

IN THE SEYCHELLES COURT OF APPEAL

WARD GOVINDEN

APPELLANT

VERSUS

STATE ASSURANCE CORPORATION
OF SEYCHELLES

RESPONDENT

Civil Appeal No. 8 of 1995

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JUDGMENT OF THE COURT

The Appellant was the owner of motor vehicle bearing registration No. S3609 which was insured under a comprehensive cover. He averred in his plaint that the vehicle was involved in an accident while being driven by his authorised agent, Allen Etienne and that the Defendant was bound to indemnify him for his loss in terms of the contract of insurance. He assessed his loss at Rs.60,600.

Counsel for both the Appellant and Respondent submitted that for the Respondent to succeed it must be established that the driver's action was fraudulent but that the Appellant acted in collusion with his driver. Mr Renaud submitted that a mere probability was not enough to establish the existence of a deliberate act calculated to defraud the Respondent and that the Appellant connived at that act. He concluded that on the

facts no influence of a deliberate act on the part of the driver and a collusion by the Appellant with the driver could be made. Mr Georges was however of a different view.

The contract of insurance made provision for the assured to be indemnified for damage to the motor vehicle if the damage had been accidental.

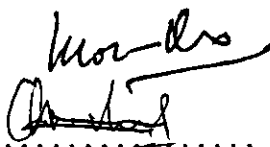
The Appellant gave evidence on his own behalf and called a witness, the driver of the car, as to the circumstances of the accident. The trial judge found that the driver's evidence was palpably false for cogent reasons which he spelt out in his judgment. We are not prepared to disturb such finding and the only reasonable inference that could be drawn from such a finding was that the damage to the car was not accidental but deliberate.

We are unable to agree with the view of both counsel that it was incumbent on the Respondent to establish not only that the damage was caused by a deliberate act of the driver but also that there was a collusion between the driver and the assured. The contract of insurance provides for the indemnity to the assured for damage to the vehicle if such damage had been accidental. As there was evidence that the driver's act was a deliberate one it cannot be said that the damage was accidental and the Respondent was accordingly under no

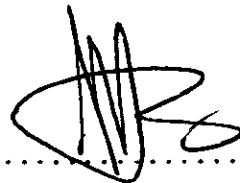
obligation to indemnify the Appellant for any loss he claims to have suffered. It is open to him to claim reparation from the driver but not from the Insurance Company.

The appeal is dismissed with costs.

19/10/95



H. GOBURDHUN (P)



A SILUNGWE (JA)



L.E. VENCHARD (JA)

Delivered this 19th day of October 1995
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