



MARTIN GEORGE & CO. (M.A.G.C.O) Attorneys-at-Law

E Mail: mag4law@hotmail.com
Website:
<http://martingeorge.net/>

PORT -OF SPAIN OFFICE:
#43 Dundonald Street,
Cor. Gordon & Dundonald
Streets Port of Spain,
Trinidad, West Indies.
Tel: (868) 624-7257
Tel / Fax: (868) 623-5187

TOBAGO OFFICE:
33 Bacolet Park
Scarborough,
Tobago, West Indies.
Tel: (868) 639-1809
Tel/Fax: (868) 639-1579

US MAILING ADDRESS:
11158 Highland Circle,
Boca Raton
Boca Woods
Florida,
33428 USA

MAGCO DAILY LEGAL LESSONS #22

LEGAL TOPIC: MOTOR VEHICLE ACCIDENTS – LIABILITY, INSURANCE AND THE FACTORS INVOLVED IN AN INSURANCE CLAIM

By: Keshavi Koorban
Attorney-at-Law
Martin George and Co.
Attorneys-at-Law

INTRODUCTION:

Motor vehicle accidents occur on a daily basis and usually occur due to the negligent acts of drivers on our nation's roads causing injury and damage not only to these reckless drivers but also to innocent third parties. The Motor Vehicles Insurance (Third Party Risks) Act Chap 48:51 (hereinafter referred to as "the said Act") seeks to provide protection to these innocent third parties who suffer harm as a result of negligent drivers. Pursuant to section 3 (1) of the said Act, it is mandatory for every owner of a vehicle which is being used on a public road to hold an insurance policy to cover against third party risks such as injury or damage caused to third parties as a result of an accident arising out of the use of a vehicle or licensed trailer on a public road. A public road is defined as:

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
anelle Ramsaroop LL.B (Hons) LEC, Sarah Lawrence LL.B (Hons) LEC and Sara Martinez
LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant



‘any street, road or open space to which the public has access and any bridge over which a road passes and includes any privately owned street, road or open space to which the public has access either generally or conditionally’ pursuant to **section 2 of the said Act**. For the avoidance of doubt it also includes the public driving areas in a gas station, a mall car park, an airport or seaport ferry terminal parking area.

THE MINIMUM REQUIREMENTS OF AN INSURANCE POLICY:

According to **Section 4 of the said Act**, to meet the requirements of the Act, a policy must be issued by an authorized insurer and must provide cover for third party death or bodily injury and third-party property damage. Thus the primary intent of the Legislation is to ensure that you have Insurance to cover against any loss or damage you may do to others, not necessarily for loss or damage you may suffer from an accident you may have caused. So the fundamental (Third Party) coverage, is for other persons who may suffer Loss, damage or injury through your actions. If you also want to cover your own losses too, then you’re looking at a Full Comprehensive type of Insurance policy. The driver of a vehicle must always carry the certificate of insurance in the vehicle as evidence that there is an insurance policy in force which covers personal injury and property damage in the case of an accident. If ever you’re the victim in a motor vehicle accident by either injury/damage to your person or property, it is advisable to always check and verify with the driver’s Insurance Company that their policy is indeed valid and in force as there have been some instances of persons driving around with forged or fraudulent Insurance certificates. Furthermore, the minimum coverage for death or bodily

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

injury is \$1,000,000 for any one claim by any one person and \$2,000,000 for total claims arising from any one accident and the minimum coverage for third party property damage is \$500,000 for any one claim by any one person and \$1,000,000 for total claims arising from any one accident. Please note that this is the limit of the Liability of the Insurance Company. It does not mean that you can't seek to claim more than these amounts if your actual losses are greater, however just remember that your recovery from the Insurance Company will be guarded by these Statutory limits and the additional losses you may have to seek to recover from the driver/owner directly; if possible.

TYPES OF INSURANCE POLICIES:

- Comprehensive - This type of insurance policy covers loss or damage to the insured's own motor vehicle caused by an accidental collision and also covers liability to third parties for bodily injury or property damage caused by the driver in an accident. This policy can also insure against damage caused by natural occurrences such as floods, fires, theft, hurricanes and earthquakes.
- Restricted Coverage – This type of insurance policy usually requires that anyone who is permitted to drive the insured's vehicle must be over the age of 25 years and have at least two years' driving experience. Usually, an insurance policy will only insure such restricted drivers upon the payment of a higher annual premium. In addition to this restriction, some insurance policies further restrict the use of the vehicle to only the specific driver(s) named on the insurance certificate. This is an extremely

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

important provision to note as the Privy Council enforced the strictness of this provision in its ruling in **The Presidential Insurance Company Limited v Resha St. Hill [2012] UKPC 33**, which sets out that in such cases, the coverage will apply only when the vehicle is operated strictly by the person(s) named on the insurance policy. If there's someone other than the named driver(s) driving while an accident occurs, then no Insurance payment will be made.

- Third Party liability - This type of insurance policy usually just satisfies the minimum requirements of the Act. Where this policy is in place, once liability has been established, an insurance company is supposed to pay a third party's claim for property or personal injury arising from an accident, however you, the Insured, get absolutely NO Payment from your Insurer, for any personal or property damage you may suffer in an accident which you cause.

LIMITATION IN RELATION TO PERSONS COVERED BY INSURANCE POLICIES:

Section 4(7) of the Act provides that: *“Notwithstanding anything in any written law, rule of law or the Common Law, a person issuing a policy of insurance under this section shall be liable to indemnify the person insured or persons driving or using the vehicle or licensed trailer with the consent of the person insured specified in the policy in respect of any liability which the policy purports to cover in the case of those persons.”* However, in **The Presidential Insurance Company Limited v Resha St.Hill (supra)** the Privy Council

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara

Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

considered the meaning of this section in relation to insurance policies which are limited to only the owner of the policy and found that in such instances the coverage cannot extend to any other driver even if he had the consent of the insured person. The Privy Council in that case, recognized that this issue was of great interest and significance for motor insurers and the Privy Council was informed that this case was fought by the appellant as a test case, the outcome of which was awaited in a large number of other cases in Trinidad and Tobago.

LIABILITY IN RELATION TO MOTOR VEHICLE ACCIDENTS:

In **Privy Council Appeal No 0063 of 2014 Insurance Company of the Bahamas Ltd. v Eric Antonio** Lord Mance stated as follows: *“1. Whether a victim of negligent driving can look to insurers of the negligent driver can be vitally important for the victim. But it is a matter over which the victim has commonly no control. It depends upon whether insurance has been arranged by or on behalf of the driver or driver’s employer, and it also depends upon the terms of that insurance, subject to limited statutory qualifications to ensure that these cannot always be relied upon as against a third party victim.”*

In order for an innocent third party to claim compensation in relation to a motor vehicle accident he must prove that the driver of the vehicle who is covered by the policy was negligent in that he owed a duty of care to the third party, there was a breach of that duty and the third party sustained damage as a result of the breach of that duty **(this topic of negligence is explored in detail**

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

in our article “The Tort of Negligence” which can easily be accessed by clicking here: <https://martingeorge.net/archives/6860>). Once it is satisfied that the driver of the vehicle was negligent, his insurer is usually required to pay compensation to the injured third party.

In some instances the driver is the employee of the owner of the vehicle and the person in whose name the policy is issued and in such instances the employer can be found to be vicariously liable for the tort of his employee once it is satisfied that the person who committed the tort was an employee of the employer, the tort was indeed committed by the employee and that the tort has been committed during the course of his employment (this topic of vicarious liability is explored in detail in our article “Vicarious Liability” which can easily be accessed by clicking here: <https://martingeorge.net/archives/6964>). However, for an insurance policy to cover an employee the policy must not have been such that it was restricted to only the owner of the vehicle: **Rajendra Samsoundar v Capital Insurance Company Limited Civ App No. S149 of 2013** which said case applied **The Presidential Insurance Company Limited v Resha St. Hill (supra)**.

Section 4A of the Act expressly provides: *Notwithstanding any other law, the owner of a motor vehicle licensed to ply for hire and insured under this Act is deemed to be the employer of any person driving the motor vehicle at the time of an accident as a result of which a person has suffered death, bodily injury or damage to property unless it is shown that at the time of the accident that the vehicle was the subject of larceny.* The Privy Council in **The Presidential Insurance Company Limited v Resha St.Hill (supra)** stated in relation to this

Martin George LL.B. AMABE
Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

section as follows: *“Subject to its larceny exception, it deems the insured to be the employer of the driver involved in the accident. Its purpose is to enable the insured to be vicariously liable for the driver’s negligence. But a deemed relationship of employment does not alter the terms of the insurance contract. If the policy covered as drivers the insured and his employees or agents generically, the vicarious liability of the insured could fall within its terms, so long as other conditions in the policy (such as that the driver was driving with the insured’s permission, or that the driver was licensed to drive the vehicle) did not exclude liability.”*

Once it is established that a driver who is covered by an insurance policy was negligent, the insurance company of the owner of the vehicle is liable to satisfy the judgment sum pursuant to **Section 10 (1) of the Act** which provides that: *“If, after a certificate of insurance has been delivered under section 4(8) 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 the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, in addition to any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.”* In her judgment dated 22nd August 2017 in **Leon Moses v Denash Maharaj, Chandra Bushan Rago and Trinre Insurance Company (Trinidad and Tobago) Limited CV2016-02506**, the Honourable Madame

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

Justice Mohammed found that the Insurance Company, was liable to satisfy the judgment against the First and Second Defendants pursuant to **section 10 (1) of the said Act.** However in relation to this section it should be noted that the Privy Council in **The Presidential Insurance Company Ltd v Mohammed and others [2015] UKPC 4** highlighted as follows: *“The insurer’s liability under this section arises only if it has been given timely notice of the commencement of the proceedings against the insured (section 10(2)). Section 10(3) allows the insurer to escape liability under this section if it raises proceedings before or within three months of the commencement of the action against the insured, and obtains a declaration that, apart from any provision in the insurance policy, it is entitled to avoid the policy on the ground that the policy was obtained by non-disclosure of a material fact or the false representation of a material fact.”*

THE PROVISIONS OF THE ACT WHICH OVERRIDE THE LANGUAGE OF INSURANCE POLICIES AND RENDER RESTRICTIONS OF NO EFFECT:

- **Section 8 (1) of the Act** stipulates that conditions subsequent to a claim giving the insurer the right to deny liability shall be of no effect as far as third party liability is concerned. According to this section the insurer therefore has to treat with the third party claim even though their insured committed a breach of the claims condition on the policy.
- **Section 12 (1) of the Act**, sets out that certain restrictions on policies shall be of no effect in relation to third party risks. The Act expressly sets out that this provision relates to restrictions as follows:

- (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 this Act.

Where an insurer satisfies a third party claim but could have avoided doing so according to the terms of the policy, it is entitled to recover the amount from the insured: **Section 12 (2) of the said Act.**

In such instances the insurers can sue the insured for breach of contract to recover monies paid to the third party. The Honourable Mr. Justice Kokaram (as he then was), in **Vanissa Sukhbir v GTM Fire Insurance Company Limited HCA S416 of 2001** highlighted that: *“The general principles of contract law are applicable to the formation of contracts of insurance.”*

THE PROBLEM IN RELATION TO UNINSURED DRIVERS:

In **The Presidential Insurance Company Ltd v Mohammed and others (supra)** the Privy Council recognised that *“there remains a serious problem about innocent victims suffering bodily injury or property damage as a result of the negligence of uninsured drivers. Parliament has attempted to address this social evil but loopholes remain. In Resha St Hill the Privy Council noted that there was no equivalent of the Motor Insurers Bureau or other facility to ensure that the victims of negligent but uninsured drivers did not go uncompensated. It also pointed out (para 31) that section 12 might be the natural section on which to build if the legislative aim is to provide compulsory insurance cover, regardless of the policy definition of the persons covered, when anyone uses an insured vehicle with the policyholder’s consent.”*

In the case of **Elizabeth Ram (Administrator of the Estate of Pearl Baboolal) v Motor and General Insurance Company Limited [2015] UKPC 22**, the Deceased, while travelling in a maxi taxi, died during a collision along with several other persons and other passengers were injured. By the time the claim was filed the Insurance Company's position was that it had already paid out the maximum \$1,000,000 to third parties with claims arising out of the accident and that it had thus already discharged its contractual liabilities to its insured, which reflected the statutory requirements of the Act. The issue before the Privy Council was whether an insurance company, before it pays third party claims under an insurance policy which has a contractual monetary limit on the aggregate of claims arising out of one event which equates with the statutory minimum cover, must (a) ascertain the total claims arising from the event and (b) where the total exceeds the limit, devise a scheme for the proportionate payment of the claims. In this case the Privy Council found that: "Where there is a contractual or statutory limit on a liability insurance fund and multiple claimants whose claims are likely to exceed the fund, there may be good policy arguments for the creation of a scheme for the rateable payment of claimants to avoid injured persons being left out in the cold. In Trinidad and Tobago, serious motor vehicle accidents involving maxi-taxis or

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

larger public transport vehicles may readily give rise to such problems. But the answer does not lie in developing the common law in a way that would be inconsistent with the existing statutory provision. Unless the insurance industry can devise a scheme for obtaining the consent of all victims in an accident to the rateable distribution of an insurance fund, it is a problem which, if so advised, Parliament will have to address."

This Learning from the Privy Council is applicable to many aspects of our Motor Vehicle Insurance Legislation which is in need of constant evaluation review and amendment where necessary.

© 2020 MARTIN ANTHONY GEORGE & CO

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara

Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant