

**SRI LANKA INSURANCE CORPORATION LTD  
VS  
CHRYSANTHA FERNANDO**

COURT OF APPEAL  
BALAPATABENDI, J., AND  
WIJERATNE J  
C.A. 383/99(F)  
D.C. COLOMBO 16598/MR  
MAY 10, 2004

*Motor Traffic Act, No. 14 of 1951, sections 100(4) 100(1)b and 106-109-Motor accident - Ex parte trial - Damages awarded - Valid policy - Separate action instituted against the Insurance Corporation to recover same - Prescription Ordinance, sections 3 and 6 - Applicable provision - Written contract - Should a separate action be instituted ?*

**HELD:**

(i) Ex parte judgment was entered on 27.03.90. The instant action was instituted on 7.7.1995 to enforce the decree against the defendant appellant (Insurance

Corporation) as the liability to pay the damages on the decree obtained by the plaintiff respondent has arisen out of the contract of insurance which is a written contract.

(ii) The prescriptive period is 6 years and not 3 years.

*Per* Balapatabendi, J.,

“The plaintiff respondent who obtained a money decree for damages against the insured could have executed the decree on the insurer (defendant appellant) without instituting the instant action.”

**APPEAL** from a judgment of the District Court of Colombo.

**Case referred to :**

1. *Fernando vs De Silva and others* – (2000) 3 SriLR 29

*Chandana Prematilake* for appellant

*Basheer Ahmed* with *V. A. Mowjook* and *V. A. Mayhes* for plaintiff respondent.

*Cur. adv. vult.*

June 7, 2004

**JAGATH BALAPATABENDI., J.**

The plaintiff- respondent who was seriously injured and suffered permanent disability in a motor accident, instituted action bearing No. 4645/M in the District Court of Mt.Lavinia, claiming damages in a sum of Rs. 3,35814 with legal interest against the registered owner of the vehicle the 1st defendant, and the driver the 2nd defendant for negligent driving, with notice of the action given to the Insurer the Insurance Corporation of Sri Lanka. The case had proceeded to trial ex-parte, the ex parte judgment had been pronounced and the exparte decree had been entered on 27.3.1990. The said ex parte-decree had been served on both defendants. After exchange of some correspondence between the plaintiff respondent and the Insurance Corporation in respect of said damages awarded, the plaintiff-respondent instituted the instant action against the defendant-appellant the Sri Lanka Insurance Corporation Ltd. (the successor of the Insurance Corporation of Sri Lanka) bearing No. 16598/M on 07.07.1995 praying for a judgment and a decree against the defendant appellant for the decreed sum (Rs. 3,35814) with the legal interest thereon from 27.03.1990, on the basis that the defendant-appellant corporation had issued

a policy of insurance in relation to the use of the said vehicle (which met with the accident), to the registered owner of the vehicle, and the said policy was valid at the time of the accident.

The learned District Judge held in favour of the plaintiff-respondent allowing the reliefs claimed in the prayer to the plaint, by the judgment dated 23.4.1999. This appeal is preferred against the said judgment by the defendant-appellant.

At the hearing of the appeal the counsel for the defendant-appellant assailed the judgment stating that the learned District Judge had erred in law on the question of prescription.

Counsel for both parties agreed to tender written submissions on the said question of law.

The contention of the defendant-appellant was that the instant action which had been filed by the plaintiff-respondent on 7.7.1995 praying for a judgment and a decree against the defendant-appellant (The insurer) a decreed sum obtained against the insured (the owner of the vehicle) on 27.3.1990 is prescribed in law, under the provisions of the section 10 of the Prescription Ordinance, as the Prescription Ordinance does not specifically provide a prescriptive period within which an action based on a decree of court could be instituted. As such the instant action had been instituted after 3 years from the date of the decree had been prescribed in law.

It was not challenged that the liabilities on the relevant policy of insurance of the predecessor the Insurance Corporation of Sri Lanka had passed on to the defendant-appellant Sri Lanka Insurance Corporation Limited.

I would like to point out the effect of the provisions of the section 105 of the Motor Traffic Act, which had been carefully considered in the case of *Fernando Vs De Silva & Others.* <sup>(1)</sup>

Gunawardene, J held that "Section 105 of the Motor Traffic Act imposes an absolute obligation on the Insurer, and the Insurer is legally bound to compensate the party who has obtained judgment in his favour for damages sustained in a motor – accident caused by a vehicle covered by policy of insurance issued by the insurer." Also, "in order to enforce a

---

decree for damages obtained against the insured, a separate action need not be brought against the insurer and it is not even necessary to add the insurer as a respondent for the purpose of executing the decree."

Further, Gunawardene, J observed that "under a contract of insurance, insurer is legally bound to compensate the other party. The added feature for the law (under section 105 of the Motor Traffic Act) itself commands the insurer to pay directly to the *injured third party*."

It is relevant to note that, in terms of the contract of insurance between the insured and the insurer, (the Sri Lanka Insurance Corporation Ltd) the insurer had admittedly undertaken to pay damages or compensation on the occurrence of damage or injury to a third party arising out of the use of the vehicle having a policy of insurance, belonging to the insured. Also, the policy of insurance obtained in favour of the insured, protects him, from liability to a third party, as a result of the operation of the relevant vehicle. The law demands and binds the insurer to indemnify the insured against the insured's liability to pay damages that had been awarded by court to a third party.

So that the obligation or the liability to pay damages even to a third party arises on the contract of the policy of insurance, *and in addition* under the provisions of section 105 of the Motor Traffic Act itself. i.e, the law compels or commands the insurer to pay damages directly to the third party.

Section 105 of the Motor Traffic Act, No. 14 of 1951 as amended, which reads as follows. " if after a certificate of insurance has been issued under section 100 (4) to the persons by whom a policy has been effected, a decree in respect of any such liability as is required by section 100(1) (b) to be covered by a policy of insurance (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 sections 106 to 109, pay to the persons entitled to the benefit of the decree any sum payable thereunder in respect of that liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum under such decree."

(2) In this section, "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy".

The liability imposed by section 105 is subjected to certain exemptions mentioned in sections 106 to 109 of the Act, but such exemptions are not relevant to the present case and it was not in issue.

The plaintiff-respondent who obtained a money decree for damages against the insured in the case No. 4645/M, could have executed the decree on the insurer – (the defendant-appellant) without instituting the instant action. As it may be, it is obviously clear for the reasons mentioned above that the liability to pay the damages on the decree obtained by the plaintiff-respondent on 27.3.1990 *arisen out of the contract of insurance* (which is a written contract), the instant action instituted on 07.07.1995 to enforce the said decree against the defendant-appellant was well within the prescriptive period of 6 years, as stipulated in the provisions of section 6 of the Prescription Ordinance. As such it is needless to consider the question of prescription for execution of a decree under the provisions of section 337 of the Civil Procedure Code as amended by Act, No. 53 of 1980.

In the circumstances mentioned above, I am of the view that the instant action instituted by the plaintiff-respondent was well within the prescriptive period of 06 years as decided by the learned trial judge. The argument advanced by the counsel for the defendant-appellant is rejected, and the judgment of the learned trial judge is affirmed. The appeal is dismissed with costs fixed at Rs. 15000.

**WIJEYARATNE, J.** — I agree.

*Appeal dismissed.*

---