AMERICAN LIFE INSURANCE COMPANY, INC., Appellant, *v.* BEATRICE C. HOLDER, Widow of the late ESLI HOLDER, for herself and her two minor children, IDA REBECCA, and MAJORIE MAE HOLDER, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard : April 9, 1981. Decided: July 29, 1981.

1. A group life insurance contract is made by the employer and the insurer rather than between the insurer and the employees. It covers and affects four parties: the insurer, the employer, the insured and the beneficiary.
2. A widow has the right to institute an action of damages individually and as guardian of the children of the marriage and is not precluded from joining the children as co-plaintiff.
3. Provisions in life insurance contracts limiting the insurer's liability or exempting the insurer from liability in the event of the death of the insured by his own hand or act or self destruction of the insured; or in case he takes his own life and other expressions, not employing the term "suicide" do not apply to death by accident or death resulting unintentionally.
4. Mere allegations are not proof, and factual allegations pleaded must be proven at the trial; for it is evidence alone which enables the court to decide with certainty the matter in dispute.
5. When a defendant is charged with the offense of driving under the influence of alcohol, a chemical analysis of his blood, urine or breath is required to determine whether the amount of alcohol consumed was sufficient to impair his operation of the vehicle.
6. Presumptions both of law and fact are always in favor of innocence; where a defendant seeks to avoid liability on the ground of a violation of law by the plaintiff, he must prove the violation.
7. Where an affirmative defense is set in an answer to plaintiff's claim, upon which issue is joined, the burden of proof is upon the defendant as to the affirmative defense.
8. The jury is the exclusive judge of the evidence, and must in reason, be the exclusive judge as to what constitutes the preponderance of the evidence. Hence, where the jury have reached a conclusion, after having given consideration to the evidence which is sufficient to support a verdict, the same should not be disturbed by the court.
9. Public policy forbids the imputation to authorize officials action of any motives other than legitimate ones; and the courts will presume in the absence of evidence to the contrary, that public officers have properly discharged their duties of their office and faithfully performed those matters to which they are charged.
10. No party may assign as error, the giving or the failure to give an instruction to

the trial jury, unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the ground of his objection.

11. The proceeds of a life insurance policy are not part of the insured estate, unless so provided in his last will and testament.
12. Life insurance policies are neither donations or gifts *inter vivos* nor gifts *mortis causa*, nor do the proceeds form a part of the estate of the deceased; rather they inure to the beneficiary directly and solely by the terms of the policy itself.

Appellant, the American Life Insurance Company entered into a group insurance contract with the Liberian Rubber Development Unit (LRDU), providing for life insurance, accidental death and dismemberment, as well as hospital and medical benefits. Prior to the filing in for an enrollment card and the designation of the named beneficiary, Esli Holder, one of the employees covered by the group insurance died as a result of a motor accident. Appellant offered to pay the benefits under the life insurance coverage, but refused to pay under the accidental death and dismemberment coverage, on grounds that the insured, having been charged with reckless driving, resulting into death, injury, property damage, and driving without license, was in violation of Item V, Clause 4 of the insurance policy. Appellees, the widow, for herself and for her two minor children, instituted an action of damages, but independent of the insured, in the Civil Law Court for the Sixth Judicial Circuit, seeking court's judgment for the payment of the life, accidental death and dismemberment benefits under the policy, as well as general damages.

The Civil Law Court, upon a regular trial, rendered judgment in favor of appellee awarding her the sum of $38,000.00, representing benefits for life and accidental death, and $10,000.00 in general damages. Appellant excepted to this judgment and appealed to the Supreme Court.

Appellant contended in its bill of exceptions and brief, among other things, that the insurance contract was between appellant and the Liberian Rubber Development Unit, and not Esli Holder, the decedent, and therefore appellees lacked the capacity to institute an action of damage on the contract. Appellant also contended that appellees' husband and father breached the policy on which the action was based; therefore,

appellees could not benefit therefrom.

The Supreme Court held that the appellees had the right and capacity to institute the action of damages; that the provision of the group insurance policy limiting the liability of the appellant, or exempting it from liability, did not apply to death by accident; and that appellees are entitled to the benefits under the accidental death and dismemberment coverage. The Supreme Court *affirmed* the judgment of the Civil Law Court but reduced the amount of general damages awarded from $10,000.00 to $5,000.00.

J. Emmanuel Berry appeared for appellant. *M. Fahnbulleh Jones* appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The records certified to us in this case revealed that on June 1, 1978, the Liberian Rubber Development Unit (LRDU) applied to the American Life Insurance company, the appellant, for a group insurance in the interest of its employees. After completing the necessary requirements for the insurance of the policy, the appellant company issued Policy # 2762. This policy has three coverages: 1) Life Insurance Benefit for twenty thousand ($20,000.00) dollars; 2) Accidental Death and Dismemberment Benefit tor twenty thousand ($20,000.00) dollars; and 3) Hospital Medical Benefit. Appellees' late husband and father, Esli L. Holder, was covered by this policy by virtue of his employment with the Liberian Rubber Development Unit (LRDU) up to the time of his death on February 9, 1979, as a result of a motor accident.

The Widow, Mrs. Beatrice Holder, approached the appellant company for the payment of the forty thousand ($40,000.00) dollars as insurance benefit for her late husband's accidental death under Policy #2762. The appellant had earlier received a police report on the accident in which the insured Esli L. Holder died, which report charged the deceased with reckless driving and driving without a license. Predicated upon the police report, the appellant informed

appellees that it would only pay $20,000.00 which represented part one of the coverage, for life benefit, but that appellees were not entitled to receive the other $20,000.00 provided for under part two of the coverage for accidental death and dismemberment, because their late husband and father had breached the terms of the contract by driving without a license. Appellees were therefore offered $18,000.00 in settlement of the life portion of the claim since the widow's brother-in-law, Edwin Holder, had already received $2,000.00 for funeral expenses. The widow, for herself and her minor children, refused to accept the $18,000.00 and contended that they be paid $38,000.00, in addition to the $2,000.00 received by her brother-in-law.

Mr. George F. Talhouk, Manager of the Claims Department of the appellant company, on August 6, 1979, wrote Mr. Elfric K. Porte, Deputy Project Manager of the Liberia Rubber Development Unit, informing him that the documents submitted by the Liberia Rubber Development Unit in support of the claim *in re* Esli Holder, deceased, under Policy # 2762 were referred to their head Office for review and advice. He also intimated in said letter that the police report revealed that the deceased was charged with the offense of reckless driving resulting into death, injury, property damage and driving without a license; and since these charges were of a criminal nature, they were advised to settle only the life portion of the claim, without considering the accidental death benefit. He further intimated that the group insurance does not cover any loss, resulting from or caused directly or indirectly, wholly or partly by "the commission of or attempted commission of an assault or any unlawful act, or being engaged in any illegal activity" as provided in item V under Clause IV of said Policy # 2762. The appellant company therefore regretted to inform the Liberia Rubber Development Unit that the accidental death and dismemberment benefit for the claim was denied, because the charges were considered unlawful acts or illegal activities; and unless it is proven beyond all reasonable doubts that the deceased did have a valid driver's license at the time of the accident, no consideration would be given in the premises. The claim manager of the appellant company also

notified the deputy project manager of the Liberia Rubber Development Unit that he should advise the beneficiary that a settlement of $18,000.00 was ready and could be received from appellant's office. He also reminded Mr. Porte that $2,000.00 was earlier advanced for funeral expenses.

On August 9, 1979, Mr. Elfric Porte wrote Mr. J. Mamadee Dorbor, Group Manager of the appellant company, explaining to him that the allegation that the late Esli L. Holder did not possess a valid license at the time of the accident was incorrect, because the deceased was in possession of an official driver's permit issued him by the Executive Officer of the Kakata Police Detachment. He attached a certificate from the Police Detachment of Kakata to this effect to the letter. It would appear that the appellant firmly maintained the position taken by the denial of any consideration for accidental death and dismemberment and the plaintiffs, on the other hand, insisted on the payment for accidental death.

Mrs. Beatrice Holder, the widow, on her own behalf and her two minor children, Ida Rebecca and Marjorie Mae Holder, then filed an action of damages against the appellant company on August 29, 1979 since they could not agree as to the amount to be paid. Pleadings progressed to the reply. On October 9, 1979, His Honour Napoleon B. Thorpe presiding over the September, 1979 Term of the Civil Law Court of the Sixth Judicial Circuit, heard arguments on the law issues and ruled that capacity to sue was a mixed law and fact and also harmless error. To this ruling both appellees and appellant excepted. During the 1979 December Term of the Sixth Judicial Circuit Court, presided over by His Honour Frank W. Smith, the case was assigned, a jury empanelled and trial commenced. During the trial, the appellant filed a petition for certiorari on the ground that the trial judge had not disposed of the legal issues. Appellees' counsel conceded the points raised in the petition, and the petition was granted. Judge Frank Smith was mandated by the Chambers Justice to pass on the law issues. The case was accordingly assigned, and Judge Frank Smith decided law issues and ruled said case to trial. The case then proceeded to trial during the June 1980 Term under the gavel of His Honour A. Wallace Octavius Obey and

the jury returned a verdict in favour of appellees, awarding $40,000.00 as insurance benefit for life and accidental death, and $10,000.00 as general damages. The trial court rendered final judgment affirming the verdict of the jury. The appellant appealed from said judgment to this Court of last resort.

For the purpose of our consideration, appellant filed an eleven-count bill of exceptions. In count one of the bill of exceptions, appellant contended that the lower court did not dispose of the legal issues which appellant squarely and unequivocally raised regarding appellees' incapacity to sue, because no insurance contract was ever entered into between the appellant and appellees nor their late husband and father that would clothe them with legal authority to institute an action for the breach of a contract. To the contrary, appellant said, the Insurance Policy #2762 relied upon by the appellees was entered into between defendant and the Liberia Rubber Development Unit. The judge, in disposing of this issue, held that the appellees had the capacity to sue by virtue of the letter of August 9, 1979, written by Mr. Elfric K. Porte, Deputy Project Manager of the Liberia Rubber Development Unit, which requested the appellant to pay the insurance benefit of the late Esli L. Holder to Mrs. Beatrice Holder because she was the beneficiary; and also Mr. George F. Talhouk's letter of August 6, 1979, requiring the Deputy Project Manager of the Liberia Rubber Development Unit to advise the beneficiary of the late Esli L. Holder to take the $18,000.00 already available at their office in settlement of the claim.

Appellant's contention, as we understand it, is that the late Esli L. Holder had no capacity to sue even if he had survived the accident, because he was not a party to the group insurance policy # 2762. Therefore, he not being a party to the group insurance contract secured by the Liberia Rubber Development Unit for the benefit of its employees from the appellant company, neither he nor his beneficiaries could independently institute an action on said contract without joining the Liberia Rubber Development Unit, the holder of policy # 27620. The appellant had already recognized Mrs. Beatrice Holder as beneficiary of her late husband Esli L. Holder. Otherwise, appellant would not have offered $18,000.00 to her in settle-

ment of the life portion of the insurance benefit for the late Esli L. Holder, in addition to the two thousand dollars advanced for funeral expenses. We quote court's question put to witness J. Mamadee Dorbor, employed as Regional Group Manager of the appellant company and his answers.

"Q. Mr. witness, the plaintiff in her testimony mentioned *inter alia* that the American Life Insurance company offered her the amount of $18,000.00 as insurance benefit for the death of her late husband; do you have any knowledge of this?

A. I will say no to the $18,000.00 only, and I will explain. Yes, we offered her an amount in excess of $18,000.00. Now, Liberia Rubber Development Unit under document marked PE-7 bought from American Life Insurance Company a group policy for its employees which contained three coverages: (1) life insurance (2) accidental death and dismemberment; and (3) hospital medical benefit. The life coverage covers the life of an eligible member under the contract for the loss of life; the accidental death and dismemberment coverage covers the conditions provided therein, which is in accordance with the legal system of the country, and it covers the loss of any principal member of the body, that is, arms, legs, neck, etc., as well as the loss of life by accidental means; the medical coverage covers any eligible member under the contract when confined in hospital when a slight injury is sustained which can be treated in a recognized and licensed clinic or hospital. The accidental death portion of the coverage or the contract under which the late Mr. Holder was a part, was denied based on the terms and conditions and limitations of the contract due to the police report received by the American Life Insurance Company, which was obtained by his employer and submitted to American Life Insurance Company. The life portion of the contract was eligible; therefore, American Life Insurance Company offered the beneficiary who is the late Mr. Holder's wife the amount of $20,000.00, of which $2,000.00 was advanced for the burial of Mr. Holder through his employer as provided

> for in the contract. The balance $18,000.00 was offered to Mrs. Holder, but she refused to accept it, contending that the police report received by American Life was not correct and therefore, she would not accept the amount of $20,000.00 from American Life Insurance Company. The American Life Insurance Company, based upon the police report, which stated that Mr. Holder was driving without a driver's license, driving under the influence of alcohol, and driving recklessly, which are all illegal acts as spelled out in our contract denied the accidental and dismemberment portion of the claim which should have been an additional $20,000.00."

The appellant, in count one of his bill of exceptions, also maintained that there was no contract entered into between the deceased Esli L. Holder and the appellant that would clothe appellees with legal authority to institute an action for the breach of a contract. The question now is, has an employee, under a group insurance secured by the employer for the benefit of the employees and for which the employer makes monthly salary deduction from his employees to pay the premium to the insurer, any legal right to maintain an action thereon? If the answer to this question is in the negative, then the appellees have no capacity to institute this action; but if the answer is in the affirmative then the appellees have capacity to maintain this action.

Group insurance is generally construed as creating a contract between the employer and the insurer but for the benefit of the employees. Therefore, a group life insurance contract is made by and between the employer and the insurer rather than between the insurer and the employees covered thereunder, and affects four parties: the insurer, the employer, the insured and the beneficiary. 44 AM. JUR. 2d., *Insurance*, § 868. Since group insurance affects four persons, who then may enforce liability on policy, and who are entitled to the proceeds? This is what the authorities have to say about the matter:

> "There is authority to the effect that group insurance taken out by an employer for the benefit of its employees may, where an employee dies, be recovered in an action

brought by the employer, since the employer is the trustee of an express trust. But it has also been held that the legal representative of an insured is not deprived of a right to bring an action on a policy of group insurance because of the fact that the premium is paid by the employer. Under a like principle, it has been held that an employee may maintain an action in his own name against an insurer, for weekly benefits, in case of injury, upon the group policy of insurance obtained by the employer for the benefit of the employee and his co-employees, under the rule that he for whose benefit a promise is made, may maintain an action thereon. Indeed, it is held that where a group insurance policy is obviously for the benefit of the employee, he may sue thereon even though the employer is designated as the beneficiary to collect the proceeds.

Under the ordinary group life policy, the beneficiary designated by the certificate holder is entitled to the proceeds, although the policy may specify the persons entitled thereto in the absence of such a designation. The Federal Employees' Group Life Insurance Act, provides for the payment of death claims in a specified order of precedence as follows: to the beneficiary or beneficiaries designated by the employee, and if there is none, to the employee's widow or widower, if there is none, to the employee's child or children, and if there is none, to the employee's parents or the survivor of them; and if none, to his executor or administrator; and if none, to his other next of kin entitled under the laws of the domicile of such employee at the time of his death". 44 AM. JUR. 2d., *Insurance*, §1876.

Can a third person institute an action against an insurer for failure of the insurer to make payment when the insured did not designate any beneficiary? We answer in the affirmative and cite the following authority:

"Right, in the absence of a named beneficiary, by third persons when insurer fails to make payment.

The fact that no beneficiary is designated does not protect the insurer when he refuses to make any payment on the policy. The insurer is still required to make payment in good faith in the absence of some other reason why it

should not be liable on the policy. Under such circumstances, a father has been allowed to sue on a policy on the life of his minor child; the insured's husband has been permitted to recover sick benefits due the insured at the time of her death, although he had not been appointed administrator; the insured's husband, suing individually and as guardian of the only child of the marriage, was held entitled to recover; and the widow of the insured, who had incurred expense on behalf of the insured, was held entitled to a right of action against the insurance company that refused to pay her. Where the policy was not made payable to the executor or administrator, and the company had not paid the insurance to anyone, the insured's widow has been allowed to recover,..." 4 COUCH CYCLOPEDIA OF INSURANCE LAW §27.76, 594-595 (2nd ed.)

In light of the foregoing circumstances, we hold that the late Esli Holder had capacity to independently enter an action of damages in his own behalf had he survived, under the doctrine that he for whose benefit a promise is made may maintain an action thereon. Mrs. Beatrice Holder, the widow, has the right to enter this action individually and as guardian of the two children of the marriage, and she is also not precluded from joining the two children as co-plaintiffs neither. Count one of the bill of exceptions is not sustained.

In count two of the bill of exceptions, appellant contested appellees' right to recover under Policy # 2762, which was issued to the Liberia Rubber Development Unit, of which the late Esli L. Holder was an employee, for reason that the late Esli L. Holder breached said contract and therefore could not benefit from the contract of his employer LRDU which he had breached, nor could his heirs benefit therefrom. The appellant refers to count 3 of its answer to buttress its contention. In count 3 of the answer the appellant averred that the events and acts committed by the late Esli L. Holder leading to his death were without the terms specified in clause IV under limitations of Policy # 2762 issued to the Liberia Rubber Development Unit which provides that ". . . the insurance provided hereunder does not cover any loss resulting from or caused directly or indirectly, wholly or partially by: (iii) self-

destruction or self-inflicted injury while sane or insane; (iv) the commission of or attempted commission of any assault or any unlawful act or being engaged in any illegal activity...." Hence, driving recklessly and without a license resulting to self death breaches the insurance contract or Policy # 2762, and renders the contract unenforceable by the assured or anyone claiming under the said contract.

The records before us reveal that although the appellant pleaded self-destruction and self-inflicted injury, no evidence was produced in support of these allegations other than the police charge sheet. However, let us see what constitutes self-destruction. Although the word 'suicide' connotes an intention to kill oneself, and the various phrases frequently employed in place thereof - die by his own hand or act', 'self-destruction,' etc., do not literally import such an intention, the courts frequently declare, and it is now generally held, that these substituted phrases are equivalent to or synonymous with 'suicide.' It is accordingly held that a condition avoiding a policy if the insured shall die 'by his own hand,' or 'by his own act', or the like, is equivalent to a proviso against suicide or intentional self-destruction. Consequently, since suicide does not cover death unintentionally or accident-ally caused, the same rule has been applied to these equivalent phrases. The rule followed by practically all courts is that provisions in life insurance contracts limiting the insurers' liability, or exempting them from liability in the event of the death of the insured by his own hand or act,' or 'the self-destruction of the insured,' or in case he 'takes his own life,' and other expressions not employing the term 'suicide,' do not apply to death by accident or death resulting unintentionally. This rule is applicable, for example, where the death of the insured is due to the accidental discharge of gun in the hands of the insured; accidental drowning, although resulting from the acts of the insured; the taking of poison by mistake; an accidental overdose of laudanum; or overdose of liquor, taken without expectation of thus causing death, a loss of perception due to drink, septicemia, following and caused by a criminal operation intended to produce a miscarriage; or ejection from a train on which the insured was trespassing. On similar

principles, death caused by the voluntary taking of carbolic acid by an insured person, with the intent not to kill himself, but to frighten his wife into giving him money, is not within a clause in the insurance policy exempting the insurer from liability in case of suicide or self-destruction. Negligence of the insured, resulting in his death, has been held not to be within the provision of a life insurance policy that it does not include insurance against self-destruction or suicide.

According to most cases which have considered the point, the addition of the words 'whether voluntary or involuntary or 'voluntary and otherwise' to expressions such as 'death by his own hand,' etc. do not make such provisions in a policy applicable to death by accident." 29A AM. JUR., *Insurance,* §1145.

We disagree with appellant's argument that the death of the late Esli Holder was due to self-inflicted injury and self-destruction, absent of any proof that the accident was intentional and that the deceased was aware of the potential danger of his act. Since mere allegations are not proof, factual allegations pleaded must be proven at the trial as provided by the rule of evidence under burden of proof.

With reference to the deceased being under the influence of alcohol at the time of the accident, we quote the jury question put to Dr. Hakil Lee, who was on duty when the late Esli L. Holder's body was carried to the said hospital on the night of the incident and his answer:

"Q. Mr. witness, it has been alleged that on the day of the incident which resulted to the death of late Esli Holder Jr., he was under the influence of alcohol. Will you please say whether or not you conducted any test when his body was taken to you to determine whether or not he was at the time under the influence of alcohol?

A. I did not conduct any alcohol test on the body of the late Esli Holder, Jr. He was brought to the hospital dead on arrival, and as there were several other patients there for treatment, I went on treating those patients who were alive."

The relevant statute on driving under the influence of alcohol provides that when a defendant is charged with the

offense of driving under the influence of alcohol, the percent of the alcohol in the defendant's blood, urine, breath or other bodily substance must be obtained by chemical analysis so as to determine whether the amount of alcohol consumed by the defendant was sufficient to impair his operation of the vehicle. Penal Law, Rev. Code 26:10.91. The contention that the deceased drove under the influence of alcohol has no legal basis and therefore cannot be sustained.

The police report of the accident charged decedent with reckless driving resulting into death, injury, property damage and driving without a license. The accident, according to the pleadings and testimonies of the witnesses, occurred on February 9, 1979 and the police report is dated February 10, 1979. It would appear from the police report, that the police did not proceed to the accident scene until the next day, which was Saturday, the 10th of February 1979 to conduct their investigation when the parties were no longer on the scene. A police report or charge sheet is an allegation against the accused subject to proof and is not conclusive. The co-appellee in this case, Mrs. Beatrice Holder, has denied that her late husband was driving without a license and has brought a certificate from Sergeant Samuel C. J. Koenig, Executive Officer of the Kakata Police Detachment, Gibi Territory, which we quote hereunder:

"REPUBLIC OF LIBERIA
MINISTRY OF JUSTICE
LIBERIA NATIONAL POLICE
KAKATA POLICE DETACHMENT

August 8, 1979

TO WHOM IT MAY CONCERN

This is to certify that on the 28th of January, 1979 the late Esli L. Holder Jr. appealed to the Kakata Police Detachment and alleged that he sent his driving license to the Motor Vehicle Division for renewal; and requested for a permit to drive.

I, the undersigned Sgt. Samuel C. J. Keonig, Executive Officer of the Kakata Police Detachment, granted to him a permit to drive for the period of two weeks while his driving license was in process.

Sgd. Samuel C. J. Keonig
Executive Officer
Kakata Police Detachment
Gibi Territory, Mont. Co. R. L.

Seal Affixed"

The co-appellee, Mrs. Holder, and witness Maryann Tucker who were present when the above certificate was prepared and signed testified to it, and said the document was admitted into evidence without any objection. The co-appellee testified also that when the claims manager told her that her husband drove without a license, she promptly told him the information was not true because she knew her husband had a driving permit. She also testified that when her husband died, three days expired before she received his wallet and all the money and the permit were gone. She told her counsel about the loss of the driving permit and her counsel advised her to get a certificate or clearance from the police, who issued the permit to this effect. It is our opinion that the certificate written and signed by the Executive Officer of the Kakata Police Detachment was a rebuttal to the accusation that the deceased drove without a license or permit and it was therefore encumbent upon the appellant company to impeach the credibility or validity of this documentary evidence; but this was not done. The appellant brought Captain Charles Harris, Commander of the Kakata Police Detachment to testify but no reference was made to the certificate. Witness Charles Harris asserted that the commander of a detachment was usually responsible for the issuance of driving permits, but he did not say that the executive officer of a detachment was precluded from issuing a permit. We wonder why the certificate, written and signed by the executive officer, and admitted into evidence, was never exhibited to Captain Charles Harris while he was on the witness stand in order that he could testify to the genuineness and the validity of said certificate, that is to say, if the executive officer of his detachment has any authority to issue driving permit.

We consider it most appropriate at this juncture to define "Permit" and "Certificate".

"*Permit.* In general, any document which grants a person

the right to do some thing. A license or grant of authority to do a thing . . A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority," BLACK'S LAW DICTIONARY 1026, (5th. ed.)

"*Certificate*. A written assurance, or official representation, that some act has or has not been done, or some event occurred or some legal formality has been complied with . . . .A 'certificate' by a public officer is a statement written and signed, but not necessarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. . . ." *Ibid.*, pp. 205.

The police report indicates that the late Esli Holder's pick-up collided with a truck and three occupants of the truck were rushed to the Rennie Hospital in Kakata, Gibi Territory, one was treated and discharged. The wounded were named as Sekou Fofana, Sekou Corneh and Musa Conneh who died later. Joseph Holder one of the occupants of the pick-up driven by the deceased was also rushed to the Rennie Hospital for treatment. Seemingly, the driver of the truck Mamadee Kromah was not wounded. Despite the fact that there were survivors in both vehicles and the police conducted an investigation, neither the appellees nor the appellant produced any of these people to testify. Joseph Holder was qualified as a witness for the appellant, but for some reasons not appearing in the records, he never took the witness stand. Whilst it is true that the appellees were bound to prove that they were entitled to receive the $20,000.00 for accidental death and dismemberment benefit, it was equally encumbent upon appellant to establish the breach of Clause IV of the insurance contract, allegedly committed by appellees' husband and father, thereby absolving said company of any liability. The two witnesses who testified to the police report were the Claims Manager, Mr. George Talhouk and the Regional Group Manager, Mr. Mamadee Dorbor of the appellant company.

Regarding matters pleaded in defense, we have the following legal authority which we quote hereunder for the benefit of this opinion. It reads thus:

> "As to affirmative defenses asserted by the defendant, he is the actor and, hence, must establish the allegations of such defense. In other words, the burden of proof in the true sense of the term is upon the defendant as to all affirmative defenses which he sets up in his answer to the plaintiff's claim or cause of action, upon which issue is joined, whether they relate to the whole case or only to certain issues in the case. As sometimes expressed, the burden is on the defendant to prove new matter alleged as a defense. This rule does not involve a shifting of the burden of proof, but merely means that each party must establish his own case. It imposes upon the defendant who alleges affirmative matter in avoidance of the plaintiff's claim or cause of action, upon which issue is taken by the plaintiff, the burden of establishing the facts which are thus alleged by presenting proof in support thereof. When the defendant comes in and admits facts stated by the plaintiff to be true and sets up matter in avoidance, he is the party who asserts the truth of the facts set up and the burden is upon him to establish those facts. If he fails to do so, the plaintiff is entitled to a verdict...." 20 AM. JUR., *Evidence,* §137,

It has been generally held that "presumptions both of law and fact are always in favour of innocence. In cases somewhat analogous, when one would avoid liability on the ground of a violation of law by the plaintiff, he must prove the violation. *Conroy v. Mather,* 104 N. E. 489.

The police officer who conducted the investigation of the accident scene or any police officer for that matter, should have appeared and testified as to what constituted the recklessness of the deceased, and to explain to the court and jury, and if possible to demonstrate by diagram how the police arrived at the conclusion that the deceased drove recklessly and without license, when he was not present at the time of the accident; nor did he meet the parties on the scene of the accident. We deem it expedient to quote verbatim the testimonies of the two witnesses who testified to the police report which charged the late Esli Holder with reckless driving resulting into death and property damage and driving without

a license:

"Q. Are you George Talhouk of the City of Monrovia?

A. Yes.

Q. Are you employed, and if so by whom and in what capacity do you serve?

A. I am employed with the American International Underwriters and the American Life Insurance Company in the capacity of manager for the Legal Property and Collection Department.

Q. Are you acquainted with one Beatrice F. Holder of Kakata, and plaintiff in these proceedings?

A. Yes.

Q. The said plaintiff has brought an action of damages against your company. You are called upon to give all facts you may have in support of your defense in this case.

A. On February 9, 1979, the assured, the Liberia Rubber Development Unit filed a claim for an automobile accident involving the death of one Mr. Esli Holder, an employee and two other deaths in the other vehicle. At the time, I served as Claims Manager and naturally had to handle this matter.

In reviewing the records submitted by our assured, it was discovered that at the time of Mr. Holder's death, he had not filed in an enrollment card, and as such he had not named a beneficiary. I further observed that the investigating officer assigned to the Kakata Police Detachment had charged the late Mr. Holder with reckless driving, resulting into injury, death, property damage and driving without a driver's license. I then referred to the insurance contract sold to the Liberia Rubber Development Unit, and made the following observations:

1. That the late Mr. Esli Holder had not purchased in his own name and right an insurance policy from our company; and
2. That the contract sold to the Liberia Rubber Development Unit is divided into two separate and distinct parts:
   a) loss of life; and
   b) accidental death and dismemberment.

Under the loss of life policy, there are no exclusions, except suicide within the first year. Under the accidental and dismemberment section, of course, you have several limitations, two of which have been violated by Mr. Holder, and I will quote both of them:

1. He was driving without a driver license;
2. The limitation spells out in details that anyone found committing an unlawful or illegal act, will definitely not enjoy the benefits afforded under the policy.

Based on these conditions, and in my capacity as claims manager at the time, I rejected the accidental death and dismemberment portion of the claim, and since there were no limitations except suicide under the loss of life policy, we in keeping with our contract, committed ourselves to pay only the loss of life portion, which was $20,000.00. However, Mrs. Holder the plaintiff and widow of the late Esli Holder, excepted to our offer and threatened that she would file suit of damages against us. In my letter addressed to her, I made mention of a check in the amount of $2,000.00 which was issued to and signed for, by the younger brother of Mr. Esli Holder, in person of Mr. Edwin Holder. This was done because he had requested us to make an initial amount available for burial expenses. When the $2,000.00 was delivered to Mr. Edwin Holder, Mrs. Holder was not present; however, Mr. Edwin Holder is within city limits and can be reached at any time to confirm this. This is all I know.

DIRECT EXAMINATION CONTINUE BY COUNSEL

Q. In your statement in chief you referred to certain instruments, including a policy that was issued by your company in favour of the Liberia Rubber Development Unit under which the plaintiff in this case is claiming, as well as the police report covering said accident. Were you to see those instruments, would you recognize them?

A. Yes.

Q. I pass you these documents and I ask you to look at them and say what you recognize them to be.

A. The document marked exhibit "A" is an insurance contract between the American Life company and the Liberia Rubber Development Unit, with an effective date

of June 1, 1978. This document marked exhibit "B" is a police report, that is, a traffic charge sheet of an accident dated February 10, 1979, involving defendant Esli Holder, who was charged with the offenses of reckless driving resulting into death, injury, property damage and driving without a license.

Defendant asks court to place marks of identification on the instrument just identified by the witness on the stand."

After appellant's first witness had testified, the next witness was J. Mamadee Dorbor, the regional manager, who deposed as follows:

"Q. What is your name and where do you live?

A. I am J. Mamadee Dorbor, Paynesward City, Robertsfield Highway, near ELWA, and I work for American Life Insurance Company.

Q. Are you employed and if so, by whom, and in what capacity do you serve?

A. Yes, I am employed by the American Life Insurance company as regional group manager.

Q. Are you acquainted with Beatrice C. Holder, the plaintiff in this case?

A. Yes, I saw her in my capacity as employee of American Life Insurance Company?

Q. Plaintiff in this case has instituted an action of damages against your company. You will please state all facts you may have in your certain knowledge, relating to and in support of your defense.

A. I am the Group Manager for American Life Insurance Company, and in my capacity as manager we instituted a contract between American Life Insurance Company and Liberia Rubber Development Unit. Under this contract, the employees of the said organization were covered under a group insurance policy of which the late Mr. Holder was a member. Some time in February 1979, our claims manager, Mr. George Talhouk, informed me that there was a claim filed from Liberia Rubber Development Unit to American Life Insurance Company on behalf of the late Esli Holder. All transactions thereafter

with regards to the claim were handled by Mr. George Talhouk, who is our claims manager. I rest.

Q. Mr. witness, refresh your memory and say if you know of any policy that was ever issued by your company under which the plaintiff in this case is a beneficiary?

A. No.

Q. I then pass you court's marked DE-2, look at it and say what you recognize it to be.

A. I recognize this document, court's marked DE-2, as a photo copy of the Master Policy which is in force as a group insurance between Liberia Rubber Development Unit and American Life Insurance Company.

Q. Please say whether the accident which claimed the life of the late Esli Holder, spouse of the plaintiff in this case was ever investigated by the police?

A. Yes.

Q. I pass you court's marked DE-1, look at it and say what you recognize it to be.

A. The document marked DE-1, was referred to my attention by our claim manager, Mr. George Talhouk.

Appellant's counsel then asked court for confirmation of the police report marked by court as DE-1 and the same was ordered confirmed.

It is our opinion that the witnesses for the appellant as quoted above did not prove any of the allegations laid in the police report against decedent. On the other hand, the certificate was testified to by witnesses who were present, and who saw Sergeant Samuel C. J. Koenig, when he executed and signed the certificate. Civil Procedure Law, Rev. Code, 1: 25.17. We hold that it was encumbent upon the appellant to have produced witnesses to prove the charges laid in the police report against decedent, Esli Holder, especially so, when the accident case had not been investigated by any court, and a judgment rendered, due to the instant death of Esli Holder. In the light of the foregoing circumstances, count two of the bill of exceptions cannot be conceded.

Our learned colleague has disagreed with us on these two issues mentioned above. His first contention is that since appellant has raised the issue of appellees' incapacity to

institute this action, we should concede this point because, under the Decedents Estate Law, a legal representative is one who has been issued Letters of Administration. Therefore, Mrs. Beatrice Holder not having been issued any Letters of Administration, she is not the legal representative of her late husband and therefore has no capacity to sue. Before addressing our selves to this contention of our colleague, we shall quote word for word, count one of the appellant's answer and bill of exceptions respectively, to ascertain whether the appellant ever pleaded lack of legal representation, since courts are not parties and therefore cannot raise issues, but must decide issues raised by parties:

"APPELLANT'S ANSWER

1. Because defendant says that as to the action in its entirety, plaintiffs are without legal capacity to sue defendant, and therefore the action is without foundation in law and should be dismissed. Defendant says that neither plaintiffs nor the late Esli Holder ever entered into an insurance contract with defendant, nor was any policy ever issued by defendant to plaintiffs or the late Esli Holder, whereupon plaintiffs have relied to bring this action. Defendant contend that Policy # 2762 was issued to the Liberia Rubber Development Unit and not Esli Holder; consequently, plaintiffs should have in keeping with the law of notice made profert of the contract or policy which constitutes the basis of their action."

"APPELLANT'S BILL OF EXCEPTIONS

1. And defendant submit that it excepted to the court's ruling on the law issues for the reason that the court did not dispose of the issues of law raised in the pleadings, in that defendant squarely and unequivocally pleaded plaintiffs' incapacity to sue as no insurance contract was ever entered into between defendant and plaintiffs, nor their late husband and father that would clothe them with legal authority to institute an action for breach of contract; and that on the contrary, Policy # 2762, upon which plaintiffs relied to sue out their action was an insurance contract between defendant and the Liberia

Rubber Development Unit (LRDU). (*See* counts 1 and 2 of Answer)."

It is evidently clear from the above quotations that the appellant never brought into issue personal or legal representative. To the contrary, appellant contends that no insurance contract was ever entered into between the late Esli Holder and the appellant. Rather, the insurance contract under which appellees are claiming was entered into between the Liberia Rubber Development Unit and the appellant. Appellees therefore have no capacity to institute an action independently without joining the policy holder, the Liberia Rubber Development Unit, since the late Esli L. Holder was no party to the contract. We hold that the determination of the beneficiary of a deceased person, is a prerequisite to the settlement of the insurance claim. Appellant having recognized Mrs Beatrice Holder as beneficiary of her late husband Esli Holder by virtue of appellant's offer of $18,000,00 to Mrs. Beatrice Holder in settlement of the life portion of the claim, said appellant was precluded from repudiating his own act. Hence he never raised this issue. Appellant also advanced $2,000.00 to decedent's brother for funeral expenses. It is our considered opinion that to agree with our colleague would tantamount to setting a dangerous precedent in our legal profession by deciding on issues not pleaded or raised by the parties. The only issue raised by appellant is that the late Esli Holder was not a party to the insurance contract and therefore neither he nor those claiming under him has any capacity to sue on the policy which we had decided earlier in this opinion.

The next point of disagreement is over the certificate issued and signed by the Executive Officer of the Kakata Detachment stating that he gave a driver's permit to the late Esli Holder for two weeks effective January 28, 1979 while the latter driver's license was in process for renewal, our colleague maintains that in the absence of the license, the permit must be produced. Otherwise, he will not recognize any document that would presuppose the existence of the permit allegedly issued to the late Esli Holder. The accident occurred on Friday, February 9, 1979, in the night and the deceased was brought to the Rennie Hospital in Kakata, Gibi

Territory, Montserrado County, on the same night and, according to Doctor Hakil Lee, he was dead on arrival. It is not clear from the records who carried the late Esli Holder from the scene of accident in Bong County to the Rennie Hospital in Gibi Territory, Montserrado County, nor is it stated in the police report when the police came on the scene and conducted the alleged investigation, except that the police report is dated February 10, 1979 and the time of the accident put at 9:30 p.m. Besides, Mrs. Beatrice Holder, the widow, in her testimony stated "three days after my husband's death before his wallet was brought to me; and his money and the permit were gone." She also testified that one Ajavon, an employee of the Liberia Rubber Development Unit was present when her late husband went to the police for the permit. None of these statements were rebutted. The certificate was also admitted into evidence without any objection. The certificate and the police report were presented to the jury who are the sole judges of the fact and, after weighing both evidence, they returned a verdict in favour of appellees. In the case *Liberian Oil Refinery company v. Ibraham Mahmoud*, 21 LLR 214 (1972), this Court held that:

> "In the trial of civil cases, it is the province of the jury to consider the whole volume of testimony, estimate and weigh its value, accept, reject, reconcile, and adjust its conflicting parts, and be controlled in the result by the part of the testimony which it finds to be of greater weight. The jury is the exclusive judge of the evidence, and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence. Accordingly, where the jury have reached a conclusion after having given consideration to evidence which is sufficient to support a verdict, the decision should not be disturbed by the court."

Our colleague has contended that we should not give any credence to the certificate in the absence of the license or the permit itself. His contention is that the permit never existed and therefore could not be produced. Hence, the certificate which supposes the existence of the permit cannot be legally accepted as evidence. We are unable to agree with our colleague for by doing so we will be violating public policy.

"Public policy forbids the imputation to authorize official action of any motives other than legitimate ones," 20 AM. JUR. 2d, §175, footnote. Further to official acts, it is provided by legal authorities that "in the absence of any proof to the contrary, there is a very strong presumption embodied in the maxim . . . that public officers have properly discharged the duties of their office, and performed faithfully those matters with which they are charged. Stated in another way, the courts will presume, in the absence of evidence to the contrary, that public officers have not culpably neglected or violated their official duties, and have not acted illegally in the doing of any official act. . . ." 20 AM. JUR. 2d., §170, pp. 174. There being no evidence before us to the effect that Sergeant Samuel C. J. Keonig, Executive Officer of the Kakata Police Detachment, acted illegally or in violation of his official duties, we have no alternative but to presume that his act in issuing the certificate was legal and that said act was performed in good faith. Let us see the circumstances surrounding this issue.

The late Esli Holder and Sergeant Samuel C. J. Koenig who issued the certificate, lived at the time in Kakata City, Gibi Territory, Montserrado County. Patrolman Alexander Gweh, the accident investigator, lived in Bong County where the deceased went on a drive. The accident occurred at 9:30 p.m. on the 9th day of February 1979 and the police allegedly conducted the investigation on February 10, 1979 (as per date of police report) when the parties were no longer on the accident scene. The decedent was pronounced dead on arrival at the Rennie Hospital in Gibi Territory, Montserrado County, and the only occupant with him was also wounded and rushed to the hospital. The wife of decedent received her husband's wallet after three days from the date of the accident and the permit and the money were gone - stolen according to her. The late Esli Holder was never charged or arrested for any traffic violation according to Captain Charles Harris, Commander of the Kakata Police Detachment. We have mentioned these circumstances in passing, but the issue raised by our colleague is not legally before us for our review. This Court has repeatedly held that exceptions taken and not included in the bill of exceptions are deemed waived. *Richards v. Coleman,* 6

LLR 285 (1938); and *Cooper v. Davis,* 27 LLR 310 (1978).

In the instant case, there is nothing before us in either appellant's bill of exceptions or brief attacking the merits or demerits of the certificate admitted into evidence without objection. We therefore disagree with our colleague. The statute defines a bill of exceptions as "a specification of the exceptions made to the judgment, decision, order, ruling or other matter excepted on the trial and relied upon for the appeal together with statement for the basis of the exception." Civil Procedure Law, Rev. Code 1: 51.7. Recourse to the records, we observe that the appellant in counts 4 and 5 of the answer did attack the certificate as not being the best evidence and fraudulent, but these counts were traversed in the reply. The trial court ruled out said counts 4 and 5 of the answer, while disposing of the law issues and appellant excepted to the said ruling. If the appellant intended to have this Court review that aspect of the judge's ruling, he would have included it in the bill of exceptions and the brief. Appellant's failure to include same in the bill of exceptions, is a waiver and an indication that the appellant may have con-ceded the legal soundness of the judge's ruling on this issue.

It is our conviction that the salient issues raised in the bill of exceptions for the determination of the appeal are enumerated in counts one and two, which we have traversed above. Counts 3, 4, 5, 6 and 7 contained objections to questions put to the co-appellee Beatrice Holder on the cross, objected to by appellees' counsel and sustained by the court, which we feel are not pertinent to reverse the judgment of the lower court. With reference to count 10 of the bill of exceptions, the motion for new trial, the court rightly denied the said two-count motion because the appellant never produced any evidence at the trial to prove the charges laid in the police report against the late Esli Holder, since, as said earlier in this opinion, a police charge sheet is an allegation and not proof. A mere allegation is not proof; evidence must support the allegation, for it is evidence alone which enables the court to decide with certainty the matter in dispute. *Cooper v. Davis,* 27 LLR 318 (1978). This Court held in *Jogensen v. Knowland,* 1 LLR 266(1895), that the want of proof will defeat the best

laid action; the statements of facts in a declaration, however, clearly and logically they may be set forth, cannot be taken as proof of their truthfulness.

Count 8 of the bill of exceptions refers to the exception taken by appellant to the court's charge to the jury. The records show that after the judge had charged the jury, appellant objected by stating "to which charge of Your Honour defendant excepts." The relevant statute on the instructions to the jury by the trial judge stipulates that "..no party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury." Civil Procedure Law, Rev. Code 1: 22.9. The objection of the appellant does not indicate distinctly the matter appellant objected to and the ground. Count 8 of the bill of exceptions is therefore not sustained.

Count 11 is simply an objection to the final judgment. Our colleague also strongly maintained that money payable to the estate of decedent must be paid to and disposed of by the personal representative of the decedent; that it cannot properly be paid directly to the beneficiaries of the estate while the estate is under administration; and he relied on the case of Mrs. Daisy Davis' application. *In re McClain Estate,* 14 LLR 334 (1961). We agree with our colleague in this regard, but dis-agree with him when he contends that that case is analogous to the case at bar.

In the case of Mrs. Davis' application, the check was issued in the name of the estate of the late J. W. H. McClain and therefore it was but proper and legal to hold that only the executors could receive and dispose of said check, since the estate was still opened. In the instant case, the amount involved is from a group life insurance policy, the proceeds of which are not part of the decedent's estate. We hold that proceeds from life insurance policy are not part of the insured's estate unless so provided in his last will and testament, or otherwise specifically ex-pressed. The weight of authority on this issue is quoted thus:

> "The fact that for the purpose of identifying the beneficiary, a contract of insurance is regarded as speaking as of the time of the decedent's death, does not make the proceeds of the policy an asset of the insured's estate, and the policy is not a testamentary writing, nor is the beneficiary a legatee.

Life insurance policies are neither donations or gifts *inter vivos* nor gifts *mortis causa*; nor do the proceeds form a part of the estate of the deceased; rather they inure to the beneficiary directly and solely by the terms of the policy itself. Although life policies resemble wills in that they become operative as to the amount payable at death, a policy payable to a named beneficiary is not a will because it does not operate on property owned at death." COUCH CYCLOPEDIA OF INSURANCE LAW §27.7, 495-496 (2nd ed.).

Relative to the general damages awarded, Black's Law Dictionary defines general damages as follows:

> "General Damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are the immediate, direct and proximate result, or such as necessarily result from the injury, or as did in fact result from the wrong, directly and proximately, and without reference to the special character condition, or circumstances of the plaintiff." BLACKS LAW DICTIONARY 468 (4th ed.).

Mrs. Beatrice Holder in her testimony stated that in addition to the inconveniences she and her children suffered, she was also involved in a motor accident while processing documents for the payment of the insurance benefit. Although, she did indicate the extent of the injury sustained from the motor accident and her testimony was corroborated, she did not exhibit a medical certificate or report. Hence, we are of the opinion that the jury rightly awarded general damages, but the amount should not have exceeded $5,000.00. We therefore hold that, since this Court has the authority to modify the judgment of the trial court, the amount of general damages is hereby ordered reduced from $10,000.00 to $5,000.00. *Townsend v. Cooper*, 11 LLR 52 (1951); *Johns v. Republic,* 13 LLR 142 (1958) *and Williams v. Tubman,* 14 LLR 109 (1960).

Under the circumstances, we find ourselves compelled to affirm the judgment of the trial court with the modification that the appellant having advanced $2,000.00 for funeral expenses which has not been denied by the appellees, same amount be deducted from the $40,000.00. The appellant is hereby required to pay $38,000.00 for insurance benefit and $5,000.00 as general damages. And it is so ordered.

Affirmed with modification.

MR. CHIEF JUSTICE GBALAZEH *dissents.*

Once more I find myself disagreeing with my distinguished colleagues' reasoning and conclusion and, hence, I have declined to append my signature to the majority opinion affirming the trial court's judgment. I should like for us, therefore, to reexamine the facts and the applicable laws governing such situations.

This case comes to us on appeal from a judgment rendered against the appellant in an action of damages instituted by the appellees, in the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its June, A. D. 1980 Term. In that action, the co-appellee, Beatrice C. Holder, widow of the late Esli L. Holder, Jr., sought to recover on her own behalf, and on behalf of her two children, group insurance benefits from the appellant, as a result of her husband's accidental death, as provided in the group insurance contract.

The records certified to this Court reveal that on June 1, 1978, the Liberia Rubber Development Unit (LRDU) applied to appellant for a group insurance in the interest of its employees, and after the completion of the primary and necessary requirements, Policy # 2762 was issued in favour of the insured covering all the employees. At the time of the issuance of Policy # 2762, one Esli L. Holder, Jr., for whom this suit was instituted, was one of such employees and was therefore covered by the policy. Under the policy of this category, any employee covered by it was required to fill out and file with appellant enrollment cards naming beneficiaries, but the records show that the late Esli L. Holder, Jr. failed to do so;

consequently, he had no named beneficiaries at the time of his demise. The policy was divided into two separate parts, namely: "loss of life" and "accidental death and dismemberment." Clause four of the said insurance contract, under 'limitations' provides that "the insurance contract provided hereunder, does not cover any loss resulting from, or caused directly or indirectly by (iii) self destruction or self inflicted injury while sane or insane; (iv) the commission of or attempted commission of any assault or any unlawful act or being engaged in any illegal activity."

On February 9, 1979, the late Holder was a victim of a fatal motor accident in Kakata and from the investigation conducted by the traffic police, it was reported that he drove recklessly and without a vehicle driver's license because his driver's license had allegedly expired since June 1978, which had not been renewed up to the time of the accident. Following the death of Mr. Holder, his brother appeared to the insured to intercede with appellant on their behalf so that the relatives could receive from appellant the insurance benefits to enable them to bury the body of the late Holder since he had not named any beneficiary as required by the policy. Accordingly, the insured wrote appellant requesting it to pay to the relatives of Decedent Holder, a portion of said benefits; and on the strength of said letter $2,000.00 was paid to the decedent's brother. Shortly after the submission of relevant documents by the insured, appellant offered to pay $18,000.00 more covering loss of life only, but refused to pay for the "accidental death and dismemberment" benefits because Decedent Holder had breached two of the principal clause conditions of said policy under 'limitations' (a) loss resulting from self destruction and (b) the commission of any unlawful act; by driving without a valid driver's license resulting to self destruction.

Appellees rejected the $18,000.00, and on August 29, 1979, instituted an action of damages against appellant, independent of the insured. In the action, she claimed the benefits covering the loss of life, and accidental death and dismemberment in the sum of $40,000.00, as well as general damages for commuting to and from, among other things. In

its answer, appellant contended that the appellees were without legal capacity to sue. Moreover, it maintained that the acts committed by Elsie L. Holder, Jr. and the circumstances leading to his untimely death, were without the terms specified in Clause Four (4) - that is, driving recklessly and without a driver's license which resulted into his death, which acts breached the portion covering accidental death and dismemberment, thereby rendering it unenforceable by the insured or anyone claiming under said insured.

A trial was had, resulting into a judgment against the appellant, from which judgment exceptions were noted, and an appeal announced and perfected to this Tribunal. The issues to be decided, as culled from the records, are:

(1) Whether or not in the absence of an executor or administrator, Mrs. Beatrice C. Holder, the widow of decedent, could sue the insurer independent of the insured to recover any insurance benefits?

(2) Whether or not the insured's employee, the decedent, breached any portion of the insurance contract, which could deprive his heirs from receiving any payment of the benefits?

(3) Whether or not it is automatic for a widow to become a beneficiary without being so named by the decedent?

(4) Whether or not the Liberia Rubber Development Unit had authority to appoint a legal representative for decedent?

(5) Whether or not there was such evidence which would lead a reasonable mind to award $10,000.00 general damages for commuting to and from in search of such payment?

My distinguished colleagues are of the opinion, as regards issues number 1 and 3, that Mrs. Holder has the capacity to sue by virtue of the letter given to her by the insured. I disagree, because legal capacity to sue is conferred by statute and the generally accepted rule is that letters of administration must be granted to the persons who are distributees of an intestate and who are eligible and qualify. Similarly, letters testamentary may be issued after a Will has been admitted into probate and any person entitled to letters testamentary

thereunder and who is eligible and qualify. This simply means that the personal representative of a decedent has the right of an action as trustee for the dependents. Decedents Estates Law, Rev. Code 8:111.1 and 113.14; and Private Wrongs Law, Rev. Code 28:3.1 and 3.2.

The general rule of law is that moneys payable to the estate of a decedent must be paid to and disposed of by the personal representative of the decedent, and cannot properly be paid directly to beneficiaries of the estate while the estate is under administration. Our courts of law have always followed this cardinal principle of law, as evidenced by the opinion of this Court found in *In re Estate of McClain*, 14 LLR 334 (1961). In that case, the facts are very similar to those in the case at bar. Mrs. Daisy Herrington Davis was trying to recover the estate of her late husband, the late John H. McClain, under the contention that she, as a widow and mother of a child by the late McClain, was beneficiary of the estate, and that she was entitled to a portion of the estate automatically. The Commissioner of Probate granted the request but on appeal from the order of the Probate Commissioner, the order was reversed by the Supreme Court.

In other words, the wife of a decedent cannot automatically assume the duties of an administratrix or personal representative either as widow or guardian, without proper authority from the probate court. The co-appellee in this case failed to qualify as a personal representative within the relevant provisions of the statute. Decedents Estates Law, Rev. Code 8: 1.3(a)(d) and 3.2.

It must also be remembered that an insurance contract, unlike other forms of contracts, is a contract of indemnity for loss or damage actually sustained and that it is strictly covered by the terms mutually agreed to by the contracting parties, that is to say, insurer and insured, and as set out in the agreement generally known as an insurance policy. In the case of a group insurance, the conditions of the contract are stated in a master policy and the participation by an individual is noted in a certificate issued to him. BALLENTINE'S LAW DICTIONARY 538 (3rd ed). Also it must be remembered that group insurance, unlike life insurance, does not confer

insurable interest automatically. One has got to be a named beneficiary in order to benefit; otherwise one will have to prove one's interest in a court of law.

Now applying these principles of law to the facts of this case, it is not difficult to see that the co-appellee, Mrs. Holder, cannot qualify as beneficiary as she was not designated as such by her late husband as required by the contract. Nor can the co-appellee sue the appellant on the contract as there is no privity of contract between the co-appellee and appellant; she being no beneficiary as required by the insurance contract, nor a personal representative as required by the statute. Hence, she cannot legally sue the appellant; and if co-appellee, Mrs. Holder, wanted to sue, she should have sued through the Liberia Rubber Development Unit, the insured. It is common knowledge that by merely being a wife, one is not automatically a beneficiary under an insurance contract or a personal representative of a decedent's estate as contended by my distinguished colleagues. Hence, in the absence of being an executrix or administratrix, Mrs. Beatrice Holder, the widow of the decedent, could not sue the insurer independent of the insured to recover any insurance benefit and she cannot thus recover any insurance benefit under the group insurance in question, in that her late husband failed to name her as his beneficiary.

With respect to issue number two, my learned Colleagues are also of the opinion that the decedent did not breach the terms and conditions of the insurance contract because the certificate issued by the traffic police showed that he had a permit to drive and once the same was acted upon by the trier of facts with credit, he drove with a license.

I differ with my dear colleagues because the certificate referred to by the majority presupposes the existence of "a permit to drive" which also presupposes the existence of a license. What a secondary grade of evidence? It is a well known principle of law that no evidence should suffice which supposes the existence of better evidence and that the best evidence in the case must always be produced. *The Shell Company of West Africa, Ltd. v. Ghandour*, 18 LLR 298 (1968) and *Twegbey and Teah v. Republic,* 11 LLR 295

(1952). Hence, in the absence of proof that the decedent's license was lost, coupled with the appellees' failure to produce the alleged permit to drive, the decedent could not be said to have driven with a license within the context of the controlling statute. The deceased having met his accidental death as a result of reckless driving and without a valid driver's license as seen from the police reports, directly violated clause four on 'limitations', one of the most crucial conditions and warranties of the contract which were construed to be a condition precedent. Driving without a valid driver's license is an unlawful activity. Vehicle and Traffic Law, Rev. Code, 38: 2.20 and 2.80(f); and *Jones v. Republic,* 13 LLR 623, 630 (1960). It is a common practice that parties to a contract of insurance of any nature are strictly governed by the terms and conditions incorporated therein; and, unless such conditions are repugnant to our laws or public policy, they are supposed to be conclusive in their mandate. 46 C.J.S. §1243. The late Holder having thus contravened the conditions and warranties of the said contract is thus estopped from denying his illegal acts; and his widow, co-appellee, cannot thus recover any benefit under the insurance contract.

With regards to issue number 4, it suffices to mention just in passing that the authority to appoint a person as a legal representative for the estate of a decedent can only be granted by the probate court of competent jurisdiction. Decedents Estate Law, Rev. Code 8:1.3(j). Therefore, the Liberia Rubber Development Unit not being a probate court or a court of law for that matter, cannot legally appoint any person as a legal representative of an estate. Hence, the letter issued by the Liberia Rubber Development Unit to the co-appellee, Mrs. Beatrice C. Holder, purporting to confer authority on her as a legal representative of the estate of her late husband was null and void and thus of no legal consequence in this regard. If anything, it was only of administrative importance.

Coming now to the last issue, I am still at a loss to understand as to how and why my learned colleagues have allowed the appellees to recover $5,000.00 - a sum that supposedly represents general damages sought by the appellees. Lest we forget that allegations in pleadings only set in a logical

manner the points constituting the act complained of and if not supported by evidence, can in no case amount to proof. General damages are those which are the natural and necessary result of the wrongful act or commission asserted as the foundation of liability. In cases of breach of warranty, the damages recoverable are those which are reasonably supposed to have been contemplated or foreseen by the parties. *Levin v. Juvico Supermarket,* 24 LLR 187 (1975). A simple glance at the evidence adduced plainly shows that commuting to and from points within Liberia in furtherance of her claim could not have cost the appellees such sum of money, even assuming, without admitting, that Mr. Holder was traveling by air to and from these places mentioned in her testimony. The co-appellee, Mrs. Holder, has not told us as to how she came up with the claim of $10,000.00, nor has this Court appreciated the basis of the computation of this claim. No evidence exists as would lead a reasonable mind to award even the reduced amount of $5,000.00 as general damages, as this Court has done. These damages are far too imaginary, excessive and punitive for the kind of suit now before us, even accepting the co-appellee's story that she experienced an acute attack of mental anguish.

THEREFORE, and in view of the foregoing facts and points of law, I am of the opinion that the judgment of the lower court should be reversed and the action dismissed with costs against the appellees, as to do otherwise would lead to gross injustice to the appellant and other party litigants who may find themselves in a similar situation.

For the reasons hereinabove stated, I find myself in complete disagreement with my learned colleagues and therefore have not signed the judgment in this case.