

Pang Lin alias Phang Yoke Lin - - - - - *Appellant*

v.

China Insurance Company Limited - - - - *Respondents*

FROM

THE FEDERAL COURT OF MALAYSIA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH JULY 1978**

Present at the Hearing :

LORD DIPLOCK

VISCOUNT DILHORNE

LORD FRASER OF TULLYBELTON

LORD KEITH OF KINKEL

SIR ROBIN COOKE

[Delivered by LORD DIPLOCK]

On 4th April, 1971, the appellant, the nominal plaintiff in this action, Mr. Pang, was driving a friend's motor car with the friend's permission. He drove it negligently and, as a result, deaths and serious injuries were caused and heavy damages were recovered against Mr. Pang. As is compulsory under section 74(1) of the Road Traffic Ordinance, 1958, the friend's policy of insurance included an Authorised Driver Clause under which Mr. Pang was covered against liability to third parties when driving with the friend's permission.

Mr. Pang was himself the owner of a Volvo car in respect of which he was insured by the respondent the China Insurance Company under a policy from which there had been deleted a printed clause (Section II, clause 2(b)) extending cover to Mr. Pang in respect of liability to third parties when personally driving a private motor car not belonging to him and not hired to him under a hire purchase agreement. If the printed clause, notwithstanding its apparent deletion, were a term of the contract of insurance between Mr. Pang and his insurers, the China Insurance Company Limited, they would have been liable to indemnify Mr. Pang against any liability to third parties incurred while driving his friend's car. In that event, the friend's insurers would be entitled to recover from the China Insurance Company at least part of the damages that they had paid on Mr. Pang's behalf to the victims of the accident. An action was accordingly started in Mr. Pang's name against the China Insurance Company claiming rectification of the policy by reinstating clause 2(b).

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The policy was signed and issued by the China Insurance Company on 30th October, 1970, for the period from 7th October, 1970, to 6th October, 1971. It was not the first motor vehicle policy that Mr. Pang had taken out with the China Insurance Company. On 1st June, 1970, he had bought a Volvo car from the authorised distributors, Federal Auto, Alor Star, of which the manager was a Mr. Lim Koon Sia, who acted as agent for the China Insurance Company in arranging insurance in respect of cars sold by Federal Auto. The policy obtained for Mr. Pang in respect of that car was described on its face as a "Motor Car Policy (Comprehensive)". It contained the same deletion of Section II, clause 2(b), as did the later policy which is the subject of the present action; and, as was proved at the trial, the usual form in which comprehensive policies were issued by the China Insurance Company from 1968 onwards had contained a similar deletion.

In October, 1970, Mr. Pang traded in the original Volvo he had bought in June in part exchange for a new one from Federal Auto. As on the previous occasion he asked Mr. Lim to arrange what he described in Chinese as "First class policy" for the substituted vehicle. As Mr. Pang did not speak English Mr. Lim filled in the proposal form for him acting in this respect on Mr. Pang's behalf and not as agent for the insurance company. The form required the proposer to state "Particulars of vehicles in respect of which insurance is applied for" and whether a "Comprehensive Third Party or 'Act only' cover" is required. Mr. Lim filled in the particulars of the new Volvo and a request for "Comprehensive" cover. He issued to Mr. Pang before he drove the new car away a combined cover note and certificate of insurance which stated that Mr. Pang "having proposed an insurance in respect of the motor car described in the schedule below the risk is hereby held covered in terms of the Company's usual form of Comprehensive Policy applicable thereto for the period from 9 a.m. on 7/10/70 to midnight on 6/10/71". It was in replacement of this cover note that the policy was issued and signed by the China Insurance Company on 30th October, 1970.

At the trial of the action in the High Court, Hashim Yeop A. Sani J. held that Mr. Pang got what he bargained for—a comprehensive policy in the usual form issued by the China Insurance Company. His judgment was upheld unanimously on appeal to the Federal Court.

In both the High Court and the Federal Court, reliance was sought to be placed on various instructions issued by the Malaysian Insurance Association to its members, of which the China Insurance Company was one. These, as the Federal Court pointed out, were *res inter alios acta* and this line of argument was not proceeded with before their Lordships' Board. So the only question left in issue is whether the policy issued with Section II, clause 2(b), deleted did conform to the bargain that Mr. Lim had made, on behalf of the insurance company, with Mr. Pang.

In their Lordships' view, Hashim Yeop A. Sani J. and the Federal Court were clearly right in holding that it did. The proposal form was a request by Mr. Pang for a "comprehensive" cover in respect of a particular vehicle, the Volvo which he had just bought. In their Lordships' view, a comprehensive policy in respect of a vehicle is one which covers all risks arising out of the use of that particular vehicle and does not necessarily incorporate an extension to cover the liability of the assured to third parties when driving any other private car. The cover note issued on behalf of the company by Mr. Lim in response to that proposal was expressed to cover the risk "in terms of the Company's usual form of Comprehensive Policy". It was proved in evidence that the company's usual form of comprehensive policy did not incorporate any such extension and Mr. Pang, who had previously been insured in

respect of his previous car under a comprehensive policy in the China Insurance Company's usual form, knew or ought to have known that it was one in which Section II, clause 2(b), was deleted.

Their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed and that the appellant must pay the respondents' costs of this appeal.

In the Privy Council

PANG LIN alias PHANG YOKE LIN

v.

**CHINA INSURANCE COMPANY
LIMITED**

**DELIVERED BY
LORD DIPLOCK**