

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL No. 13 of 2003

BETWEEN

LLOYD'S CORPORATION

Appellant

AND

JOHN BUCKMIRE

Respondent

Before:

The Hon. Mr. Brian Alleyne SC Justice of Appeal

The Hon. Mr. Michael Gordon QC Justice of Appeal [Ag]

The Hon. Mr. Othniel Sylvester QC Justice of Appeal [Ag]

Appearances:

Mr. J. Brsitol for the Appellant

Ms. C. Edwards for the Respondent

2003: December 3

JUDGEMENT

[1] **SYLVESTER, J.A. (Ag)** The Appellant is an Insurance Underwriter carrying on business in Grenada by its agent ***Grenada Fire and General Insurances Ltd.*** and at all relevant times was the insurer of the Respondent's vehicle registration No H8406, which was involved in a motor vehicle accident on or about 20th June 2000.

[2] By the said policy of insurance, the Appellant contracted and ag to indemnify the Respondent against loss of or damage to the said vehicle by accidental loss.

[3] The Appellant, in breach of the contract, refused to reimburse the Respondent . for damage caused to the said vehicle as a result of an alleged breach of Condition 3 of the said policy of insurance by which the Respondent undertook to take all reasonable steps to safeguard the said vehicle from loss or damage.

[4] For the purposes of the trial, it was agreed by the parties that the Respondent was intoxicated at the time of the accident and the matter proceeded on the sole issue "whether or not the Defendant was entitled to avoid the said policy of insurance on the ground that the Claimant was intoxicated at the time of the accident".

[5] The Appellant, by its defence pleaded at paragraphs 3 and 4: -

"3. It was a condition of the said contract of insurance, namely Condition 3 thereof, that the Insured shall take all reasonable steps to safeguard his motor vehicle from loss or damage.

"4. At the time of the said accident the Plaintiff was so intoxicated that he was in breach of the said Condition 3.

By reason of the said Condition the Plaintiff is not entitled to be indemnified in respect of such loss as he may have suffered as a result of the said accident

[6] The condition, the breach of which the Appellant relied on to justify its right to avoid the policy is as follows: -

"The insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor Vehicle inefficient condition and the Underwriters shall have at all times free and full access to examine the motor vehicle or any part thereof or any driver or employee of the Insured."

[7] The Clause contained in the policy, which entitles the Appellant to avoid the policy is ***Clause 10: -***

"The due observance and fulfilment of the Terms of this certificate in so far as they relate to anything to be done or not to be done by the Insured and the truth of the statement and answers in the proposal shall be conditions precedent to any liability of the Underwriters to make any payments under this certificate."

[8] There is a Schedule attached to the Certificate of Insurance, which inter alia limits the liability of the Appellant and stipulates "**The Authorised Driver**" of the vehicle for the purpose of the policy of insurance with a proviso: -

"Authorised Driver: Any of the following: -

(a) The Insured

(b) Any person driving on the Insured's or with his permission. Provided that the person driving holds a licence to drive the motor vehicle or has held and is not disqualified for holding or obtaining such a licence The Term "licence" means a licence or other permit required by the licensing or other laws or regulations."

[9] It is further provided by the conditions of the policy that the Certificate and the Schedule shall be read together as one contract:

"This Certificate and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the Certificate or of the Schedule shall bear such specific meaning wherever it may appear."

[10] Reading the Policy of Insurance as a whole, it is quite clear that there is no exception clause in respect of negligence, nor of the imprecise word "intoxication" in the contract. On the contrary by Section 1 of the Policy of Insurance the underwriters undertook to indemnify the insured against loss or damage by accidental loss.

The material part of SECTION 1 - LOSS OR DAMAGE reads thus:

1. "The Underwriters will indemnify the insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon.

{a } by accidental collision or

[11] It follows therefore that mere intoxication in the context of the provisions of this policy cannot be the basis for the Appellant to avoid the contract. In the absence of an exception clause to that effect, being intoxicated at the time of an accident is an accidental loss. The Appellant itself pleaded the occurrence was an accident.

[12] I hold that if it were intended that intoxication would void the policy of insurance, it should have been specifically stated therein and the extent of the intoxication would have had to be such as to "disturb the quiet and equable exercise of the intellectual faculties of the [insured] " as explained by Lord Coleridge in **Mair v Railway Passengers Assurance Co [1877] 37 LT 356 at 358.**

[13] To allege as the Appellant did in paragraph 4 of its Defence that "at the time of the said accident (**my emphasis**) the Plaintiff was so intoxicated that he was in breach of condition 3", and that he is not entitled to be indemnified, is a misconception of the duty imposed on the insured and the obligation undertaken by the Appellant under the terms and conditions of the policy.

[14] By the state of the pleadings the Respondent was not required to prove care as a condition precedent to cover under the policy so that when it was agreed that the sole issue was whether or not the Defendant (Appellant) was entitled to avoid the said policy of insurance on the ground that the Claimant (Respondent) was intoxicated at the time of the accident; (**my emphasis**) the short answer to that issue was in the negative.

[15] However, because of the arguments advanced by the parties I consider it necessary to examine in some detail the policy of insurance as a whole.

[16] In common law countries like England and the Eastern Caribbean States insurance policies of this type are presumed and construed to cover loss caused by negligence of the insured or his/her employees.

[17] Loss negligently caused may be excluded directly or indirectly and even then in accordance with general rules of construction applicable to all insurance terms, an exception of negligence will be construed restrictively.

[18] Further, by the schedule to the certificate the limits of liability are detailed and the authorised driver of the vehicle is spelt out. It is noteworthy that intoxication of the driver or the driver being under the influence of drugs or alcohol is not stated therein.

[19] In argument before this Court, it was advanced by the Respondent that the terms of condition 3 relate¹ only to the physical condition of the vehicle, a construction with which I do not agree. Equally so, I reject the argument of the Appellant that the Respondent being intoxicated at the time of the loss he would not have taken all reasonable steps to safeguard the motor vehicle from accident as contemplated by the policy of insurance.

[20] In my view the duty imposed by the phrase "all reasonable steps" does not mean an obligation to take every practicable caution.

[21] In construing motor insurance policies there are two applicable well established rules of construction in case of doubt, which together simply mean that policies should be construed strictly against the party who is the author of the same or who is putting them forward (**contra proferentem**).

[22] As stated by **Malcolm A. Clarke** the Learned Author of **The Law of Insurance Contracts 2nd ed para 15-5C at pages 352 - 353** quoting from the judgment of **Staughton U in Youell v Bland Welch & Co Ltd [1992] 2 Lloyd's Rep 127 at 134:**

"There are two well established rules of construction, although one is perhaps more often relied on with success than the other. The first is that, in case of doubt, wording in a contract is to be construed against a party who seeks to rely on it in order to diminish or exclude his basic obligation, or any common law duty which arises apart from contract. The second is that, again in case of doubt, wording is to be construed against the party who proposed it for inclusion in the contract: it was up to him to make it clear. "

[23] To accept the interpretation put on Condition 3 by the Appellant and to hold that the Appellant is entitled to avoid the policy, in the circumstances of this case, would be to ignore the rules of construction referred to above and to open a flood gate for insurance companies to avoid policies of insurance on a mere allegation of intoxication.

[24] Accordingly, I will dismiss the appeal affirm the judgment of the Court below and order that the Appellant pays the Respondent's costs of this appeal.

[25] CPR Part 65.13 is the relevant provision. The cost awarded in the Court below was \$11,805.00. There is no appeal against this sum nor any apparent disagreement thereon. I will therefore award costs in the sum of \$7,870.00 being two-thirds of the cost below to be paid by the Appellant to the Respondent.

Othniel Sylvester

Justice of Appeal [Ag]