

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 254/2017

(arising in CS 22/2017)

[2018] SCSC 661

H.SAVY INSURANCE
Plaintiff

versus

GOLDY PORIS
Defendant

Heard: 23rd May 2018
Counsel: Ms Benoiton for Plaintiff
Mr Camille for Defendant
Delivered: 11th July 2018

JUDGMENT

Nunkoo J

[1] The plaintiff is vehicle owner having his vehicle insured with the Defendant, an insurance company, for the sum of Rs 750,000.00. The plaintiff has averred that on 14 June 2015, as a result of an accident the vehicle was seriously damaged and could not be repaired. Hence the claim for the amount of Rs 800,000.00 from the defendant, as follows:

Breach of agreement	Rs 50,000.00
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Loss of vehicle Rs 700,000.00

Inconvenience, loss, anxiety and distress Rs 50,000.00

- [2] The plaintiff has averred that in spite of a notice sent to the defendant for the payment of damages and loss the defendant has failed to do so.
- [3] As per the records this case was entered on 30 December 2016.
- [4] Summons to the defendant was duly served on the defendants on 21st March 20-17, by delivering same to the secretary of the defendant company that is H Savy Insurance Company Ltd.
- [5] The case came before the Master for exparte on 17 May and it was fixed for exparte hearing. The Master fixed it to 24 May at 2 pm ,to be heard exparte by me.
- [6] On that date no one represented the defendant and the matter was set for exparte hearing to the 30 th of March 2017. After hearing evidence from the plaintiff judgment was given in his favour.
- [7] The Petitioner has averred in her petition that at some point the applicant was served with the plaint and it appears that on the date set for mention, unfortunately due to logistical and scheduling issues neither a counsel nor a representative of the Applicant was available to attend court and the case proceeded in the applicant's absence.
- [8] From the records it appears that the case came before the master and it was set for 24 th May 2017 for a date to be fixed for an exparte hearing. The case was fixed to 30 May for an exparte hearing and on both these dates the Applicant was unrepresented.
- [9] I have gone through the submissions made by Learned Counsel for the Applicant. The Learned Counsel has referred the court to section 69 of the Seychelles Code of Civil Procedure which reads as follows:

Section 69: If in any case where one party does not appear on the day fixed in the summons, judgment has been given by the court, the party against whom judgment has been given

may apply to the court to set it aside by motion made within one month after the date of the judgment if the case has been dismissed, or within one month after execution has been effected if judgment has been given against the defendant, and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called for hearing, the court shall set aside the judgment upon such terms as to costs, payment into court or otherwise as it thinks fit and shall order the suit to be restored to the list of cases for hearing. Notice of such motion shall be given to the other side.

[10] Learned Counsel seems to be arguing that the Court has a duty to notify the party who did not attend court about the *ex parte* date. She has quoted a line of cases suggesting that it is in interest of the administration of justice to give notice. I am of the view that the law is clear and there is no such legal duty imposed upon the court. The Applicant was aware of the date upon which the case was fixed for mention. They did not attend for what they call scheduling or logistical reasons. That the end of it. The Respondent cannot be made to suffer for that; he is entitled to his payment under the insurance. Justice need to be done to him as well. Justice is not one sidedness.

[11] I find no merit in this application. I therefore dismiss it. With costs.

Signed, dated and delivered at Ile du Port on 11th July 2018.



S Nunkoo
Judge of the Supreme Court