

MOTOR TRAFFIC

No. 13 of 1965

An Ordinance to amend the
Motor Traffic Ordinance 1936–1964, as amended by the
Motor Traffic Ordinance 1965.

1.—(1.) This Ordinance may be cited as the *Motor Traffic Ordinance* (No. 2) 1965.* Short title and citation.

(2.) The *Motor Traffic Ordinance* 1936–1964,† as amended by the *Motor Traffic Ordinance* 1965,‡ is in this Ordinance referred to as the Principal Ordinance.

(3.) Section 1 of the *Motor Traffic Ordinance* 1965 is amended by omitting sub-section (3.).

(4.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Motor Traffic Ordinance* 1936–1965.

2. Section 54 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:— Policies of insurance.

“(9.) A third-party policy in force under this section on or after the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance* 1955 indemnifies, and shall be deemed at all times to have indemnified, to the extent of the insurance effected by the policy, an insured person and his estate against—

- (a) any liability under a cause of action that survives under or by virtue of section 4 of that Ordinance against the estate of a deceased person;
- (b) any liability under or by virtue of section 7 of that Ordinance;
- (c) any liability in a case where the insured person or his estate, as the case may be, has in any proceedings been joined as an alternative defendant;

* Made on 23 August, 1965; notified in the *Commonwealth Gazette* and commenced on 9 September, 1965.

† Ordinance No. 45, 1936, as amended by Nos. 25 and 41, 1938; No. 16, 1941; No. 14, 1942; Nos. 2 and 13, 1943; No. 3, 1945; Nos. 6 and 13, 1947; No. 7, 1950; No. 17, 1951; No. 1, 1955; No. 6, 1956; No. 19, 1957; Nos. 10 and 15, 1958; No. 7, 1959; No. 11, 1960; Nos. 16 and 17, 1962; No. 21, 1963; and No. 8, 1964.

‡ Ordinance No. 9, 1965.

(d) any liability in a case where the insured person or his estate, as the case may be, has served or been served with a third-party notice; and

(e) any liability in a case where the insured person or his estate, as the case may be, claims contribution from some other person as a joint tort-feasor or has a claim made against him or it as a joint tort-feasor.

“(10.) In the last preceding sub-section, ‘insured person’ means a person who is insured under a third-party policy against liability in respect of the death of, or bodily injury to, another person caused by or arising out of the use of a motor vehicle.”.

Recovery of
money from
insurers.

3. Section 61 of the Principal Ordinance is amended—

(a) by omitting from sub-section (3.) the word “sub-section” (first occurring) and inserting in its stead the word “section”; and

(b) by adding at the end thereof the following sub-sections:—

“(9.) The provisions of sub-sections (1.) and (2.) of this section apply, and, from the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*, shall be deemed at all times to have applied, to—

(a) authorize entry against the authorized insurer of any judgment obtained against the estate of a deceased insured person under or by virtue of Part II. of that Ordinance; and

(b) authorize contribution between joint tort-feasors under or by virtue of Part IV. of that Ordinance.

“(10.) Notwithstanding anything contained in Part II. of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*, the provisions of sub-section (3.) of this section continue to apply, and shall be deemed to have applied, from and including the date of commencement of that Ordinance.

“(11.) Sub-section (3.) of this section permits, and that sub-section shall, from and including the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*, be deemed to have permitted, the institution of proceedings of the kind referred to in that sub-section against the authorized insurer or the nominal defendant, as the case may be, in a case—

(a) where the insured person is dead; or

(b) where, under or by virtue of section 7 of that Ordinance, a cause of action in respect of death or bodily injury is deemed to have been subsisting against the insured person before his death.

“(12.) Where liability of the kind referred to in sub-section (3.) of this section has been incurred by an insured person and the insured person is dead or cannot be served with process—

(a) a person seeking to recover damages in respect of the death or bodily injury as a result of which liability was incurred may join—

(i) in a case where the insurance is under a third-party policy issued by an authorized insurer—the authorized insurer; or

(ii) in a case where the insurance is under a policy of the kind referred to in paragraph (b) of sub-section (3.) of this section—the nominal defendant,

as a defendant or one of the defendants;

(b) a third-party notice that might have been served—

(i) by the insured person if he had been joined in the proceedings; or

(ii) upon the insured person if he were living or could have been served with process,

may be served by or upon the authorized insurer or the nominal defendant, as the case may be; and

(c) the authorized insurer or the nominal defendant, as the case may be, has the same rights and is subject to the same obligations in respect of contribution between joint tort-feasors as the insured person would have had or been subject to if he were living or could have been served with process.

“(13.) The last preceding sub-section shall, from and including the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*, be deemed to have applied in the like manner as it applies after its commencement.

“(14.) The right of action against the authorized insurer or the nominal defendant in a case where an insured person is dead is, and, from and including the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*, shall be deemed at all times to have been, alternative to the right of action conferred under or by virtue of Part II. of that Ordinance against the estate of a deceased insured person.

“(15.) Without prejudice to the generality of the last preceding sub-section—

- (a) where proceedings are commenced against the authorized insurer or the nominal defendant—proceedings in respect of the same cause of action shall not be instituted against the estate of a deceased insured person unless the first-mentioned proceedings have been discontinued;
- (b) where proceedings are commenced against the estate of a deceased insured person—proceedings in respect of the same cause of action shall not be instituted against the authorized insurer or the nominal defendant unless the first-mentioned proceedings have been discontinued; and
- (c) where proceedings against the authorized insurer, the nominal defendant or the estate of a deceased insured person, as the case may be, have been carried to judgment—further proceedings in respect of the same cause of action shall not be instituted.”.

Presumption
of agency.

4. Section 66 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:—

“(2.) In addition to its application to proceedings of the kind referred to in the last preceding sub-section, the presumption of agency under that sub-section applies to—

- (a) proceedings against the estate of the deceased owner or driver of the motor vehicle under or by virtue of Part II. of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*;
- (b) proceedings against the authorized insurer or the nominal defendant, as the case may be, under or by virtue of sub-section (3.) of section 61 of this Ordinance in a case where the owner or driver of a motor vehicle is dead or cannot be served with process; and
- (c) proceedings in a case where the owner or driver of the motor vehicle, the estate of the deceased owner or driver of the motor vehicle, or the authorized insurer or the nominal defendant, as the case may be, is—
 - (i) joined as an alternative defendant;
 - (ii) served with a third-party notice; or

- (iii) made a party to proceedings for the recovery of contribution by or against a joint tort-feasor under or by virtue of Part IV. of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*.

“(3.) The last preceding sub-section applies to proceedings referred to in that sub-section, and shall be deemed at all times to have applied to those proceedings, from the date of commencement of the *Law Reform (Miscellaneous Provisions) Ordinance 1955*.”.

5.—(1.) The amendments made by this Ordinance apply, subject to the next succeeding sub-section, to and in relation to— Transitional provisions.

- (a) any proceedings pending as at the first day of July, One thousand nine hundred and fifty-nine, that were uncompleted on that date, notwithstanding that in any such proceedings a notice of discontinuance has been filed; and
- (b) any proceedings that were not pending on that date and that could not be commenced by reason that those amendments had not been made.

(2.) Notwithstanding anything contained in the last preceding sub-section, any proceedings—

- (a) that have been settled by agreement between the parties to the proceedings and followed by a release signed by those parties or by an entry of verdict or judgment; or
- (b) that have been taken to verdict or judgment, other than proceedings in respect of which an appeal to the Supreme Court or the High Court is pending at the date of commencement of this Ordinance,

shall not be revived or continued.

(3.) For the purposes of any proceedings of the kind referred to in paragraph (b) of sub-section (1.) of this section, time shall not run during the period that commenced on the first day of July, One thousand nine hundred and fifty-nine, and ended on the day immediately preceding the date of commencement of this Ordinance for the purpose of any notice before action required to be given, or for the purpose of any period of time within which actions must be brought, under a law in force in the Territory.

(4.) Where a plaintiff seeks to revive, continue or institute any proceedings to which paragraph (a) of sub-section (1.) of this section applies or that would, but for the last preceding sub-section, have been barred, the Supreme Court may, by order, allow the plaintiff to revive, continue or institute those proceedings, as the case may be, on such conditions, if any, as the Supreme Court thinks fit.

(5.) An application to the Supreme Court under the last preceding sub-section shall be made within one year after the date of commencement of this Ordinance or within such further period as the Supreme Court allows, but not thereafter.