

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civ. App. No. S 191 of 2015**

**Claim No. CV2013-03656**

**BETWEEN**

**Motor One Insurance Co. Ltd.**

**Appellant/Defendant**

**AND**

**Rampersad Maharaj  
Radesh Maharaj**

**Respondents/Claimants**

\*\*\*\*\*

**Panel:**

R. Narine J.A.

P. Moosai J.A.

J. Jones J.A.

**Appearances:**

Mr. S. Roopnarine instructed by Ms. H. Lochan for the appellant

Ms. R. Chatergoon instructed by Mr. P. Maharaj for the respondents

**DATE DELIVERED:** 13<sup>th</sup> April, 2016.

I have read the judgment of Narine J.A. and agree with it.

P. Moosai,  
Justice of Appeal.

I too, agree.

J. Jones,  
Justice of Appeal.

## **JUDGMENT**

**Delivered by R. Narine J.A.**

### **THE FACTS:**

1. The short issue in this case involves an interpretation of the Limitation of Certain Actions Act Chapter 7:09 (the Act) as to which provision applies to the bringing of an action against an insurer by a third party who has obtained a judgment against their insured, pursuant to section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 48:51.
2. The relevant dates for the purposes of this appeal are:
  - On the 1<sup>st</sup> August 1988 the respondents were involved in a motor vehicle accident.
  - On the 13<sup>th</sup> February 1990 they filed legal action against Mikey Parmashwar as the owner and driver of motor vehicle PAT 6678”.
  - On 28<sup>th</sup> April 1998 the respondents obtained judgment against Mikey Parmashwar for damages and costs to be assessed.
  - On 18<sup>th</sup> May 1999 the costs were assessed.

- On the 11<sup>th</sup> August 2005 Master Paray-Durity assessed the respondents' damages.
- On the 17<sup>th</sup> September 2013 the respondents commenced the present action, pursuant to section 10 of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 48:51.

3. The appellant contends that by virtue of section 3(1)(c) of the Act the time for bringing an action against the insurer under section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act is four years. Section 3(1)(c) provides:

*“3. (1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:*  
*(a) ...;*  
*(b) ...; or*  
*(c) actions to recover any sum recoverable by virtue of any enactment.”*

4. The respondents submit that the relevant period of limitation for the purposes of the section 10(1) action is twelve years by virtue of section 3(2) of the Act which provides:

*“3(2) An action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment.”*

5. The trial judge found that the relevant limitation period was twelve years. However, she based her decision on section 3 of the Limitation of Personal Actions Ordinance Chapter 5 No. 6 (the Ordinance). Section 3 of the Ordinance provides:

*“All actions, suits or proceedings brought to recover any sum of money secured by any mortgage, judgment or specialty, or charge upon or payable out of and being a lien on any land or rent or for the recovery of any dotal claims or any legacy or share of any inheritance and all actions of account between partners in land or commerce or between co-heirs, or against any executor, guardian, trustee, curator, administrator or agent shall and may be brought at any time within twelve years next after a present right to receive or have the same shall have accrued to some person capable of giving a discharge for a release of the same, and not after twelve years unless in the meantime some part of the principal money or some interest thereon shall have been paid, or some acknowledgement of the right thereto, or to maintain such action, shall have been given in writing, signed by the person liable or by whom the money shall be payable or his agent, to that person entitled thereto or his agent; and in such case no such action, suit, or proceedings shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments and acknowledgments, if more than one was given.”*

6. Section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 48:51, provides:

*“10. (1) If, after a certificate of insurance has been delivered under section 4(8) to 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 section 4(1)(b) (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, in addition to 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.”*

7. In **Shanti Matadeen v. Caribbean Insurance Co. Ltd.** [2002] UKPC 69, the Privy Council held that an action by a third party under section 10 of the Act is a statutory cause of action created by the section. Such an action derived from the statute was an action on a “specialty” within section 3 of the Ordinance, and was subject to a twelve year limitation period.
8. The Ordinance was repealed and replaced by the Act which came into operation on 17<sup>th</sup> November 1997. The Act made no mention of actions founded on a “specialty” but provided for a limitation of four years for “actions to recover any sum recoverable by virtue of any enactment”: section 3(1)(c). The appellant submits that the action by the respondents to recover their judgment obtained against the insured is such an action, the enactment being section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act.
9. The respondents argued that section 3(1)(c) of the Act applies only to “money claims” as opposed to (presumably) claims for an unliquidated sum. However, section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act makes the insurer liable “to pay to the persons entitled to the benefit of the judgment any sum payable thereunder, in respect of the liability”. Accordingly, the sum assessed for damages and costs being a sum payable under the judgment is “a sum recoverable” by virtue of section 10(1) within section 3(1)(c) of the Act. The claim in the original action filed in 1990 against Mikey Parmashwar was for damages for personal injury and consequential loss (i.e. an unliquidated sum) in respect of which damages were subsequently assessed on 11<sup>th</sup> August 2005.

The sum so assessed is a sum recoverable by virtue of an enactment under section 3(1)(c) of the Act.

10. The respondents further submitted that the section 10 action falls under section 3(2) of the Act, being an action brought upon a judgment, and so the limitation period should be twelve years from the date of the judgment.
11. Section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act makes the insurer liable as against a third party provided that two conditions are satisfied:
  - (i) a certificate of insurance has been delivered to the insured and
  - (ii) judgment is obtained against the insured in respect of any liability covered by the policy.
12. As explained in **Matadeen** (supra) the cause of action given to the third party under section 10(1) derives from the statute. Where the third party obtains a judgment against the insured, section 3(2) of the Act gives him twelve years within which he may take steps to enforce the judgment or bring a new action against the insured on the judgment. However, the cause of action against the insurer (which transfers the liability to pay to a third party a judgment obtained against an insured) derives from the statute that is, section 10(1) not from the judgment against the insured. If the third party brings a section 10(1) action against the insurer within the time limited to do so, and obtains a judgment therein, section 3(2) of the Act will apply so as to give the third party a twelve year period within which to enforce such a judgment or to bring a fresh action on it. Of course it would lead to an absurdity should the Act be interpreted in such a way as to provide for a limitation of four years under section 3(1)(c) for causes of action given by statute, as well as allowing a limitation of twelve years under section 3(2) of the Act for the bringing of the same action. Clearly this could not have been intended by Parliament.

13. It follows from the above analysis, that the relevant provision of the Act which applies in this case is section 3(1)(c). The judgment on liability in the action against the insured was obtained on 28<sup>th</sup> April 1998, and damages were assessed on 11<sup>th</sup> August 2005. Accordingly, applying section 3(1)(c), the action against the insurer (the appellant in this case) became statute barred four years after the later date. It follows that the section 10(1) action filed on 17<sup>th</sup> August 2013 was more than four years outside of the period of limitation.
14. It may well be that Parliament may not have intended to shorten the limitation period that previously applied to section 10(1) actions. However, the omission of actions based on a “speciality” as provided for in section 3 of the Ordinance, and the inclusion of section 3(1)(c) in the Act has produced that consequence.
15. This court is bound to give effect to the natural and ordinary meaning of the words of the Act. It does so with a heavy heart having regard to the consequences of its decision to the respondents who have suffered personal injuries and consequential loss incurred in an accident since 1<sup>st</sup> August 1988, and now some twenty-eight years later are precluded by this decision from proceeding against the insurer. Perhaps the legislature in its wisdom will take appropriate steps to amend the Act so as to reinstate the previous limitation period, if indeed the introduction of a shorter period was done through inadvertence.
16. There was an additional issue raised in this appeal which we will briefly touch on for the sake of completeness. The respondents’ bill of costs in the original action under the judgment obtained on 28<sup>th</sup> April 1998 was eventually taxed on 18<sup>th</sup> May 1999. Having held that the twelve year limitation under the Ordinance was applicable, the trial judge exercised her discretion under section 9 of the Act to extend the time from 18<sup>th</sup> May 1999 to the date of the filing of the action that is, 17<sup>th</sup> September 2013. In doing so, for reasons already given we are of the view that the trial judge was wrong. The time limited by section 3(1)(c) of the Act for

bringing the section 10(1) action to recover the taxed cost expired on 18<sup>th</sup> May 2003, almost ten years before the filing of the section 10(1) action. In our view this delay is wholly inordinate and it would be an improper exercise of the discretion under section 9 of the Act to extend the time for bringing the action in respect of the taxed costs.

**DISPOSITION:**

17. It follows that this appeal is allowed. The order of the trial judge is set aside. The claim number CV2013 – 03656 is statute barred. We will hear the parties on costs.

Dated the 13<sup>th</sup> day of April, 2016.

R. Narine  
Justice of Appeal