COMPULSORY INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY CLAIMS

Between 1936 and 1943 all States in Australia introduced legislation to compel owners of motor vehicles to insure against liability to third parties. The need for such legislation had become apparent because of the increasing number of cases in which a person injured in a motor vehicle accident had been unable to obtain satisfaction of a judgment against a negligent but impecunious driver; it was suprising to find how many motorists had not insured against such a liability while insurance remained voluntary.

The Western Australian legislation, the Motor Vehicle (Third Party Insurance) Act was passed in 1943, and was largely modelled on similar statutes of New South Wales and South Australia. It provided that every owner of a motor vehicle must take out a policy of insurance with one of a large number of "approved insurers," insuring the owner and any other person who drove the vehicle with or without the owner's consent, in respect of liability for negligence resulting in the death of or in bodily injury to any person and caused by or arising out of the use of the vehicle. The Act permitted policies to limit the insurer's liability to £2,000 for any one passenger's claim and to £20,000 in respect of claims by all passengers in the vehicle: sec. 6 (2) (a). Originally policies were not required to indemnify the owner in respect of claims by certain relatives or by a servant engaged on the owner's business (sec. 6 (2) (b)); but the permitted exemptions were repealed in 1944.[1]

Under the Traffic Act 1919-1949 every motor vehicle in the State must be registered with the Police Traffic Branch in the metropolitan area or with a local authority in the country; the registration must be renewed annually. After 1943, registration or the renewal thereof could not be effected without production of an insurance certificate.

An injured person who obtained judgment against the owner or driver of an insured vehicle was entitled to recover the amount of the judgment and costs from the insurer if the judgment debtor failed to pay. It was no defence to an insurer in an action by the judgment creditor that the policy had been obtained by fraud or non-disclosure, or that the insured person had failed to comply with any of the conditions or warranties of the policy (sec. 7 (4)); but

[1] Motor Vehicle (Third Party Insurance) Act Amendment Act, No. 40 of 1944, sec. 4.

in such circumstances, after having satisfied the judgment, the insurer was given a right of recovery against the insured (sec. 7 (5)).

Provision was then made that if the insured person were dead or could not be served with process, the injured person could take proceedings against the insurer and obtain against him the same judgment as he would have been entitled to recover from the insured person (sec. 7 (2)). If the identity of the vehicle which caused the injury could not be ascertained, the injured person was entitled to proceed against a "nominal defendant" (to be nominated by the Minister from among the approved insurers) and to recover from him the same judgment as he could have obtained against the driver (secs. 7 (3) and 9). Elaborate provisions were also made in regard to uninsured vehicles. Here a judgment obtained against the owner or driver, if not satisfied within one month, could be entered up against a nominal defendant; the latter, having paid the amount of the judgment, was then given a right of recovery against owner or driver. Similarly, where the owner or driver of an uninsured vehicle was dead or could not be found, the injured person could proceed against a nominal defendant. All amounts paid by a nominal defendant in satisfaction of any of these judgments and costs were repaid to him by all the approved insurers in proportion to their premium income.

The Act required the owner and the driver of a vehicle involved in an accident which resulted in death or bodily injury to give notice to the insurer of the fact, time, place, and circumstances of the accident, and to notify the insurer of any claim made (sec. 10). The insured person was not permitted, without the consent of the insurer, to enter upon litigation or to make any settlement of a claim or any admission of liability. If the insured person committed a breach of any of the foregoing provisions the insurer was entitled to recover from him all moneys and costs paid by the insurer in relation to any claim arising out of the particular accident. This latter provision was very strict in its terms and could operate harshly against an insured person; but it is understood that in practice the insurers did not seek to enforce this right of recovery unless the breach was so serious as to prejudice them in the defence of a claim.

A further provision (sec. 11) permitted the insurer to conduct negotiations in respect of any claim against an insured person and to assume the conduct and control of any legal proceedings resulting from such a claim. The insurer's liability attached even where a driver was using an insured vehicle without the consent or authority of the owner, and if an insurer in fact became bound to pay a judgment recovered against such a driver, he was given a right of recovery against the latter.

Actions against the owner, driver, or insurer of a motor vehicle, or against a nominal defendant, are to be tried without a jury (sec. 16). In this respect the provisions of similar legislation in South

Australia[2] and Queensland[3] were followed; no doubt it was expected that a judge sitting alone would be less influenced than a jury, on the score of damages, by knowledge of the fact that the defendant was insured or that the damages would have to be met by an approved insurer. An insurer was permitted to cancel the policy of insurance on fourteen days' notice (sec. 19) but in practice, by arrangement with the Government, advantage was taken of this right only in very special circumstances. Every insurance policy enured to the benefit of subsequent owners of the insured vehicle.[4] As in most other States, special provision was made to declare void any contract by which any person abandoned in advance his right to claim damages for the negligence of any other person in the driving of a motor vehicle (sec. 21).

Section 24 of the Act provided that no action for damages for death or bodily injury arising out of the use of a motor vehicle should be maintainable against an owner, driver, or insurer of a motor vehicle unless the prescribed notice in writing was given to the insured person or the insurer within one month of the date of the accident. The harshness of this provision very soon became evident; it not only affected the injured person's right of recovery against the insurer, but drastically reduced his common law right of suing the negligent owner or driver. Hence an amendment was passed in 1944, with retrospective effect to the commencement of the 1943 Act, which provided for notice as soon as practicable, and for the claim for damages to be made within twelve months; with a proviso in each case that failure to comply with the section would not be a bar to action if the defendant were not prejudiced by such failure or if it were occasioned by mistake, absence from the State, or other reasonable cause. This amended provision was largely copied from a similar section in the Workers' Compensation Act 1912-1944; but in *Wege v. Elphick*,[5] Dwyer, C.J., doubted whether judicial interpretation of the relevant section in the Workers' Compensation Act afforded a safe guide in construing the section in the Motor Vehicle (Third Party Insurance) Act.

The Act also allowed an insured person or an insurer defending a claim to require the injured plaintiff to submit to examination by a medical practitioner nominated and paid by insured or insurer; if the injured person refused without reasonable cause to submit to such examination his action was stayed (sec. 25).

The Act set up a statutory committee consisting of the Auditor-General, the manager of the State Government Insurance Office, two persons representing approved insurers, and two persons repre-

[2] Road Traffic Act 1934-1936, sec. 70i; see Vol. 7 of South Australian Statutes 1837-1936.
[3] Motor Vehicles Insurance Act 1936, sec. 12; see Vol. 9 of Public Acts of Queensland (Reprint) 1828-1936.
[4] Sec. 19A. inserted by the amending Act of 1944.
[5] (1948) 49 W.A.L.R. 83.

senting motor vehicle owners, to advise the Minister as to the premiums to be charged for insurance and as to whether the insurance policies issued contained any unreasonable terms or conditions (sec. 26). In practice this committee has virtually fixed from time to time the premiums chargeable by all insurers and has approved a standard form of policy for the purposes of the Act.

Between 1944 and 1948 the Act undoubtedly achieved its main purpose; but some complaints were made as to the underwriting and claims costs of the numerous insurance companies handling the business, and a number of practical difficulties were experienced by owners of motor vehicles in obtaining the requisite insurance cover prior to the annual renewal of the registration of the vehicle. After conferences between the Government and all interested bodies, it was decided in 1948 to abolish the system of approving numerous individual insurers and to substitute a single insurer for the purposes of the Act. An amending Act[6] accordingly set up a new statutory body corporate known as the Motor Vehicle Insurance Trust; as from 1st July 1949 all insurance policies under the Act must be taken out with the Trust. All approved insurers were given the right to participate in the Trust on a contributory basis; the majority availed themselves of that right. The Trust, as so formed, is administered by a committee of five, one being the manager of the State Government Insurance Office and the other four being nominees of the other participating insurers. This committee completely controls the operations of the Trust; it appoints a manager and other officers, instructs bankers, barristers, solicitors, accountants, medical practitioners, and so forth. Its books of account are open to inspection by the Minister in charge of the Act and by the Auditor-General; a copy of its annual accounts is to be laid before both Houses of Parliament. Apart from this it is free from Government control,

A special fund is set up and administered by the Trust into which are paid all premiums for insurance and from which are paid all claims, costs, and administrative expenses. Initially, all the former approved insurers who agreed to participate in the Trust contributed to its financial establishment. The initial contributions and future profits and losses are borne rateably by the participating insurers according to their respective premium incomes from insurances under the Act during the year ended 30th June 1948.

Arrangements have been made by the Trust for the Police Traffic Branch in the metropolitan area and for local authorities in country areas to issue policies and to collect premiums on behalf of the Trust simultaneously with the issue of the annual motor vehicle licences. The policy is printed on the back of the licence itself. Premiums collected by the above authorities are remitted by them to the Trust at regular intervals.

[6] Motor Vehicle (Third Party Insurance) Act Amendment Act, No. 31 of 1948; see *Review of Legislation 1948,* 316-317 *supra.*

All references in the 1943 Act to "an approved insurer" are amended by substituting "the Trust," which now takes the place of the nominal defendant in cases where vehicles are uninsured or the owner or driver is dead or cannot be found.

It is believed that this is the only State in Australia[7] in which a statutory monopoly has been created to handle all insurances under this type of legislation. As yet it is too early to make a definitive pronouncement as to its success or failure. There is no doubt, however, that underwriting costs will be reduced very considerably, and there is every reason to believe that with a single body handling the negotiation, settlement, or litigation of claims the costs incurred in relation to claims should also be materially reduced. It is obvious that in many cases litigation will now be unnecessary. Under the 1943 Act, one fruitful source of litigation occurred where passengers were injured as a result of collision between two vehicles, and the respective insurers of the vehicles sought to cast the blame for the accident on the other. Both vehicles will now be insured with the Trust; the only litigation that could ensue would be the assessment of the damages to be paid to the passengers.

It is understood that during the past year claims have been increasing both in number and amount. This is no doubt due to the larger number of vehicles now on the road since the discontinuance of petrol rationing,[8] and to an appreciation on the part of the courts that the value of money has decreased. These factors would normally have led to marked increases in premium rates, but with the establishment of the Trust and the consequential reduction of overhead charges, it may be that premiums in this State will remain relatively static in comparison with other States. One final point of interest is that the Trust has adopted the policy, for the time being, of distributing its work broadly among those members of the legal profession who previously acted for the numerous approved insurers under the 1943 Act. This no doubt has both advantages and disadvantages from the point of view of the Trust; but the profession has not unnaturally regarded it as a reasonable and proper action in the circumstances.

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[7] In the United States of America it would appear that Massachusetts is the only State which has adopted compulsory insurance, and there the business is written by individual insurers. See the interesting article, *Recent Developments in Automobile Accident Compensation*, by Frank P. Grad, in (1950) 50 Columbia L.R. 300. That article also discusses the recent Saskatchewan Act for automobile accident compensation which imposes liability regardless of fault after the manner of the Workers' Compensation Acts.

[8] It may be, too, that with compulsory insurance against third party claims the careful driver occasionally relaxes his vigilance and that the careless driver becomes reckless.