforeseen vissicitudes in the business of life vacillate unfavourably?

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11. Our Singapore Motor Vehicle (Third Party Risks and Compensation) Ordinance, 1960 (No. 1 of 1960 seems to have anticipated *Kelly's* situation. Section 13(2) reads: A policy issued under this Ordinance shall remain in force and available for third parties notwithstanding the death of any person insured under para, (b) of subsection (1) of section 4 of this Ordinance as if such insured person were still alive. And section 4(1) says: "In order to comply with the requirements of this Ordinance a policy of insurance must be a policy which (b) insures such person, or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle."

12. The decision in *Kelly's* case would have been different if the car was sold. *Smith* v. *Ralph* [1963] 2 Lloyd's Rep. 489 is in point.

13. The case of *Global General Insurance Co.* v. *Finlay* [1961] S.C.R. 539 is authority to say that the executor or administrator could give permission to drive during the remaining period of the policy.