

IN THE SUPREME COURT OF SEYCHELLES

HERMAN MARIA CO PTY LTD.

V

H. SAVY INSURANCE CO LTD.

Civil Side No. 01 of 2006

Mr. J. Renaud for the plaintiff

Mr. F. Chang-Sam for the defendant

D. Karunakaran J

JUDGMENT

I believe, I need not write a long judgment in this case. The pleadings and facts are clear on record. The issues involved in this case are simple and straightforward. I will therefore, proceed to give an ex tempore judgment saving the precious time of the Court and that of the counsel.

The plaintiff in this matter seeks this Court for a judgment ordering the defendant to pay the plaintiff the sum of Rs.33, 210/- with interest and costs. The defendant denies liability.

It is not in dispute that at all material time, the plaintiff- company was the owner

of a motor vehicle registration S9023. On the 15th April 2000 the plaintiff's vehicle was involved in a road traffic accident with another vehicle bearing registration no. S11965, owned by one Francois Kilindo, hereinafter called the "claimant". At the time of the accident admittedly, the plaintiff's vehicle was insured by the defendant-company through Policy No. HSI/081/1/000441/1999 with fully comprehensive insurance policy vide exhibit D1. On the 10th October 2005 in a Supreme Court Case CS 119 of 2000 instituted by the claimant/ Kilindo, Justice AR Perera found liability against the plaintiff herein in the sum of Rs.25, 000/- with interest and costs. The costs were taxed in the sum of Rs.8, 210/-. Admittedly, the sum claimed and judgment obtained by the claimant in that suit against the plaintiff was to recover the "loss of earning" which the claimant allegedly suffered on account of the said road traffic accident. It is further averred in the plaint that the plaintiff requested the defendant-company to pay the said judgment- debt to the claimant pursuant to the said comprehensive insurance policy. However, the defendant -company refused to pay him. This necessitated the plaintiff to pay off the judgment-debt to the claimant.

Now, it is the case of the plaintiff that in breach of the contract of insurance the defendant-company has refused to pay the said sum for which the defendant is liable in law to the plaintiff. Therefore, the plaintiff claims that the defendant is liable to compensate the plaintiff in the sum of Rs33, 210/-, which sum the plaintiff owed and paid to the claimant by virtue of the said judgment of the Court. Therefore, the plaintiff prays this Court to enter judgment against the defendant in the sum of Rs.33, 210/- with interest and costs accordingly.

In a nutshell, the case of the defendant is that it is not liable to compensate the

plaintiff under the said insurance policy or in law in respect of the amount claimed by the plaintiff. According to the defendant, the insurance company is not liable to pay for a debt which the plaintiff incurred which is not covered or indemnified by the insurance policy. Learned counsel Mr. Chang-Sam submitted in essence that the claim made by the plaintiff in respect of loss of earnings suffered by a third party/claimant falls under General Exceptions to the liability specified in the contract of insurance, that is, in the insurance policy in question. Mr. Chang-Sam also pointed out that the Insurance Policy at page 9 paragraph 7 clearly stipulates that any costs and expenses incurred by any claimant for loss of use/loss of earnings etc is specifically exempted and are not covered by the insurance. Moreover, Mr. Chang-Sam contended that by virtue of Section 2 in the Insurance Policy, the defendant- company is liable to indemnify a third party against liability at law for damages only in respect of:-

1. Death or bodily injury to any person or
Damage to property.

In the circumstances, learned counsel submitted that any claim based on loss of earning is not covered or falls under the liability clause in that contract of insurance. Therefore, Mr. Chang-Sam contended that the defendant is not at all liable to pay the claim made by the plaintiff in this matter.

According to Mr. Renaud, Learned counsel for the plaintiff, his client has already incurred liability and has paid the sum to the said Kilindo in pursuance of the judgment given against him involving the claim for loss of use / earning. Hence,

Mr. Renaud submitted that the insurance company is liable in law to pay the said sum to his client, the insured in this matter.

I carefully perused the pleadings and the policy of insurance produced in evidence. I gave diligent thought to the submissions made by both counsel in this matter. First of all, I note as rightly submitted by Mr. Chang-Sam, the insurance policy under Section 2 on “liability to 3rd parties” does not cover or include or indemnify the insured/plaintiff in respect of any claim by a 3rd party for loss of earning/use. It is evident Section 2 in this particular contract of policy refers to only two categories of claims:-

1. Death or bodily injury to anyone and
Damage to property.

Obviously the loss of earnings is not covered by the insurance policy.

Having said that, I note that loss of earnings is specifically exempted from liability in terms of paragraph 7 under the heading General Exceptions vide page 9 of the policy. In the circumstances in my considered view, the insurance company is not liable to pay the alleged loss of earnings, which the plaintiff claims that he has already paid to the said Kilindo by virtue of the judgment mentioned supra. Indeed, an insurance company which pays a claim under an insurance policy does not pay somebody else’s debt but its own under the insurance policy. See, ***General Insurance Company of Seychelles v/s Mendelson 1978 SLR Case No. 9.***

As I have observed earlier since loss of earnings falls under exemption to liability under the said policy of insurance, the insurance company is not liable to pay any debt under the insurance policy to any claimant. Had the plaintiff-company paid the debt to the said claimant Kilindo, it has simply paid its own debt by virtue of the court-judgment, and not any debt/sum the insurance-company owed to the claimant by virtue of the Insurance Policy. For these reasons, I find the plaintiff's claim in this matter is not maintainable in law and liable to be dismissed. I do so accordingly. The suit is dismissed. I make no order as to costs.

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D. KARUNAKARAN

JUDGE

Dated this 1st day of October 2010