Er Kee Jeng v Public Prosecutor
[2006] SGHC 45

Case Number : MA 109/2005

Decision Date : 15 March 2006

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Peter Ong Lip Cheng (Peter Ong & Raymond Tan) for the appellant; Nor' Ashikin Samdin (Deputy Public Prosecutor) for the respondent

Parties : Er Kee Jeng — Public Prosecutor

Agency – Principal – Identity – Payment of premium for insurance policy made by "registered agent" of insurer – Whether "registered agent" making payment on behalf of insurer or insured

Road Traffic – Third party liability – Cancellation of insurance policy by insurer – Non-surrender of certificate of insurance – Whether surrender of certificate of insurance precondition to valid cancellation of third-party insurance

Road Traffic – Third party liability – Statutory liability of insurer under s 9 Motor Vehicles (Third-Party Risks and Compensation) Act – Insurer liable in respect of third-party risks even after cancellation of policy – Whether policy deemed to be in force where insurer statutorily liable – Section 9 Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)

15 March 2006

Yong Pung How CJ:

1 The appellant was convicted under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("the MVA") on the following charge:

> That you, on 25/3/2004 at about 8:05pm along Bencoolen Street did permit one Eric Tan Cher Peng to use a motor car no. SFB 8761 C whilst there was not in force in relation to the user of the said vehicle such a policy of insurance in respect of third party risks as complies with the requirement of the Motor Vehicles (Third Party Risks and Compensation) Act, Chapter 189 and you have thereby committed an offence under section 3(1) and punishable under section 3(2) of the said Act, Chapter 189.

The district judge imposed a fine of $700 and disqualification from driving all classes of vehicles for a period of 14 months on the above charge.

2 The appellant appealed against both his conviction and sentence on the ground that there was a valid insurance policy in force in relation to the said motor car ("the car") at about 8.05pm on 25 March 2004 ("the material time"). After examining the evidence before me, I dismissed the appeal and now give my reasons.

The facts

3 The appellant was the registered owner of the car, a Toyota Wish 1.8, at all material times. He had purchased the car from Teck Wei Auto Trading ("Teck Wei") on 17 September 2003, taking a loan of $96,000 from Oversea-Chinese Banking Corporation Limited ("OCBC Bank") for this purpose. As reflected in the sales agreement with Teck Wei, the loan of $96,000 was intended to go towards the purchase price of $93,800, initial payment of $1,008 as well as the insurance fee of $1,773. However,

the sum of these three figures, being $96,581, exceeded the loan quantum by $581.

4 While a third-party risks insurance policy for the period of 17 September 2003 to 16 September 2004 ("the Policy") had initially been taken out prior to the registration of the car, the Policy had subsequently been cancelled on 24 December 2003 for non-payment of the premium. Accordingly, the car was not covered under the Policy at the material time.

5 In his testimony, Mr Ong Hong Woon ("Ong"), a partner of Teck Wei, admitted that it was Teck Wei's responsibility to take out a third-party risks insurance policy over the car with NTUC Income Insurance Cooperative Limited ("NTUC") through Jin-Shi (Holdings) Pte Limited ("Jin-Shi"). Teck Wei had therefore faxed an application for insurance coverage to Jin-Shi before registering the car, and the Policy was accordingly issued by NTUC to the appellant. However, it was Teck Wei's position that it would not make payment for the insurance premium until the additional sum of $581 was received because this additional sum was intended for the insurance premium.

6 The appellant gave evidence that he did not pay this remaining sum of $581 to Teck Wei. He admitted that he never made any payment for the car, but relied on his friend, one Teo Chye Lin ("Teo"), to make all the payments in relation to the car. In fact, the appellant had purchased the car for Teo's use, and did not even collect the car from Teck Wei personally on 17 September 2003, but had sent Teo on his behalf. Further, the sales agreement with Teck Wei was signed not by the appellant, but by Teo. Teo had also tendered a cheque of $1,000 to Teck Wei as payment for the shortfall of $581, as well as for some installation work which had been done on the car. However, this cheque subsequently bounced, in consequence of which Teck Wei refused to pay the insurance premium. Despite being informed that the cheque had bounced, Teo did not make any further payment to Teck Wei.

7 However, since full payment for the insurance premium of $1,773 had not been received as a result of the cheque failing to clear, Teck Wei refused to make payment of the insurance premium to Jin-Shi. Although Ong admitted that it was not stated in the sales agreement that the sum of $581 was meant for the insurance premium, he also asserted that he had informed both the appellant and Teo of this fact. He also acknowledged that the sales agreement did not state that Teck Wei would not pay the insurance premium to NTUC unless full payment was received.

8 Ms Ang Li Yen ("Ang"), a director and secretary of Jin-Shi, gave evidence that Jin-Shi's role was to receive proposal forms from any person seeking to be insured. Jin-Shi would then forward these forms to NTUC for its decision on whether to accept or reject each proposal. Upon receiving notice that the proposal was accepted, Jin-Shi would issue a certificate of insurance to the insured, as well as make advance payment of the premiums to NTUC. These payments were made pursuant to a private arrangement between NTUC and Jin-Shi. While its present whereabouts is uncertain, a certificate of insurance for the period 17 September 2003 to 16 September 2004 ("the original certificate") had indeed been handed over to Teck Wei. Under the premium warranty clause of the Policy, the insured would then have 60 days from the effective date of coverage to repay the premium to Jin-Shi.

9 Jin-Shi thus allowed NTUC to deduct the sum of $1,773 from its company account on 20 October 2003. When Jin-Shi did not receive repayment within the premium warranty period, it sent a letter dated 11 December 2003 to the appellant giving him seven days to make payment on pain of the termination of the Policy. After the expiry of this initial seven-day grace period, NTUC sent the appellant a letter dated 17 December 2003, again giving him seven days to make due payment. Upon the failure of the appellant to make any payment, NTUC cancelled the policy with effect from 24 December 2003, notifying the appellant of this cancellation through another letter dated 2 January

2004.

10 Although the appellant denied receiving any of the letters, all three letters were sent to the appellant's address as stated in the insurance proposal form ("the address"). It should be noted that the Policy had similarly been sent to the address and had been successfully received by the appellant. Pursuant to the cancellation of the policy, NTUC refunded Jin-Shi the sum of $1,294 on 30 December 2003. The pro-rated premium for coverage from 17 September 2003 to 24 December 2004 ($479) remains due to Jin-Shi from the appellant.

11 On 25 March 2004, Teo permitted one Eric Tan Cher Peng to use the car and it was at 8.05pm on that day that the car was involved in a minor accident. The appellant was consequently charged with permitting the car to be used at the material time without there being in force either a valid motor vehicle licence or insurance against third-party risks, offences under s 29(1) of the Road Traffic Act (Cap 276, 1997 Rev Ed) and s 3(1) of the MVA respectively. The appellant pleaded guilty to the former, but claimed trial to the latter.

The Prosecution's case

12 The Prosecution's case was simple: No money had been paid to either NTUC or Jin-Shi in relation to the Policy and the Policy had been cancelled by NTUC from 24 December 2003 in consequence thereof. There was thus no third-party risks insurance in force for the purposes of s 3(1) of the MVA at the material time.

The Defence's case

13 On the other hand, it was the Defence's case that there was a valid policy of insurance against third-party risks in force at the material time. This was evidenced by the issuance of the Policy and original certificate. The fact that the original certificate was never surrendered to either NTUC or Jin-Shi was further evidence in support.

14 In addition, the Defence also contended that the Policy had been wrongfully cancelled by NTUC because the appellant was not given due notice of the cancellation. According to the Defence, the appellant never received any of the letters sent by NTUC and Jin-Shi, which ought not to have been sent to the appellant by ordinary post.

The decision below

15 The district judge found that the appellant did not make payment of the sum of $1,773 to Teck Wei, Jin-Shi or NTUC despite being aware that a further sum of $581 had to be paid to Teck Wei in satisfaction of the insurance premium. In fact, the district judge was of the following opinion (see *PP v Er Kee Jeng* [2005] SGDC 271 at [31]):

> Having observed Ong's demeanor in Court, I preferred and accepted Ong's evidence relating to the cheque for $1,000 and his evidence of having informed both Teo and [the appellant] of the need for the payment of the $581, especially for purposes of securing the insurance coverage. This was essentially an exercise in choosing which of 2 versions given by 2 different Defence witnesses was the more believable version.

The district judge was therefore of the opinion that NTUC was entitled to cancel the Policy and had validly done so. Even if NTUC had not been entitled to cancel the Policy, the purported cancellation would only constitute a contractual dispute between the appellant and NTUC. According to the

district judge (at [10]):

> What could not be denied was that NTUC had indeed cancelled the policy on 24 December 2003, so that when the Car was used on 25 March 2004, there was no valid insurance policy in force as required by the MVA.

16 The district judge further held that, if it was necessary to make such a finding, the appellant should be taken as having received the three letters mentioned above. The letters had been sent to the same address as the Policy, and the appellant had received the Policy. In any case, the appellant "certainly knew that the insurance premium remained outstanding". These findings of fact by the district judge were based on the assessment of the credibility and veracity of the witnesses, and were neither plainly wrong nor against the weight of the evidence before him: *Syed Jafaralsadeg bin Abdul Kadir v PP* [1998] 3 SLR 788 at [56]; *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [31]–[32]. These findings of fact were thus upheld.

The appeal against conviction

17 Section 3(1) of the MVA provides:

> Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use —
>
> (*a*) a motor vehicle in Singapore; or
>
> (*b*) a motor vehicle which is registered in Singapore in any territory specified in the Schedule,
>
> unless there is *in force* in relation to the use 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 Act.
>
> [emphasis added]

18 The reality was that the Policy had indeed been cancelled and therefore could not have been in force at the material time. However, the Defence challenged the cancellation as being invalid, arguing that the Policy remained in force at the material time for the following reasons:

> (a) The premium for the Policy had been paid to NTUC, it being irrelevant that the payment had not been made by the appellant himself but by Jin-Shi, as agent for the appellant.
>
> (b) The fact that the original certificate issued to the appellant under the Policy had not been surrendered to NTUC was evidence that the Policy had not been validly cancelled.

Payment of insurance premium by Jin-Shi

19 The premium warranty clause in the Policy states:

> It is a condition precedent to our liability that all premiums due must be paid within 60 days from the effective date of the coverage or within the period of insurance, whichever is earlier. If this condition is not complied with then this Policy is automatically cancelled from the expiry of the premium warranty period and we shall be entitled to a pro-rata premium for the period we have been on risk subject to a minimum of $25.

20 The Defence argued that this clause was satisfied as the premium had been fully paid to NTUC by Jin-Shi on 20 October 2003, it being immaterial whether the premium had come from the appellant, Teo, Teck Wei, OCBC or Jin-Shi. The Defence contended that Jin-Shi was in fact the appellant's agent, relying on the two letters from NTUC which contained language to that effect. The payment which Jin-Shi had made to NTUC ought therefore to be taken as having been made on the appellant's behalf, in satisfaction of the premium warranty clause. The Defence further claimed that the fact that NTUC had accepted Jin-Shi's payment of the pro-rated premium of $479 for coverage between 17 September 2003 to 24 December 2003, even issuing another certificate of insurance to this effect, was evidence that Jin-Shi had indeed acted as the appellant's agent.

21 However, after close examination of the factual circumstances, I find that Jin-Shi had acted as agent for NTUC, rather than the appellant, in the issue of the Policy. Ang, a director and secretary of Jin-Shi, had testified that Jin-Shi was NTUC's agent. Ms Sharifah Hassan, an assistant executive of NTUC, had likewise asserted that Jin-Shi was a registered agent of NTUC, and not agent for the appellant. She further stated that because the Policy was expressly stated to be a contract between NTUC and the appellant, the payment referred to in the premium warranty clause had to be made by the appellant himself, rather than by Jin-Shi.

22 Moreover, had Jin-Shi indeed been agent for the appellant, it was unlikely that NTUC would have refunded the premium to Jin-Shi upon receiving notice from Jin-Shi to do so. Neither would NTUC and Jin-Shi have made provision for refund of the premium in the private arrangement between them. Instead, had Jin-Shi been agent for the appellant, NTUC would probably have declined Jin-Shi's request for a refund, leaving Jin-Shi to look to the appellant for indemnity.

23 The arrangement between NTUC and the appellant for the deduction of the premium from Jin-Shi's company account pending the collection of the premium by Jin-Shi on NTUC's behalf, was also one which was likely to exist between principal and agent. The arrangement appeared to be a device for the allocation of the risk of default between NTUC and Jin-Shi, and had probably been imposed by NTUC as a condition of Jin-Shi acting as its "registered agent". The payment by Jin-Shi had not been made under an obligation owed to the appellant, but had been made under the private arrangement between NTUC and Jin-Shi, for NTUC's benefit. In fact, the two representatives from NTUC and Jin-Shi, Sharifah Hassan and Ang respectively, both testified that the appellant did not have any knowledge of this arrangement. The appellant therefore could not rely on this arrangement to argue that Jin-Shi had made the payment for his benefit as his agent when Jin-Shi clearly had no such intention.

24 This was particularly since Jin-Shi had subsequently retracted its initial payment of the premium to NTUC. Jin-Shi's request for a refund of the sum paid amounted to a refusal on the part of Jin-Shi to allow that initial payment to be taken in satisfaction of the premium, while its request for NTUC to demand payment from the appellant indicated that it had not intended to make payment on the appellant's behalf. Jin-Shi was therefore unlikely to have been the appellant's agent.

25 Moreover, almost all the steps taken by Jin-Shi in relation to the application for the Policy had been dictated by NTUC, and not the appellant. According to Sharifah Hassan:

> This Agent, is our Link-up Agent. They are allowed to transact business for us, they issued the policy to the Policy Holder and to collect the payment.

Furthermore, although not determinative, Jin-Shi had had next to no communication with the appellant, the only correspondence being the letter sent by Jin-Shi to demand payment.

26 In *National Employers' Mutual General Insurance Association Ltd v Globe Trawlers Pte Ltd* [1991] SLR 46, the Court of Appeal held that the insurance brokers in that case were agents for the insured rather than the insurer. In doing so, the court relied on the case of *Newsholme Brothers v Road Transport and General Insurance Company, Limited* [1929] 2 KB 356 in which it was held that a broker who completes the proposal form is not acting as an agent of the insurer but the insured. However, in the instant case, Jin-Shi did not fill up the insurance proposal form on behalf of the appellant. Instead, it appeared that Jin-Shi's role was merely to receive such forms, and to forward them to NTUC. Moreover, although it did not have the authority to approve the insurance proposals received, Jin-Shi had the express authority to issue certificates of insurance on behalf of NTUC and to bind NTUC to insure the risks covered by the certificates.

27 In fact, the Defence appeared to have admitted as much when it stated in its closing submissions at the trial below that "[t]he premium of $1,773.00 was fully paid to NTUC Income by its agent, Jin-Shi (Holdings) Pte Limited on 20 October 2003". Since Jin-Shi had not acted as the appellant's agent, its initial payment to NTUC could not be taken as having been made by the appellant. The appellant had therefore breached the premium warranty clause and the Policy had been validly cancelled.

Non-surrender of certificate of insurance

28 The appellant submitted that the district judge had erred in failing to consider that under ss 4(9), 9(3)(*c*), 15 and 16 of the MVA, the issue of a certificate of insurance was *prima facie* evidence that a policy of insurance was in force. Section 4(9) of the MVA dictates that a third-party risks insurance policy is of no effect for the purposes of the MVA unless there is issued a certificate in the prescribed form. Moreover, s 15 mandates, on pain of criminal sanction, the surrender of the certificate by the insured upon the cancellation of the policy, in lieu of which a statutory declaration that the certificate had been lost or destroyed must be made. Further, s 9(3)(*c*) allows insurers to limit their continued liability under cancelled policies, but only upon the surrender of the certificates of insurance issued. Under r 10 of the Motor Vehicles (Third-Party Risks and Compensation) Rules (Cap 189, R 1, 1996 Rev Ed) ("the MVR"), insurers are also bound to inform the Registrar of Vehicles of the cancellation of any policy of insurance against third-party risks, failing which they would be guilty of an offence.

29 The appellant thus placed emphasis on the fact that the Prosecution had not led any evidence to demonstrate that the original certificate had been surrendered to NTUC, or that NTUC had made a demand or commenced proceedings to recover the certificate. There was also no evidence that a statutory declaration had been made in lieu of the surrender of the original certificate. On the other hand, I noted that the Defence had similarly omitted to lead any evidence to conclusively prove that the original certificate had not been surrendered. Nonetheless, I proceeded on the basis that the original certificate had indeed not been surrendered, and that no demand for it had been made by NTUC.

Surrender of certificate of insurance as precondition to valid cancellation

30 The appellant contended that the purported cancellation of the Policy by NTUC was invalid under the MVA because the original certificate had not been surrendered. However, I found no merit in this argument.

31 Section 4(9) merely states that a policy shall be of no effect if no certificate of insurance is issued. It does not follow that the converse – that a policy must continue to have effect until the certificate of insurance is surrendered – is true. The requirement of the issue of the certificate of

insurance under s 4(9) is purely for administrative convenience, to allow the existence of a policy covering third-party risks to be quickly verified under s 16 of the MVA. This is evident from r 4 of the MVR, which prescribes the appropriate forms to be used in satisfaction of the requirement of the issue of certificates of insurance in s 4(9). Rule 4(1)(*b*) states that where the policy issued does not relate to any specified motor vehicle, the insurer must issue such number of certificates "as may be necessary to enable the requirements of section 16 of the Act to be complied with".

32 It therefore appears that the primary purpose of the requirement of a valid certificate is to facilitate the conduct of random checks by police officers, who are empowered under s 16 to require any person driving a motor vehicle on the road to produce his certificate of insurance. To this end, r 10(1)(*a*)(iii) of the MVR similarly makes it mandatory for insurers to inform the Registrar of Vehicles if any policy issued "ceases to be effective for any reason".

33 In addition, s 15 prescribes only criminal liability for the failure to surrender the certificate upon the cancellation of the policy, but does not state that any purported cancellation would thereby be rendered invalid. It is precisely because the cancellation of the policy at common law renders the policy ineffective that it is necessary to impose criminal sanction for the non-surrender of the policy. Otherwise, the possibility of unscrupulous motorists passing off their defunct certificates as valid ones would be a very real threat – since insurance policies may be validly cancelled notwithstanding the non-surrender of the certificate. Had the legislative intent been that the surrender of the certificate was a necessary formality in the cancellation of the policy, the MVA would have made this explicit.

34 The common law rights and obligations of the insurer and the insured ought not to be readily altered without express legislative provision. Indeed, the appellant himself admits that the non-surrender of the original certificate was only *prima facie* evidence that the Policy remained in force. Certificates issued under the MVA serve a purely evidentiary purpose and do not affect the substantive rights of the insurer and insured. Whether the Policy was indeed in force at the material time must therefore be determined according to ordinary principles of contract law.

Duty of insurers to satisfy judgments against insured persons under s 9 of the MVA

35 The Defence placed much reliance on s 9(3)(*c*) of the MVA, arguing that the Policy continued to be valid notwithstanding the purported cancellation, because the requirements in s 9(3)(*c*) were not satisfied. Under s 9(1) of the MVA, where insurers fail to comply with the s 9(3)(*c*) procedures, they remain liable in respect of third-party risks under the cancelled policy. However, it does not follow that the cancelled policy should therefore be deemed to be "in force" for the purposes of criminal liability under s 3(1) of the MVA.

36 Section 9(1) provides:

> If after a certificate of insurance has been issued under section 4 (9) to the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under section 4 (1) (*b*) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the Public Trustee as trustee for the persons entitled thereto —
>
> (a) any sum payable thereunder in respect of the liability including any amount payable in respect of costs; and
>
> (b) any sum payable in respect of interest on that sum by virtue of any written law

relating to interest on judgments.

The insurer may avoid liability under s 9(1) if before the occurrence of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and the certificate had been surrendered to the insurer or the insurer had commenced proceedings in respect of the failure to surrender the certificate: s 9(3)(*c*) of the MVA.

37 Although no assistance may be derived from contemporary legislative debates on the MVA (see *Stewart Ashley James v PP* [1996] 3 SLR 426 at 429, [17]), it is evident from the heading of s 9 that s 9 deals only with the civil liability of the insurer to satisfy judgments against persons insured in respect of third-party risks. Section 9 was enacted to confer upon the third party a direct cause of action against the insurer, a right which did not exist under common law: *Nippon Fire and Marine Insurance Co Ltd v Sim Jin Hwee* [1998] 2 SLR 806 at [14]. It creates a *statutory* relationship between the insurer and the third party, which exists irrespective of the *contractual* position *vis-à-vis* the insurer and the insured. In order to be discharged from its liabilities under s 9, the insurer must adopt the procedures set out in ss 9(3) to 9(5), which were intended to give third parties adequate notice that the insurer had disclaimed not only its contractual obligations to the insured, but also its statutory obligations to the third party. Failure to follow these procedures only entails the insurer's continued liability under statute and not contract. Section 9 was not intended to impact upon the criminal liability of the insured under s 3(1).

38 As stated in its preamble, the MVA was enacted to "provide against third-party risks arising out of the use of motor vehicles and for the payment of compensation in respect of death or bodily injury arising out of the use of motor vehicles and for matters incidental thereto". Indeed, "[t]he very *raison d'etre* of mandatory insurance under the MVA is to protect third-party road users, not the insured driver": *PP v Lee Hong Hwee* [2004] 1 SLR 39 at [31].

39 Specifically, s 3(1) was enacted not only to ensure that victims of traffic accidents are not left without any compensation where the motorist is unable to satisfy judgment, but also to deter irresponsible motorists from driving without the appropriate insurance coverage: *Chandara Sagaran s/o Rengayah v PP* [2003] 2 SLR 79 at [11]. These dual aims of compensation and deterrence would be defeated if motorists were permitted to rely on s 9 to avoid criminal liability under s 3(1).

40 In addition, s 9 also ensures that policies issued under the MVA do indeed hold some substantive utility for the innocent third party and are not issued in perfunctory compliance with the requirements of the MVA. In *Zurich General Accident and Liability Insurance Company, Limited v Morrison* [1942] 2 KB 53, the English Court of Appeal dealt with s 10 of the Road Traffic Act 1934 (c 50), which is *in pari materia* with s 9 of the MVA. According to Goddard LJ (at 61), after "the principle of compulsory insurance against third party risks had been established", insurers began to "hedge round the policies with so many warranties and conditions that no one advising an injured person could say with any certainty whether, if damages were recovered against the driver of the car, there was a prospect of recovering against the insurers". The provision was therefore "designed to prevent conditions in policies from defeating the rights of third parties, but insurers were still allowed to repudiate policies obtained by misrepresentation or non-disclosure of material facts" (at 62).

41 It therefore appears that s 9 was intended to compel insurers to share the responsibility of ensuring adequate protection against third-party risks with motorists. While motorists have the duty to purchase the appropriate insurance policies, insurers have the duty to ensure that adequate notice of any avoidance or cancellation of those policies are given to third parties through the procedures

set out in ss 9(3) to 9(5).

42 In *Salleh bin Awang v PP* [1978] 2 MLJ 212 at 214, Mohamed Zahir J held, with respect to s 79 of the Road Traffic Ordinance 1958 (No 49 of 1958) (M'sia) which precluded insurers from repudiating third-party liability through restrictions on the scope of insurance policies, that:

> …although the injured third party can still recover from the insurers by virtue of section 79 yet the insurance policy itself does not cover such drivers as the policy expressly excludes any liability. In other words, the driver is not covered by the policy. The insurer is made to cover the third party by statute and not by the policy of insurance and it remains therefore that the driver is without "a policy of insurance…"

In reaching this conclusion, the court relied on the case of *Velusamy v PP* [1974] 1 MLJ 15, which held that s 79 merely provided that the restriction in the policy should have no effect with respect to the civil liability of the driver and did not affect his criminal liability. Indeed, the criminal liability of the motorist ought to be dependent only upon the operation of the insurance policy, without consideration of the protection afforded by the statute to third parties.

43 Yet, this approach appears to run contrary to an observation made peripherally by the late Wee Chong Jin CJ in *Lim Cheng Wai v PP* [1988] SLR 731 at 734, [11]:

> [I]f upon its true construction, the policy covers the use of the vehicle in question, the policy may yet be voidable at the option of the insurers, eg on the ground of misrepresentation. However, such a policy will remain a policy in force unless the policy had in fact been avoided in accordance with s 9(4) of the Motor Vehicles (Third-Party Risks and Compensation) Act: see, for example *Durrant v Maclaren* [1956] 2 Lloyd's Rep 70.

However, it should be noted that the learned judge's statements were merely *obiter dicta*, and were entirely unnecessary for the disposal of the case before him. In *Lim Cheng Wai v PP*, there was no question of the policy being voided at the option of the insurers. Instead, the defendant in that case was convicted on the simple ground that, on a true construction of the policy, the policy did not even cover the use of the vehicle at the time of the offence.

44 In the English case of *Durrant v Maclaren* referred to above, the court seemed to suggest that motorists would not be criminally sanctioned as long as third parties remain protected under the then equivalent of s 9(1). Maclaren had been charged with unlawfully using a motor vehicle without having in force such policy of insurance against third-party risks as was required under the Road Traffic Act 1930 (c 43). The third-party insurance policy in relation to the vehicle in question had been obtained through fraudulent statements made by Maclaren, but Maclaren argued that the effect of s 10(1) of the Road Traffic Act 1934 (which is *in pari materia* with s 9(1) of the MVA) was that insurers would be held to their contracts of insurance until such time as they should avoid them.

45 Although the Divisional Court recognised (at 72) that s 10 had been "passed for the protection of people who may be injured in an accident, not really to protect these drivers whether fraudulent or not, but to protect the people who may be injured", it also held that the insurer remained under an obligation to indemnify third parties until the procedure set out in s 10 to avoid the policy were fulfilled. The Divisional Court in *Durrant v Maclaren* followed the case of *Goodbarne v Buck* [1940] 1 KB 107 at 113, in which Hilbery J held:

> It appears to me that this policy, from the time when the proposal form was filled up, and incorrectly filled up, was voidable, but that does not mean that it was void. In other words, if the

> insurance company never elected to avoid it, it was a valid and subsisting policy. … [A]n insurance company … might still elect to pay a claim rather than go to the expense and bother of a law suit to get a declaration that they were entitled to avoid the policy, …

Since no steps had been taken to avoid the policy at the time Maclaren was prosecuted, he was not criminally liable. *Durrant v Maclaren* was subsequently followed by the Queen's Bench Division in *Adams v Dunne* [1978] RTR 281.

46 The above cases appear to support the contention that until the procedure set out in s 9(3)(*c*) is fulfilled, the insurer remains liable and the motorist innocent of any offence. However, a closer examination of the facts in those cases reveals that they can be easily distinguished from the instant case, and that it was unnecessary for the courts to have made the above pronouncements.

47 In none of these cases had the insurer taken any steps to avoid the policy before the time of the alleged offence. Instead, the insurer in each of those cases had only sought to avoid the policy *after* the time of the alleged offence, in the hope that the avoidance of the policy would take effect *retrospectively*. However, as Hilbery J stated in *Goodbarne v Buck* (at 114):

> [T]he fact that the rights which were created by the contract of insurance were subsequently avoided, does not, it seems to me, prevent there having been a policy in force at the time of the user of the vehicle which is in question.

48 Certainly, it would be unfair for the motorist to be criminally sanctioned as a result of a retrospective avoidance of the policy. This would be so whether the policies had been avoided at common law or through the more onerous procedures set out in the equivalent of s 9 of the MVA. The policies in those cases had not even been avoided at common law, let alone under the respective statutes. It was therefore unnecessary for the courts in those cases to prescribe those procedures as the steps which the insurers should have taken to avoid the policies.

49 In the instant case, there was no question of any retrospective voiding of the Policy by NTUC because the Policy had already been cancelled at the material time. Convicting the appellant on the basis of NTUC's cancellation of the Policy at common law was therefore justified. The appellant was aware that the Policy had already been cancelled by NTUC, yet took no steps to prevent the continued use of the car. The facts in this case were entirely different from those in the cases above.

50 Upholding the appellant's conviction would convey the right message to the public – that motorists must take active steps to ensure that their use of motor vehicles is covered against third-party risks. As the Court of Criminal Appeal stated in *PP v Kum Chee Cheong* [1994] 1 SLR 231 at 243, [39] "[u]nder the Act, the obligation is placed absolutely and squarely on users of motor vehicles to take out such policies of insurance". Motorists ought not to be able to rely on their insurer's continued liability under s 9 to avoid liability under s 3(1). This is particularly since there is absolutely no difference between the moral culpability of a motorist who does not even apply for third-party insurance and one who does make the initial application but then allows the policy to lapse. If the policy in the latter scenario were held to be "in force" for the purposes of s 3(1), the former would be punished while the latter would not – a result which would be most unjust. It cannot make any difference that the latter motorist would have in his possession a certificate of insurance, albeit one that has lapsed, while the former does not. Indeed, such a result may encourage motorists to apply for insurance, without paying any heed to whether the policy is subsequently cancelled by the insurer.

5 1 Section 3(1) must be given its ordinary meaning – the Policy should no longer be deemed to be "in force" upon its cancellation by the insurer. This interpretation of s 3(1) is consistent with a literal reading of s 9, which is meant to have effect notwithstanding that the policy may have already been "avoided or cancelled" at common law. The fact that the insurer may claim any sum which may have been paid under s 9(1) from the insured is further support for this interpretation. As Lord Goddard CJ stated in *Durrant v Maclaren* ([43] *supra* at 72), if the insurer "can avoid the policy he is none the less liable to pay the injured person damages, although he will have a remedy over against his assured". The court in *Tan Tok Nam v Pan Global Insurance Sdn Bhd* [2002] 3 MLJ 742 at 750 likewise stated that where the insurer, despite being entitled to avoid the policy, is liable to the third party under the equivalent of s 9:

> It is always open to the insurers to sue their then insured for indemnity for breach of policy conditions or for failing to comply with s 86 which requires the insured to surrender the said certificate …

52 That the policy had been cancelled by NTUC at common law was incontrovertible. The Policy was therefore not "in force" for the purposes of s 3(1) and the appellant was rightly convicted.

Conviction ought to be upheld

53 As I stated in *M V Balakrishnan v PP* [1998] SGHC 416 at [20], the proper defence to a charge under s 3(1) would be that reasonable care had been exercised. However, far from having exercised reasonable care, the appellant had been most remiss towards his duties as the registered owner of the car. The appellant never made any payment in relation to the purchase of the car or the Policy, relying entirely on Teo to make the requisite payments. As the district judge stated (*PP v Er Kee Jeng* ([15] *supra*) at [32]),

> It was also this Court's finding that [the appellant] was informed of the dishonour of the cheque for $1,000, and that [the appellant] asked Ong to look to Teo for the payment. It appears that [the appellant] was prepared to leave it at that: expecting Ong to get the required payment from Teo.

54 The appellant claimed not to know the purpose behind the cheque that had failed to clear, and even asserted that the cheque had "nothing to do" with him. In fact, when Ong called the appellant to inform him that the cheque had bounced, the appellant took no action, but merely told him to demand payment from Teo. Likewise, when he discovered that the car was not insured, the appellant did not even call Teck Wei or NTUC to verify the status of the Policy, claiming that he did not know Teck Wei's telephone number and that he had no time to call NTUC. The appellant had adopted a careless and dismissive attitude towards his responsibilities as the registered owner of the car, and cannot be said to have exercised reasonable care.

55 Having already been cancelled by NTUC, there was no doubt that the Policy was not in force in relation to the car at the material time. Also, the appellant had certainly not taken reasonable care to ensure that there was a valid insurance policy in force. The appellant had been rightly convicted under s 3(1) of the MVA, and I dismissed the appeal against his conviction.

The appeal against sentence

56 Under s 3(2) of the MVA, the maximum sentence which may be imposed upon a conviction under s 3(1) is a fine not exceeding $1,000 or imprisonment for a term not exceeding three months or both. Section 3(3) further provides:

> A person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence under the Road Traffic Act (Cap. 276) for a period of 12 months from the date of the conviction.

57 In *Ho Soo Kin v PP* [1999] 1 SLR 833, the defendant permitted his employee to use the motor vehicle in question without valid insurance coverage. A fine of $600 and the mandatory disqualification period of 12 months was imposed. In *Sriekaran s/o Thanka Samy v PP* [1998] 3 SLR 402, the defendant had, upon being informed that his cheque for the payment of the insurance premium had been dishonoured, sent another cheque, and it was while the second cheque was being processed that he was involved in an accident and caught. The insurance policy for the car had expired approximately three months before the date of the accident and defendant was sentenced to 12 months' disqualification from driving in addition to a fine of $600. In dismissing the appeal against the disqualification order imposed in *Sriekaran s/o Thanka Samy v PP*, I stated, at [4]:

> It would appear that had the accident not occurred, the appellant would have continued driving around Singapore with the excuse that he had not received any notice that his insurance had lapsed. To permit road users to escape with such irresponsible conduct would go against the policy behind the enactment ...

58 Likewise, had the car in the instant case not been involved in an accident, the appellant would undoubtedly have continued to be wholly indifferent to his responsibilities as the registered owner of the car. He had not taken the trouble to ensure that there was a valid insurance policy in relation to the car, despite having been informed by Teck Wei that the unpaid $581 was meant to go towards the payment of the insurance premium. Indeed, the appellant ought to have erred on the side of caution and disallowed Teo from driving the car if there was any uncertainty as to the validity of the Policy. The appellant cannot be allowed to disclaim all responsibility as the registered owner of the car and a strict prophylactic approach ought to be taken towards him: *Stewart Ashley James v PP* ([37] *supra*).

59 The appellant had been sentenced to a fine of $700 and disqualification from driving for a period of 14 months by the district judge. This sentence was neither manifestly excessive nor wrong in principle: *Tan Koon Swan v PP* [1986] SLR 126. Therefore, I also dismissed the appellant's appeal against his sentence.