[2016] JMCA Civ 31

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 68/2015

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA

BETWEEN	**ADVANTAGE GENERAL INSURANCE COMPANY LIMITED**	**APPELLANT**
AND	**DOREEN WRIGHT**	**RESPONDENT**

Kevin Powell instructed by Hylton Powell for the appellant

Miss Danielle Chai instructed by Samuda & Johnson for the respondent

15 February and 30 May 2016

MORRISON P

Introduction

[1] This appeal raises a short, but important, point of construction in relation to section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act (the Act). The issue to be determined is whether section 18(1) obliges a motor vehicle insurer (the insurer) to pay costs and interest to a third party to whom, subject to any applicable policy limit, it is liable to pay the amount of a judgment obtained against the holder of an insurance policy issued by it (the insured).

[2] In a decision given on 3 June 2015, Batts J (the judge) decided that the insurer is in fact so liable and, accordingly, granted the declaration sought by the respondent to that effect. On 15 February 2016, after hearing arguments on the appellant's appeal from this decision, the court dismissed the appeal, affirmed the judge's decision and awarded the costs of the appeal to the respondent. These are my reasons for concurring in this outcome.

The statutory framework

[3] It is first necessary to identify and state briefly the effect of a few of the relevant provisions of the Act. Section 4(1) requires the driver of a motor vehicle on the road, on pain of criminal prosecution, to be covered under a valid policy of insurance (the policy) in respect of third-party risks. Section 5(1) provides that, in order to comply with the requirements of the Act, the policy must be issued by an insurer[1] and provide cover in respect of (i) the death of, or bodily injury to, any person; and (ii) any damage to property, caused by or arising out of the use of the motor vehicle on the road.

[4] In respect of death or bodily injury claims, section 5(2) requires the policy to cover liability to any one person for a sum of not less than $1,000,000.00; and a total liability of not less than $3,000,000.00 in relation to each motor vehicle insured under the policy arising out of all claims in connection with any one accident. In respect of property damage claims, section 5(3) requires the policy to cover liability to any one

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[1]Defined in section 2 of the Act as "any person carrying on the business of – (a) issuing policies of insurance; or (b) giving securities".

person for a sum of not less than $500,000.00; and a total liability of not less than $1,000,000.00, in relation to each motor vehicle insured under the policy arising out of all claims in connection with any one accident.

[5] However, the obligation described in the previous paragraph is qualified by section 5(4), which provides that the policy shall not be required to cover (among other things), "(d) in respect of any death or bodily injury claims generally, liability for any sum in excess of [$3,000,000.00] arising out of all such claims in connection with any one accident for each motor vehicle insured under the policy".

[6] Section 5(9) provides that, in order for a policy to be effectual for the purposes of the Act, there must have been issued by the insurer a 'certificate of insurance' setting out the policy conditions and "any other matters as may be prescribed".

[7] And finally, the all-important section 18(1) provides as follows:

> "18 – (1) If after a certificate of insurance has been issued under subsection (9) of section 5 in favour of 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 subsections (1), (2) and (3) of section 5 (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 **the amount covered by the policy or the amount of the judgment, whichever is the lower**, in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments." (Emphasis supplied)

[8] The words highlighted in paragraph [7] above (the 2005 amendment) were inserted by the Motor Vehicle Insurance (Third Party Risks) (Amendment) Act 2005 (the 2005 Act), in substitution for the previous wording, "any sum payable thereunder".

[9] The objective of these provisions is to create a scheme of compulsory motor vehicle insurance. As Walker JA observed in **Globe Insurance Company of the West Indies Limited v Johnson and Stewart**[2] (**Globe Insurance**), "the scheme of the Act is to protect innocent third parties who suffer injury as a result of the negligent conduct of motor vehicle operators on the public roads". Section 18(1) fortifies the protection given by the Act by obliging the insurer, in the event that judgment in respect of any liability required to be covered by a policy under section 5(1), (2) and (3) is obtained against any person insured under the policy, to pay directly to the persons entitled to the benefit of the judgment the lesser of either the amount covered under the policy, or the amount of the judgment. On the face of it, therefore, the policy limit will define the extent of the insurer's liability to a third party. But section 18(1) goes on to state that the amount which the insurer is liable to pay shall include "any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments". The insurer's obligation under section 18(1) supersedes any contractual entitlement which the insurer may have as against the insured to avoid or cancel the policy.

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[2]SCCA No 70/1999, judgment delivered 14 April 2000, page 22

[10] However, section 18(2) goes on to make it clear that no sum shall be payable by an insurer under section 18(1) unless, among other things, "before or within ten days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings"[3].

How the issue arose in this case

[11] The appellant is an insurer which provides motor vehicle insurance coverage to its policy holders. On 27 November 2009, the respondent was injured in a motor vehicle accident involving a motor vehicle that was at the material time covered under a policy issued by the appellant to the insured. The limit of the appellant's liability under the policy was $3,000,000.00. As a result of the accident, the respondent sued the insured and obtained judgment in default against him. In due course, after an uncontested assessment of damages before Evan Brown J, the respondent obtained judgment against the insured for damages in the sum of $3,136,090.96, plus interest, and costs of $40,000.00.

[12] The appellant paid the policy limit of $3,000,000.00, as well as the statutory interest on the judgment debt, to the attorneys-at-law for the respondent. But the appellant refused to pay the costs of $40,000.00. Dissatisfied with this stance, the respondent commenced proceedings against the appellant in the Supreme Court,

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[3]Section 18(2)(b)

seeking a declaration that the appellant was obliged to pay the costs of $40,000.00, with interest at the rate of 6% per annum.

What the judge decided

[13] As I have indicated, the judge granted the declaration in the terms sought by the respondent. In arriving at this conclusion, he considered that the matter was covered by the authority of the decisions of the Privy Council, on appeal from the Court of Appeal of Trinidad & Tobago, in **Presidential Insurance Company v Molly Hosein Stafford**[4] (**Presidential**) and **Shanti Matadeen (in substitution for Suresh Matadeen, deceased) v Caribbean Insurance Co. Limited**[5] (**Matadeen**). In both cases, the construction given by the Board to section 10(1) of the Motor Vehicles (Third Party Risks) Act of Trinidad & Tobago (the T & T Act), the terms of which were at the material time very similar, though not identical, to section 18(1) of the Act, fully supported the respondent's claim to entitlement to her costs of $40,000.00 in this case. This is what the judge said[6]:

> "[9] Counsel for the Defendant submitted that those decisions are not binding and I should decline to follow them. I should instead adopt a construction of the section which followed the more literal approach and which he submitted was the intention of Parliament. That intention being to limit the insurer's liability either to the policy limit or the judgment which ever [sic] was less. I am not prepared to adopt

[4][1999] UKPC 14
[5][2002] UKPC 69
[6]At para. [9] of his judgment

> that approach. In my view the decisions of the Judicial Committee of the Privy Council on the construction of a similar statute from a jurisdiction as closely related to us as Trinidad & Tobago are to all intents and purposes binding. The Judicial Committee continues for the time being to be our final Appellate Court. I will not in these circumstances depart from their decisions."

[14] I will naturally have to consider the decisions in **Presidential** and **Matadeen** in greater detail in due course. But I should also indicate that, authority apart, the judge added this[7]:

> "[10] Furthermore, the decisions appear to me to be correct. Interest and costs follow on a judgment almost as the night follows the day. It is within the contemplation of parties to litigation and their insurers that if they are unsuccessful they will pay costs and they will pay interest on a judgment. It is in that context that the word 'including' ought to be construed. It is right therefore that an insurance company, especially one subrogated to a judgment, should pay not just the judgment but the interest and costs on it. Furthermore, any other decision, as their Lordships pointed out, would provide a motive for delay and unnecessary litigation. That could not have been the intention of our Parliament."

The grounds of appeal

[15] In challenging the judge's decision, the appellant relied on the following three grounds:

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[7]At para. [10]

"A. The learned judge erred in interpreting section 18(1) of the Act to mean that an insurer's obligation to satisfy judgments against persons insured in respect of third-party risks extends to paying the costs and interest on such judgments even where they exceed the amount covered by the policy.

B. The learned judge erred in failing to find that on the evidence before him the appellant had fully discharged its duty under section 18(1) of the Act and that the respondent was not entitled to the declaration claimed.

C. The learned judge erred in holding that the decisions of **Presidential Insurance Company Limited v Molly Hosein Stafford** and **Mattadean [sic] (in substitution for Suresh Mattadean [sic] deceased) v Caribbean Insurance Company Limited** determine the proper construction of the section 18(1) of the Act."

The submissions

[16] Taking grounds A and B together, Mr Kevin Powell for the appellant submitted that the judge erred in law when he interpreted section 18(1) of the Act to mean that an insurer's obligation to satisfy judgments against persons insured in respect of third-party risks extends to paying the costs and interest on such judgments, even where they exceed the amount covered by the policy. Contending that the answer to the problem posed by this case is a matter of statutory interpretation, Mr Powell argued that the construction urged by the appellant, that is, that the insurer's obligation under section 18(1) is to pay either the sum payable under the policy or the judgment sum (inclusive of costs and interest), whichever is the lower, is entirely in keeping with the ordinary meaning of the words of the section. Further, Mr Powell submitted, this

construction is also consistent with the purpose of the Act and, in particular, the 2005 amendment, which increased an insurer's liability from the statutory minimum to either the sum payable under the policy or the judgment sum, whichever is lower. And finally on these grounds, Mr Powell urged that the meaning for which the appellant contended is also consistent with the objectives of the Act, in that it could not have been Parliament's intention, having imposed a statutory minimum of $1,000,000.00, which insurers may choose to exceed, to affix the insurer with a liability potentially exceeding the statutory minimum or the limit under the policy (for which the insurer will have charged proportionate premiums).

[17] As regards ground C, Mr Powell submitted that the judge's reliance on **Presidential** and **Matadeen** was misplaced, as those decisions are entirely distinguishable, since neither case had to do with a provision similar in terms to section 18(1) of the Act. In both cases, the court was concerned with a provision which did not limit the liability of the insured to the lower of either the policy limit or the judgment sum, inclusive of costs and interest. Mr Powell also pointed out that the T & T Act has since been amended, by the substitution of the words "in addition to" for the word "including", thus making it clear that the insurer is liable for costs over and above the statutory minimum. If this were the intention of the Jamaican legislature, it was submitted, one might have expected it to say so clearly by amending section 18(1) in similar fashion.

[18] Responding on grounds A and B, Miss Danielle Chai for the respondent submitted

that, in reckoning the amount payable by the insurer where the judgment exceeds the policy limit, the policy limit together with costs and interest on the judgment debt (if the sum is not paid immediately) are payable to the third party. Were it otherwise, Miss Chai contended, there would have been no need for the words "including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments" in section 18(1). Rather, it would have been sufficient for the legislature to stop the sentence at the words "in respect of the liability". Thus, it was submitted, by specifying that the third party's entitlement includes interest and costs, the legislature put the matter beyond doubt. Since the purpose of the Act is to protect the rights of third parties, particularly when the insured is unable to pay, it would be alarming to interpret the section in a such a way as to saddle the innocent third party with the costs of the litigation, despite the vindication by the court of his or her right to recover. Given that the insurer, by virtue of its right of subrogation, controls the cost and pace of the litigation, it is only just for it to bear the responsibility to pay interest and costs.

[19] And, in relation to ground C, Miss Chai submitted that the judge had rightly regarded himself as bound by **Presidential**, despite the slightly different wording of the T & T Act. She pointed out that, before the 2005 amendment, the wording of section 18(1) of the Act was identical to that of section 10(1) of the T & T Act at the time when **Presidential** was decided. Further, that the 2005 amendment was explicitly aimed at the mischief identified by this court in **Globe Insurance**: that is, where an insurer, having agreed to insure a party to the extent of a sum in excess of the

statutory minimum and collected premiums on that basis, was obliged to pay out to the injured third party the minimum coverage required by the Act, even where the judgment exceeded the statutory minimum. Against this background, Miss Chai submitted, the substitution of the words "the amount covered by the policy or the amount of the judgment, whichever is the lower", was not intended by the legislature to limit the injured third party's right to recover interest and costs incurred during the litigation, but was intended simply to address the situation where the insured's policy limit exceeded the statutory minimum. In these circumstances, Miss Chai submitted, the interpretation given to section 10 of the T & T Act by the Privy Council in **Presidential** remained equally applicable to section 18(1) of the Act even after the 2005 amendment.

[20] In support of these submissions, both counsel naturally referred to the decisions of the Privy Council in **Presidential** and **Matadeen**, as well as to the influential decision of this court in **Globe Insurance**. Miss Chai also referred us to the Memorandum of Objects and Reasons (the accompanying memorandum) appended to the Bill tabled in the Senate in respect of the 2005 Act; and the record of the parliamentary proceedings in respect of the Bill, as recorded in the Jamaica Hansard (Hansard)[8].

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[8]Proceedings of the Honourable Senate, Session 2005-2006, Vol. 31, 14th January 2005 – 16th December 2005; Proceedings of the House of Representatives, Session 2005-2006, Vol. 31 No. 2, 13th September 2005 – 13th December 2005.

Discussion and conclusions

[21] Although in point of fact the appellant has paid interest on the judgment debt to the respondent in this case, the grounds put forward on its behalf raise a question as to the insurer's liability to pay both interest and costs in an action against it by a third party under section 18(1). I must therefore consider at the outset the decision of the Board in **Presidential**, in which it was held that, under the comparable provisions of the T & T Act, the insurer was so liable.

[22] In that case, a car driven by the insured was involved in a collision with a car driven by the third party on a public road in Trinidad. As a result of the accident, the third party, who was injured, sued the insured. The insured was held 70% to blame for the accident and damages were in due course assessed in the third party's favour in a total amount of over $100,000.00, plus interest. The third party was also awarded the costs of the trial and the assessment, totalling $43,136.25 on taxation, and judgment was entered for her accordingly.

[23] The insured failed to satisfy the judgment against him and the third party commenced a second action against his insurer (Presidential) under section 10 of the T & T Act. In so far as is now material, section 10(1) provided as follows:

> "If, ... judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) is obtained against any person insured by the policy, then, ... the insurer shall ... pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability**, including 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**." (Emphasis supplied)

[24] The insurer did not dispute liability. However, it contended that its liability to the third party under the T & T Act was limited to no more than $50,000.00, on the basis of section 4(2), which provided that the policy was not required to cover (among other things) "liability in respect of any sum in excess of [$50,000.00] arising out of any one claim by any one person"[9]. Accordingly, the insurer submitted, the word "including" at the beginning of that portion of section 10(1), which I have highlighted above, implied that there should be no additions whatsoever to the sum required to be covered. This defence therefore gave rise to, as Lord Hobhouse put it[10] -

> "… a question of the construction of the Act: does an insurance company have any liability to the injured party for the costs of the first action and in respect of interest or are such sums covered by the $50,000 limit?"

[25] The Board held that section 10(1) obliged the insurer to pay to the third party interest and costs, in addition to the $50,000.00 limit stated in section 4(2). As regards interest, Lord Hobhouse explained[11] that, while any pre-judgment interest element in a judgment is "subsumed in the judgment and ceases thereafter to be relevant", a judgment, once entered, itself carries interest under statute at the judgment rate from

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[9] As has been seen, this provision is virtually identical to that of section 5(4) of the Act – see para. [5] above
[10] At para. 7
[11] At paras 12-13

the date of the judgment until it is satisfied. Therefore, as regards the wording of section 10(1) –

> "...it will be seen that what is being referred to in the last part of the subsection is clearly interest on the judgment. So the correct understanding of the words 'including ... interest on that sum by virtue of any written law relating to interest on judgments' is not as a reference to the calculations made before judgment in the first action but to the statutory interest upon the unsatisfied judgment, the judgment being deemed to have been for no more than $50,000. The word 'including' is clearly used in the sense of referring to what the injured person is entitled to be paid by the insurer: he or she is entitled to be paid by the insurer not only the deemed amount of the judgment but also interest on it so long as it shall remain unpaid. His or her entitlement includes that interest. Any other construction would place a premium on delay and default on the part of the insurer and only serve to frustrate the purpose of the statute."

[26] Next, in relation to costs, Lord Hobhouse went on to explain[12] that a judgment given in disputed litigation will normally include some order as to costs. Accordingly:

> "... What [section 10(1)] is providing is that the injured person's right to recover from the insurer includes the costs which the driver has been ordered to pay in the first action. This does not relate to the minimum cover required by section 4. Here again the contrary interpretation would simply serve to frustrate the purpose of the subsection. The insurer would be provided with an incentive to use its right, as the insurer of the driver, to defend the first action to the extent of depriving the injured person of the benefit of the recovery which he or she is intended to have under the subsection ... [The third party] was also entitled to interest on the unpaid costs liability at the judgment rate from the time that she became entitled to be paid those costs down to the time of payment...

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[12] At paras 16-17

> The error in the argument of the [insurer] was to relate the word 'including' to the word 'liability', whereas it should be related to the word 'entitled.'"

[27] In the absence of any previous direct authority on the point, Lord Hobhouse found it "reassuring" to recall Lord Diplock's observation in the earlier case **Harker v Caledonian Insurance Co.**[13] that "... there are instances, of which costs and interest on the judgment are examples, where the insurer would be liable in the direct action for sums in excess of the permissible monetary limits upon the cover afforded by the policy".

[28] **Matadeen** was also a case of a third party attempting to recover from an insurer the fruits of a judgment obtained against the insured for damages, interest and costs. Although the point was not directly in issue in the appeal to the Privy Council, Lord Scott's brief comment on it is also pertinent[14]:

> "A further point of construction arising under section 10(1) that needs to be mentioned relates to the words 'including any amount payable in respect of costs and any sum payable in respect of interest ...'. The words are inherently ambiguous. They might mean that the $200,000 statutory minimum is inclusive of any such costs and interest. Or they might mean that the injured party's right of recovery against the insurer is to include costs and interest as well as the statutory minimum. The latter construction seems to their Lordships to make much more sense than the former."[15]

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[13] [1980] 1 Lloyds Rep. 556, 558-559
[14] At para. 13
[15] Somewhat curiously, **Presidential** was not mentioned at all in Lord Scott's judgment, although Lord Hobhouse, who wrote the judgment in that case, was also a member of the panel.

[29] The judgments in both **Presidential** and **Matadeen** therefore provide direct authority for, as it was neatly put by Hosein J at first instance[16] in the latter case, treating the word "including" in section 10(1) of the T & T Act as "a word of extension [which] means 'as well as' or 'in addition to' or simply 'and'". In other words, in an action under that Act, interest and costs are clearly payable by the insurer to a third party beneficiary of a judgment against its insured, in addition to and irrespective of the statutory minimum. Given the unequivocal nature of these judicial pronouncements, it seems to me that the subsequent amendment to section 10(1) of the T & T Act[17], by virtue of which the word "including" was replaced by the words "in addition to", can only have been intended to make assurance on the point doubly sure.

[30] Before the 2005 amendment, as has been seen, the operative words of section 18(1) of the Act were identical to those of section 10(1) of the T & T Act, as it stood when **Presidential** was decided. As in section 10(1), section 18(1) provided that "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, **including any amount payable in respect of costs and any sum payable in respect of interest on that sum** ..." (my emphasis). It therefore seems to me to be beyond question that, had this court been called upon before 2005 to decide the point of construction which has arisen in this case, it would have considered itself bound to apply the construction sanctioned by the Board in a matter treating with the identical

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[16] Quoted by Lord Scott, at para. 17 of **Matadeen**.
[17] By Act 38 of 1996

legislative language. As Forte P observed in a not dissimilar context in **Globe Insurance**[18], "... we must abide by the interpretation given by the Learned Law Lords to similarly worded Statutes in other territories ..."

[31] No doubt in acknowledgment of this reality, Mr Powell relied entirely on the 2005 amendment as his sole basis for distinguishing **Presidential** and **Matadeen**. It is therefore necessary to consider the provenance of the 2005 Act in some detail. Its origins lie in a perceived injustice of longstanding. Over 30 years ago, in **Central Fire and General Insurance Co. Ltd v Sylvester Hylton**[19], this court confirmed that section 18(1) conferred a statutory right of action on a third party against the insurer, where a judgment against the insured remained unsatisfied. However, it was also held that the insurer was not liable to pay a sum greater than the minimum sum which the insured was required to insure for, irrespective of whether the insurance policy in fact provided for coverage in excess of the minimum. In other words, as Carberry JA explained[20], "the remedy provided only by the statute is limited to what the statute properly construed permits to be recovered". Carberry JA went on to urge a review of the Act by the legislature to, among other things, "consider the desirability of amending section 18(1) to clearly permit recovery of more than the minimum if in fact the insurance policy provides a coverage in excess of the minimum".

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[18] At page 1
[19] (1985) 22 JLR 358
[20] At page 377

[32] 15 years later, in **Globe Insurance**, fortified by another decision of the Privy Council to the same effect[21], this court also concluded that the insurer's liability in an action by a third party under section 18(1) was limited to the statutory minimum. The facts of that case brought into particularly clear relief the appearance of anomaly in the rule. The statutory minimum at the time when that case was decided was $200,000.00. The insured was covered under a policy with a limit of liability of $750,000.00, in respect of "all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of ... bodily injury to any person ..." In separate actions against the insured, each of the third parties was awarded damages well in excess of the policy limit; but, in both cases, the judgments remained unsatisfied. So, each of the third parties commenced action against the insurer to recover the sum of $750,000.00, on the footing that that was the actual amount of the insured's coverage under the policy. And, in each case, this court felt constrained by authority to hold that the third party's right of recovery against the insurer was limited to $200,000.00, being the statutory minimum coverage under the policy.

[33] All three members of the court expressed utter distaste for this result. Walker JA, who delivered the leading judgment, observed[22] that "[i]n its present form the Act produces an unjust result for innocent third parties as the outcome of this appeal must so clearly demonstrate". Accordingly, he concluded, "[i]t should be appropriately

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[21]**Goberdhan v Caribbean Insurance Co. Ltd** [1998] 2 Lloyd's Reports 449, also an appeal from the Court of Appeal of Trinidad & Tobago.
[22]At page 22

amended with the least possible delay". For his part, describing the outcome[23] as "an injustice to insured parties", Forte P observed[24] that "in this case the [insurer] is the beneficiary of a gift as it has collected premiums on a policy of insurance containing an insured amount of $750,000 and will now be liable only for the statutory minimum of $200,000". The learned President therefore joined Walker JA "in strongly recommending that the Statute be amended as soon as possible to avoid what is in my view an injustice to insured parties". And Panton JA (as he then was), echoing the call of his brethren, stated[25] that "[i]t is incumbent on Parliament to amend the legislation so as to prevent injustice to affected persons".

[34] The court's unanimous call for amendment to section 18(1) was finally heeded by Parliament in 2005. The accompanying memorandum stated the following:

> "The Court of Appeal of Jamaica, has on more than one occasion in judgments of that Court, pointed out that the interpretation of section 18(1) of the Motor Vehicles Insurance (Third Party Risks) Act, has resulted in an injustice to injured parties, and has recommended that the statute be amended to avoid this injustice.
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> The recommendation was first made by Carberry, J.A. in 1985 in the case of *Central Fire and General Insurance Co. Ltd. vs. Sylvester Hylton.* In 2000 in the case of *Globe Insurance Company of the West Indies Ltd. vs. Paulettte Johnson and Simsford Stewart,* all three Justice of Appeal (Forte, P., Walker, J.A. and Panton, J.A.) made the strongest possible recommendation that this Act be amended as soon as possible, to avoid an obvious injustice to injured parties.

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[23]At page 2
[24]At page 3
[25]At page 23

> The effect of the amendment, as the Court of Appeal has pointed out, is that 'if insurance companies agree to insure a party to the extent of a sum in excess of the statutory minimum and collect premiums based on that sum, it is unjust to require the companies to pay over to the injured party, only the minimum coverage required by the statute'.
>
> This Bill, therefore seeks to follow the recommendation of the Court of Appeal and to correct the injustice to injured parties."

[35] Hansard[26] reveals that the Bill was tabled in the Senate on 16 September 2005, on a private member's motion moved by Senator Arthur Williams. In introducing the Bill, Senator Williams referred to **Globe Insurance** and, in particular, to the court's strong and unanimous recommendation that section 18(1) be amended in the manner proposed in the Bill. Thereafter, following generally supportive debate, the Bill was passed by the Senate, with a single amendment, with unanimous approval. Just over a month later, after a similarly uneventful passage, the Bill was also passed in the House of Representatives on 18 October 2005.

[36] The 2005 amendment was therefore an explicit response to the inequity highlighted by **Globe Insurance**. As has been seen, that amendment substituted the words "the amount covered by the policy or the amount of the judgment, whichever is the lower" for the words "any sum payable thereunder" in section 18(1). The

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[26]Sensibly, in my view, Mr Powell made no objection to Miss Chai's reliance on this material. Given what Lord Scott described as an inherent ambiguity in the words of the equivalent provision in the T & T Act of the original section 18(1), it seems to me that, in the circumstances of this case, reference to parliamentary material as an aid to the construction of the amended version was amply justified under the doctrine of **Pepper v Hart** [1993] AC 593.

amendment therefore had the effect of making it clear that the limit of the insurer's liability on a third party claim brought pursuant to section 18(1) should be reckoned by reference to the amount actually covered by the policy, and not the minimum amount which the policy is required to cover in order to satisfy the provisions of the Act. So, to take **Globe Insurance** itself as an example, had the 2005 amendment been in place when that case was decided, the third parties would have been able to recover $750,000.00, that is, the amount of the policy limit, instead of $200,000.00, which was the minimum sum which the policy was at that time required to cover.

[37] In the light of this history, it seems to me impossible to maintain that the 2005 amendment was intended by Parliament to affect, in any way, the by then fully settled understanding of the meaning of the words "including any amount payable in respect of costs and any sum payable in respect of interest on that sum …". In these circumstances, I therefore consider that the interpretation given by the Privy Council to section 10 of the T & T Act in **Presidential** remains equally applicable to section 18(1) after the 2005 amendment. Miss Chai has accordingly made good her admirable submission to this effect. The result of this is that, as used in section 18(1), the word 'including' must be read as having expanded the insurer's liability to a third party claimant to include (i) interest on the total judgment from the date it is pronounced to the date of payment; and (ii) costs.

[38] I would only add that, in agreement with the judge, I consider this result to be fully justified by the policy of the Act, which is to protect innocent third parties. It

seems to me that, to paraphrase Lord Hobhouse's conclusions on the point in **Presidential**, the alternative construction would encourage delay on the part of the insurer, provide it with an incentive to defend indefensible claims against its insured and ultimately frustrate the objective of the Act.

[39] These are therefore my reasons for concurring in the result set out at paragraph [2] above.

BROOKS JA

[40] I have read, in draft, the reasons for judgment of the learned President. It accurately expresses my reasons for concurring with the decision handed down by the court in this case.

MCDONALD-BISHOP JA

[41] I too have read the draft reasons for judgment of the learned President. I find that they entirely reflect my reasons for concurring that the appeal should be dismissed and the consequential orders made in the terms set out in paragraph [2] above. Accordingly, I adopt his reasoning and conclusion and I have nothing useful to add.