

Motor & General Insurance Company Limited

Appellants

v.

(1) Dorothy Cox and (2) Sandra Cox

Respondents

FROM

THE COURT OF APPEAL OF BARBADOS

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
2ND OCTOBER 1990  
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*Present at the hearing:-*

LORD BRIDGE OF HARWICH  
LORD ROSKILL  
LORD OLIVER OF AYLMEYTON  
LORD GOFF OF CHIEVELEY  
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by Lord Jauncey of Tullichettle]*

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This appeal concerns the construction of two sections of the Motor Vehicle Insurance Act, Cap. 292, of Barbados, as amended from time to time.

The facts may be summarised briefly. On 2nd January 1980 the two respondents were walking along a street when they were struck and knocked down by a vehicle which was being negligently driven by a servant of one Gittens. On 8th September 1980 they raised actions against Gittens and his servant to recover damages in respect of their injuries, and on 28th October 1981 judgment was entered for them. The judgment remained unsatisfied and on 26th April 1982 the respondents, relying on section 9 of the Motor Vehicle Insurance Act raised an action against the appellants, as insurers of Gittens, seeking *inter alia* payment by them of the amount and costs of the judgment entered against him.

Section 3(1) of the Motor Vehicle Insurance Act makes provision for compulsory insurance of motor vehicles and section 4, so far as relevant, provides:-

"(6) Notwithstanding anything in any enactment, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy

retrospectively covers such liability it satisfies the requirements of section 9(1). That is the position in this appeal.

The question then is whether section 4(7) has any effect on section 9(1). Although the former sub-section provides that a policy shall be of no effect for the purposes of the Act unless and until there has been issued a certificate in the prescribed form, it provides neither that a policy cannot have effect at common law without the issue of a certificate nor that, having become effective, it cannot operate retrospectively. If section 4(7) had the effect contended for by the appellants, it would mean that, although the insured could enforce his rights against the insurer notwithstanding the absence of a certificate, as well as rights which were retrospectively conferred, third parties, for whose benefit section 9(1) was enacted, would be debarred from so doing. This would be a very curious result. Their Lordships are satisfied that the appellants' argument is without substance and that there is nothing in section 4(7) which requires that the operation of section 9(1) be limited to cases where there was in existence at the date when liability was incurred a policy which satisfied the requirements of the former sub-section.

Their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. The appellants must pay the respondent's costs before their Lordships' Board.