

**IN THE SEYCHELLES COURT OF APPEAL**

**STATE ASSURANCE CORPORATION  
OF SEYCHELLES**

APPELLANT

versus

**DANIEL ADELINE**

RESPONDENT

Civil Appeal No. 44 of 1999

*[Before: Ayoola, P., De Silva & Matadeen, JJ.A]*

Mr. K. Shah for the Appellant  
Mr. P. Boule for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by De Silva, J.A)*

The respondent (the plaintiff in the trial) in his plaint averred inter alia that:-

- (a) on the 10<sup>th</sup> day of March 1998 the Supreme Court delivered a judgment in Civil Side No. 57 of 1996 (Daniel Adeline v/s Koko Cars Company (Pty) Ltd), ordering the said Company to pay damages to the plaintiff in a sum of SR270,000 with interest and costs;
- (b) by virtue of Section 10(1) of the Motor Vehicles Insurance (Third Party Risks) Act, the defendant is liable to the plaintiff for the aforesaid judgment debt, the details of which are as follows:-

(i)	Award	R270,000.00
(ii)	Costs which have been taxed	SR12,003.00
(iii)	Interest @ 4% per annum from 10.3.98 to 9.8.98	<u>SR4,500.00</u>
		<u>SR286,503.00</u>

Admittedly, the respondent suffered personal injuries as a result of an accident involving vehicle No. S3762 owned by the said company. It is also not in dispute that this vehicle was insured with the appellant at the time of the accident.

The crux of the defence pleaded by the appellant (the defendant in the trial court) is in paragraph 3 and it reads thus:-


*“The defendant avers that Section 5 of the Insurance Motor Vehicle (sic) Third Party Risks Act provides that the policy must insure such persons or classes of persons as may be specified in the policy; the policy in this case specified, ‘Any Authorised Licensed Driver.’ Whilst it was established per the judgment that the driver was an authorised driver it was not established that the driver was licensed as specified in the policy.” (Emphasis added)*


The contention of the appellant as pleaded was that an essential term of the policy was that the driver must be a licensed driver and since there was no proof of that fact, the insurer (the appellant) was not liable to satisfy the judgment entered against the insured.


In this state of the pleadings and the evidence, the crucial question that arises for consideration is, on whom does the evidential burden of proof lie? In our opinion, there is but one answer to this question. The burden lies clearly on the appellant, for it is the appellant who seeks to be discharged from the liability to satisfy the judgment entered in favour of the respondent against Koko Cars Company Ltd, the insured, by relying on a condition of the policy. The respondent, as rightly stated by the Learned Trial Judge (Perera, J.) is an innocent Third Party who was not privy to the policy. This burden

the appellant has totally failed to discharge. It follows that the appeal of the State Assurance Corporation of Seychelles fails and is dismissed with costs.

We now turn to the cross-appeal filed by the respondent. The cross-appeal relates to that part of the judgment which disallowed "*interest from 10.3.98 to 9.8.98, being the period between the date of the delivery of the judgment in favour of the plaintiff as against Koko Cars Company and the date of the filing of the present case.*" The amount of the interest involved was SR4,500. Mr. Boule for the respondent referred us to the Interest Act (Chapter 100) and also to the judgment of Sauzier Acting Chief Justice in **Seychelles National Commodity Co. Ltd v Roy Faure** (1981) SLR 160. The Learned Acting Chief Justice referred to the Interest Act as being a relevant Statute on the question of interest on judgments. We would respectfully follow this observation and award to the respondent a sum of SR4,500 as interest. The cross-appeal is allowed to this extent.

  
**E. O. AYoola**  
**PRESIDENT**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

  
**K. P. MATADEEN**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahé, this 13<sup>th</sup> day of *April* 2000.