JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 70/99

COR: THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

BETWEEN	**GLOBE INSURANCE COMPANY OF THE WEST INDIES LIMITED**	**DEFENDANT/ APPELLANT**
AND	**PAULETTE JOHNSON SIMSFORD STEWART**	**PLAINTIFF/ RESPONDENTS**

Dennis Goffe, Q.C. and **Dave Garcia** instructed by **Myers, Fletcher & Gordon** for the Appellant

Howard Malcolm instructed by **Henry & Malcolm** for the Respondents

December 6, 7, 1999 and April 14, 2000

FORTE, P.

I have read in draft the judgment of Walker, J.A. and am constrained to agree with his conclusion on the basis that this Court is bound by the decision of Her Majesty's Privy Council. Though I agree that we must abide by the interpretation given by the Learned Law Lords to similarly worded Statutes in other territories I do so with the firm belief that the interpretation so given results in unfairness to the respondents in this case. 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, then in my view it is unjust to require the companies to pay over to the injured party, only the minimum coverage required by the Statute. Had I the freedom to find as I did in the case of the ***Administrator General v. National Employees Mutual Association Ltd*** [1988] 25 JLR 459 at p. 470, I would again return to the words I used there:

> "Such a construction would in my opinion not be in keeping with the purpose of the Act i.e. to protect the rights of third parties, particularly when the insured is unable to pay. To say that the insurer could enter into a contract of insurance to indemnify the insured in respect of liabilities to third parties, to an amount in excess of the minimum statutory requirements, and then deny the third party of that protection by reliance on the very section of the statute which is directed at securing his protection, would to my mind, be absurd, and would do injustice to the intention of the legislation."

Given the decision of Her Majesty's Privy Council in ***Goberdhan v. Caribbean Insurance Co Ltd*** [1998] 2 Lloyd's Law Reports 449 referred to and followed by Walker, J.A. it appears my words (supra) have now become a reality, and the interpretation of the Statute given in that case has in my opinion resulted in the absurdity of which I spoke, and created a situation contrary to what I perceive must have been the intention of the legislation. Consequently, I join with Walker, J.A. in strongly recommending that the Statute be amended as soon as possible to avoid what is in my opinion an injustice to insured parties. As an

example, in this case the appellant 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.

I regrettably agree that the appeal must be allowed.

WALKER, J.A.

The resolution of the central issue which is raised by this appeal hinges on a true construction of the Motor Vehicles Insurance (Third - Party Risks) Act (the "Act"). Of particular importance is the inter-relation between S.18 (1), and S.5(1) and (2)(a) of that enactment which, respectively, read 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 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 enactment relating to interest on judgments.

> **5.** (1) In order to comply with the requirements of this Act the policy of insurance must be a policy which --
>
> (a) is issued by a person who is an insurer; and
> (b) subject to the provisions of this section, insures such person, persons or classes of persons as may be specified in the policy, against any liability incurred by him or them 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.
>
> (2) In respect of death or bodily injury claims, the policy shall be required to cover --
>
> (a) subject to paragraph (b), liability to any one person for a sum of not less than two hundred thousand dollars;"

On March 5, 1994 the respondents, Johnson and Stewart, were injured in an accident involving a motor vehicle of which Winston Brown was the registered owner. As a consequence the respondents brought separate actions in which each obtained a judgment against Mr. Brown. On January 28, 1997, pursuant to an assessment of damages Johnson was awarded a sum of $1,561,834.76 with interest and costs, and on September 17, 1997 after a similar exercise Stewart was awarded a sum of $1,364,780.00 with interest and costs. In neither case was the judgment satisfied and so the respondents commenced civil proceedings against the appellant to recover in each case a sum of $750,000 claiming that

pursuant to S. 18 of the Act the appellant was liable to pay such a sum of money being the actual amount of the coverage of Mr. Brown's insurance policy. There was no dispute as to the fact that at the material time (i.e. the date of the accident) Winston Brown was insured with the appellant under a valid policy of insurance which complied with the provisions of the Act. The policy was of a limit of $750,000 and was stated to be 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 except..." The exceptions to which the policy was subject are irrelevant to the present case. In defence of each suit the appellant contended that on a true construction of sections 18(1) and 5(2) (a) of the Act its legal obligation to each of the respondents was to pay an amount of $200,000 being the statutory minimum cover required by s.5 (2) (a) of the Act. On that basis the appellant paid to each respondent a sum of $200,000 purportedly in final discharge of its liability in the matter. On February 2, 1999 Stewart filed a summons for summary judgment by which he sought to recover from the appellant a further sum of $550,000 being the difference between the amount paid to him and the limit of the insured's actual coverage. In response to this summons the appellant filed a summons seeking, on a joint application of the parties as it stated, a determination by the court of the following question:

> "Under the provisions of the Motor Vehicle Insurance (Third Party Risks) Act and on the facts admitted on the pleadings, what is the amount which the Defendant is required to pay to the Plaintiff?"

This summons was heard by Miss Justice Smith (Ag.) who on May 7, 1999 ordered, inter alia, as follows:

> "The defendant is liable to each of the plaintiffs for: The sum of $750,000, the limit of liability under the policy of insurance issued by the defendant to its insured, Winston Brown, of which the plaintiffs each acknowledge receiving the sum of $200,000."

It is from this order of the court that the present appeal is taken.

The earliest case to which our attention has been drawn is ***Free Lanka Insurance Co. Ltd. V. Ransinghe*** [1964] A.C. 541, a decision of the English Privy Council. So far as is material the headnote to that case reads as follows:

> "By section 133 of the Motor Car Ordinance, 1938,of Ceylon: '(1) If after the certificate of insurance has been issued under section 128 (4) to the persons by whom a policy has been effected, a decree in respect of any of such liability as is required... to be covered by a policy of insurance... is obtained against any person insured by the policy... the insurer shall... pay to the persons entitled to the benefit of the decree any sum payable thereunder in respect of that liability...
>
> The respondent, who was injured in March, 1948, while driving a motor car which was in collision with a lorry owing to the lorry driver's negligence, was, on September 24, 1951, awarded damages of Rs.15,000 by the District Court (increased on appeal to Rs.30,000) against the

> owner of the lorry, who was insured against the third party risk, limited by statute to Rs. 20,000, with the appellant insurance company. The respondent obtained leave to levy execution for his damages, but it was not known whether in fact he had recovered anything. Thereafter, on September 17,1957, he began the present action against the appellants and obtained judgment for Rs.30,000 in the District Court, which was affirmed by the Supreme Court."

Inter alia, it was held:

> "The appellants' liability was limited to Rs.20,000. Circumstances might arise, apart from the case of limitation of liability in respect of a motor lorry under section 128 (1) (c) of the Ordinance of 1938 (section 100 (1) (c) of the Act of 1951), in which the insurer might be ordered to pay to the third party sums in excess of the insurer's liability to the assured. Having regard, however, to the words "required... to be covered" in section 133 of the Ordinance (section 105 of the Act), that section did not render in such a case as the present the insurer liable to the third party for a greater sum than that for which he was liable to the assured under section 128 of the Ordinance".

Then followed the local decision in ***Jamaica Co-operative Fire and General Insurance Co. Ltd. v Sanchez*** [1968] 11 J.L.R. 5. There the appellant was party to a comprehensive policy of insurance under which the appellant's liability to the insured in respect of any one accident was unlimited. The respondent, having been injured in an accident involving the motor vehicle insured, sued in the Supreme Court and was awarded damages in a sum of £3,513.1s.6d against the insured. That judgment remaining unsatisfied, the respondent brought an

action against the appellant under the provisions of s.16 (1) of the Motor Vehicles Insurance (Third –Party Risks) Law, Cap. 257 (now s.18 (1) of the Act) to recover the amount of the judgment debt and costs as well as interest thereon. The respondent succeeded in those proceedings and was awarded a judgment for Σ3,513.1s.6d less an amount of Σ94.14s. That judgment was appealed, the appellant contending that the extent of its liability to the respondent was no more than Σ995, being the minimum liability required to be covered by the policy under the statute. This court (Henriques P, Moody and Luckhoo J.J.A) held that as the liability of the appellant to its insured under the policy was unlimited in respect of any one accident, the amount payable by the insured under the judgment obtained by the respondent in respect of liability required to be covered by the law would be the amount of the judgment awarded in respect of such liability and, accordingly, the appellant was liable under s.16 (1) to the respondent for the full amount of the judgment obtained by him against the insured. In his judgment Luckhoo J.A., having considered the ***Free Lanka*** case, came to the conclusion that the limit of the insurer's liability derived not only from the statute, but also from the terms of the policy itself.

Next comes the decision of the English House of Lords in ***Harker v Caledonia Ins. Co.*** [1980] 1 Lloyd's Law Reports 556. In that case a British soldier stationed in British Honduras suffered grave injuries in a motor

vehicle accident in that country. In an action brought against the insured he recovered by way of a consent judgment in the Supreme Court of Belize, a sum of $175,000 (Belizean currency) together with interest and costs but the car driver responsible was unable to pay any part of that judgment. The car driver was insured by the defendants under a motor vehicle insurance policy issued pursuant to the British Honduras Motor Vehicle Insurance (Third Party Risks) Ordinance, 1958, the material clauses of which provided inter alia as follows:

> "**4.—**(1) In order to comply with the requirements of this Ordinance, a policy of insurance must be a policy which...
>
> (a) insures such person... in respect of any liability which may be incurred by him...in respect of the death or bodily injury to any person caused by or arising out of the use of the motor vehicle on a public road:
>
> Provided that such policy shall not be required to cover ...
>
> (v) Liability in respect of any sum in excess of four thousand dollars arising out of any one claim by any one person...
>
> 20.(1) If...judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4 (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... 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 including any amount payable in respect of costs and any sum payable in respect of interest on that sum..."

The defendants paid to the plaintiff the sum of $4,000 and the issue before their Lordships' House was whether the defendants were liable to pay the balance of $171,000. Previously the plaintiff's claim had failed at first instance before Donaldson J, and in the Court of Appeal (Roskill and Cumming Bruce L.JJ, Lord Denning, M.R., dissenting) it was held, inter alia, dismissing the appeal that the wording of the British Honduras Ordinance was clear and unambiguous on the point at issue and that its construction turned upon the inter-relation between S.4(1) and s.20(1) of the Ordinance. In the course of his speech with which their Lordships all concurred, Lord Diplock said at p.558:

> "In a sentence the question of construction is: Is 'liability in respect of any sum in excess of four thousand dollars arising out of any one claim by any one person' which by proviso (v) to sub-s. (1) (b) of s.4 a policy is *not* required to cover, nevertheless included in 'such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4' where that expression is used in s. 20 (1)? So stated, the only possible answer is, in my view 'no'."

In distinguishing the ***Free Lanka*** case Lord Diplock observed at p. 559:

> "My Lords, in the courts below there was some discussion of the judgment of the Judicial Committee of the Privy Council in ***Free Lanka Insurance Co. Ltd v Ranasinghe,*** [1963] 2 Lloyd's Rep. 419;[1964] A.C. 541, which was a decision under the Motor Car Ordinance 1938 of Ceylon. Some justifiable criticism was directed to part of

> the reasoning of Lord Evershed who delivered the opinion of the Board in that case; but the terms of the Ceylon Ordinance differed from that of the ordinance which your Lordships have now to construe; and I do not find that case or other cases which dealt with legislation upon the same topic in other countries and in the other terms helpful in deciding the only question of construction that concerns this House in the instant case."

The case of ***Central Fire and General Insurance Co. Ltd. v Sylvester Hylton*** [1985] 22J.L.R. 358 follows next in chronological order. On appeal to this Court (Rowe P., Carberry and Campbell, J.J.A.) it was held, inter alia, that:

> "Section **18** (1) of the Motor Vehicle Insurance (Third Party Risks) Act conferred on a third party who recovered judgment against a person insured under a motor insurance policy a statutory right to maintain an action against the insurer where judgment recovered against the person insured remained unsatisfied. However, an insurer was not liable to pay a greater sum than that for which it was liable to indemnify the insured under the policy of insurance."

In his contribution Carberry J.A. was at great pains to construe s.18 (1) of the Act, and although much of what was said may, ***strictu sensu,*** be regarded as ***obiter dicta,*** the judgment is noteworthy for the remarkable foresight of the learned judge. In his analysis of the ***Free Lanka, Sanchez and Harker*** cases Carberry J.A. said at p. 377:

> "Both the ***Free Lanka*** case and ***Harker's*** case were cases in which the insured's policy was an Act policy, that is, it was in terms limited to the minimum amount prescribed by the Act. In view

> of this, it is not possible to predict with any degree of certainty how the Privy Council or the House of Lords would react to a case in which the coverage of the policy exceeded the statutory minimum; it seems likely that in construing the recovery section, section 18 (1), they would hold that in the context of the statute what the third party is allowed to recover from the insurer is the minimum sum which the insured is required to insure for; that is to hold that the remedy provided only by the statute is limited to what the statute properly construed permits to be recovered.
>
> If that is so, then it follows that our own decision in the ***Sanchez*** case may be open to question elsewhere. The decision has however, stood for some seventeen years and countless settlements have been made on the basis that the actual coverage of the policy represents the ceiling of the liability of the insurer. What is necessary as a matter of urgency is for the Legislature to review the Act, to decide if the insurance cover should be unlimited as in England (and now in the Bahamas and Barbados), or if it is desirable to retain a limit, and then re-examine the existing limit and also to 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."

It was within such a legal framework as I have endeavoured to describe that it fell to this court, (Forte, Downer, and Gordon JJA) to hear and determine the legal issues that arose in the case of ***The Administrator General v National Employees Mutual Association Limited*** [1988] 25 J.L.R. 459. So far as is relevant to the present case the headnote to that case reads as follows:

"The respondent issued a certificate of insurance to Jonathan Daley in respect of a motor truck owned by him. The policy of insurance contained a clause which limited the liability of the respondent to indemnify Daley only where the vehicle was being used for certain specific purposes. It excluded liability if the vehicle was being used for hire or reward. On the 10th January, 1978 while driving the truck Daley was involved in an accident which resulted in the death of Hopeton Mahoney. The appellant, the administrator of the estate of Mahoney, brought an action against Daley and recovered damages totalling $271,000.00 with interest. Daley was unable to satisfy the judgment and the appellant brought an action against the respondent pursuant to the Motor Vehicle Insurance (Third Party Risks) Act, Section 18 (1). The Supreme Court gave judgment for the respondent on the basis of evidence that at the time of the accident the vehicle was being used to transport goods for hire or reward. The appellant appealed.

Held (i)...
(ii)...
(iii)...
(iv) Notwithstanding the fact that paragraph (v) of the proviso to section 5 (1) (b) of the Act states a minimum liability which a policy of insurance issued pursuant to the Act should cover, where the insurer issues a policy which limits the insurer's liability in respect of third party risks to an amount in excess of the statutory minimum the third party is entitled to recover from the insurer not the statutory minimum stated in section 5(1)(b) but the actual limit of liability imposed by the policy.

(v) Where the judgment obtained by the third party against the insured exceeds the insurer's limit of liability under the policy the third party is not entitled to recover from the insurer any

> more than the limit of liability imposed by the policy. The appellant was therefore entitled to recover from the respondent the sum of $250,000.00 which was the limit imposed by the policy."

In his judgment, Forte, J.A.(as he then was) considered **Sanchez** and said that he saw no warrant for disagreeing with the reasons and conclusions set forth by Luckhoo J.A. in that case, and this in spite of the doubts expressed by Carberry J.A. In rationalization of his judgment Forte, J.A. put the matter this way at p. 470:

> "As I understand the contrary interpretations of the section, there is a suggestion that the words 'such liability as is required to be covered by a policy' under paragraph (b) of subsection (1) of section 5 denies the third party's right to recover the amount insured in the policy if it is in excess of paragraph (v) of the proviso to section 5 (1) (b) of the Act and restricts him to the minimum amount for which the insured is required to be insured by those provisions. Such a construction would in my opinion not be in keeping with the purpose of the Act i.e. to protect the rights of third parties, particularly when the insured is unable to pay. To say that the insurer could enter into a contract of insurance to indemnify the insured in respect of liabilities to third parties, to an amount in excess of the minimum statutory requirements, and then deny the third party of that protection by reliance on the very section of the statute which is directed at securing his protection, would to my mind, be absurd, and would do injustice to the intention of the legislation."

For his part, in construing s.18 of the local Act, Downer J.A. expressed the view that the approach taken by Carberry J.A. was "an odd way of reading an Act". Said Mr. Justice Downer at p. 476:

> "The point is that there are similarities in policies which comply with the requirements of the Act".

In his judgment, Gordon J.A. (Ag.) in agreeing with the reasoning and conclusions of Forte and Downer J.J.A., was content to observe at p. 477:

> "The concern of the law is the protection of third parties and in furtherance of this protection section 18 provides for the third party to recover from the insurer the judgment he had obtained against the insured which remains unsatisfied. This obtains 'notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy'. The liability in respect of which the third party can proceed must be a *'Liability covered by the terms of the policy'*."

However, nearer in point to the present appeal is the case of ***Suttle v Simmons*** [1989] 2 Lloyd's Law Reports 227, a decision of the Privy Council in which Harker's case was considered and followed and the ***Free Lanka*** and ***Sanchez*** cases referred to in the judgment of Lord Keith of Kinkel. In ***Suttle*** it was held that on a true construction of section 6(1) of the Motor Car Insurance (Third Party Risks) Act, 1943 of Bermuda, (the equivalent of s.18 (1) of the Act) the words "such liability as is required to be covered by a policy under paragraph (b) of subsection 1 of section 4' did not include liability in excess of $24,000 arising out of any one

claim by any one person since by virtue of proviso (iii) to s. 4(1) (b) such a liability was not required to be covered; the effect of s. 6(1) was to limit the amount which the injured third party could recover directly from the insurers." In that case the amount covered by the policy under the 1943 Act of Bermuda was $125,000, a sum greater than the statutory minimum of $24,000, and the action by the respondent against the insurers was for a sum of $100,000 which was within the amount so covered. The question at issue was whether in a situation where the amount covered by the policy exceeded the statutory minimum the injured party could recover from the insurers a sum in excess of the statutory minimum but within the amount generally covered by the policy. In answering that question in the negative Lord Keith referred to Lord Diplock's reasoning in Harker's case and opined that that reasoning might be applicable to the case with which their Lordships were then concerned. Lord Keith then went on to refer to the ***Sanchez*** case but stopped short of holding that that case was wrongly decided. Said Lord Keith at p. 232:

> "Their Lordships were referred to the case of ***Jamaica Co-operative Fire and General Insurance Co. Ltd. v Sanchez,*** [1968] 13 W.I.R. 138. It was there decided by the Court of Appeal of Jamaica, on the construction of the Jamaican legislation corresponding to the Bermudan Act of 1943, that where the policy of insurance afforded cover for an unlimited amount an injured third party was entitled to recover directly from the insurers, under the equivalent enactment to s.6 of

> the Bermudan Act, a sum in excess of the statutory minimum for which he had obtained judgment against the insured. The reasoning of Luckhoo J.A. who delivered the leading judgment, would appear to be in certain respects inconsistent with that of Lord Diplock in the later case of ***Harker*** . However, the Jamaican enactment equivalent to s.20 of the British Honduras Ordinance and s.6 of the Bermudan Act contained a sub- s.(2) providing:-
>
> No sum shall be payable by an insurer under the foregoing provisions of this section: (a) liability for which is exempted from the cover granted by the policy pursuant to section 4, subsection (1) of this Law...
>
> Section 4(1) of the Law was in terms similar to s.4(1) of the British Honduras Ordinance and s.4(1) of the Bermudan Act. It was argued that the effect of the quoted provision was that the amount recoverable by the injured third party from the insurers was not limited by any of the provisos to s.4(1) unless the policy itself expressly provided for such limitation. Accordingly, their Lordships would not be prepared, without hearing fuller argument, to hold that the case was wrongly decided."

However, I think that the recent Privy Council decision in ***Goberdhan v Caribbean Insurance Co. Ltd.*** [1998] 2 Lloyd's Law Reports 449, to which our attention was adverted by Mr. Goffe, puts the matter beyond doubt. ***Goberdhan*** originated in the Republic of Trinidad and Tobago. The headnote to the case provides a convenient summary of the relevant facts. It reads, inter alia, as follows:

> "On Dec. 23, 1977 the second plaintiff while driving a motor car belonging to the first plaintiff was

involved in an accident with a motor car driven by Mr. Sarran Sampath. Although the damage to the first plaintiff's car was comparatively slight, the second plaintiff sustained personal injuries which rendered him paraplegic.

The plaintiffs obtained judgment against Mr. Sampath and sought to recover from the defendants, as Mr. Sampath's insurers, all the moneys awarded against him.

The defendants contended that their liability to the second plaintiff was limited by the terms of the policy to U.S.$250,000 per person per claim or alternatively it was subject to a statutory limit of U.S.$50,000.

The statute in force at the date of the accident was the Motor Vehicles Insurance (Third Party Risks) Ordinance Ch. 16, No.4 (the Ordinance).

Section 8 (1) of the Ordinance provided inter alia:

> If after a certificate of insurance has been delivered under subsection (4) of section 4 of the person by whom a policy has been effected, judgment in respect of any liability as is required to be covered by a policy under paragraph (1) (b) of section 4... 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...

By s.4 it was provided inter alia:

> (1) In order to comply with the requirements of this Ordinance a policy of insurance must be a policy which --... (b) insures such person... in respect of any liability which may be incurred by him... in respect of the ... bodily injury to any person caused by or arising out of the use of the motor vehicle on a public road:

Provided that such a sum shall not be required to cover--... (v) liability in respect of any sum in excess of $4,800 arising out of any one claim by any person...

It was common ground that this figure was increased by Act 24 of 1966 to U.S. $50,000.

Held, by Razack, J that the defendant's liability to the second plaintiff was subject to a statutory limit of U.S.$50,000.

The plaintiffs appealed.

Held, by C.A. of Trinidad and Tobago that the liability of the defendants fell to be determined under Ordinance Ch.16 No.4 which limited the liability of the defendants to U.S.$50,000 with interest and costs.

The plaintiffs appealed.

Held, by P.C. (Lord Slynn of Hadley, Lord Steyn, Lord Clyde, Lord Hutton and Sir Andrew Leggatt), that (1) the insurers' liability to a third party is determined, subject to the permissible limit of liability, by reference to what that policy which rendered the insurer liable to his insured in respect of the accident was required to cover, because the policy in question was not required to cover liability in excess U.S.$50,000, that was the applicable limit (see p. 451 col. 2).

(2) the insurers were liable for no more than such liability as was required to be covered under s.4(1) (b) no liability was required to be covered in excess of the amount prescribed by par.(v) ; and the effect of s.8 (1) was therefore to limit the amount which the third party could recover directly from the insurers (see p.452, col.1);

> (3) since s.8(1) provided that 'the insurer shall pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability' it was arguable that 'thereunder' referred not to the section but to the judgment; but that would not avail the plaintiffs because the right to payment was only to any sum payable 'in respect of the liability'; 'the liability' was that which was identified earlier in the sub-section namely 'any such liability as is required to be covered by a policy' under s.4 (1) (b); that the liability was limited to U.S. $50,000.00; and the appeal failed."

In this case ***Harker*** and ***Suttle*** were considered and applied. Here also the decision in ***Sanchez*** must be taken to have been over-ruled **sub silentio** since, significantly, no reference was made to Lord Keith's reservation expressed in ***Suttle*** as to the correctness of that decision.

Against this background, Mr. Malcolm for the respondents submitted that under the Act the cumulative effect of s.18 (1), s.5 (1) and s.5 (2) (a) is that the amount recoverable by an injured third party from an insurer is not limited to the statutory minimum coverage unless the policy itself expressly provides for such limitation. Mr. Malcolm relied on the local cases referred to earlier in this judgment and pointed specifically to the language of s.5(2) (a) in arguing that there the use of the words "not less than" implied a legal obligation on the part of an insurer to pay to an injured third party an amount in excess of the statutory minimum coverage up to the extent of the actual coverage of

the policy. In my opinion the issue at hand must, ultimately, be determined on an answer to the question whether in interpreting the provisions of s.18(1) that " the insurer shall... pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability", " the liability" is that which is identified earlier in the subsection, namely "any such liability as is required to be covered by a policy under subsections (1), (2) and (3) of section 5". The question is similar to that which arose for determination in ***Harker, Suttle*** and ***Goberdhan***. Comparing then the relevant provisions of the Act with the legislation construed in ***Harker, Suttle*** and ***Goberdhan*** one finds that s.18 (1) of the Act, s. 20 (1) of the British Honduras Ordinance in ***Harker,*** s.6(1) of the Bermuda Act in ***Suttle*** and s.8(1) of the Trinidad and Tobago Ordinance in ***Goberdhan*** are in **pari *materia*** with each other. Similarly, s.5 (2) (a) of the Act, proviso (v) to s.4 (1) (b) of the British Honduras Ordinance, proviso(iii) to s.4(1)(b) of the Bermuda Act and proviso (v) to s.4 (1) (b) of the Trinidad and Tobago Ordinance all correspond with each other in prescribing the minimum coverage required under a policy of insurance. On this basis I conclude that the construction placed on the legislative provisions in ***Harker, Suttle*** and ***Goberdhan*** is applicable to the legislation which falls to be construed in the present case. That being so, it follows that in the present case the liability of the appellant to each of the respondents is limited to an

amount of $200,000 being the minimum statutory coverage which the appellant has already paid.

This Court is bound by the Privy Council decisions in ***Suttle*** and ***Goberdhan.*** Therefore, inasmuch as I find myself unable to distinguish on principle any of the local authorities to which reference has been made in this judgment, I reluctantly conclude that those cases were wrongly decided and ought not to be followed in the future. I say reluctantly because the earliest of them, namely ***Sanchez,*** which was decided in 1968, has stood for well nigh on 32 years. My reluctance is all the more real since I am convinced that 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. It is an irony that the Act should operate to the detriment of a third party victim in a case where such a person becomes entitled to be paid compensation in an amount which exceeds the statutory minimum of an insured's coverage but falls within the actual coverage of the policy. True enough that under the Act an insured may claim indemnity from an insurer, but this can be of no comfort to a hapless third party who seeks to recover compensation from an impecunious insured. In its present form the Act produces an unjust result for innocent third parties as the outcome of this appeal must so clearly demonstrate. It should be appropriately amended with the least possible delay. In the meantime it

is not permissible for this Court to attempt to put the matter right by judicial surgery applied Lord Denning style.

In the result I would allow this appeal with costs here and below to the appellant to be agreed or taxed.

PANTON, J.A.

In view of the fact that this Court is bound to follow the decisions of the Judicial Committee of the Privy Council in a situation such as that which presents itself in this case, I have no choice but to agree with the learned President and Walker, J.A. that this appeal ought to be allowed. It is incumbent on Parliament to amend the legislation so as to prevent injustice to affected persons.

Fifteen years ago Carberry, J.A. in clear language urged the Legislature to review the Act in question. It is hoped that the call will now be heeded.

FORTE, P:

Appeal allowed. Costs to the appellant both here and below to be taxed if not agreed.