

No. 19. *Motor Vehicles Insurance (Third-party Risks).* 1938.

TRINIDAD AND TOBAGO.

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No. 19 —1938.

I ASSENT,

[L.S.]

J. HUGGINS,

*Governor's Deputy.*

21st November, 1938.

24th November, 1938.

AN ORDINANCE to amend the Motor Vehicles Insurance  
(Third-party Risks) Ordinance, 1933 (No. 39 of 1933).

**B**E it enacted by the Governor of Trinidad and Tobago  
with the advice and consent of the Legislative Council  
thereof as follows :—

1. This Ordinance may be cited as the Motor Vehicles Insurance (Third-party Risks) (Amendment) Ordinance, 1938, and shall be read as one with Ordinance No. 39 of 1933, hereinafter referred to as the Principal Ordinance. Short title.

2.—(1) If, after a certificate of insurance has been delivered under sub-section (4) of section 4 of the Principal Ordinance 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 paragraph (b) of sub-section (1) of section 4 of the Principal Ordinance (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 Duty of insurers to satisfy judgments against persons insured in respect of third-party risks.

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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.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings ; or
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal ; or
- (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—

(i) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or

(ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid, or

(iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Ordinance in respect of the failure to surrender the certificate.

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(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this sub-section as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section the expression "material" means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

(6) In this Ordinance references to a certificate of insurance in any provision relating to the surrender, or the loss or destruction, of a certificate of insurance shall

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in relation to policies under which more than one certificate is issued, be construed as references to all the certificates, and shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.

Bankruptcy,  
&c. of insured  
persons not to  
affect certain  
claims by  
third parties.

3. Where a certificate of insurance has been delivered under sub-section (4) of section 4 of the Principal Ordinance to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 10 of the Principal Ordinance, shall, notwithstanding anything in the said Ordinance, not affect any such liability of that person as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 4 of the Principal Ordinance, but nothing in this section shall affect any rights against the insurer conferred by that Ordinance on the person to whom the liability was incurred.

Avoidance of  
restrictions on  
scope of  
policies cover-  
ing third-party  
risks.

4. Where a certificate of insurance has been delivered under sub-section (4) of section 4 of the Principal Ordinance to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters—

- (a) the age or physical or mental condition of persons driving the vehicle ; or
- (b) the condition of the vehicle ; or
- (c) the number of persons that the vehicle carries ; or
- (d) the weight or physical characteristics of the goods that the vehicle carries ; or
- (e) the times at which or the areas within which the vehicle is used ; or
- (f) the horse power or value of the vehicle ; or
- (g) the carrying on the vehicle of any particular apparatus ; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Principal Ordinance ;

shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of sub-section (1) of section 4 of the Principal Ordinance, be of no effect :

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Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

5.—(1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 4 of the Principal Ordinance shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of the Principal Ordinance, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under sub-section (4) of section 4 of the Principal Ordinance.

Duty of person against whom claims are made to give information as to insurance.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence.

6. Where a certificate of insurance has been delivered under sub-section (4) of section 4 of the Principal Ordinance to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was delivered shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails so to do he shall be guilty of an offence.

Duty to surrender certificate on cancellation of policy.

7. The foregoing provisions of this Ordinance shall apply in relation to securities having effect for the purposes of the Principal Ordinance as they apply in relation to policies of insurance, and in relation to any such security as aforesaid, references in the said provisions to being insured, to a certificate of insurance to an insurer, and to persons insured, shall be construed respectively as

Application of this Ordinance to securities given under the Principal Ordinance.

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references to the having in force of the security, to the certificate of security, to the giver of the security, and to the persons whose liability is covered by the security.

Section 4 (5)  
of Principal  
Ordinance  
replaced.

8. Sub-section (5) of section 4 of the Principal Ordinance is hereby repealed and replaced by the following :—

(5) In this Ordinance the expression “ a policy of insurance ” means a policy issued for not less than six months, and includes a single covering note issued for a period not exceeding ninety days in respect of any vehicle, but does not include any extension of a covering note or any subsequent covering note issued in respect of the same vehicle during any period of six consecutive months:

Provided that the provisions of this sub-section shall not apply to a *bona fide* visitor to the Colony who is the holder of a policy of insurance which otherwise complies with the requirements of this Ordinance in respect of the period of his temporary stay in the Colony.

References to  
Ordinances  
Nos. 29 and 30  
of 1931 to be  
read as  
references to  
Ordinance  
No. 42 of 1934.

9. In the Principal Ordinance and in the Regulations made thereunder references to the Licensing of Vehicles Ordinance, 1931, and to the Motor Vehicles Ordinance, 1931, shall be taken as references to the Motor Vehicles and Road Traffic Ordinance, 1934, and to any Ordinance amending, supplementing, or substituted for the latter Ordinance, and any reference to section 9 of the Licensing of Vehicles Ordinance, 1931, shall be taken as a reference to section 6 of the Motor Vehicles and Road Traffic Ordinance, 1934.

Saving clause.

10. Nothing in this Ordinance shall apply to any claim for any injury sustained before the commencement of this Ordinance.

Passed in Council this fourth day of November, in the year of Our Lord one thousand nine hundred and thirty-eight.

W. E. BOARDMAN,  
*Clerk of the Council.*