**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Appeal in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka*

**SC Appeal No. 07/2024**
**SC/HCCA /LA /237/19**
**SP/HCCA/GA/59/2014(F)**
**D.C. Balapitiya No. 3207/M**

Lanka Electricity Company (Private) Limited
No: 411, E.H. Cooray Building,
03rd Floor, Galle Road, Colombo 03.

**PLAINTIFF**

Vs.

1. W.A.C.Thisera
   Doowawatta, Wella. Marawila,
2. Weerakoon Mudiyanselage Manuje
   Suranga Fernando
   No. 66, Jusana Road, Marawila,
3. Aviva NDB Insurance PLC
   No. 75, Kumaran Ratnam Mawatha,
   Colombo 02

**DEFENDANTS**

And

Lanka Electricity Company (Private) Limited
No: 411, E.H. Cooray Building,
03rd Floor, Galle Road, Colombo 03

**PLAINTIFF-APPELLANT**

Vs.

1. W.A.C.Thisera
   Doowawatta, Wella. Marawila,
2. Weerakoon Mudiyanselage Manuje
   Suranga Fernando
   No. 66, Jusana Road, Marawila,
3. Aviva NDB Insurance PLC
   No. 75, Kumaran Ratnam Mawatha,
   Colombo 02

**DEFENDANTS-RESPONDENTS**

**AND NOW**

Aviva NDB Insurance PLC
No. 75, Kumaran Ratnam Mawatha, Colombo 02
Presently
Allianz Insurance Lanka Limited,
No. 695, Dr. Danister de Silva Mawatha,
Colombo 09

**3RD DEFENDANT-RESPONDENT-APPELLANT**

Vs.

Lanka Electricity Company (Private) Limited
No: 411, E.H. Cooray Building,
03rd Floor, Galle Road, Colombo 03.

**PLAINTIFF-APPELLANT-RESPONDENT**

1. W.A.C.Thisera
   Doowawatta, Wella. Marawila,
2. Weerakoon Mudiyanselage Manuje
   Suranga Fernando
   No. 66, Jusana Road, Marawila,

**01ST AND 02ND DEFENDANTS-RESPONDENTS-RESPONDENTS**

***Allianz Insurance Lanka Limited v Lanka Electricity Company (Private) Limited and Others***
***Case No. SC/Appeal /07/2024***

**Before:** A.L. Shiran Gooneratne J.
Dr Sobhitha Rajakaruna J.
Menaka Wijesundera J.

**Counsel:** Vinodh Wickremasooriya with Lahiru Abeysekara for the 3rd Defendant-Respondent-Appellant
Dilini Premasiri for the Plaintiff-Appellant-Respondent

**Written Submissions:** Defendant-Respondent-Appellant - 20 January 2026,
30 August 2024
Plaintiff-Appellant-Respondent - 23 August 2024

**Argued on:** 18 November 2025

**Decided on:** 30 July 2026

## Judgement

### Dr Sobhitha Rajakaruna J.

According to the contentions of the Plaintiff-Appellant-Respondent ('Plaintiff'), the present dispute arose from a motor vehicle accident involving Vehicle Registration No. NWLH 1717, which was allegedly driven by the 2nd Defendant-Respondent-Respondent ('2nd Defendant') and owned by the 1st Defendant-Respondent-Respondent ('1st

Defendant’). The Plaintiff states that the vehicle collided with an electricity pole and transformer belonging to the Plaintiff, causing extensive damage that rendered both installations beyond repair. The Plaintiff further contends that, at the time of the accident, the vehicle was insured by the Eagle Insurance Co. Ltd., which was later transformed into Aviva NDB Insurance PLC. (presently known as Allianz Insurance Lanka Ltd.) who is the 3rd Defendant-Respondent-Appellant – herein after referred to as the ‘3rd Defendant’.

The Plaintiff submits that, as a consequence of the irreparable damage caused to the electricity pole and transformer, it instituted proceedings in the District Court of *Balapitiya* (‘District Court’) seeking to recover damages in the sum of Rs. 882,128/- jointly and severally from the 1st to the 3rd Defendants, being the cost incurred in replacing the damaged property.

The Plaintiff further states that the 3rd Defendant admitted that the vehicle was insured under an insurance policy issued by it, but contended that its liability in respect of third-party property damage was contractually limited to Rs. 500,000/-. The Plaintiff further submits that the 3rd Defendant (Insurer) asserted that it had discharged its contractual obligations by paying the sum of Rs. 500,000/- to the 1st Defendant (Insured) for onward payment to the Plaintiff (who is the third party) and, on that basis, sought to be discharged from the proceedings. However, the Plaintiff maintains that it has not received the said sum from the 1st Defendant.

The Plaintiff further states that the learned District Judge of *Balapitiya*, by judgement dated 13 November 2014, held that the Plaintiff was entitled to recover damages only from the 1st and 2nd Defendants and declined to impose liability on the 3rd Defendant on the basis that the latter had already paid the sum of Rs. 500,000/- to the 1st Defendant. According to the Plaintiff, being dissatisfied with that decision, it preferred an appeal to the Provincial High Court of the Southern Province, holden in Galle (‘High Court’).

When the appeal was taken up for hearing before the High Court, the 1st to 3rd Defendants were absent and unrepresented. The High Court, by judgement dated 16 May 2019, allowed the appeal and held that the Plaintiff was entitled to recover the sum of Rs. 882,128/- jointly and severally from the 1st, 2nd, and 3rd Defendants. Being aggrieved by the said judgement of the High Court, the 3rd Defendant preferred the instant Appeal, and this Court granted Leave to Appeal on the following Questions of Law:

“**A.** Did the Honourable judges of the Civil Appellate High Court of the Southern Province err in law by overlooking Section 100 (1) (b) of the Motor Traffic Act as amended?

**B.** Did the Honourable judges of the Civil Appellate High Court of the Southern Province err in law by arriving at the conclusion that under Section 105 of the Motor Traffic Act, the 3rd Respondent, as the insurer, is liable to satisfy a decree in relation to third-party property damage?

**C.** (i) Is the Contract of insurance in respect of third-party property damage a privity of contract between the Insurer and the Insured?

(ii) If the answer to the above question is in the affirmative, can the insurer pay a claim directly to a third party (claimant)?

**D.** In the absence of a definition of 'third party' in the Motor Traffic Act, should the liability to pay the damages directly to the third party be confined only to cases of death or bodily injury to such third party? ”

***High Court Judgement***

The learned High Court Judge, in the judgement dated 16 May 2019, held that the District Court had failed to comply with the mandatory requirements of Section 105 of the Motor Traffic Act No. 14 of 1951. The High Court further observed that the action was in the nature of a third-party insurance claim and held that, once such a claim is established on a balance of probabilities, the District Court is under a statutory obligation in terms of Section 105 of the Motor Traffic Act to direct the insurer to satisfy the damages awarded to the third party. In support of this proposition, the learned High Court Judge relied on ***Fernando v De Silva and Others*** [2003] 3 Sri L.R. 29, wherein the Court of Appeal explained that Section 105 imposes a direct statutory obligation on the insurer to make payment to the injured third party, who thereby acquires a legal entitlement to the decretal amount.

Having accepted the Plaintiff’s claim, the High Court held that the learned District Judge had erred in directing that the damages could be recovered only from the 1st and 2nd Defendants. The learned High Court Judge considered this to be a misconception of the applicable law and held that the learned District Judge had also erred in accepting the contention that payment of the insured amount under the policy to the 1st Defendant discharged the 3rd Defendant from its statutory liability towards the third party. The High

Court observed that no valid reason had been given for departing from the express provisions of Section 105 and accordingly held that appellate intervention was warranted.

Consequently, the High Court set aside the portion of the District Court judgement relating to the recovery of damages and directed that the sum of Rs. 882,128/- be recovered jointly and severally from the 1st, 2nd, and 3rd Defendants, while affirming the remainder of the judgement.

***Contention of the 3rd Defendant***

The 3rd Defendant submitted that the insurance policy remained a contract governed by the ordinary principles of contract law and that, except to the extent modified by statute, the rights and obligations of the insurer and the insured were regulated exclusively by the terms of the policy. Relying on *Bird's Modern Insurance Law* (8th edition, pp74 - 76) and ***Ceylinco Insurance Co. Ltd. v Richard et al.*** (64 NLR 53), the 3rd Defendant contended that its contractual obligation was limited to indemnifying the 1st Defendant for third-party property damage up to the sum of Rs. 500,000/- and that, having paid that amount to the insured, it had duly discharged its contractual obligations. The 3rd Defendant further maintained that, by reason of the doctrine of privity of contract, the Plaintiff had no right to enforce the insurance contract directly against the insurer in the absence of an assignment or an express contractual entitlement.

The 3rd Defendant further contended that Section 100(1)(b) of the Motor Traffic Act creates a statutory exception to the doctrine of privity of contract only in respect of claims arising from the death of or bodily injury caused to third parties. It was submitted that claims relating solely to third-party property damage fall outside the scope of that statutory exception and, therefore, continue to be governed exclusively by the contractual relationship between the insurer and the insured. The 3rd Defendant also argued that Section 105 of the Motor Traffic Act must be read together with Section 100(1)(b) and that the statutory obligation imposed by Section 105 to satisfy decrees extends only to liabilities arising from third-party death or bodily injury and not to claims for property damage.

The 3rd Defendant further submitted that the High Court had erred in law by interpreting Sections 100 and 105 of the Motor Traffic Act as imposing a statutory obligation upon the insurer to satisfy every decree obtained by a third party irrespective of the nature of the claim. It was contended that the High Court had incorrectly relied upon the aforesaid ***Fernando v De Silva and Others***, a case concerning death or bodily injury, and had wrongly extended its ratio to claims involving third-party property damage. Accordingly, the 3rd Defendant maintained that the judgement of the High Court was legally unsustainable and prayed that it be set aside and that the judgement of the learned District Judge be restored.

***The Plaintiff's Position***

The Plaintiff submitted that the insurance policy issued by the 3rd Defendant expressly covered third-party property damage and that the 3rd Defendant had acknowledged its liability to compensate the Plaintiff for the damage caused to the electricity pole and transformer. The principal issue, according to the Plaintiff, was whether the 3rd Defendant could be regarded as having discharged its statutory obligation by paying the insured amount to the 1st Defendant instead of making payment directly to the Plaintiff.

The Plaintiff further contended that Sections 99, 100, and 105 of the Motor Traffic Act should be read harmoniously as imposing a mandatory statutory obligation upon an insurer to satisfy decrees obtained by third parties against the insured. The Plaintiff argued that, although an insurance policy may contractually limit the insurer's liability, such contractual limitations cannot prevail over the statutory duty imposed by Section 105 once a decree has been entered in favour of a third party. It was further submitted that the use of the word "shall" in Section 105 denotes a mandatory obligation requiring the insurer to satisfy the decree directly in favour of the person entitled to its benefit.

The Plaintiff also relied on the decisions in the said ***Fernando v De Silva and Others*** and ***Sri Lanka Insurance Corporation Ltd. v Chrysantha Fernando*** (2005) 1 Sri LR 229, together with the writings of Dr Wickrema Weerasooriya and other legal commentators, to contend that the rights of a third party against an insurer arise not from the contract of insurance but from the statutory provisions of the Motor Traffic Act. Consequently, the doctrine of privity of contract, according to the Plaintiff, cannot be invoked by the insurer to defeat the statutory rights of a third party.

The Plaintiff further contended that the expression "third party" under the Motor Traffic Act extends to persons who suffer damage to their property as well as those who sustain bodily injury or death. It was therefore submitted that the statutory obligation imposed upon the insurer applies equally to third-party property damage claims and that the 3rd Defendant could not avoid liability by asserting that its contractual obligation had been discharged through payment to the insured. Accordingly, the Plaintiff maintained that the judgement of the High Court was correct in law and prayed that the instant Appeal be dismissed.

***Interpretation of Section 105 of the Motor Traffic Act***

It is observed that motor vehicle insurance policies generally fall into two principal categories, namely comprehensive insurance policies and policies providing only compulsory third-party cover. Third-party cover constitutes a distinct component of a standard motor insurance policy, and the policy ordinarily provides that only the relevant section shall apply where the insured has opted solely for compulsory third-party insurance. Such cover generally extends to claims by third parties arising from death, bodily injury and, where provided by the policy, property damage.

It is also pertinent to note that the definition of an "accident" under the Motor Traffic Act encompasses accidents resulting in damage to property. Although the Motor Traffic Act does not expressly provide for statutory compensation in respect of third-party property damage, insurers, as a matter of commercial practice, ordinarily indemnify such claims in accordance with the terms and limits of the respective insurance policy.

Upon a consideration of the documents marked Vx(1)(a) and Vx(1)(b), it is evident that the 1st Defendant had obtained a comprehensive insurance policy. However, the policy expressly limits the insurer's liability in respect of third-party property damage to a sum of Rs. 500,000/-. Significantly, the policy does not prescribe any corresponding limitation in respect of liability arising from the death of, or bodily injury to, a third party.

Section 105[1] of the Motor Traffic Act imposes a statutory obligation upon an insurer to satisfy a decree obtained against an insured person in respect of a liability required to be

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[1] Section 105:

> (1) If after a certificate of insurance has been issued under section 100 (4) to the persons by whom a policy has been effected, a decree in respect of any such liability as is required by section 100 (1) (b) to be covered by a policy of insurance (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 sections 106 to 109, pay to the persons entitled to the benefit of the decree any sum

covered under Section 100(1)(b)[2], provided that a certificate of insurance has been issued under the Act and the liability falls within the terms of the policy. This statutory obligation

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payable thereunder in respect of that liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum under such decree.

(2) In this section, '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

[2] Section 100(1):

(1) In order to conform to the requirements of this Part a policy of insurance in relation to the use of a motor vehicle must be a policy which-

(a) is issued by an insurer (hereinafter referred to as an 'authorized insurer') who is authorized by the Minister in charge of the subject of Trade, subject to such conditions as may be prescribed, to issue policies of insurance for the purposes of this Part; and

(b) insures, in accordance with the provisions of paragraph (c), such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle on a road; and

(c)

(i) in the case of a motor coach covers any liability which is referred to in paragraph (b) and which may be incurred in respect of any one accident, up to an amount which shall not be less than twenty thousand rupees in respect of persons other than passengers, and up to an amount which shall not be less than two thousand rupees in respect of each passenger authorized to be carried therein;

(ii) in the case of a motor lorry, covers any liability which is referred to in paragraph (b) and which may be incurred in respect of any one accident, up to an amount which shall not be less than twenty thousand rupees; or

(iii) in the case of any other motor vehicle, covers any such liability which is referred to in paragraph (b) as may actually be incurred:

Provided that nothing in this subsection shall be deemed to require any such policy to cover-

(i) liability in respect of the death of any person in the employment of a person insured by the policy, or in respect of bodily injury sustained by any person so employed, where such death or injury arises out of and in the course of such employment;

(ii) except in the case of a motor vehicle in which passengers are carried for fee or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or continues notwithstanding the insurer's entitlement to avoid or cancel the policy, or the fact that the policy has in fact been avoided or cancelled, subject only to the exceptions contained in Sections 106 to 109 of the Act. It is paramount to note that Section 100(1)(b) does not deal with third party property damage, but refers only to death of or bodily injury caused to third parties.

The Plaintiff relied upon the decisions in the said ***Fernando v De Silva and Others***, ***Sri Lanka Insurance Corporation Ltd. v Chrysantha Fernando*** [2005] 1 Sri L.R. 229, and ***Royal Insurance Co. Ltd. v Ven. J.A.R. Navaratnam*** 60 N.L.R. 520, in support of the contention that an insurer is statutorily bound under Section 105 to satisfy the entire decretal amount awarded by a trial court in respect of negligence arising out of a motor traffic accident.

However, it is noteworthy that each of the aforesaid authorities concerned claims arising from the death of, or bodily injury sustained by, a third party. None of those decisions considered the question of third-party property damage. Likewise, the decision in ***Ceylinco Insurance Co. Ltd. v Richard et al.,*** 64 N.L.R. 53, relied upon by the 3rd Defendant, also related to liability arising from personal injury rather than property damage.

In these circumstances, I do not consider those authorities to be determinative of the issue presently before this Court. Equally, I am reluctant to place significant reliance upon the foreign authorities cited by both parties. The legal principles governing compulsory motor vehicle insurance in those jurisdictions are founded upon statutory provisions that differ somewhat from those contained in our Motor Traffic Act. Consequently, the proper resolution of the present dispute must be found primarily by interpreting the provisions of our own statute in light of its object and purpose.

It is important to recognise the distinction between claims arising from the death of, or bodily injury sustained by, a third party and claims relating to damage caused to the property of a third party. This distinction assumes considerable significance when construing the provisions of the Motor Traffic Act. Having examined the scheme of the

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entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise; or

(iii) any contractual liability.

Motor Traffic Act, particularly the provisions contained in Sections 99, 100 and 105, I am of the view that there is no legal impediment to an insurer limiting its contractual liability in respect of third-party property damage. This should not be construed as granting the insurer the privilege of refusing to issue coverage for third-party losses for which the insured is indemnified. However, the parties to a motor vehicle insurance policy cannot, by contractual agreement, limit the statutory liability imposed in respect of the death of, or bodily injury sustained by, a third party, since such liability is governed by the mandatory provisions of the Act.

Having regard to the relevant statutory provisions (particularly Sections 99, 100(1)b & 105) and the judicial authorities on the subject, I am of the considered view that, notwithstanding the absence of an express provision in the Motor Traffic Act dealing specifically with third-party property damage, the proper interpretation of Section 105 is that the insurer is statutorily obliged under the said section to satisfy a decree obtained in respect of the death of, or bodily injury sustained by, a third party. In contrast, liability in respect of damage to the property of a third party remains subject to the contractual terms of the insurance policy, including any limitation of liability expressly agreed upon between the insurer and the insured at the inception of the policy.

In reaching this conclusion, considerable emphasis must be placed upon the phrase *"liability covered by the terms of the policy"* appearing in Section 105. Section 105(2) expressly provides that this phrase includes a liability which is covered by the policy or which would have been so covered but for the insurer's right to avoid or cancel, or its avoidance or cancellation of, the policy. In my view, the statutory obligation imposed upon the insurer, in respect of third-party property damage, cannot extend beyond the scope of the liability undertaken under the policy itself, except in circumstances where the policy expressly enlarges that liability in order to protect third parties.

Accordingly, where the insurance policy expressly limits the insurer's liability in respect of third-party property damage, Section 105 does not operate so as to enlarge that contractual obligation. Conversely, in relation to liability arising from the death of, or bodily injury sustained by, a third party, the parties are not at liberty to contract out of the statutory obligation imposed by the Act.

I am also of the opinion that the right of recovery conferred upon the insurer under Section 110(1) of the Motor Traffic Act is intended principally to apply to amounts paid pursuant to the insurer's statutory obligation in respect of liabilities arising from the death of, or bodily injury sustained by, third parties. That provision cannot, in my view, be interpreted as extending the insurer's contractual liability in respect of third-party property damage beyond the limits expressly stipulated in the policy.

***Payment by the Insurer to the Insured***

Having determined the legal effect of Section 105, I now turn to consider the correctness of the learned District Judge's conclusion that the Plaintiff was entitled to recover damages only from the 1st and 2nd Defendants.

A careful examination of the documentary evidence led before the District Court reveals that, by letters marked 'P4', 'P5' and 'P6', the Plaintiff demanded that the 1st Defendant compensate him in the sum of Rs. 882,128/- for the damage allegedly caused to his property. In response, the 1st Defendant, by letters marked 'P1' and 'P7', explained his inability to satisfy the claim owing to his financial difficulties. All these exchanges took place prior to the institution of the action in the District Court. The evidence further discloses that, by letter dated 2 February 2008 (appearing at page 190 of the brief), the 1st Defendant informed the 3rd Defendant (who was then carrying on business as Eagle Insurance Company Ltd.) of the Plaintiff's claim. Thereafter, on 3 March 2008, the 3rd Defendant paid directly to the 1st Defendant the maximum amount payable under the policy in respect of third-party property damage. This payment is evidenced by the Discharge Certificate marked 'V2'.

Subsequently, by Plaint dated 21 January 2010, almost immediately before the expiry of the applicable prescriptive period, the Plaintiff instituted this action in the District Court against all three Defendants. In the plaint, the Plaintiff averred that notice had been given to the 3rd Defendant in terms of Section 106 of the Motor Traffic Act. However, no copy of such notice was annexed to the Plaint.

Irrespective of my earlier conclusion regarding the insurer's liability in respect of third-party property damage, it remains necessary to determine whether, in the circumstances of the present case, the 3rd Defendant had lawfully discharged its obligations under the insurance policy by paying the insured sum directly to the 1st Defendant before the institution of the proceedings in the District Court.

The principal contention advanced by the Plaintiff is that the 3rd Defendant could not validly discharge its obligations under the insurance policy merely by paying the insured sum directly to the 1st Defendant, particularly where the Plaintiff, as the party who had suffered the loss, had received no compensation. This argument is reinforced by the fact that, although the 1st Defendant had received the payment from the insurer on 3 March 2008, his subsequent letter marked 'P7', dated 7 July 2008, did not refer whatsoever to having received that payment from the insurer.

In his work *Insurance General Principles, Law and Regulatory Practice* (Stamford Lake, 2014, p.132), Dr Wickrema Weerasooriya[3] observes:

> *"A third party, not being a party to the contract, is not recognised in contract law and has no rights in contract law against either the insured or the insurer. The third party is a complete stranger to the contract. As regards the insured, the third party's rights are created by the law of tort and not by contract. As regards the insurer, the third party's rights are created by statute, namely the Motor Traffic Act."*

I agree with the foregoing statement of principle. It succinctly explains the legal basis upon which the rights of a third party arise in the context of motor vehicle insurance. Whilst the contractual relationship exists exclusively between the insurer and the insured, the Motor Traffic Act confers upon an injured third party certain statutory rights against the insurer. Consequently, although a third party is not privy to the contract of insurance, the insurer's liability towards such a third party arises from the statutory framework governing compulsory motor vehicle insurance.

Ordinarily, an insurer does not discharge a claim for third-party property damage by making payment directly to its insured before the third party has formally asserted a claim. As a matter of accepted insurance practice, the insurer first requires the third party to submit a formal demand, following which the claim is investigated and the extent of the loss is assessed. Only thereafter is the insurer expected to indemnify the loss in accordance with the terms of the policy. This practice is firmly rooted in the principles of privity of

[3] LLB, PhD (London) , Former Insurance Ombudsman of Sri Lanka

contract and indemnity. The object of third-party insurance is not merely to reimburse the insured but to ensure that the person who has suffered the loss is compensated to the extent contemplated by law and by the policy. The legislative purpose is to protect innocent third parties from being deprived of compensation merely because the insurer has acquired a contractual right to avoid the policy as against the insured.

A different statutory regime may apply in cases involving the death of, or permanent disability sustained by, third parties arising out of motor vehicle accidents. In such instances, compensation schemes introduced pursuant to circulars issued to general insurance companies under the Regulation of Insurance Industry Act, No. 43 of 2000, or under other applicable statutory provisions, may require the insurer to settle the claim directly to the third party. Those exceptional circumstances, however, are confined to claims arising from death or bodily injury and do not govern claims relating to third-party property damage.

The present Case concerns property damage. The evidence establishes that the 3rd Defendant became aware of the Plaintiff's claim by virtue of the letter dated 2 February 2008 sent by the 1st Defendant informing the insurer of the Plaintiff's demand. It was with full knowledge of the Plaintiff's claim that the 3rd Defendant, on 3 March 2008, paid the entire amount recoverable under the policy directly to the 1st Defendant instead of satisfying the claim of the Plaintiff.

In my considered opinion, such conduct cannot be regarded as a proper discharge of the insurer's obligations under the policy. Once the insurer became aware that a third party had asserted a claim in respect of damage allegedly caused by its insured, it was incumbent upon the insurer to investigate that claim and deal with it in accordance with the terms of the policy. Merely paying the policy limit to the insured, without ensuring that the payment reached the person who had allegedly suffered the loss, did not discharge the insurer's contractual obligation to indemnify the liability covered by the policy.

I take the view that the principle of indemnity concerning insurance policies, requires that the payment ultimately benefit the person who has sustained the loss for which the insured has become legally liable. In the circumstances of the instant Case, the payment made by the 3rd Defendant to the 1st Defendant cannot, in my view, be treated as a complete discharge of its liability under the policy, particularly when the insurer was already aware that the Plaintiff had asserted a claim against its insured. Consequently, the 3rd Defendant remains liable to satisfy the Plaintiff's claim to the extent of Rs. 500,000/-, being the limit of indemnity prescribed under the policy in respect of third-party property damage.

For these reasons, I hold that the Plaintiff is entitled to recover from the 1st to 3rd Defendants, jointly and severally, the maximum amount payable under the policy, namely Rs. 500,000/-, being the contractual limit applicable to third-party property damage. The balance of the damages awarded to the Plaintiff by the District Court remains recoverable from the 1st and 2nd Defendants, jointly and severally, in accordance with the law governing their liability.

***Conclusion***

In light of the foregoing analysis, I am unable to affirm the conclusion reached by the learned District Judge that the Plaintiff's remedy lay exclusively against the 1st and 2nd Defendants. Whilst I agree that the primary liability for the loss occasioned by the accident rests upon the tortfeasors (namely the 1st and 2nd Defendants), the 3rd Defendant as the insurer, cannot escape its contractual and statutory obligations to the extent of the indemnity undertaken under the policy.

As already observed, the insurance policy expressly limits the insurer's liability in respect of third-party property damage to a sum of Rs. 500,000/-. Consequently, the Plaintiff is not entitled to recover from the 3rd Defendant any amount exceeding that contractual limit.

In the instant Case, the payment made by the 3rd Defendant to the 1st Defendant did not operate as a complete discharge of its liability under the policy. At the time of making such payment, the 3rd Defendant was already aware that the Plaintiff had asserted a claim arising from the accident. In those circumstances, the insurer ought to have investigated the claim and settled it in accordance with the terms of the policy rather than merely remitting the policy proceeds to its insured. Such payment, in my view, did not extinguish the Plaintiff's right to recover from the insurer the amount for which it remained liable under the policy.

Accordingly, I hold that the 1st to 3rd Defendants, jointly and severally, continues to be liable to indemnify the Plaintiff to the extent of Rs. 500,000/-, being the maximum amount payable under the policy in respect of third-party property damage. The Plaintiff is entitled to recover the balance of the decretal amount from the 1st and 2nd Defendants, jointly and severally, in accordance with the judgement entered against them.

Hence, I am of the view that the findings of the District Court and the High Court require variation to the extent indicated above. Accordingly, the answers only to the Issue Nos. 05 and 08 to 12 framed by the District Court are varied as follows:

> Issue No. 5 – Yes. However, the Plaintiff is entitled to recover a sum of Rs. 500,000/- from the 1st, 2nd and 3rd Defendants, jointly and severally, subject to the contractual liability of the 3rd Defendant being limited to that amount. The balance of the damages awarded by the District Court remains recoverable from the 1st and 2nd Defendants (jointly and severally), whose liability arises independently of the insurer's contractual obligation.
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> Issue No. 8 – Can, but to the extent that the 3rd Defendant remains liable to the Plaintiff for the sum of Rs. 500,000/- notwithstanding its prior payment of that amount to the 1st Defendant.
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> Issue No. 9 – No.
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> Issue No. 10 – No.
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> Issue No. 11 – Can, but the 3rd Defendant is liable only for a sum of Rs. 500,000/, being the maximum amount recoverable under the policy in respect of third-party property damage.
>
> Issue No. 12 – The answer to this issue should be varied in accordance with the foregoing answers to Issues Nos. 5 and 8 to 11.

For the foregoing reasons, the judgements of the District Court and the High Court are varied to the extent set out above. Save as to so varied, the remaining findings of the learned District Judge are affirmed. In light of the reasons given above, I proceed to answer the aforementioned Questions of Law ‘A’ to ‘D’ upon which this Court granted Leave to Appeal, as follows:

Question A: Yes

Question B: Yes. The statutory obligation imposed upon the insurer, in respect of third party property damage, cannot extend beyond the scope of the liability undertaken under the policy itself, except in circumstances where the policy expressly enlarges that liability in order to protect third parties.

Question C: (i) Not arising due to reasons given above in this Judgement

(ii) The principle of indemnity requires that the payment by the insurer, in relation to third-party property damage, ultimately benefit the person who has sustained the loss for which the insured has become legally liable.

Question D: The answer given by me to the above Question C(ii) applies even to claims arising from death of or bodily injury sustained by, a third party.

The instant Appeal is accordingly allowed in part. In the circumstances of this Case, I make no order as to costs.

**Judge of the Supreme Court**

**A.L. Shiran Gooneratne J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera, J.**

I agree.

**Judge of the Supreme Court**