

THE REPUBLIC OF SEYCHELLES

SUPREME COURT OF SEYCHELLES

Ghislaine Brutus

Plaintiff

Versus

Raveendran Namasivayan

Defendants

H. Savy Insurance Co (PTY) Ltd

Civil Side No. 54 of 2003

Ms Lucie Pool for the Plaintiff

Mr. Chang Sam for the defendant no. 2

RULING

FMS Egonda-Ntende, CJ

1. This civil suit was filed more than 6 years ago. Defendant no. 1 has never been served with summons. It was suggested from the bar that he had left the country a long a time ago after he had served his sentence in connection with a traffic accident he had caused. When this case came up for hearing on 12th October 2009, learned counsel for the plaintiff, Ms Lucie Pool, withdrew the case against defendant no.1 and opted to proceed against defendant no.2. At this juncture learned counsel for defendant no.2 raised a point of law arguing that this suit could not be maintained against the defendant no.2 and ought to be dismissed at this stage. This is the ruling of the court on that objection.
2. The facts of this case so as they are relevant to this ruling are that the plaintiff contends that she was hit by the motor vehicle registration no. S 3530 while she was

crossing a zebra crossing at Francis Rachel Street. The said motor vehicle was being operated by the defendant no.1. She sustained personal injuries. She contends that the defendant no.2 was the insurer of the said motor vehicle. She seeks compensation from both defendants for the loss and damages that she suffered and continues to suffer as a result of that accident.

3. Mr. Chang Sam submitted that that this action cannot lay against defendant no.2 alone as there is no privity of contract between the plaintiff and defendant no.2. Defendant no.2's liability would only arise by virtue of statute, under Section 10 of the Motor Vehicles Insurance (Third Party Risks) Act, Chapter 135 of the Laws of Seychelles, (hereinafter referred to as the 'Act'). For this liability to arise there must be a judgment obtained against the insured which would then trigger the liability of the insurer. As there is no judgment against the alleged insured, no liability can arise in the circumstances towards the plaintiff.

4. Ms Lucie Pool, learned counsel for the plaintiff, agreed that there is no privity of contract between the plaintiff and defendant no.2. However, she submitted, that the contract between the defendant no.1 and defendant no.2 was for the benefit of a third party and that third party is the plaintiff. Despite the fact that the defendant no.1 cannot be traced the defendant no.2 is liable to the plaintiff for the injury that she has suffered. Ms Pool further submitted that there had been obtained against the defendant no.1 judgment in a criminal case and that this should suffice to attach liability to the defendant no.2.

5. Section 10 of the Motor Vehicle Insurance (Third Party Risks) Act, Chapter 135, states, in part,

‘10(1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable there under in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section –
(a) in respect of any judgment, unless before or within fourteen days after the commencement of this proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or

6. Ms Lucie Pool suggested, I presume, that the judgment referred to in the above provision includes judgment in a criminal matter. I do not agree. Judgment in a criminal case may be used as evidence in the civil case. The judgment in a criminal case does not establish civil liability but establishes criminal liability for which a penalty is prescribed. The provisions in Section 10 of the Act refer to a judgment in respect of liability covered under a policy of insurance. In this particular case this is liability for third party risks. The judgment must be in respect of an action by a third party against an insured for injuries sustained by that third party. It is then possible under Section 10 of the Act to hold the insurer liable for such judgment.

7. In the instant case the action against the insured, the defendant no.1, did not progress after filing. It was discontinued. No judgment is available to trigger the provisions of Section 10 of the Act. I can find no basis for bringing an action against the insurer, defendant no.1, in the circumstances of this case. I agree with Mr. Chang Sam that no action now can be maintained against the defendant no.2. No cause of action is established against the defendant no.2, given that there can be no right to relief against it, in the circumstances of this case. Accordingly this suit is dismissed.

Signed, dated and delivered this 16th day of November 2009

FMS Egonda-Ntende

Chief Justice