THE LAW RELATING TO COMPULSORY THIRD PARTY MOTOR INSURANCE IN MALAYSIA

Introduction

The tort of negligence allows the victim of a road accident to sue the tortfeasor for damages. However, even if negligence is established and an award of damages is made, whether the victim will be able to enforce the judgment depends upon the financial ability of the tortfeasor. If the tortfeasor happens to be a man of straw who is uninsured against such risks, the victim will not in fact get the damages awarded.

It was in the interest of such victims of road accidents that a system of compulsory third party motor insurance was first introduced in England in 1930 under the Road Traffic Act.[1] In *King Lee Tee* v *Norwich Union Insurance Co*[2] the court rejected the argument that the provisions of the 1930 Act were applicable in the Straits Settlements. The court reasoned that the 1930 Act was not within the scope of section 5(1) of the Civil Law Ordinance of 1920 and hence could not be applied in the Straits Settlements. Perhaps prompted by this decision, the different states subsequently introduced their own legislation pertaining to compulsory third party motor insurance. The first of these was the Road Traffic (Third Party Insurance) Enactment 1937 of the Federated Malay States.[3] This was followed by the introduction of similar enactments in the other states.[4]

All these enactments were subsequently repealed and replaced by the Road Traffic Ordinance 1958 of the Federation of Malaya.[5] When they first joined the Federation, Sabah

[1]20 & 21 Geo. V c.43, section 35. This Act has now been replaced by the Road Traffic Act 1972 (c.20).
[2][1933] MLJ 187.
[3]FMS Enactment No 17 of 1937.
[4]Straits Settlements Ordinance No 5 of 1938, Road Traffic Third Party Enactment 1938 (Johore), Road Traffic Enactment No 16 of 1356 AH (1938 AD) (Kedah), Motor Vehicle Enactment No 16 of 1356 AH (1938 AD) (Trengganu)
[5]FM Ordinance No 49 of 1958.

and Sarawak had their own legislation relating to compulsory third party motor insurance[6] but in 1984 the Road Traffic Ordinance 1958 was extended to these two states and their own statutes were thereby repealed.[7] The Road Traffic Ordinance 1958 was subsequently repealed and replaced by the Road Transport Act 1987.[8]

The obligation to insure against third party risks is provided for by section 90(1) of the 1987 Act. This provision is similar though not identical to s. 143(1) of the Road Traffic Act 1972 of England. Section 90(1) reads:

> Subject to this Part, it shall not be lawful for any person to use or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part.

The Scope of Section 90(1)

'Any Person'

The use of the phrase 'any person' makes it clear that it is not just the legal owner of the vehicle who comes within the scope of this provision. It includes everyone who uses, causes or permits a vehicle to be used. A person who drives a car which he hires under a hire purchase agreement, for instance, is not the legal owner of the vehicle until he has exercised his option to purchase. This however does not preclude him from being charged under this provision.[9] The proviso in section 90(3) however exempts from this section an employee using a vehicle which does not belong to him in the course of employment, provided he neither knew nor had reason to believe, that the vehicle was uninsured against such risks.

[6] Road Traffic (Third Party Insurance) Ordinance 1949 of Sabah and Motor Vehicles (Third Party Insurance) Ordinance 1949 of Sarawak.

[7] The Road Traffic Ordinance 1958 was extended to these two states, w.e.f. 12 April 1984 by the Modification of Laws (Road Traffic Ordinance) (Extension and Modification) Order 1984, PU(A) 136/84 and PU(B) 175/84.

[8] Act 333.

[9] See *infra*, pp 83-84.

'Motor Vehicle'

Section 2 of the Road Transport Act defines a motor vehicle as every vehicle propelled by means of mechanism contained within itself and constructed or adapted so as to be capable of being used on the roads, and includes a land implement.

Generally all motor vehicles are required to comply with section 90(1). Vehicles which are exempted from the obligation to insure include those belonging to the government or other affiliated bodies, whilst being used for the purpose of such government or body.[10] The fact that a vehicle belongs to the government does not *ipso facto* relieve its driver of an obligation under section 90(1). To be exempted, the vehicle must at that time be used for a purpose connected with the government or with the affiliated body.

'Use'

A person is said to use a vehicle if he either controls, manages or operates the vehicle as a vehicle.[11] Only one person, that is the driver, can be using a vehicle at any one time.[12]

To 'use' a vehicle does not necessarily mean to drive it.[13] If a vehicle is being parked on the road jacked-up with the battery removed but remains a potential danger to other road users, the vehicle is still being used in the context of this provision.[14]

A small but significant difference between section 90(1) of the Malaysian Act and section 143(1) of the Road Traffic Act 1972 of England is that in the latter the word 'use' is qualified by the phrase 'on a road'. 'To use ... on a road'

[10] Road Transport Act 1987, section 90(5).
[11] *Brown* v *Roberts* [1963] 2 All ER 263.
[12] *Carmichael & Sons* v *Cottle* [1971] RTR 11 and *Cranford* v *Houghton* [1972] RTR 125.
[13] *Dudley* v *Holland* [1963] 3 All ER 734 and *John Ellis* v *Hinds* [1947] 1 All ER 337.
[14] *Elliot* v *Gray* [1959] 3 All ER 733 and *Williams* v *Jones* [1975] RTR 433.

introduces a geographical restriction to the word 'use' and so there may be situations which though clearly outside the scope of the English Act, may come within section 90(1). The absence of the phrase 'on a road' in the Malaysian provision however seems to be due to a mere legislative omission rather than the result of a calculated move to change the law from that in England. This is because such a phrase is found in section 91(b) which provides that the policy must cover any liability to a third party caused by or arising out of the use of a vehicle 'on a road'.[15]

'To Permit'

To permit the use of a vehicle means to authorise another person to use it; the authorisation being given by a person who is in a position to do so, that is, a person with some degree of right or control over the vehicle. Such permission may be given either expressly or impliedly. In *Chan Tian Hock* v *PP*,[16] the appellant took his car to Lee, a motor mechanic for some repairs. He left the car with Lee but took away the key to the ignition. Lee was later found driving the car without either a driving licence or a third party insurance. The appellant was charged under section 74(1) of the Road Traffic Ordinance 1958 (which is similar to section 90(1) of the 1987 Act) for permitting the use of the car without the required insurance cover. The magistrate convicted the appellant on the evidence of Lee that the appellant had not expressly prohibited him from driving the car. The appellant's appeal was allowed by the High Court on the ground that there was no evidence that permission to drive had been given or from which such an inference could be made. The fact that the key to the ignition was taken away was in fact sufficient to rebut any inference of permission being given.[17]

[15]Section 2 of the Act defines road, *inter alia*, as any public road and any other road to which the public has access.

[16][1966] 2 MLJ 231.

[17]It is not clear from the facts in *Chan Tian Hock* whether the mechanic was driving the car for his private purpose or in connection with the repairs which were being carried out to the car. This distinction is important because a mechanic driving a car for the purpose of repairs does so for the owner and as his authorised driver. See *Official Administrator, F.M.* v *China Insurance Co. Ltd.* [1957] MLJ 59.

It was said in *Ratnam and Anor* v *The Public Insurance Co Ltd*[18] that in order to be liable for the offence of permitting another to use a motor vehicle without insurance, the person permitting must be in a position to forbid the other person from using it. This test however does not provide an answer to the question whether a person to whom such a permission is granted can then permit another person to use the car, without the knowledge of the first permittor. In *Yong Moi and Anor* v *Asia Insurance Co Ltd*,[19] the owner of a car lent it to Woo for a journey to Segamat. During the journey, Woo fell ill so he asked a friend who was travelling with him, Yong Choy, to drive. Whilst driven by Yong Choy, the car met with an accident resulting in Woo's death. The administrators of his estate sought to enforce a judgment which they had obtained against Yong Choy against the owner's insurers. The insurers denied liability on the ground that Yong Choy was not driving the car with the insured's order or permission. The Federal Court however held that as there was no express prohibition by the owner, of any particular individual driving the car, it could be inferred that there was an implied consent to the car being driven by the deceased or any other person who was travelling with him who had a driving licence.

The question of who is responsible for the third party insurance on a car which is the subject of a hire-purchase transaction has not been considered in Malaysia. The Hire Purchase Act 1967 allows an owner to require any goods comprised in a hire purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of agreement.[20] But the question remains: what if the hirer fails to insure either because the agreement was silent on the issue or because he was acting in breach of the agreement. Can the owner be charged under the Road Transport Act for the offence of permitting the

[18][1956] MLJ 152. 'Permission to drive' in this case was however construed in relation to the terms of the policy and not in the light of section 74(1) of the Road Traffic Ordinance 1958, which was applicable then.
[19][1963] MLJ 329.
[20]Section 26(1).

use of a car without it being insured against third party risks?

According to the High Court of Australia,[21] the driving of a motor car by the hirer under a hire-purchase agreement is a use permitted by the owner, so as to render the owner liable to an action for damages for breach of a statutory duty to insure. This is so even though the hire-purchase agreement stipulates that the hirer should throughout the agreement comply with all provisions in the traffic acts and regulations. This is because:[22]

> [Permit] connotes an authorisation by a person who has at least *de facto* control. If such a person lends a motor vehicle for a day for use by a friend this is a clear case of permitting user. It makes no difference if a charge is made for the loan. If the hiring is for a longer period, the position is still the same. A contract of letting of a chattel, whatever the length of the term, creates not a right *in rem*, but rights which are contractual only. In such a case, *the hiring agreement creates once and for all*[23] a permission to use, which is referrable to nothing but a consensual arrangement between the parties. On the other hand a sale and delivery of a vehicle to a purchaser vests in the purchaser rights *in rem* and, prima facie, the purchaser thereafter depends on his ownership, and not on any authorisation by the vendor, for his right to use the car.

'To Cause'

This phrase as used in section 90(1) and in the equivalent English provision has developed its own highly technical legal meaning. Spencer-Wilkinson J in *Tan Teik Leong* v *Regina*[24] quoted with approval the following explanation given to the phrase by Lord Goddard CJ in *Shane* v *Rossner*:[25]

> [To cause] involves a person who has authority to do so ordering or directing someone to use it ... If I tell my chauffeur to bring my car round and drive me to the courts, I am causing the car to be used.

[21] *Broad* v *Parish and Ors* (1941) 64 CLR 588.
[22] *Ibid* at p 594, per Rich ACJ.
[23] Emphasis added.
[24] [1956] MLJ 14.
[25] [1954] 2 WLR 1057 at p 1060.

According to Lord Wright in *McLeod* v *Buchanan*:[26]

> To cause the user involves some express or positive mandate from the person 'causing' to the other person, or some authority from the former to the latter ....

The person causing the use of the vehicle must be in a position of dominance vis-a-vis the vehicle. A person who is not in a position of dominance or does not have control over the vehicle cannot be said to have caused the car to be used in the context of this provision. If A insists that B drive B's car even after B had told him that the car is uninsured, A cannot be said to have caused the use of B's car in the context of section 90(1) although ordinarily, it can be said that it was A who had caused B to use his car whilst uninsured.

'Policy ... in force'

Section 90(1) provides that there must be in force in relation to the user of the vehicle, a policy of insurance as complies with the requirements of that part of the Act. A policy however is of no effect for the purpose of compulsory third party insurance, unless and until the insurer has delivered to the person effecting the policy a certificate of insurance.[27] As according to section 2 of the Road Transport Act 1987, a certificate of insurance includes a cover note, the delivery of a cover in the prescribed form and with the relevant particulars would be sufficient for the purpose of complying with this requirement.

Assuming that a certificate of insurance has been issued but the policy itself is voidable, is there a 'policy in force'? In determining the answer to this, a distinction must be drawn between the existence of a policy for the purpose of complying with section 90(1) and therefore avoiding the criminal sanctions thereunder, and the existence of a policy for civil purposes, that is that of meeting third party liabilities.

[26] [1942] 2 All ER 179 at p 187.
[27] Section 91(4).

In England the prevailing view seems to be that a voidable policy is a valid policy for the purposes of the insured's statutory obligation under section 143 of the Road Traffic Act unless the insurers have in fact taken steps to avoid it.[28]

The position in Malaysia is less clear although there are numerous cases on this. These cases can be broadly classified into two categories. Within the first category are those where at the time of the alleged offence, the person charged had a policy but was driving in breach of licensing or other traffic regulations and therefore in breach also of a condition in the policy. Within the second category are cases where the driver was also driving in breach of a condition in the policy but such a condition was ineffective vis-a-vis third party liabilities by virtue of section 79 of the Road Traffic Ordinance 1958 (which is in *pari materia* with section 95 of the Road Transport Act 1987).

Although most of the cases in the first category[29] seem to be consistent with the English cases, there are a few decisions to the contrary[30] and so the exact position remains unclear.

There also seem to be conflicting decisions where there is a breach of a restriction in the policy which is ineffective by virtue of section 95 (formerly section 79 of the Road Traffic Ordinance). A common example is when a car is insured for domestic or social use only, the policy will state that the car is not to be used for other purposes. According to section 95(b) (section 79(k) of the 1958 Ordinance) however, restrictions purporting to restrict the use of the vehicle shall as respect third party liabilities be of no effect. The question thus arises whether at such a time there is a policy in force for the purposes of section 90(1), that is does section 95 validate the policy in respect of both the insured's criminal and civil liabilities or only in respect of the latter? On this

[28]See eg. *Durant* v *MacLaren* [1956] 2 Lloyd's Rep. 70, *Goodbarne* v *Buck* [1940] 1 All ER 613 and *Adams* v *Dunn* [1978] RTR 281.

[29]Eg. *Manlam* v *PP* (1946) 12 MLJ 39, *Low Ah Seng* v *PP* [1946] MLJ 46, *Tan Kwang Chin* v *PP* [1959] MLJ 252 and *PP* v *Lim Ching Chuan* [1972] 1 MLJ 27.

[30]*PP* v *Nasir* [1972] 2 MLJ 39 and *Josephine Yii* v *PP* [1973] 1 MLJ 47. A similar view was also expressed by the then Court of Appeal in the civil case of *Ratnam and Anor* v *Public Insurance Co Ltd, Op. cit.*, n 18.

issue too there seems to be no consensus of judicial opinion in Malaysia.

In *Vellusamy* v *PP*,[31] the appellant was convicted of offences relating to the use of his car including that of driving without third party insurance. He appealed against this conviction as he had a policy of insurance at that time. He contended that although he was then driving in breach of a restriction in the policy which prohibited the car from being used for hire or reward, such a restriction was ineffective by virtue of section 79(k) of the 1958 Ordinance. His appeal was dismissed. According to the Federal Court the restrictions listed in section 79 would only be ineffective vis-a-vis the insured's civil liabilities towards a third party. Even so the insurer could then recover the amount which they had paid to the third party from the insured.

The above decision was followed, albeit reluctantly, by Chang Min Tat J in *PP* v *Ung Ah Leng*.[32]

A decision to the contrary was reached in *PP* v *Sia Yok Hua*.[33] The accused was convicted for the offence of driving without a valid driving licence but was acquitted on a charge under section 74(1) of the 1958 Ordinance (section 90(1) of the 1987 Act) because he had a third party policy. In dismissing the Public Prosecutor's appeal against acquittal, Pawan Ahmad J applied a different test, that is whether third parties would have their claims met. As the liability of a person who has breached a restriction under section 79 of the 1958 Ordinance (section 95 of the 1987 Act) towards a third party would be met by his insurer, the insured had a valid policy for the purpose of section 74 (section 90 of the 1987 Act).

While this test seems attractive, it fails to take into account the fact that according to the proviso to the section, an insurer who has paid a third party by virtue only of that section could then seek reimbursement from the insured, that is, the insured would ultimately have to bear the loss. This factor in fact was foremost in the mind of Suffian FJ in *Vellusamy*. By making an insured who has acted in breach

[31] [1974] 1 MLJ 15.
[32] [1974] 1 MLJ 84.
[33] [1974] 1 MLJ 93.

of any of the restrictions in section 95 criminally liable under section 90(1), the insured is being helped to avoid putting himself in a situation where he would have to reimburse the insurer for third party claims.

The Mental Element in Section 90(1)

The offender's state of mind seems to be irrelevant under section 90(1). It was said in *Scott* v *Regina*[34] that for a charge under such a provision all the prosecution has to do is establish a *prima facie* case that the vehicle concerned was not covered by third party insurance at the time of the alleged offence.

In considering the mental element to be irrelevant under section 90(1), the Malaysian courts have not distinguished between the offences of using a vehicle, or permitting or causing it to be used without insurance. In England too the courts have consistently held that the word 'permit' in section 143 of the Road Traffic Act 1972 (or similar provisions in the earlier Acts) does not denote a requirement of *mens rea*.[35] This is so despite the fact that in recent years the same word when used in other contexts have been held to signify the requirement of *mens rea*.[36]

The Burden of Proof

The fact that *mens rea* is not an ingredient of the offence under section 90(1) makes the burden upon the prosecution much lighter. Even so, the courts do not seem to agree upon the quantum of proof that is required. According to Horne J in *Maniam* v *PP*:[37]

[34][1954] MLJ 203. See also *Re Tan Kheng Cheng* [1962] MLJ 310.
[35]*Tapsell* v *Maslen* [1967] Crim. LR 53.
[36]See eg *James and Son* v *Smee* [1955] 1 QB 78 and *Mallon* v *Allon* [1964] 1 QB 385. See also, Strachan, B, 'Compulsory Insurance for Road Traffic', (1973) 123 NLJ 652.
[37]*Op. cit.*, n 24 at p 40.

> It must be proved beyond reasonable doubt that there was no policy in force and until the policy has in fact been avoided by the insurer no magistrate can convict solely on an admission of a breach of condition ...

Pawan Ahmad J in *PP* v *Sia Yok Hua*[38] regarded the decision in *Maniam* to be no longer good law in the light of two English cases namely, *John* v *Humphreys*[39] and *Davey* v *Towle*[40] where it was held that in offences involving an omission to obtain a licence, it was not for the prosecution to prove that the accused had no such licence but it was for the accused to prove that he had a licence. There are in fact a whole line of local cases which have been decided along similar lines as these English cases.[41]

According to section 106 of the Evidence Act 1950,[42] when any fact is within the special knowledge of any person the burden of proving that fact is upon him. This has often been used by the prosecution to argue that in a charge under section 74(1) of the 1958 Ordinance (section 90(1) Road Transport Act, 1987) the burden of proof is upon the accused. By invoking this provision however, it does not mean that the prosecution has no burden whatsoever to discharge because:[43]

> Although the fact that the vehicle is insured is in the knowledge of the defendant ... the prosecution must make out a case which, if unrebutted would entitle the court to convict before it can call on the defence.

The Penalty

Section 90(2) of the Road Transport Act 1987 provides:

> If a person acts in contravention of this section he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding

[38]*Op. cit.*, n 28.
[39][1955] 1 WLR 325.
[40][1973] Crim. LR 360.
[41]Eg. *PP* v *Koh Chin Mong* [1962] MLJ 201, *PP* v *Chin Yoke* [1940] MLJ 47 and *Khoo Teck Yam* v *PP* [1955] MLJ 112.
[42]Revised 1971, Laws of Malaysia, Act 56.
[43]Per Adam J in *Re Tan Kheng Cheng*, *op. cit.*, n 29.

> three months or to both and a person convicted of an offence under this section shall, unless the court for special reasons to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a diriving licence under Part II for a period of twelve months from the date of conviction.

The disqualification for twelve months is an automatic outcome of a finding of guilt under section 90(1). There is no necessity for the court to specifically make such an order. The court can however for special reasons, which must be specified, shorten the period of disqualification. In exercising his discretion to impose a shorter period of disqualification, a magistrate or a judge must give his reasons to justify the exercise of such discretion.[44] If there are no special reasons, the period of disqualification cannot be reduced.[45] The reasons must be reasons which are special to the offence and not to the particular offender.[46] The fact that the accused at the time of the offence was urgently required to take a very ill person to the hospital and the vehicle was the only means of conveyance available, for instance, is a reason which is special to the offence.[47]

The Application of the Principle in *Monk* v *Warbey*[48]

In England, a third party who after being injured in a road accident fails to get compensation because the driver was not insured against third party risks, can bring a civil action for damages against the owner of the vehicle, for breach of a statutory duty. This principle was first recognised in *Monk* v *Warbey*.

The earliest indication of the acceptance of the above principle in Malaysia can be seen in *Tan Kwee Low* v *Lee Chong and Anor*.[49] The plaintiff was injured in an accident

[44] *Re Teoh Teck Seng* [1959] MLJ 220.
[45] *In re Muniandy* [1954] MLJ 168.
[46] PP v *Teoh Gaik Beng [1967] 2 MLJ 110.*
[47] *PP* v *Mohd Isa* [1963] MLJ 135.
[48] [1935] 1 KB 75.
[49] [1960] MLJ 212 (High Court) and [1961] MLJ 98 (Court of Appeal).

involving a car driven by the second defendant and belonging to the first defendant. The car had been lent by the first defendant to the second defendant for ten days. The first defendant's policy did not cover the second defendant. The plaintiff sought to recover damages from both on the basis that the second defendant was driving the car as an agent or a servant of the first defendant. Alternatively, the plaintiff claimed that the first defendant was liable for breach of statutory duty in permitting an uninsured person to drive his car. This alternative claim failed solely because it was held that the plaintiff had failed to prove a necessary ingredient for the application of the principle in *Monk* v *Warbey*, that is, the person who caused the injury, the second defendant, was financially unable to pay any judgment that might have been made against him.

In *Letchumi and Anor* v *Asia Insurance Co*,[50] the insured, owner of a taxi, hired it to one Lim. Against the insured's express prohibition, Lim re-hired the taxi to one Quek. Whilst driven by Quek, the taxi was involved in an accident which resulted in the death of the appellant's husband. The appellant sought to recover the damages which had been awarded to them against Quek from the insurer. This claim was dismissed by the High Court and the Federal Court.

The Federal Court suggested that the only recourse left for the appellant was to sue Lim on the principle enunciated in *Monk* v *Warbey*. Since this case came about after the Motor Insurers' Bureau of Malaysia was set up, it is not clear why the Federal Court advised the victim to bring an action based upon the principle in *Monk* v *Warbey* and not against the Bureau. Even in England a *Monk* v *Warbey* suit is now regarded as a thing of the past with the setting up of the Motor Insurers' Bureau of England.[51]

[50] [1972] 2 MLJ 105.

[51] Ivamy, ER, *Motor Insurance*, 3rd Ed., Butterworths, London 1978, p 325. The existence of the MIB was also ignored by the English court in the case of *Corfield* v *Groves* [1950] 1 All ER 488, where it was held that an action under the principle in *Monk* v *Warbey* was unaffected by the fact that the MIB would meet any judgment against the uninsured driver.

The Requirements for a Valid Third Party Policy

The Policy

Only an authorised[52] insurer can issue a policy as required by section 90(1) of the Road Transport Act.[53]

To be valid, the policy of insurance must have been delivered by the insurer to the person who effected it. A policy which has been issued but has yet to be delivered is of no effect. Delivery of a cover note however is sufficient to satisfy this requirement as a policy includes a cover note.[54]

The Scope of Cover

(i) *Death of or Bodily Injuries to, Third Parties*

A third party policy must insure the user of the vehicle against any liability incurred by him in respect of the death of or bodily injuries to, any person, caused by or arising out of the use of the vehicle on a road.[55] Damage to the property of a third party is not included Even if a particular policy covers such damage, the provisions relating to third party insurance in the Road Transport Act are not applicable thereto.

In *QBE Insurance Co Ltd* v *Thuraisingham,*[56] the insured was involved in an accident which resulted in the respondent being awarded $6,300 for property damage. As the insured's third party policy had a clause which covered damage to property, the third party brought a suit against the insurer in accordance with the provisions of the Road Traffic Ordinance 1958. It was held that the third party could not do so as the judgment which they had obtained against the insured was in respect of property damage which was not within the scope of the provisions relating to third party insurance.

[52]A person lawfully carrying on motor vehicle insurance business in Malaysia who is a member of the Motor Insurer's Bureau - Road Transport Act 1987, section 89.
[53]Section 91(1)(a).
[54]Section 90(4).
[55]Section 91(1)(b).
[56][1982] 2 MLJ 62.

(ii) *Liability to Employees*

Although section 91(1)(b) refers to liability to 'any person', this phrase must be read in the light of the proviso which follows. The first proviso excludes liability to a person in the employment of the insured when the death or injury occurred in the course of such employment. The second proviso excludes liability to passengers except *inter alia* when the passenger is being carried by reason or in pursuance of a contract of employment.

Although both provisoes contain references to persons in employment, each actually deals with a different situation. The first excludes the insured's liability when death or bodily injury is caused to a person in the insured's employment in the course of such employment. This is irrespective of whether at the time of the accident the employee was driving the insured vehicle or was independently on the road. The second proviso refers only to a situation where an employee, either of the insured or of a third party, is carried as a passenger by the insured.

The case of *Saw Poh Wah* v *Oi Kean Hang and Anor*[57] illustrates the distinction between the two categories of employees. The plaintiff was a lorry attendant and the first defendant was a lorry driver. Both were employees of the second defendant who was also the owner of the lorry. The plaintiff who was injured when the lorry met with an accident obtained a consent judgment of $65,000 against the defendants who then claimed this sum from the insurer. The policy in question contained provisoes which were similar to those in section 91(1)(b) of the Road Transport Act.

It was held that the insurer was not liable to indemnify the second defendant because liability to an employee was excluded by the first proviso. The plaintiff also did not come within the exception to the second proviso because although he was in the lorry as an employee he was not at that time a passenger as according to section 2 of the 1958 Ordinance in relation to a goods vehicle, a passenger does not include any

[57] [1985] 2 MLJ 387.

driver or attendant who is required to be carried in the lorry by law. The insurer was however liable to indemnify the driver because the policy covered the liability of authorised drivers to third parties.[58]

It must be emphasised that the first proviso excludes *only* liability to a person in the *employment of the insured* when the death or injury occurred in the course of the employment. If a third party policy undertakes to indemnify an authorised driver as though he was the insured person, the authorised driver cannot rely on this proviso to escape liability if the injured person was not his employee. This was the view taken by the High Court in *Lim Eng Yew* v *United Oriental Insurance Sdn Bhd.*[59]

The plaintiff was an employee of one Lim Yoke Pak (LYP), the owner of a motor lorry. The defendants had issued a commercial vehicle insurance policy to LYP whereby the defendants agreed to indemnify LYP against all sums which LYP or any authorised driver might be liable to pay as damages or compensation in respect of death of or bodily injury to any person caused by or arising out of the use of the vehicle. The policy contained exceptions which were similar to those in provisoes (i) and (ii) of section 91(1) of the Road Transport Act 1987.

The plaintiff an employee of LYP was injured whilst he was travelling in the said lorry as a passenger in the course of his employment. The lorry was then driven by an authorised driver, another employee of LYP.

Having obtained judgment against the authorised driver, the plaintiff sued the insured pursuant to section 80(1) of the Road Traffic Ordinance 1958 (Section 96(1) of the 1987 Act). The insurers relying on one of the exceptions in the

[58]The insurer appealed to the Federal Court against the High Court's decision in favour of the driver. This appeal was allowed as it was reasoned that as the trial judge had found that the attendant though an employee was not a passenger vis-a-vis the second defendant (the employer) and the lorry driver had not appealed against this, this finding must also apply to the driver. Hence all the exceptions which applied to the first defendant also applied to the second defendant. The decision of the Federal Court (Civil Appeal No 32 of 1982) was not reported as no written judgment was given but see Editorial Note, [1985] 2 MLJ 387.

[59][1989] 1 MLJ 454. According to an Editorial Note at p 455 of the Report, the defendants have appealed to the Supreme Court vide Civil Appeal No 315 of 1988.

policy contended that they were not liable because at the time of the accident, the plaintiff was an employee travelling in the course of employment.

The learned judge rejected the contention of the defendants and decided in favour of the plaintiffs. According to the learned judge, by the policy in question, the insurer undertook to indemnify an authorised driver as though he was the insured person. This meant that the authorised driver was separately covered by the policy. As the plaintiff was not a person in the employment of the authorised driver at the time of the accident, the said exception in the policy had no application.

(iii) *Liability to Other Passengers*

Liability to passengers generally, that is those not carried either for hire or reward or as an employee or by reason or in pursuance of his contract of employment, is exempted from the requirement of compulsory insurance, by virtue of the second proviso to section 91(1)(bb). Regrettably this proviso which originated from the English Act of 1930 and is similar to section 75(1)(b) of the 1958 Ordinance is retained in the 1987 Act although England herself has introduced compulsory passenger insurance since 1972.[60] Hence like a claimant for property damage, a passenger in Malaysia cannot utilise the rights and protections accorded to other third parties by the Road Transport Act 1987.

In *Sinnadorai* v *New Zealand Insurance Co Ltd*,[61] the plaintiff was injured in an accident whilst he was a passenger in a car driven by the insured. The insured's third party policy with the defendant covered liability in respect of passengers being carried in the vehicle as well. Having obtained a judgment against the insured, the plaintiff sought to enforce it against the insurer. It was held that section 80(1) of the Road Traffic Ordinance 1958 (section 96(1) of the Road

[60]Road Traffic Act 1972, section 145(3). Singapore too has introduced compulsory passenger insurance, see Motor Vehicles (Third Party Risks and Compensation) (Amendment) Act 1980.
[61][1969] 1 MLJ 183.

Transport Act 1987) which establishes a duty on the insurers to satisfy judgments obtained by third parties, had no application to a claim by a passenger.

Restrictions and Conditions in the Policy

Ineffective Restrictions and Conditions by Virtue of Section 94

Section 94 of the Road Transport Act 1987 provides that conditions requiring certain specified things to be done or to be omitted after the occurrence of an event giving rise to a claim under a third party policy are ineffective vis-a-vis third party claims and therefore do not affect the rights of third parties.[62] With the exception of those imposed by the Act, the insurer cannot effectively impose other conditions precedent to their liability to a third party.[63] However if there are such conditions and the insured fails to comply with any of them, the insurer after satisfying a third party claim can, if it is so provided in the policy, claim for reimbursement from the insured. This is by virtue of the proviso to section 94 which reads:

> [N]othing in this section shall be taken to render void any provision in a policy ... requiring the ... insured ... to repay to the insurer any sums which the latter may have become liable to pay under the policy ... and which have been applied to the satisfaction of the claims of third parties.

The right to a reimbursement is not a statutory right but a contractual one. In *Gan Chwee Leong* v *New India Assurance Co Ltd*,[64] the appellant had a third party policy issued the respondent. After an accident, the appellant failed to notify the insurer as was required by the policy. Having settled a

[62] *Osman* v *Tan Swee Liang* [1968] 2 MLJ 228.
[63] Whether an arbitration clause is within the scope of this provision has not been considered in Malaysia. According to the Court of Appeal in *Jones* v *Birch Bros* [1933] 2 KB 597, if such a clause has the *Scott* v *Avery* (10 ER 1121) addition which makes arbitration a condition precedent to the insurer's liability it would be caught by this restriction, but not otherwise.
[64] [1968] 1 MLJ 196.

third party claim which arose out of the accident, the insurer sought reimbursement from the insured. This was allowed by the Magistrate. On appeal, the High Court held that in order to successfully rely on the proviso to section 78 of the 1958 Ordinance, (section 94 of the 1987 Act), there must be evidence of an undertaking by the insured to reimburse the insurer in such a situation. As there was no such term in the contract, the insurer had no right to the reimbursement.

The Federal Court in *Lee Chau* v *Public Insurance Co Ltd*[65] agreed with the above decision but stressed that even if a right to reimbursement is provided in the policy, it could only be enforced in respect of the insured's statutory liability towards a third party. If the insurer had made the payment to a third party on a voluntary basis and independently of any statutory obligation, they could not thereafter enforce such a right.

Ineffective Restrictions and Conditions by Virtue of Section 95

Certain restrictions and conditions in the policy which relate to the vehicle itself, its user or the manner in which it is being used are made ineffective by section 95 of the Act. It does not matter whether such restrictions are termed conditions or warranties.

When the 1958 Ordinance was first introduced, the following restrictions were ineffective by virtue of section 79:

(a) the age or physical or mental condition of the driver,
(b) the condition of the vehicle,
(c) the number of persons carried,
(d) the weight or physical characteristics of the goods carried,
(e) the times or the areas within which the vehicle is used,
(f) the horse power or the value of the vehicle,
(g) the carriage on the vehicle of any particular apparatus, and

[65][1969] 2 MLJ 167.

(h) the carriage on the vehicle of any particular means of identification other than that required by the Ordinance.

Insurers were then free to include other restrictions and conditions which could be used to defeat third party claims. This included the requirement that the insured had a valid driving licence or that he was not driving under the influence of intoxicating liquor. As the Motor Insurers' Bureau had not been set up then, breach of such a condition by the driver could result in the third party not recovering anything from the insurer. In *Cheong Bee* v *China Insurance Co Ltd*,[66] the plaintiff, as a result of a road accident was awarded damages against one Rani who was insured with the defendant. The plaintiff's claim against the insurer was denied on the ground that at the time of the accident, Rani was driving unsupervised with an expired provisional licence, contrary to a clause in the policy. This contention was accepted by the learned judge on the ground that breach of such a condition was not within the scope of section 79.

As the purpose and policy behind compulsory third party insurance was clearly eroded by such cases, an amendment in 1976[67] added the following to the list in section 79:

(i) the driver was at the time of the accident under the influence of a drug or an intoxicating liquor,

(j) the driver was at the time of the accident not holding a licence to drive or not holding a licence to drive that particular vehicle, and

(k) the vehicle was being used for a purpose other than that stated in the policy.

The Road Transport Act 1987 retains the revised list in section 95.

One significant difference between section 94 and section 95 is that while under the former an insurer is only entitled

[66] [1974] 1 MLJ 203.

[67] Act 21 of 1976. With the setting up of the MIB, results like that in *Cheong Bee* will no longer arise as the injured would be compensated by the Bureau.

to reimbursement if there is a contractual stipulation to that effect, under the latter there is a statutory right to reimbursement.

Other Restrictions and Conditions

Apart from those that are ineffective by virtue of sections 94 and 95, insurers are free to include any other restrictions and conditions in a third party policy. Such conditions and restrictions are as effective against third parties as they are against the insured.

In *Ahmad Sandera Lela Putera and Anor* v *Queensland Insurance Co*[68] a motor cycle owned by one Poon Sam was insured against third party risks with the defendant. The policy specified that the authorised driver was the insured only, and excluded liability when the motor cycle was being driven by any other person. Whilst driven by another person, the motor cycle was involved in an accident resulting in injuries to the plaintiff. Having been awarded damages against the driver, the plaintiff sought to enforce it against the insurer. The insurer denied liability. In dismissing the plaintiff's action, Ajaib Singh J said:[69]

> [T]he parties are absolutely free to decide on the terms and conditions that they wish to incorporate in the policy provided that those terms and conditions are not otherwise illegal or contrary to law. Section 79 of the 1958 Ordinance, [section 95 of the 1987 Act] ... contains a list of restrictions which can have no application on the scope of policies relating to third party risks, but a stipulation restricting the driving of a vehicle to the insured himself is not one of the matters listed therein.

The above decision seems to be consistent with those in the English cases. In *Jones* v *Welsh Insurance Corp*,[70] the plaintiff was injured in an accident which involved a car which was insured against third party risks with the defendant.

[68] [1975] 1 MLJ 269.
[69] *Ibid*, at p 270.
[70] [1937] 4 All ER 149. See also *Gray* v *Blackmore* [1934] 1 KB 95.

It was a condition of the policy that the insurer would not be liable for any claim arising when the car was being used otherwise than in accordance with the description of use contained in the policy. The policy covered the use of the car for social, domestic and pleasure purposes only. At the time of the accident the car was being used by the insured's brother for his own business purpose. The plaintiff's attempt to enforce a judgment which he had obtained against the driver upon the insurer, failed.

Duty of Insurer to Satisfy a Judgment Against the Insured

Once a third party has obtained a judgment against a person insured by the policy[71] the insurer is under a statutory obligation to satisfy this judgment. This is so notwithstanding that the insurer may be entitled to avoid or cancel the policy or may have avoided or cancelled the policy.[72]

Before the liability of the insurer is complete, several conditions must be satisfied. First, there must have been a judgment against any person insured by the policy. In *New India Assurance Co Ltd* v *Simirah*,[73] the respondent's husband was knocked down and killed by a car driven by one Chua. The car was insured by one Chong against third party risks with the appellant. Having obtained a judgment against Chua, the respondent sought to enforce it against the appellant. There was evidence that prior to the accident Chong had sold the car to Chua. It was held by the Federal Court that as the judgment against Chua was not a judgment against the insured, it could not be enforced against the insurer.

The second condition is that the judgment must be in respect of a liability which is required to be covered by compulsory insurance. Judgments in respect of property

[71]In the 1958 Ordinance, reference was made only to the insured. The use of the phrase *'any person insured by the policy'* in the 1987 Act is wider as it covers authorised drivers as well.

[72]Section 96(1).

[73][1966] 2 MLJ 1. See also *Roslan bin Abdullah* v *New Zealand Insurance Co* [1981] 2 MLJ 324 and *Ahmad Sandera Lela Putera, Op. cit.*, n 64.

damage[74] or in respect of liability to passengers[75] for instance would not be included.

The third condition is that the liability must in fact be covered by the terms of the policy or would be covered but for the fact that the insurer is entitled to avoid or cancel it or have done so. It considering this condition it has to be emphasised that breach of any conditions or restrictions which are ineffective by virtue of sections 94 and 95 are to be ignored. Breach of other conditions and restrictions however will effectively make the insurer immune to third party claims.[76]

Apart from the three substantive conditions considered above there are three other technical requirements which must also be satisfied before an insurer can be made to satisfy a judgment against the insured. These are that a certificate of insurance had been issued to the insured,[77] that the insurer had notice of the proceedings by the third party against the insured[78] and that the execution of the judgment had not been stayed pending an appeal.[79]

While the first and third requirements seem clear, the second deserves further consideration. Section 96(2) of the Road Transport Act provides that no sum shall be payable by an insurer under section 96(1) unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the proceedings. It is not stated if it is the insured or the third party who must give that notice to the insurer. According to Abdul Razak J in *Rohani bt Muda* v *Mohamed Rahim and Anor*:[80]

> [T]he purpose of section 80(2) [of the 1958 Ordinance, now section 96(2)(a) of the 1987 Act] is to compel the insurance company as long as they know of an impending action to pay whenever

[74]*QBE Insurance Co Ltd* v *Thuraisingham, Op. cit.* footnote 53 and *Pacific and Orient Insurance Co Sdn Bhd* v *Lee Yin Song and Anor* [1983] 1 Malaysian CLJ 91.
[75]*Sinnadorai* v *New Zealand Insurance Co Ltd. Op. cit.*, n 57.
[76]*Halsbury's Laws of England.* Vol 25, 4th Ed., para 775. See also *supra.*
[77]Road Transport Act 1987, section 96(1).
[78]Section 96(2)(a).
[79]Section 96(2)(b).
[80][1979] 1 MLJ 25 at p 26.

judgment is entered against their insured. It is not concerned with how the judgment is obtained or how they came to know ... It is imperative therefore, on the part of the insurance company to seek their clients instead of waiting for them, if that is necessary for the protection of their interest.

With respect, it seems doubtful whether the learned judge was correct in saying that the court was not concerned with how the insurer came to know of the proceedings. According to other cases, a notice must be sufficiently detailed before it can amount to a notice of proceedings under section 96(2)(a).

In *Wong Choo Yong* v *Safety Insurance Co Ltd*,[81] the plaintiff brought an action against the insurer to enforce a judgment which they had obtained against one Chin, the insured. The insurer contended that they had no notice of the proceedings. The plaintiff adduced evidence that their solicitor had sent a letter to Chin, with a copy to the insurer, informing that legal proceedings would be taken in the High Court in Kuala Trengganu and that the solicitor had been instructed by them to file legal proceedings if payment was not received within ten days. In holding that the solicitor's letter was a sufficient notice of proceedings, Ibrahim Manan J referred to the Privy Council decision in *Ceylon Motor Insurance Association* v *Thambugala*[82] where in considering a provision similar to section 80(2)(a) of the 1958 Ordinance, the Privy Council said:[83]

The notice, in setting out the name and address of the proposed plaintiff, the name of the owner and the number of the car which caused the injuries, the date of the accident and the sum being claimed as damages, was a sufficient notice of action ...

A mere notice of claim does not amount to a notice of proceedings. In *China Insurance Co Ltd* v *Ng Siak Yow*,[84] the respondent was injured in an accident with a person who was insured with the appellant. The respondent's solicitor wrote a letter to the insured with a copy to the insurer

[81] [1971] 2 MLJ 260.
[82] [1953] 2 All ER 870.
[83] *Ibid.* at p 873.
[84] [1963] MLJ 244.

which read: 'We are instructed to claim damages from you in respect of our client's injuries. Please let us know if liability was admitted.' Having obtained a judgment against the insured, the respondent sought to enforce it against the insurer. The insurer contended that they were not liable as they had no notice of proceedings. It was held that the letter was a mere notice of claim and not a notice of action under section 80(2)(a) of the 1958 Ordinance.

No sum is payable by the insurer in the above circumstances if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable.[85] However an insurer cannot rely on the benefit of this subsection, in respect of a judgment, the action for which was commenced before the commencement of the action for the declaration unless the insurer before or within seven days after the commencement of the action for declaration, gave notice to the plaintiff in the proceedings specifying the grounds upon which he proposes to rely upon in avoiding the policy.

A third party who may be aggrieved by the declaration sought by the insurer is entitled to intervene in the action between the insurer and the insured and may even enter a defence to the action. If a judgment had been given, the third party can apply for an order to set aside the judgment and for leave to enter an appearance either in the name of the insured or in their own name.[86]

[85]Section 96(3) Road Transport Act 1987. This is a clear departure from the equivalent provision in the 1958 Ordinance, that is section 80(3) which read:

> No sum shall be payable by an insurer ... if, in an action commenced before or after three months after the commencement of proceedings in which the judgment was given, he has obtained a declaration that ... that he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a *material fact* or by a representation of fact that was false in some material particular ...

As the term 'material fact' was used in the above provision, its definition was given in section 80(5). Unfortunately while there was no reference made to 'material fact' in the new provision, its definition is retained in section 96(5). This legislative oversight ought to be rectified as the definition of material fact is clearly of no use now.

[86]*The South British Insurance Co Ltd* v *Haji Ismail* [1964] MLJ 16.

Bankruptcy of Insolvency of the Insured

Under the common law, the right of the insured to be indemnified under a policy of insurance is a personal right. The third party could not sue the insurer directly as there is no privity of contract between them. Thus if the insured was ajudicated a bankrupt, or in the case of a company, went into liquidation, any insurance moneys payable by the insurer to the insured would form part of the insured's general assets for distribution among all his creditors by the trustees.[87]

In England, the Third Parties (Rights Against Insurers) Act 1930[88] was introduced to deal with the injustices of the common law in this respect. Basically this Act confers upon third parties certain direct rights against third party insurers in the event of the insured becoming a bankrupt or being made insolvent. This Act applies to all third party insurance including compulsory third party motor insurance.

Even prior to the introduction of compulsory third party motor insurance in Malaysia, it was already held that the Third Parties (Rights Against Insurers) Act 1930 of England being basically related to accident insurance which is a branch of mercantile law generally, was applicable in this country. Hence even though third party insurance was not then compulsory, if there was such a policy, the provisions of that Act could be applied in Malaysia.[89]

With the introduction of compulsory third party insurance, provisions similar to those in the 1930 Act were incorporated in the local statutes. According to section 97 of the 1987 Act when an insured who is an individual becomes bankrupt or makes a composition with his creditors, the rights of the insured against the insurer shall be transferred to and vest in the third party. The same applies when the insured being a company, is wound-up. If an order of bankruptcy is made against the estate of a deceased person, the deceased's rights against his insurer will be similarly transferred to the third party. It does not matter whether the liability towards the

[87]*Re Harrington's Motor Co* [1928] Ch 105.
[88]20 & 21 Geo. V, c. 25.
[89]*King Lee Tee* v *Norwich Union Insurance Co* [1933] MLJ 187.

third party was incurred before or after the proceedings for bankruptcy or winding-up.

The Motor Insurers' Bureau (MIB) of West Malaysia

The aim of ensuring compensation for victims of road accidents cannot be achieved merely by a system of compulsory third party insurance. This is because there are instances where the negligent driver in breach of the statutory requirement does not possess a third party policy or where the policy which he possesses does not cover the particular accident, inspite of the numerous protections in the Road Transport Act, or where the negligent driver, and consequently his insurer, if any, cannot be traced.

The need in Malaysia for the setting up of a body similar to the MIB of England was first highlighted by the Federal Court in *New India Assurance Co Ltd* v *Simirah* where Thompson LP said:[90]

> The case ... is one of a class which is becoming frequent in the courts where an insurer resists claims made against him under section 80(2) of the RTO on technical legal grounds ...
>
> And now this widow and these three young children have to face the future deprived of their husband, father and breadwinner without compensation for his loss and indeed faced with a great burden of debt by reason of the cost of these proceedings.
>
> Things like this should not happen in a civilised society. It may be legal justice, it is not social justice.
>
> In the United Kingdom insurance companies have recognised the existence on their part of some sort of social duty in the matter by setting up the Motor Insurers' Bureau which in cases like the present one, subject to the fulfilment of certain simple conditions by way of safeguard, pay compensation. The time has long passed when insurance companies in this country should follow this example and ... if they are not prepared to do so voluntarily, pressure should be put upon them by the government.

[90][1966] 2 MLJ at pp 3-4.

It was perhaps in response to the above call that the MIB of West Malaysia was incorporated as a company under the Companies Act 1965 on 24 October 1967. The Memorandum and Articles of Association of the Bureau incorporated the terms of the agreements between the Minister of Transport and the Bureau and between the Bureau and the individual motor insurers which were signed on 12 December 1967 and 15 January 1968 respectively.

An insurer must be a member of the Bureau before it can carry out motor insurance business[91]. The fund of the Bureau comes from a levy imposed on every such insurer.

The agreement between the Minister of Transport and the MIB is basically similar to the first MIB agreement of England which was entered into in 1945. The provisions of the 2nd MIB agreement in England which makes it a legal liability of the Bureau to compensate victims of untraced drivers or of 'hit and run' accidents have not been incorporated in the Malaysian agreement. As such the scope of the Bureau's legal liability is rather restricted. It is only liable in respect of claims for death or bodily injury for which the driver is either uninsured or though insured, his insurer was able to avoid liability. The MIB is not legally liable to compensate the victims of untraced drivers although it normally considers such claims and frequently makes *ex-gratia* awards. The Bureau is also not liable to compensate victims of accidents caused by vehicles which are not legally required to be insured against third party risks, such as those belonging to the government. Finally, the Bureau is also not liable when the victim is the sole cause of the accident.

Even in respect of liabilities covered by the agreement, the Bureau's liability will only arise if there is a judgment awarded against the uninsured driver in favour of the victim, his dependants or representatives. A written notice of such proceedings must also be given either to the insurer if there is one, or in other cases, directly to the Bureau.

[91]The Road Transport Act 1987 (Section 89) defines an authorised insurer as a motor vehicle insurer in Malaysia *who is a member of the Motor Insurers' Bureau.*

The MIB of England has been described as an extraordinarily anomalous institution which is partly in and partly outside the legal system.[92] This applies to the MIB of Malaysia too. The Bureau can raise all the usual defences that can be raised by an insurer in that position, such as that the loss was not one that was required to be compulsorily insured against or that the death or bodily injury was not caused by the accident or that a condition precedent has not been complied with.

It is however with respect to the issue of privity of contract that the position of the Bureau seems to be outside the legal system. The Bureau's obligation arises not under a statutory provision but under an agreement with the Minister of Transport. By the doctrine of privity of contract, a third party, not being a party to that agreement, could not enforce it. In Malaysia, there are no reported cases yet which involves a suit against the MIB. In England, it is generally recognised that the MIB will not raise the defence of privity of contract.[93]

While the MIB of West Malaysia has to a certain extent provided victims of uninsured motorists with an avenue for claiming compensation, it's main weakness lies in the fact that it does not cover victims of untraced drivers. Although it cannot be denied that the Bureau has given compensation to untraced drivers,[94] *ex gratia* payments is not a satisfactory system of compensation because it is totally discretionary. Even if as a rule, all victims of untraced drivers are made such awards, there are no judicial rulings on the quantum of the awards.

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[92]Atiyah, PS, *Accidents, Compensation and The Law*, 3rd Ed., Weidenfeld and Nicholson, London 1982, pp 288-289.
[93]*Hardy* v *MIB* [1964] 2 QB 745.
[94]Teo, CC "Motor Insurers' Bureau", Paper presented at the Insurance Course for Journalist, Kuala Lumpur, 16 March 1985.