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*405 The Concept of Insurable Interest and the Road Transport Act 1987

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*405 The Concept of Insurable Interest and the Road Transport Act 1987

Abstract

This article explores the long-standing impact of the concept of "insurable interest" in respect of claim for damages by road accident victims and the effect of the recent Court of Appeal case of Muhamad Haqimie bin Hasim & Anor v Pacific & Orient Insurance Co Berhad (Case No. W-04 (NCC)(W)-15-01/2017) (Unreported) where it was held that in road accident cases the statutory provisions found in the Road Transport Act 1987 (Act 333) ("the RTA") overrides the need for insurable interest. Until recently, the courts have always held that there is no insurable interest if transfer of interest is proved and the third party insurance cover becomes void and deprives the innocent road victims of compensation. This overriding preference for insurable interest ran counter to the objective of assured compensation for road accident victims under Part IV of the RTA and the recent decision resurrects the objective intended to be achieved under the RTA.

Introduction

It is a legal requirement under s 90(1) of the RTA that every motor vehicle user must be insured against third party risk arising from the usage of the said vehicle. Of late, insurers have resorted to raising the issue of "transfer of interest" to nullify insurance policies in respect of third party risk (hereinafter "the said policy") to defeat the legitimate claim for damages by road accident victims. In a number of recent cases, the courts have allowed the declaration by insurers to nullify the said policies on the grounds of transfer of interest. There is, of course, no dispute that based on principles of insurance law per se insurable interest ceases to exist when transfer of interest occurs.

This article seeks to explore whether the granting of such declarations in favour of insurance companies based purely on principles of insurance law defeats or undermines Parliamentary intent in enacting Part IV of the RTA. After all, it is clearly stated in the preamble to the RTA that it is an Act "to make provision for the protection of third parties against risks arising out of the use of motor vehicles".

***406 What is transfer of interest?**

Basically, a transfer of interest is when a title to property or assets change from one person to another. "Transfer of interest" happens when the registered owner of a motor vehicle sells it to a third party informally without going through the legal requirements of having the said vehicle registered in the name of the new owner with Jabatan Pengangkutan Jalan or the Road Transport Department ("the RTD").

In Malaysia, transfer of interest is not so uncommon and it frequently happens in cases of "sambung bayar", that is, where the registered owner being unable to pay the monthly hire purchase instalment sells his motor vehicle to a willing buyer on the understanding that the new purchaser will continue to service the said monthly instalment without having the sale registered with the RTD as required by the RTA. Basically deemed an "informal sale" for failure to comply with the legal formalities associated with sale of a motor vehicle. The other scenario, where this issue crops up, is when the registered owner of the motor vehicle passes away. The beneficiaries before or without being appointed as administrator or executor in respect of the deceased registered owner's estate and thereafter having the motor vehicle registered in their name with the RTD continue to renew the insurance policy in the name of the deceased without informing the insurer. It can also happen when second-hand car dealers delay in registering the vehicle in their company's name after trading in is done. This article will focus on the scenario where an "informal sale" takes place although the effect in insurance law is the same in all the aforesaid scenarios.

Section 13 of the RTA

This informal method of sale or usage of a motor vehicle is in complete violation of the requirements in s 13 of the RTA. In s 13(1) of the RTA, the procedure to be undertaken on change of ownership of motor vehicle is

clearly spelt out, namely that the registered owner shall within seven days after such change of possession, notify the RTD by using a prescribed form and shall deliver to the new owner the registration certificate whereupon the new owner shall within seven days after change of possession notify the RTD using the prescribed form with the registration certificate and the prescribed fees. The new owner cannot use the said vehicle until registered as the owner thereof. Upon the needful being done by the transacting parties, the RTD shall make the necessary alteration in the register and in the registration certificate and the altered registered certificate shall be handed over to the new owner as required by the s 13(3) of the RTA.

***407** **What is insurable interest?**

One of the cornerstones of insurance law is the need for the insured to have "insurable interest" in the subject matter of the insurance. S Santhana Dass on The Law of Motor Insurance (2) at p 535 states:

Malaysian law following English law does not permit a person who has no interest in the insured subject matter to insure that subject matter.

Shawcross on The Law of Motor Insurance (1) (2nd edn) at p 80 defined insurable interest as follows:

An insurable interest exists where the assured stands in some legal relation to the subject matter of the insurance whereby he stands to incur some legal loss if the event insured against occurs.

In Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd,[1] the concept of insurable interest was lucidly explained by the Federal Court as follows:

An insurable interest can be established either by ownership, possession or direct relationship to the subject matter of the insurance. Thus, one has an insurable interest if by taking out an insurance policy, one gains a benefit from the preservation of that subject matter or suffers a disadvantage should it be lost. The interest in the insured property is not confined to just a legal interest per se.

Also in Halsbury's Laws of Malaysia,[2] it is stated:

With regards to an insurable interest in property, the general principle for Malaysia would be that an insurable interest should exist at the time the event causing the loss occurs. Thus, an owner of a car who has sold it, would not be able to recover from a motor policy which has expired if the car is damaged in the hands of the new owner.

Therefore, the insurable interest in the insured subject matter must not only exist at the point of taking any insurance cover but also at the time the event causing the loss occurs to claim damages. Without insurable interest, the insurance policy is null and void.

What happens to insurable interest in the event transfer of interest?

In insurance law when the insured sells his vehicle, even informally, resulting in a "transfer of interest", the insured's insurable interest in the said vehicle ceases and the said policy becomes null and void or ceases to exist. Consequently, the relationship of insurer and insured comes to an end. This is founded on the basis that in insurance law a policy of insurance is a personal contract of indemnity.

***408** In Roslan bin Abdullah v New Zealand Insurance Co Ltd,[3] the Federal Court held that:

In this case, once ownership of the truck changed, the insurance policy lapsed unless there was novation of the policy, which was not alleged. The driver of the truck was not covered by the insurance policy as there was no insurance policy at the time of the accident.

Likewise in the English High Court in Peters v General Accident & Life Assurance Corporation Ltd,[4] Goddard J held thus:

(i) when the vendor sold the car, the insurance policy automatically lapsed; (ii) at the time of the accident, the purchaser could not be said to be driving the car by the order or the permission of the vendor, as the car was then the purchaser's own property; and (iii) the insured is not entitled to assign his policy to a third party. An insurance policy is a contract of personal indemnity, and the insurers cannot be compelled to accept responsibility in respect of third party who may be quite unknown to them.

(Emphasis added.)

To subvert the effects of transfer of interest, a novation of the insurance contract can be done whereby if the insurer agrees to cover the new owner, they will endorse the policy accordingly and issue a new certificate of insurance in the new owner's name. This, however, is unlikely to happen as the transaction itself is done

informally.

Recent court decisions involving transfer of interest

Cases where transfer of interest rendered the said policy void

The four recent cases where the High Court held that transfer of interest rendered the said policy null and void are Lonpac Insurance Berhad v Mohamad Hakim bin Zulkifli & 5 Ors,[5] Aliannz General Insurance Company (M) Bhd v Sutakar a/l Supramaniam,[6] Allianz General Insurance Company (M) Bhd v Media Focus Marketing Sdn Bhd & Anor[7] and Rusdianto Rusmadi & Anor v Liberty Insurance Berhad (formerly known as Uni Asia Insurance Berhad).[8] The factual matrix of each of the aforesaid cases are set out below to show the various scenario transfer of interest can occur.

The case of Lonpac Insurance Berhad v Mohamad Hakim bin Zulkifli & 5 Ors (supra) involved an appeal from the decision of the Sessions Court which refused to grant the declaration under s 96(3) of the RTA sought by the appellant, as the insurer, on the grounds of transfer of interest based on the ***409*** reason that the vehicle had not be legally transferred at the date of accident into the new owner's name. The salient facts contained in the statutory declaration affirmed by the second respondent (insured) was that she had traded or "sold" her motor vehicle ("the insured subject matter") to one Yong Ming Motor Sdn Bhd for a new vehicle. One of the employees of Yong Ming Motor Sdn Bhd procured a used car dealer by the name Berjaya Auto Mobile Enterprise to purchase the said vehicle and the second respondent executed all the necessary documents and handed it over to a representative of Berjaya Auto Mobile Enterprise and also settled the outstanding loan with the financer. However, the second respondent failed to inform or cancel the insurance policy with the appellant. Six months down the line, the motor vehicle (insured subject matter) was involved in a multi-vehicle collision while being driven by the first respondent, who was an employee of Berjaya Auto Mobile Enterprise. In the unfortunate accident, there were two fatalities and one injury. The next of kin and the injured party commenced actions in the Magistrates' Court and Sessions Court and were cited as the third to the sixth respondents in the declaratory suit. Based on the salient facts, the appellant as insurer commenced declaratory proceedings to declare the insurance policy in the name of the second respondent void on the grounds that she had no insurable interest due to the transfer of interest. The High Court judge stated as follows:

In the present appeal, the second respondent has parted off with her possession of the insured subject matter. She was no longer in possession of the insured subject matter at the time of the accident. She traded off the insured subject matter for value, therefore she not possess any interest in the insured subject matter despite the existence of the insured subject matter. The second respondent also could not claim any legal right over the insured subject matter despite the fact the insured subject matter was still registered in her name.

The High Court, in dismissing the Sessions Court's basis of legal ownership being the foundation of liability to third parties, stated:

This court is of the considered view that the second respondent was merely holding in name the insured subject matter on trust (I believe bare trust), and she did not possess any pecuniary interest in it to gain any benefit or suffer any loss un the insured subject matter.

The judge in allowing the appeal of the insurer/appellant which had the effect of unfortunately depriving the innocent victim and next of kin of their compensation, stated as follows:

In closing, this court was satisfied that the second defendant (the second respondent) had lost her insurable interest in the insured subject matter in the policy. Insurable interest is the foundation of a valid insurance contract between an assured and insurer. In the absence of such insurable interest in the policy, the appellant's originating summons ought to be allowed.

410 In the case of Aliannz General Insurance Company (M) Bhd v Sutakar a/l Supramaniam (supra), the plaintiff/applicant were the insurers of the motorcar ("the insured subject matter") which was registered in the name of the first defendant. The said motorcar was involved in an accident with a motorcycle ridden by the second defendant with the third defendant as pillion. Arising from the said accident, the second and third defendants commenced a writ action for damages against the first defendant and one Ganesan a/l Kalimuthu ("GK"), the driver of the motorcar at the material time. A total of three statutory declarations were affirmed by the first defendant, one GK and VT in support of the plaintiff's originating summons to have the policy coverage of the motorcar declared null and void under s 96(3) of the RTA on the basis of transfer of interest. The three statutory declarations revealed that the first defendant during the time of the renewal of the insurance policy and the accident. While in prison, the first defendant befriended an inmate by the name of Vinod a/l Thangaraju ("VT") and they orally agreed that upon the release of VT from prison, VT will take possession of the insured subject matter only for the purpose of paying the instalments. However, when VT was released from prison he took possession of the motorcar, the first defendant's NRIC and the registration card from the first

defendant's sister. Subsequently, VT sold the insured subject matter to GK allegedly for RM5,000 without the knowledge of the first defendant because the first defendant's bank account had been blacklisted. The first defendant asserted that he did not know GK and never had any dealings with him. He claimed he never consented to VT selling the vehicle to GK. His Lordship, relying on well-established authorities on insurable interest, in allowing the declaration sought by the plaintiff, stated as follows:

Although the first defendant said that he never allowed the renewal of the policy despite the sale to VT, for all intent and purposes, the sale effected in favour of GK without the knowledge of the first defendant means that there is no longer any insured-insurer relationship between the first defendant and the plaintiff. There was in other words no contract of insurance between the two at the time of the accident. The policy is after all, I reiterate, a personal contract of indemnity.

The absence of any insurable interest on the part of the first defendant cannot be any clearer.

The judge relied on two earlier High Court cases, namely Kurnia Insuran (Malaysia) Berhad v Personal Representative of Zenol bin Saad & 3 Ors[9] and Allianz General Insurance Company (Malaysia) Berhad v Mohd Fauzi bin Abdul Manaf @ Wahi & 3 Ors[10] where as a result of transfer of interest by way of sale of the motor vehicle involved in the accident, it was held that the insurable interest had ceased and the declaration sought by insurers were allowed.

***411** In the High Court case of Rusdianto Rusmadi & Anor v Liberty Insurance Berhad (formerly known as Uni Asia Insurance Berhad) (supra), the declaratory proceedings were brought by the insurer to declare the insurance policy null and void. The first and second appellants were the plaintiffs in the Sessions Court being the rider and pillion of motorcycle bearing registration No. QMY 3623. Both the appellants commenced an action for damages in the Sessions Court against the first and second defendants as the driver and registered owner respectively of motor car bearing registration No. WHQ 7608 which collided with their motorcycle on June 1, 2016. However, the driver and registered owner of motor car were not parties to the appeal. The motor car at the material time was insured against third party risk by the respondent. As usual, investigation by the insurers revealed that the second defendant had sold off the motor car to one Syazarulizwan bin Bokeri on May 6, 2014. This was confirmed by statutory declaration from both Syazarulizwan and the second defendant. Armed with the information of sale and the non–notification thereof, the respondent as insurers commenced declaratory proceeding in the Sessions Court on the grounds, inter alia that the second defendant had no insurable interest in the motor car, failure to comply with the principle of uberrimae fidei due to non-disclosure of the sale as well as non-notification of the accident. The Sessions Court allowed the relief sought under s 96(3) of the RTA and held the respondent is entitled to repudiate its liability under the said policy. In dismissing the appeal brought by the plaintiffs/appellants, although the High Court did not specifically state lack of insurable interest as the basis but rather relied on all the grounds as stated in the Sessions Court. The net effect is that although the court did not base the decision on non-insurable interest alone but it still left the plaintiffs without recourse for payment of damages from the insurer.

In the case of Allianz General Insurance Company (M) Bhd v Media Focus Marketing Sdn Bhd & Anor (supra), an accident occurred involving motor vehicle No. BFR 159 ("the vehicle") which at all material times was registered in the name of the first defendant and driven by one Wong Pooi Yee (hereinafter referred to as "Wong") with motorcycle No. JKB 1718 ridden by the second defendant. When the second defendant instituted an action for damages, the plaintiff as the insurer of the vehicle commenced investigation and it revealed in no uncertain terms that the vehicle had been sold by the first defendant to Wong on July 10, 2015. The vehicle was not registered in the name of the new owner in the RTD. As expected, the plaintiff raised the issue that the first defendant no longer had any insurable interest in the vehicle at the time of the accident, Wong was not the authorised driver of the first defendant and also in violation of the duty of utmost good faith required under the contract of insurance by failure to notify the sale in support of the declaratory proceedings. Based on all the aforesaid grounds the insurer successfully obtained the declaration the said policy was declared void or unenforceable.

***412** It is clear from the above four recent cases, the court's decision is based purely on principles of insurance law without consideration to the provisions of the RTA. Once transfer of interest is established the declaration sought by the insurers is allowed as a matter of course.

Cases where the transfer of interest did not render the insurance policy in respect of third party risk void

In comparison to the aforesaid two cases, in the following cases, the insurers failed to obtain the declaration that the said policy was null and void on the ground of transfer of interest purely due to insufficiency of evidence.

The case in point is the unreported Court of Appeal decision in Zainudin bin Mat Esa & Anor v The Pacific Insurance Berhad & Ors[11] which was relied on by the second and third defendants (the victims) in the case of Aliannz General Insurance Company (M) Bhd v Sutakar a/l Supramaniam (supra). In a gist, it was contended by

the insurers that before the accident which caused injuries to the victims, the property in the relevant car had pursuant to a sale passed from the insured and registered owner ("R3") to the driver at the material time ("R2"). Based on the statutory declarations by R3 and R2 the High Court had decided that the policy had lapsed as there was no insurable interest in the car involved in the accident following the sale and allowed the declaration sought by the insurers. However, this was overturned by the Court of Appeal on the basis that R3 in his statutory declaration had stated that he had sold the car to an individual in May 2013 before it was purchased by R2. However, no statutory declaration by the said individual, being the first buyer was annexed to the application and the said absence was considered significant. Also, the motorcar policy had been renewed twice after sale to the individual even though R3 had affirmed he did not know the said individual and this raised the question why would R3 renew the insurance if he did not know the said individual. Based on the aforesaid discrepancies, which were matters of evidence, the Court of Appeal denied the declaration sought by the insurer.

In another case of Pacific Insurance Berhad v Magendran a/l Selvam & 2 Ors,[12] the applicant had issued a third party insurance policy in the name of Choong in respect of a motor van. The said motor van was involved in a collision with a motorcycle while driven by one Firdaus. The rider and pillion of the motorcycle had commenced an action against Choong and Firdaus at the Sessions Court. The applicant's investigation revealed that Choong had sold the said vehicle to one Zahari. Hence the originating application to have the insurance policy declared null and void on the grounds that there was transfer of interest due to the sale and it means Choong had no insurable interest in the motorvan and the insurance policy had lapsed. Based on the ***413*** above facts and the court having referred to the case of Roslan (supra) and other judicial pronouncements stated:

… that evidence of a change of ownership of the insured vehicle will entitle the plaintiff (insurer) to the declaration which it seeks. Thus the issue to be determined is whether there has been a change of ownership of the van by virtue of the purported sale.

However, in deciding the issue, the court placed reliance on ss 2 and 117 of the RTA which gave rise to a rebuttable statutory presumption that the person whose name appears in the registration certificate was the registered owner. It means that the insurer had the burden to rebut by evidence that there had been a change of ownership of the motor van by way of a sale as alleged.

Section 2 reads as follows:

2. Interpretation

In this Act, unless the context otherwise requires –

"owner" –

(a)

In relation to a motor vehicle registered or deemed to be registered under this Act, means the registered owner of such vehicle; and

(b)

…

Section 117 reads as follows:

(1)

A registration certificate shall be prima facie evidence of the registration of the motor vehicle referred to therein, and of the particular appearing in the register relating to such motor vehicle and the registered owner thereof.

Based on the above two provisions, the court concluded that "there exist a statutory presumption that Choong is the owner of the van" based on the registration certificate. Now the burden fell on the insurers to rebut the said presumption. After taking viva voce evidence, the court concluded that the insurer had failed to discharge the legal burden of proving that the sale of the motor van had taken place between Choong and Zahari. One of the main weaknesses in the insurer's case was that, in one of the statutory declaration sworn by Choong, she had stated that the purchaser was Firdaus and in the other as Zahari. Secondly, the statutory declarations were prepared by the adjusters and Choong was merely told to affirm and based on her vacillating evidence, the court concluded that Choong's evidence was wholly hearsay. In addition, Choong's husband, as well as Firdaus, were not called to give evidence. This left a gap in the chain of evidence.

In the aforesaid cases of Zainudin bin Mat Esa & Anor v The Pacific Insurance Berhad & Ors (supra) and Pacific Insurance Berhad v Magendran a/l Selvam & 2 Ors ***414*** (supra), although there was evidence of sale of the motor vehicle, the insurers failed to obtain the declaration that the said policy was null and void under s

96(3) of the RTA due to insufficiency of evidence. Undeniably, the task of the insurers were made harder in the case of Pacific Insurance Berhad v Magendran a/l Selvam & 2 Ors (supra) by the court placing reliance on the two provisions in the RTA and placing the burden on the insurer to rebut the presumption that the person whose name appears in the registration certificate is prima facie the owner of the vehicle.

Although in the aforesaid two cases, the plaintiffs were fortunate in that they could look towards the insurers for compensation but in the bigger picture, it still leaves the innocent victims of road accident in a vulnerable position as it all depends on the factual matrix of each case that is before the court. If the insurers can muster the required evidence, the declaration will be granted as a matter of course because the concept of insurable interest rules paramount without consideration for the express provisions in the RTA.

The current position after Muhamad Haqimie bin Hasim & Anor v Pacific & Orient Insurance Co Berhad case

However recently, the vulnerable position of innocent road accident victims has been alleviated by the Court of Appeal's decision in Muhamad Haqimie bin Hasim (supra) where a paradigm shift took place. Instead of looking at the issue of transfer of interest and its effect on the said policy purely from a factual or evidentiary basis it shifted to a purely legal basis. In the process, the Court of Appeal gave precedence to the provisions in the RTA and thereby relegated the concept of insurable interest as inapplicable to motor insurance policy covering third-party risk.

The case of Muhamad Haqimie bin Hasim was delivered on April 9, 2018. The simple facts are as follows. A motorcycle was ridden by one Lalmiya while the insured cum registered owner was one Normala when it met in an accident on June 23, 2011. In the course of evidence, it transpired that Normala had allowed one Latif to utilise the said motorcycle. Latif without the knowledge of Normala sold it Lalmiya around 2010. The insurance policy in force at the time was the one taken out by Normala on September 4, 2010 until September 4, 2011. Based on the above facts, the Sessions Court judge had held that the insurers were not liable as there was contravention of a term of the insurance policy and this was affirmed by the High Court resulting in the appeal to the Court of Appeal.

Essentially the case for the insurer was grounded on the sale of the motor vehicle which they claimed had rendered the insurance policy ineffective. Also, as usual, the insurers relied on an insurance policy being a contract of personal indemnity and cannot be assigned and that Lalmiya was not an authorised rider and that the insurance policy only covers the insurer and authorised rider.

****415*** The appellants/plaintiffs relied on s 13 of the RTA (supra) which requires the alleged sale to be registered and also on s 109 of the RTA which provides:

(1)

For the purpose of any prosecution or proceedings under this Act, the registered owner of a motor vehicle shall be deemed to be the owner of that motor vehicle.

(2)

Except where otherwise required by this Act, any act or omission by whoever was the driver of a motor vehicle at the material time, shall for the purpose of any prosecution or proceedings under this Act, be deemed to be the act or omission of the registered owner unless he satisfies the court that he took all reasonable steps and precautions to prevent such act or omission.

In other words, the appellants' contention was that as the sale was not registered with RTD, Normala is deemed to be the owner because the plaintiffs' claim comes within the meaning of "proceedings" under s 109 of the RTA and the insurer remains liable.

Having considered the contentions of both sides, the Court of Appeal stated that the "central issue for consideration here is whether the alleged transfer of interest from Normala to Lalmiya had the effect of rendering the policy ineffective or causing it to lapse".

The Court of Appeal in allowing the appeal unanimously stated the reasons as follows in the abridged grounds of judgment, which is reproduced in its entirety as follows:

(i)

Section 13 of the RTA sets out the procedure to be adopted upon change of possession upon transfer pursuant to sale. It requires that the new possessor or new owner register himself within seven days of such change of possession. This was not done in the instant case.

(ii)

Section 109(1) deems the registered owner to be the owner of that vehicle for the purpose of any inter alia

proceedings under the RTA. The current proceedings fall under the RTA.

(iii)

Accordingly Normala is deemed to be the registered owner of the vehicle, not Lalmiya. There is therefore no transfer of interest from Normala to Lalmiya by operation of law.

(iv)

Therefore Normala remains the insured for the purposes of the accident. As such it would follow that the insurer remains liable to compensate the plaintiffs for any injuries suffered as a consequence of the accident. That is the primary function of this part of the RTA.

***416** The Court of Appeal in arriving at its decision had quite correctly emphasised that the primary function of Part IV of the RTA is to ensure compensation for motor accident victims which in any event is clearly set out in the preamble to the Act. As the RTA is a specific Act for the purpose of protecting innocent road users who unfortunately meet in an accident, it must necessarily prevail over the concept of insurable interest.

The Court of Appeal stated that it was fortified in its decision by reference to ss 94 and 95 of the RTA due to the restriction it places on the insurer's ability to restrict or avoid liability under the policy it issues pursuant to ss 90 and 91 of the RTA, in particular s 94 which reads:

Any condition in a policy ... issued … for the purpose of this Part providing that no liability shall arise under the policy … or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy … shall be of no effect in connection with such claims as are mentioned in paragraph (b) of subsection (1) of section 91.

Section 91(1)(b) of the RTA sets out the scope of compulsory insurance coverage in respect of motor accident claims. The court also held that by virtue of ss 94 and 91(1)(b) “any term in the policy of insurance avoiding liability for unauthorised drivers is of no effect” as this was also raised by the insurers in seeking the declaration.

Finally the Court of Appeal also referred to the letter dated January 18, 1985 from Motor Insurers Bureau (hereinafter referred to as “MIB”) which lays down that for all accidents occurring after August 30, 1984 involving a transfer of interest the claims would become the liability of the insurance companies concerned, that is, the company whose insurance is in force at the time of the accident. However, it is unfortunate that having agreed to honour “transfer of interest” cases some insurance companies have reneged on their agreement with MIB resulting in cases coming before the court as illustrated above.

Conclusion

As of March 1, 2013, the Sessions Court was conferred unlimited jurisdiction to try all actions and suits in respect of motor accident claims by virtue of amendment to s 65(1)(a) of the Subordinate Courts Act 1948. With the said amendment, the Court of Appeal became the apex court for accident cases. With the new case of Muhamad Haqimie bin Hasim (supra), hopefully, the spectre of insurable interest will be laid to rest as the highest court for accident cases has addressed the issue from a legal basis by giving preference to the provisions found in the RTA.

There is no doubt the decision correctly resurrects the position of the provisions in Part IV of the RTA to the level desired by Parliament as envisioned in the preamble to the Act. After all, Parliament enacted ***417** s 91(1)(b) of the RTA to negate the requirement of privity of contract so that victims of motor accident can look for compensation directly from the insurers even though they are not a party to the contract of insurance. If such an important basis of contract law requirement can be circumvented in the interest of road users, all the more reason the concept of insurable interest should be prevented from jeopardising their claim. More so Part IV of the RTA was partly a social legislation to ensure that road accident victims and next of kin were not left to seek compensation from the actual tortfeasor who might be a man of straw and thereby become a burden to society.

The decision in effect gives full effect to the desire of the parties who are directly or indirectly involved in the management of accident cases namely, the insurance companies, the government via the Ministry of Transport and MIB.

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1. [2013] 4 AMR 385.

2. Vol 4, Malaysian Law Journal, SB, 2000 at p 37, paragraph [60.034].

3. [1981] 2 MLJ 324.

4. [1937] 4 All ER 628.
5. [2018] 1 AMR 486.
6. [2018] 5 AMR 838.
7. [2018] 6 AMR 636.
8. [2018] 6 AMR 815.
9. [2013] 1 AMCR 703; [2013]1 LNS 239.
10. [2015] AMEJ 1739; [2016] 1 CLJ 587.
11. Civil Appeal No. K-02 (NCvC)(A)-463-03/2017.
12. [2018] 1 AMR 607.