Teo Rong Zhi Saimonn *v* Public Prosecutor
[2013] SGHC 185

Case Number	: Magistrate's Appeal No 264 of 2012
Decision Date	: 23 September 2013
Tribunal/Court	: High Court
Coram	: Tay Yong Kwang J
Counsel Name(s)	: Peter Ong Lip Cheng (Peter Ong & Raymond Tan) for the appellant; April Phang (Attorney-General's Chambers) for the respondent; Margaret Joan Ling (Allen & Gledhill LLP) as amicus curiae
Parties	: Teo Rong Zhi Saimonn — Public Prosecutor

Road Traffic – Third party liability

23 September 2013

Tay Yong Kwang J:

1 The appellant claimed trial and was convicted on 19 October 2012 by the District Judge ("the DJ") on the following charge:

> You … are charged that you, between the period 25.3.2011 to 20.5.2011 in Singapore, being the person in-charge of motor car No. SGE 6666 E (now registered as SKB 7012 D), did permit one Lee Han Keat to use the said motor car when 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 DJ sentenced the appellant to a $600 fine (in default three days' imprisonment) and 12 months' disqualification from the date of conviction from holding or obtaining a driving licence for all classes of vehicles. The fine was paid. The appellant appealed against conviction but not against the sentence imposed.

2 During the appeal, in the course of arguments, I amended the charge to "when there was not in force in relation to the *use* of the said vehicle …" (instead of "user"). This was to accord with the statutory language. There were no objections to this amendment.

3 I dismissed the appeal against conviction. I now set out the reasons for my decision.

Facts

4 In early 2011, the appellant purchased vehicle registration number SGE 6666 E ("the Registration Number"). The appellant then purchased a Toyota Corona ("the Vehicle") for about $3,000 and registered it in the name of his wife on 5 March 2011 in order to benefit from lower insurance premiums. The appellant had sole control of the Vehicle. The appellant purchased the Vehicle for the sole purpose of retaining the Registration Number with a view to the eventual sale of the Registration Number. At the time of purchase, the Vehicle's certificate of entitlement was only

valid for about another six months.

5 The appellant purchased an insurance policy ("the Policy") for the Vehicle from Liberty Insurance Pte Ltd ("Liberty Insurance"). The policy came into force on 5 March 2011 and was to expire on 4 March 2012. The material terms of the Certificate of Insurance are as follows:

> 6. Persons or Classes of Persons entitled to drive:
>
> A) The Policyholder.
>
> B) Any other person who is driving on the Policyholder's order or with his permission.
>
> …
>
> 7. Limitations as to use:
>
> Use only for social, domestic and pleasure purposes and for the Policyholder's business.
>
> 8. The Policy does not cover:
>
> A) **Use for hire or reward.**
>
> B) Use for racing, pace-marking, reliability trials or speed-testing.
>
> …
>
> [emphasis added; footnotes in original omitted]

6 Although the appellant initially left the Vehicle in a car park without any intention to rent it to others, he subsequently decided to rent it out to recoup some of the costs of purchase. The appellant therefore placed an advertisement on the Internet.

7 The advertisement was seen by one Lee Han Keat ("Lee"). Pursuant to a car rental agreement dated 24 March 2011 ("the Rental Agreement"), Lee rented the Vehicle from 25 March to 25 August 2011 at a fee of $800 per month with an initial deposit of $200. The Rental Agreement was signed by the appellant's wife and Lee. However, the Rental Agreement was drafted by the appellant who met Lee in order to obtain his signature. Lee did not meet or speak to the appellant's wife at any time.

8 Lee used the Vehicle from 25 March to 20 May 2011 ("the material time"). On 21 May 2011, Lee was imprisoned. When Lee failed to pay the rental fee for May 2011, the appellant made enquiries and discovered that Lee had been detained by the Central Narcotics Bureau. The appellant also discovered that several parking summonses had been issued against the Vehicle. The appellant therefore lodged a police report dated 1 June 2011 ("the Police Report"), which stated that he would not be responsible for the Vehicle during the period when it was rented to Lee.

9 On 14 July 2011, Liberty Insurance cancelled the Policy. Liberty Insurance did not have any record of the Certificate of Insurance having been surrendered to it. As a result of the above events, investigations were carried out. These led to criminal proceedings being initiated against the appellant, culminating in his conviction on the Charge on 19 October 2012.

The decision below

10 The DJ had to consider two issues. The first issue was whether the appellant could be said to have permitted Lee to use the Vehicle when he was not the registered owner. The second was whether the Vehicle was insured when it was used by Lee at the material time.

11 With regard to the first issue, the DJ held that the offence under s 3 of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("the Act") would be made out as long as it was established that the accused was in charge of the Vehicle and was in a position to forbid the other person from using the Vehicle. It was undisputed that the appellant was in charge of the Vehicle at the material time. The appellant did not appeal against this aspect of the DJ's decision. In any case, I agree with the reasoning of the DJ on this issue.

12 On the second issue, the DJ held that the use of Vehicle by Lee at the material time was not covered by the terms stated in the certificate of insurance. The policy explicitly stated that it would not cover the use of the Vehicle for hire or reward and it was not in dispute that the Vehicle had been rented to Lee. It was also immaterial that the appellant was in possession of the original Certificate of Insurance or that there was no evidence that the Policy had been repudiated.

The issue raised on appeal

13 Accordingly the only issue that arose for my consideration was whether an insurance policy which complied with s 3 of the Act (which mandates insurance in respect of third-party risks) was in force in relation to the use of the Vehicle by Lee at the material time.

The respective arguments

14 The appellant argued that the Policy complied with s 3 of the Act. The appellant relied on two intermediate propositions to establish this argument: firstly, insurers had the duty to satisfy judgments against insured persons under s 9 of the Act; secondly, Liberty Insurance had not repudiated the Policy in accordance with the Act.

15 The respondent took the position that the Policy did not comply with s 3 of the Act. The Policy did not cover the use of the Vehicle by Lee; therefore, it was irrelevant that the Policy was in force when Lee was using the Vehicle at the material time. Additionally, it was also irrelevant that the Policy had not been repudiated in accordance with s 9 of the Act.

16 An *amicus curiae*, Ms Margaret Joan Ling, was appointed pursuant to the Young *Amicus Curiae* scheme. The *amicus curiae* made various submissions. First, s 3(1) of the Act had a dual purpose of both compensation for third parties and deterrence. Secondly, a certificate of insurance is only evidence of, and is not equivalent to, a policy of insurance. Thirdly, ss 8 and 9 of the Act would not result in an insurer being liable to a third party in respect of a liability not covered by the policy (except for certain enumerated categories as set out in s 8(1) of the Act).

The law

17 S 3 of the Act provides:

> Users of motor vehicles to be insured against third-party risks
>
> 3. —(1) 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.

(2) If a person acts in contravention of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 3 months or to both.

(3) 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.

…

18 In *Stewart Ashley James v Public Prosecutor* [1996] 3 SLR(R) 106, Yong Pung How CJ succinctly pointed out (at [17]) the policy considerations behind the Act:

> … Section 3(2) is primarily concerned with ensuring that persons using the roads take adequate steps to ensure that compensation would be available to persons involved in accidents with them. A contravention of s 3(1) is a serious offence. … Nonetheless it is clear that a strict prophylactic approach is necessary to ensure that there is adequate provision for compensation.

The objectives behind the Act are thus twofold: firstly, to ensure that parties involved in collisions with motorists are adequately compensated; and secondly, to deter motorists from failing to take the necessary steps to ensure that such compensation is available.

19 The appellant placed special reliance on ss 9(1) and 9(3)(*c*) of the Act. I set out both provisions below:

Duty of insurers to satisfy judgments against persons insured in respect of third-party risks

9.—(1) 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.

…

(3) No sum shall be payable by an insurer under subsections (1) and (2) —

…

(*c*) in connection with any liability if before the happening 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 either —

(i) before the happening of that event the certificate was surrendered to the insurer or the person to whom the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed;

(ii) after the happening of that event but before the expiration of a period of 14 days from the taking effect of the cancellation of the policy the certificate was surrendered to the insurer or the person to whom the certificate was issued made such a statutory declaration as aforesaid; or

(iii) before or after the happening of that event but within the period of 14 days the insurer commenced proceedings under this Act in respect of the failure to surrender the certificate.

[emphasis added]

20 It was common ground that the policy had not been cancelled in accordance with s 9(3)(*c*) of the Act. To reiterate, the appellant argued that where insurers fail to comply with s 9(3)(*c*) of the Act, they remain liable in respect of third-party risks under the policy due to the operation of s 9(1). There was therefore in force an insurance policy within the meaning of s 3(1) of the Act. The appellant cited the cases of *Lim Cheng Wai v Public Prosecutor* [1988] 2 SLR(R) 123 ("*Lim Cheng Wai*") and *Tan Tok Nam v Pan Global Insurance Sdn Bhd* [2002] 3 MLJ 742 as authorities for this proposition.

21 The statutory language of s 9(1) of the Act indicates that the subsection only applies to a "liability covered by the terms of the policy". If a policy does not cover a certain mode of use, then any liability incurred during that mode of use would not be covered by the terms of the policy. The Policy in question here explicitly stated that it did not cover the use of the Vehicle for hire or reward.

22 S 9(1) states that an insurer shall remain liable notwithstanding that it "may be entitled to avoid or cancel or may have avoided or cancelled the policy". There is nothing to avoid or cancel if the policy does not cover certain prescribed modes of use in the first place. The reference to "avoid or cancel" refers to situations where the policy is voidable at the option of the insurers (for instance, on the ground of misrepresentation) or where the policy is liable to be terminated for repudiatory breach (for instance, where premiums are not paid). This is supported by *Lim Cheng Wai*, where Wee Chong Jin CJ held (at [11]) that:

> Secondly, **if 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. [emphasis added]

23 I turn next to s 8(1) of the Act, which stipulates that certain categories of restrictions on the scope of a policy shall be of no effect:

Avoidance of restrictions on scope of policies covering third-party risks

8.—(1) Where a certificate of insurance has been issued under section 4(9) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters:

(*a*) the age or physical or mental condition of persons driving the vehicle;

(*b*) the condition of the vehicle;

(*c*) the number of persons that the vehicle carries;

(*d*) the weight or physical characteristics of the goods that the vehicle carries;

(*e*) the times at which or the areas within which the vehicle is used;

(*f*) the horse-power or value of the vehicle;

(*g*) the carrying on the vehicle of any particular apparatus; or

(*h*) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Road Traffic Act (Cap. 276),

shall as respects such liabilities as are required to be covered by a policy under section 4(1)(b) be of no effect.

The categories are exhaustive and relate mostly to vehicular characteristics. In particular, s 8(1) does not apply to clauses which limit the mode of use, such as the "hire or reward" clause in the Policy.

24 The net result was that s 9(1) of the Act did not apply. Liberty Insurance would not have been liable for third-party risks had the Vehicle been used for hire or reward. The act of renting out a vehicle for monetary consideration comes within the ordinary meaning of the phrase "hire or reward". The Vehicle, when used by Lee during the material period, was not insured for third-party risks within the meaning of s 3(1) of the Act and the appellant therefore committed an offence.

25 Assuming that s 9(1) did apply, a more fundamental point remains: a third party would only be able to claim due to statutory intervention and would not be able to do so based solely on the contract between the insurer and the insured. In other words, the presence of a statutory ameliorative measure in the form of s 9(1) does not, in any way, affect the position under s 3(1). For the purposes of criminal liability under s 3(1) of the Act, the operation of s 9(1) of the same must be disregarded (that is, the liability of the insurer under the insurance policy only must be considered). This proposition is supported by *Er Kee Jeng v Public Prosecutor* [2006] 2 SLR(R) 485 ("*Er Kee Jeng*"), where Yong Pung How CJ held (at [50]) that:

Motorists ought not to be able to rely on their insurer's continued liability under s 9 to avoid liability under s 3(1).

26 This separation between ss 3(1) and 9(1) is further buttressed by policy considerations. In *Public Prosecutor v Lee Hong Hwee* [2004] 1 SLR(R) 39, Yong CJ held (at [31]) that:

The preamble to the [Act] reads:

> An Act 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.

The very *raison d'etre* of mandatory insurance under the [Act] is to protect third-party road users, **not the insured driver**. There was no question here of the respondent benefiting from his own wrong.

[emphasis added]

S 9(1) of the Act is an ameliorative measure meant to protect *third-party road users* by ensuring that third parties are compensated even if there are issues between the insurer and the insured which could potentially lead to avoidance and/or cancellation of the policy on the insurer's part. An insured driver cannot use the ameliorative effect of s 9(1) to *his* advantage and claim that the requirements of s 3(1) of the Act have been thereby fulfilled.

27 This also harks back to the objective of deterrence (see [18] above). Adding to the previous discussion, in *Er Kee Jeng*, Yong CJ opined (at [39]) that:

> 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(R) 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).** [emphasis added]

I agree. It would be repugnant to the legislative intention of the Act if motorists do not face the criminal consequences of driving without appropriate insurance coverage. This is especially so as lower premiums may be charged to reflect the fact that a vehicle will only be used for social, domestic and pleasure purposes and for the insured's business and not for hire or reward, as was the case for the Policy here.

Conclusion

28 I therefore dismissed the appeal against conviction. By renting out the Vehicle, an activity not covered by the Policy, the appellant did not comply with the requirements of the Act and committed an offence under s 3(1) of the same.

29 I thank all parties for their comprehensive written submissions. In particular, I thank Ms Margaret Joan Ling for volunteering her service to the court as *amicus curiae.*