Public Prosecutor v Lee Hong Hwee
[2003] SGHC 266

Case Number : MA 59/2003

Decision Date : 29 October 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : David Chew Siong Tai (Deputy Public Prosecutor) for the appellant; Gordon Oh (Ari, Goh & Partners) for the respondent

Parties : Public Prosecutor — Lee Hong Hwee

Road Traffic – Offences – Using vehicle without insurance policy in respect of third-party risks – Whether proviso in insurance policy excludes insurance coverage because accused was driving de-registered vehicle and without valid vehicle licence – Section 3(1) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)

1 The respondent, Lee Hong Hwee, was acquitted in the district court on a charge of using a vehicle without an insurance policy in respect of third party risks, an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) ('MVA'). The prosecution appealed. I dismissed the appeal, and now give my reasons.

Background

Facts

2 In the district court, evidence was led by way of a statement of agreed facts. The respondent was the registered owner of a motor van bearing the registration number GL 1372 Z ('the van'). On 8 June 2000, the Land Transport Authority notified the respondent that the Certificate of Entitlement ('COE') for the van was due to expire on 31 July 2000. He did not revalidate the COE. On 1 August 2000, the van was automatically de-registered.

3 On 2 August 2000, the ERP facility along Queen Street detected the van entering the ERP zone. The respondent did not dispute that he had been driving the van at the material time. Three different charges were subsequently brought against him in the district court.

The two charges under the Road Traffic Act

4 The first charge alleged that the respondent had used a de-registered vehicle, and had thereby committed an offence under s 10(1) of the Road Traffic Act (Cap 276) ('RTA'). The second charge alleged that the respondent had used a vehicle for which no valid vehicle licence was in force, and had thereby committed an offence under s 29(1) of the RTA.

5 The respondent pleaded guilty to the first two charges. He was convicted, and fined $400 in respect of each charge. I refer to these two charges herein as 'the RTA convictions.'

The charge under the MVA

6 The respondent claimed trial to the third charge. This charge alleged that he had used a vehicle without a policy of insurance in respect of third-party risks, and had thereby committed an offence under s 3(1) of the MVA ('the MVA offence').

7 There was no dispute that the van was insured in respect of third-party risks with The

Hartford Insurance Company (Singapore) Limited ('Hartford') for the period 4 December 1999 to 3 December 2000. This policy is referred to herein as 'the Hartford policy.'

8 Clause 5 of the Certificate of Insurance forming part of the Hartford policy was headed 'Persons or Classes of Persons entitled to drive.' The respondent, as the policy-holder, was clearly one such person. However, clause 5 contained a proviso, which read:

> Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle.

Clause 5 and its proviso are standard terms in many motor vehicle insurance policies.

9 The issue before the district judge was whether, because the respondent had been driving a vehicle that was de-registered, and for which there was no valid vehicle licence, the proviso excluded insurance coverage so that he had also committed the MVA offence.

10 It was not disputed that the respondent held a valid Class 3 driving licence at the material time. The district judge therefore had to decide what effect the RTA convictions had on the operation of the Hartford policy.

The decision below

11 The district judge found that the RTA convictions did not affect the operation of the Hartford policy. He was of the view that clause 5 and the proviso referred to a person's legal ability to drive, as distinct from the manner in which the motor vehicle driven may or may not be used. The district judge determined that the word 'disqualification' as used in the proviso had to mean express disqualification from, or the loss of, the right to drive. In his view, the RTA convictions did not have this effect.

12 That being the case, the district judge acquitted the respondent of the MVA offence. In the course of his reasoning, the district judge relied on the Malaysian case of *Public Prosecutor v Lim Ching Chuan* [1972] 1 MLJ 27. He declined to follow a passage cited to him by the prosecution from *Public Prosecutor v See Albert* [1969-1971] SLR 419 at 422A-B, a decision of the Singapore High Court, on the ground that it was *obiter dicta*.

The appeal

13 The crux of this appeal was essentially whether the proviso's reference to permission to drive the motor vehicle encompassed licensing requirements for the van as well as the driver, or whether it was limited only to licensing requirements for the driver. If it was the former, the respondent would have committed the MVA offence. If the latter, he would not.

14 Before me, the DPP advanced two main arguments in support of his contention that the district judge, in not adopting the former conclusion, had erred in law. First, he had failed to give the proviso its plain and ordinary meaning. Second, he had departed from *Public Prosecutor v See Albert*, a decision that was binding on him by virtue of the rules of *stare decisis*.

Construction of the proviso in the Hartford policy

15 I should state at the outset that Hartford's position, as documented in the Record of Proceedings, was that the Hartford policy remained in force on 2 August 2000 despite the respondent's RTA convictions. However, that was not *ipso facto* conclusive of the matter. In *Public Prosecutor v See Albert*, Wee Chong Jin CJ said at 422F-G:

> the question to be decided in every case before a court under s 3 of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 [*in pari materia* with s 3 of the MVA] is whether or not, *as a matter of construction*, a *particular policy* covers the defendant at the time he was driving the motor vehicle described in the policy and not whether the insurance co [*sic*] would regard itself as being on risk if an accident occurs. [Emphasis added.]

My duty, therefore, was to determine the true meaning of the proviso according to the rules of construction ordinarily applicable to commercial contracts.

16 On the other hand, it was not correct to say that Hartford's position was entirely irrelevant to the question before me. The learned editors of *MacGillivray on Insurance Law* (10 ed, 2003) set out the appropriate balance to be struck thus at paragraph 29-8, p 875:

> Where there is a doubt as to whether a particular use is covered by the policy owing to an ambiguous exceptions clause or other term, it appears that the court *may* accept evidence from the insurers, that they regard themselves on risk, as establishing that cover was in force. But such evidence will be of no account *if the construction of the relevant clause is clear*, or if the question is whether or not an enforceable contract of insurance has been concluded, or if the relevant user is forbidden by law. [Emphasis added.]

I noted that this reflected the position of the English Court of Appeal in *Cargill v Rowland* [1953] 1 All ER 486, which was cited to me by counsel for the respondent.

17 I was not persuaded by the DPP's argument that the plain and ordinary reading of the proviso led incontrovertibly to only one meaning. In my view, the words of the proviso, *without more*, were perfectly compatible with either interpretation set out above. I was guided, too, by the learned editors of *MacGillivray on Insurance Law* who state further, at paragraph 11-2, p 278:

> [t]he first and overriding consideration in construing any phrase or form of words in a policy is to inquire whether these have been the subject of any prior decision by a court. The proper construction to be placed on words is a matter of law for the court.

With these principles in mind, I turned to examine *Public Prosecutor v See Albert*, in which precisely the same proviso was given scrutiny by Wee CJ.

The decision in **Public Prosecutor v See Albert**

18 The facts were these. The defendant was driving a motorcycle with an expired provisional driving licence ('PDL'). He also failed to display 'L' plates as required by the terms of his PDL. He had an insurance policy covering third-party risks, which was still valid at the material time. The policy contained a proviso *in pari materia* with that in the present appeal. The issue before Wee CJ was the same as the issue now before me.

19 Wee CJ was of the opinion that the insurance policy was not in force at the material time, and that the offence under the then-equivalent of s 3(1) of the MVA had been proved. He could see 'no ambiguity or doubt' as to the interpretation of the proviso. In his view, any such previous doubts

had arisen from the English cases of *Edwards v Griffiths* [1953] 1 WLR 1199 and *Mumford v Hardy* [1956] 1 WLR 163. The proviso in those cases was completely different. It read:

> Provided that the person driving *holds a licence to drive* such motor-cycle or *has held* and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf *for holding and obtaining such a licence*. [Emphasis added.]

Wee CJ then observed, at 422A-B:

> The proviso construed in the English cases refers to the *holding of a licence* to drive and to the disqualification for *holding or obtaining a licence* to drive whereas the proviso to be construed in the present case is *completely different* and refers, not to the holding of a licence to drive, but to the *permission to drive* and to *disqualification*, not for holding or obtaining a licence to drive, but *from driving*. [Emphasis added.]

This was precisely the passage relied upon by the DPP, and which the district judge pronounced *obiter*.

20 I could not agree with this aspect of the district judge's decision. In my view, this passage was part of the very *ratio decidendi* of *Public Prosecutor v See Albert*. To that extent only, I agreed with the DPP.

21 Nevertheless, and this was crucial to the disposal of the present appeal, I was of the view that *Public Prosecutor v See Albert* was distinguishable on its facts. First, the defendant in that case was not permitted to drive without 'L' plates (even if his PDL had been valid) by virtue of r 13(6)(c) of the Motor Vehicles (Driving Licences) Rules 1969 – he had thereby broken the first limb of the proviso. Second, the defendant was expressly disqualified by virtue of s 13(1) of the Road Traffic Ordinance 1961 from driving because his PDL had expired – he had thereby broken the second limb of the proviso.

22 In my view, then, the effect of Wee CJ's decision in *Public Prosecutor v See Albert* was simply this. The proviso would have excluded insurance coverage only if the respondent's own legal ability to drive had been circumscribed by a breach of the conditions attached to his driving licence, or if he had been disqualified from the act of driving *per se*.

23 Unlike the defendant in *Public Prosecutor v See Albert*, the respondent in the present appeal escaped liability for the MVA offence because he had neither breached any of the licensing conditions attaching to his own legal ability to drive, nor had he been disqualified from the act of driving. The RTA convictions related, instead, to vehicle licensing requirements. Therefore, the respondent had not committed the MVA offence.

24 This conclusion was strengthened by a close reading of the authorities considered in Wee CJ's judgment, as well as the 1972 Malaysian case of *Public Prosecutor v Lim Ching Chuan*, the case relied on by the district judge. Ostensibly the district judge relied on the Malaysian case because the defendant therein, who had, like the respondent, been driving with an expired road tax licence, was acquitted. This case followed the earlier Malaysian decision of *Tan Kwang Chin v Public Prosecutor* [1959] MLJ 252. In *Public Prosecutor v See Albert*, Wee CJ acknowledged that his own decision would appear to conflict with *Tan Kwang Chin v Public Prosecutor*. I venture to reason that it was this that caused some misunderstanding in the present appeal.

25 Upon perusing the authorities I formed the opinion that the difference between the Singapore

and Malaysian positions on the point of law now before me really had nothing to do with whether the breach of licensing requirements related to the driver, or to the vehicle. The real disparity was in the respective courts' treatment of two *different* provisos commonly used in motor vehicle insurance policies. The Malaysian view was that both provisos carry the same meaning: *Tan Kwang Chin v Public Prosecutor* at 253E-F. The Singapore view, as elucidated by Wee CJ in *Public Prosecutor v See Albert*, was that they do *not*. As Wee CJ made clear, the question in every case before the court is whether *as a matter of construction* the terms of that *particular* policy affords the defendant the requisite insurance coverage under the MVA. It would appear that the Malaysian courts do not subscribe to that approach.

26 Simply put, the divergence is this. Under our law, mere *expiry* of one's driving licence suffices to deprive a driver of insurance coverage where his insurance policy contains a proviso *in pari materia* with the present one. The Malaysian courts differ from ours in this respect, and take the view that what is necessary is nothing less than an order of court disqualifying the defendant from driving – regardless of the words of the particular proviso before the court.

27 It was for this reason that Wee CJ refused to follow the Malaysian case of *Tan Kwang Chin v Public Prosecutor*, which was then followed in *Public Prosecutor v Lim Ching Chuan*. The different results in the Singapore and Malaysian authorities had no relation to the nature of the licensing requirements breached in each case.

28 That being so, I was of the opinion that Wee CJ's remarks in *Public Prosecutor v See Albert* firmly supported an acquittal on the present facts. I should add that it is settled law that I am at liberty to depart from *Public Prosecutor v See Albert* if necessary: *Wong Hong Toy v Public Prosecutor* [1994] 3 SLR 396; *M V Balakrishnan v Public Prosecutor*, Criminal Motion 9/1998, HC, unreported judgment dated 8 July 1998. However, I saw no compelling reason to do so in the present case. Furthermore, the preservation of a clear line of precedent from *Public Prosecutor v See Albert* served the interests of promoting certainty. I agreed with this basic principle in *M V Balakrishnan v Public Prosecutor* and affirm it now.

29 For the sake of completeness, I should also add that this decision does not stand for the proposition that an offence under s 3(1) of the MVA is *only* made out where the breach of licensing requirements relates to the driver, and not the vehicle. I took the DPP's point that the outcome of this appeal had wide-ranging ramifications since breaches of licensing conditions are common bases for prosecutions under s 3(1). I also took his point that cases under s 3(1) may certainly be made out where the breach of licensing requirements relates to the vehicle, rather than the driver: *Lim Cheng Wai v Public Prosecutor* [1988] 3 MLJ 309; *Kerridge v Rush* [1952] 2 Lloyd's Rep 305.

30 However, it bears repeating that each case is determined on its own particular facts. Obviously, while industrial usage will mean that certain terms are uniform across all motor vehicle insurance policies, not every term is invariably identical. The defendants in *Lim Cheng Wai v Public Prosecutor* and *Kerridge v Rush* were deprived of insurance coverage because the policies in question clearly prohibited particular uses of the insured vehicle. In *Lim Cheng Wai v Public Prosecutor*, for example, the defendant had permitted another person to use a school bus to ferry adult passengers without an Adult Workers Contract Permit when his insurance policy explicitly limited such use only to instances where an Adult Workers Contract Permit was held.

31 Finally, it was my view that interpreting the proviso so that it was limited to the driver's own legal ability to drive was consistent not only with *Public Prosecutor v See Albert*, but with the objective of the MVA. The preamble to the MVA 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 MVA is to protect third-party road users, not the insured driver. There was no question here of the respondent benefiting from his own wrong.

32 As I have made clear in previous cases under s 3(1), the prevention of a situation in which accident victims are left without any compensation lay at the very heart of the enactment of the section: *Chandara Sagaran s/o Rengayah v Public Prosecutor* [2003] 2 SLR 79 at 82; *Stewart Ashley James v Public Prosecutor* [1996] 3 SLR 426 at 429G. I was also guided in this respect by the Court of Appeal's opinion in *Public Prosecutor v Kum Chee Cheong* [1994] 1 SLR 231 at 243C.

Conclusion

33 For the foregoing reasons, while I could not agree with the district judge's treatment of *Public Prosecutor v See Albert* in his grounds of decision, I was nonetheless of the opinion that the acquittal should be upheld. I dismissed the prosecution's appeal accordingly.

Appeal dismissed.