

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 412
CS 105/2015

In the matter between:

Jose Pool
(rep. by France Bonte)

Plaintiff

and

H. Savy Insurance
(rep. by Alexandra Madeleine)

Defendant

Neutral Citation: [2019] SCSC 412 Jose Pool v H.Savy Insurance
Before: **Pillay J**
Summary: **Quantum – theft of vehicle – payment by Insurance**
Heard:
Delivered: 23rd May 2019

ORDER

Prayers for damages dismissed

JUDGMENT

PILLAY J

[1] The Plaintiff on 26th October 2015 filed a case seeking an order for the Defendant to pay him the total sum of SCR 647, 000/- being the loss of his vehicle which was a write-off and further for damages for loss of use and moral damages.

[2] The trial judge in a judgment dated 1st June 2016 found that “there is no evidence on record other than that of the Plaintiff on which this court could rely in favour of

Plaintiff's contention that Hubert Mothee had stolen his jeep and driven away...With respect to his claim for damages Plaintiff offered no evidence in support of his claim."

- [3] The trial judge proceeded to dismiss the Plaintiff's claim.
- [4] The Plaintiff appealed to the Court of Appeal which Court sent the matter "back to the Supreme Court for a determination on that issue of quantum, of which Appellant's Counsel conceded to."
- [5] On being referred back counsel for the Defendant filed a defence on the issue of quantum being stuck for any other word to call her objections to the issue of quantum.
- [6] In her 'defence' counsel for the Defendant denied that the Plaintiff was entitled to his claim as per the policy but that he is entitled to be paid based on assessments of the Defendant and/or third parties.
- [7] Defence also denied that the vehicle was written off or worth SCR 397, 000/- or that the Plaintiff was entitled to loss of use or moral damages.
- [8] The only witness who testified was the Plaintiff himself. He testified that he was the owner of S20378, a Hyundai iX35. He further testified that the vehicle was insured with the Defendant for the sum of SCR 397, 000. He produced the policy as P1 which indeed showed that the sum insured for the vehicle was SCR 397, 000/-.
- [9] The witness further testified that the vehicle was stolen and involved in an accident on the 15th September 2014. The Defendant's assessors came in to do the assessment, took pictures and agreed that the vehicle was a write-off according to the Defendant's evidence.
- [10] Subsequently the Plaintiff told a friend of his one Tom Hoareau to take the jeep which he did. According to the Plaintiff Tom Hoareau fixed up the jeep (page 7 of 22nd January 2019 proceedings).
- [11] Defence did not call any witnesses and relied on submissions while Plaintiff's side left it to Court to decide the issue.

- [12] As per the judgment of the Court of Appeal, the only issue for this Court to decide is the issue of quantum.
- [13] In order to decide the issue of quantum this Court requires proof of the damages to the vehicle, evidence of loss of use as well as evidence of moral damages being the three heads under which the claim is made.
- [14] Other than the Plaintiff's testimony as to the vehicle being a write-off there is only the policy which states that the value of the vehicle was SCR 397, 000/-. The Defence cannot dispute the value since that is the sum for which they insured the vehicle.
- [15] To my mind the issue is the value of the damage to the vehicle. Logically, in order to be paid the value of the vehicle as insured on P1, the Plaintiff has to show that the vehicle has been damaged beyond repair or that the cost of repairing the vehicle is in excess of the insured value of the vehicle.
- [16] The Plaintiff only stated that the vehicle was a write-off. There is no evidence as to the extent of the damage to the vehicle.
- [17] As regards the claim for moral damages the Plaintiff merely stated he was claiming for moral damages without expanding on that.
- [18] Furthermore it was the Plaintiff's evidence that the vehicle is now in use. Even if one was to accept his evidence that he could not use the vehicle for two years, there is no other evidence to support his testimony.
- [19] I note Defence's submission that PE1 was for a minivan and not an iX35 and that the period of cover was for May 2010 to 2011 while the vehicle was stolen in 2014. Indeed that is so. I also note on the policy that it covers a vehicle with registration number S20378.
- [20] Discrepancies aside, in my opinion this Court cannot pronounce itself on the legitimacy of P1 since it has no bearing on the issue of quantum in itself, other than to show the sum for which it was insured, albeit in 2010. The Court of Appeal accepted the Plaintiff's evidence including the insurance policy and allowed the Plaintiff's appeal, only referring

the issue of quantum to this Court for a decision. This Court is not empowered to question the Court of Appeal in its judgment.

[21] With all that said I find no evidence on which I can, on a balance of probabilities, say that the Plaintiff is entitled to the sums claimed, the Plaintiff having failed to provide any proof to support its claim for loss of vehicle, loss of use and moral damages.

[22] In the circumstances I dismiss the prayers for damages.

[23] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ...

Pillay J