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IN THE SEYCHELLES COURT OF APPEAL

BENNET ACCOUCHE

APPELLANT

VERSUS

STATE ASSURANCE COPORATION OF SEYCHELLES

RESPONDENT

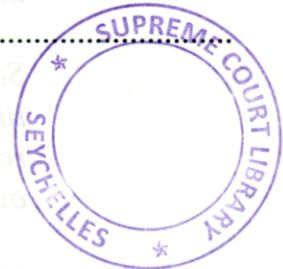
Civil Appeal No. 23 of 1995

(Before H. Goburdhun, P, A. Silungwe, J.A, L.E. Venchard J. A.)

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Mr. J. Renaud for the Appellant

Mr. B. Georges for the Respondent



JUDGMENT OF THE COURT

The Appellant entered a plaint against the Respondent in which he averred that he had insured his car No. S330 with the Respondent under a comprehensive cover policy which stipulated that the Appellant would be indemnified for any loss which he may sustain by reason of accidental damage to the insured vehicle. He made a claim for Rs.85,000 particularised as follows -

| | |
|----------------------------------|--------------|
| Loss suffered by the Plaintiff - | Rs. 65,000 |
| Moral damage | - Rs. 10,000 |
| Loss of Use | - Rs. 10,000 |

The Respondent refused to meet the claim and averred that the damage to the vehicle resulted from a simulated accident.

The Appellant called the person who, at the material time, drove the vehicle. He maintained that the damage was accidental. The Respondent called one of its officers who described the damage sustained by the vehicle. The trial judge did not believe the Appellant's witness as his narration of the alleged accident was inconsistent with the irresistible inferences to be drawn from the

contrary, he drew our attention to certain passages in Hardy-Ivany, General Principles of Insurance Law - fifth edition. The relevant passage quoted by him reads as follows -

"The onus of proving that the loss was caused by a peril insured against lies on the assured. Unless he discharges the onus, the claim must fail."

Mr. Renaud did not press the issue of fraud but submitted that the trial judge erred in not accepting the evidence of the Appellant's witness.

In reply, Mr. Georges drew attention to inferences to be drawn from the evidence on record which demonstrated that the vehicle could not have been damaged in the manner described by the Appellant's witness. The trial judge took into account only certain of the inferences which in our view were adequate to justify his findings as set out above. Indeed it would have been sufficient to discredit the Appellant's witness by drawing attention to the fact that the accident could not have occurred in the manner described by him as otherwise one would have necessarily expected to find damage on the underneath of the vehicle. In this respect, out of deference to counsel's submission, we wish to state that we have not regarded the Respondent's witness as an expert. He gave evidence of damage as well as to the absence of damage to the vehicle. It was on the strength of that evidence that irresistible inferences were drawn by the trial judge.

The Appellant having failed to discharge the onus of proving that the damage to the vehicle resulted from a genuine accident, we have no alternative but to dismiss the appeal with costs.



 H. GOBURDHUN, P.



 A. M. SILUNGWE, J.A.



 L.E. VENCHARD, J.A

Dated this 29 day of Feb 1996.