

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
Civil Division**

SANT LUCIA

Claim Number: SLUHCV2020/0163

BETWEEN:

**[1] CLINT JAMES
[2] NATALIA KNIGHT**

Claimants

-and-

SAGICOR GENERAL INSURANCE INC.

Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mrs. Maureen John – Xavier for the Claimants
Mr. Deale Lee for the Defendant.

2025: February 17 – Trial
March 19, 31 – Closing Submissions
May 26 – Decision

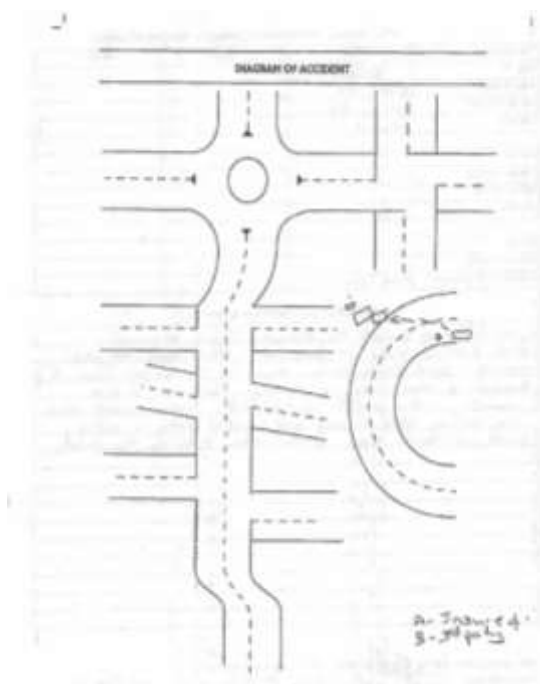
JUDGMENT

[1] **PARIAGSINGH, J** – This claim arises out of a motor vehicle accident which occurred on 7 June 2019. The First Claimant, Mr Clint James, was at the time driving a Ford Explorer insured under a private motor vehicle comprehensive insurance policy issued by the Defendant to the Claimants (“the policy”). The policy was effective from 15 August 2018 to 14 August 2019 and carried a maximum coverage for loss or damage to the Claimants vehicle in the sum of \$125,000.00. Following the accident, the Claimants submitted a claim under the policy. The Defendant declined the claim, citing inconsistencies in the Claimants’ account and relying on the findings of a forensic investigator it had engaged. The Claimants therefore seek damages for breach of a contract of insurance: the policy.

- [2] On 7 June 2019, the First Claimant, while driving the Claimants' vehicle registration number 287, was involved in a motor vehicle accident along the Beanfield Highroad. Four (4) days after the accident the First Claimant provided the following statement to the Defendant:

"I was driving up towards the Hewanorra Airport at around 10:45 pm on Friday 7th June 2019. Almost after the white concrete road closer to the corner of the airport fence, I escaped a man carrying a bag trying to catch crab in the middle of the road. Having missed him my vehicle took a drag and I slid into a black BMW x5 which was on the other side of the road"

- [3] To accompany the statement, the First Claimant was provided with a blank diagram representing the roads in the general area and was asked to draw the vehicles before and after the accident and to indicate the direction he said he slid. It is important to include this diagram below to understand the Court's reasoning.



- [4] About two months after submitting their claim to the Defendant, on 6 August 2019, the Defendant engaged the services of FCI Consultancy Services (FCI) , a company based in Barbados to investigate the accident independently of the police officers of the Royal Saint Lucia Police Force.

[5] As part of this investigation, the First Claimant was interviewed by Mr. Mark Sargeant of FCI. This interview took the form of Mr. Sergeant asking questions and recording the First Claimant's answers. The questions asked were not recorded, only the answers. The First Claimant cooperated with the investigation although he was not told at that time that the findings of that investigation may be adverse to his claim.

[6] At the conclusion of the Defendant's investigation, the Claimants were informed by letter dated 30 October 2019 that their claim was denied. The reason provided was as follows:

“...investigations conducted revealed inconsistencies with the claim presented”.

[7] Save for the above statement, no details were given of the inconsistencies found. This is despite requests by the Claimants to be informed of the nature of the inconsistencies.

[8] The Claimants case is that in acting as aforesaid, the Defendant breached its policy with them. They now seek damages for the loss suffered as well as damages for personal injuries suffered by the First Claimant in the accident.

[9] In its defence, the Defendant averred that FCI was engaged on 11 July 2019 and not in August 2019 as the Claimants contended. The Defendant admitted that the claim was denied and contended that, “Based on the findings contained in the FCI report, the Defendant concluded that the claim was not supported by the evidence and there denied liability under the policy.”

[10] At paragraph 13 of its defence, the Defendant contended that:

“..... based on the totality of the evidence before it, and the inconsistencies raised in the report of FCI as regards the damage impact to the subject vehicle, the Defendant concluded that a loss covered under the policy had not occurred and therefore had not triggered any liability on the part of the Defendant to pay.”

[11] In their reply, the Claimants contended that the Defendant had a duty to act under the contract of insurance in good faith and therefore was under an obligation to provide the Claimants with particulars of the alleged inconsistencies and allow them the opportunity to respond to it before taking the decision to deny their claim.

Issues:

[12] The Court is required to determine:

- 1) Whether the accident happened in the manner the Claimant described;
- 2) Whether the Defendant was entitled to repudiate the claim based on the perceived inconsistencies;
- 3) Whether the expert report commissioned by the Defendant should be admitted and, if so, what weight it should be given;
- 4) Whether the Defendant breached the contract of insurance.

Analysis:

[13] The Claimants allege that the accident occurred when Mr. James swerved to avoid a pedestrian and collided with a stationary BMW parked on the left verge of the Beanfield Highway. The impact caused extensive damage to the Ford Explorer, which was ultimately deemed a total loss. The Defendant commissioned a report from Mr. Mark Sargeant of FCI Consulting Services, whose findings were relied upon to repudiate the claim.

[14] The Claimants take issue with the Defendant's refusal, arguing that they were never afforded an opportunity to respond to the expert's concerns, nor were they told what the alleged inconsistencies were until after the commencement of proceedings.

[15] Having considered the evidence, I am satisfied on a balance of probabilities that an accident did occur on the date in question and that the core narrative given by Mr. James is more likely than not to be true. I base this finding on several features of the evidence, both documentary and oral, and on the inherent logic and consistency of the First Claimant's account when compared against the totality of the record.

[16] Mr. James' version was consistent. In his accident notification form, in his witness statement, and again in oral evidence, he stated that he was travelling west on the Beanfield Highway when a pedestrian suddenly crossed the road. He swerved to the right to avoid the person, lost control, and collided with a parked BMW. At trial, he demonstrated this sequence using model vehicles. Under cross-examination, he maintained this explanation. I found his demeanor calm, direct and without evasion, even when pressed by Counsel for the Defendant.

[17] The Defendant sought to challenge Mr. James' version of events on the basis that his accident sketch showed a trajectory that was inconsistent with the expert's reconstruction. But the Defendant's own expert, Mr. Sargeant, accepted in cross-examination that the sketch was rudimentary and drawn by a layperson. There was no suggestion that the diagram was designed to mislead. Mr. James himself acknowledged it was a general depiction. In my view, this weakens the contention that the sketch amounted to a deliberate misrepresentation.

[18] Furthermore, Mr. James gave a coherent explanation for why he was on that stretch of road. He said he had family living in the area and that his brother operated a business there. This explanation was never challenged in cross-examination. Notably, Mr. Sargeant conceded that had he known of this reason at the time of his investigation, he would not have flagged the route as suspicious. It is difficult to see how the Defendant can now treat the route as implausible in light of this concession. Furthermore, the Court finds it incomprehensible that an investigator would utilise the route taken as a reason

for not accepting the First Claimant's version of events, since it does not affect the manner in which the accident occurred: the subject of this claim.

[19] In terms of external corroboration, the police accident report confirms that an accident occurred between Mr. James' vehicle and a BMW that was parked on the verge. The Defendant did not call any independent witness to challenge this or suggest that the vehicles were staged. The Court finds this police documentation neutral and reliable. It supports the Claimants' case that an accident, as described, did in fact occur.

[20] The Defendant's central allegation, however, lies not in denying that an accident occurred, but in suggesting that the Claimants sought to recover for damage inconsistent with the mechanism described. Mr. Sargeant identified three anomalies: (i) a point fracture on the windscreen; (ii) damage to the rear left quarter glass; and (iii) vertical impressions on the bumper supports. He stated that these were not explained by the angle and nature of the collision.

[21] But here again, the evidential support is weak. Mr. Sargeant admitted under cross-examination that he did not ask Mr. James about any of these features when conducting his investigation. He also confirmed that he did not inquire into how the vehicle was transported post-collision, nor did he know whether it was moved or handled in a way that could account for the marks. In response, Mr. James testified that the car was transported on a flatbed truck. This contradicts the assumption that a wheel-lift tow vehicle might have caused the impressions. Further, the absence of glass at the scene does not, without more, establish that the quarter glass was not broken in the accident. Mr. Sargeant did not establish that the scene had been properly preserved for such an inference to be drawn.

[22] Additionally, it is relevant that the Claimants were never shown Mr. Sargeant's report prior to denial of the claim, nor were they asked to clarify any of the matters now relied upon to justify repudiation. This is significant because the claim was not rejected on the

basis of clause 1(f) (fraud or concealment) at the time. The letter sent by the Defendant spoke only of unspecified inconsistencies.

[23] It is necessary to consider the role and reliability of Mr Sargeant's report more closely. It is well established that experts must act independently and objectively, irrespective of the party who instructs them. This principle was clearly set out in **Kennedy v Cordia (Services) LLP**¹, where the Court reaffirmed that experts owe a duty to the Court and not to those who pay them. Their reports must be transparent in terms of assumptions, materials reviewed and must refrain from making factual findings or evaluating witness credibility matters reserved for the Court.

[24] In this case, Mr. Sargeant's report exhibits a number of weaknesses. First, the report was initially prepared for internal use by the Defendant, not in contemplation of court proceedings. Second, Mr. Sargeant did not follow the safeguards laid down in CPR Part 32.14. His instructions were not disclosed, nor did he provide a clear statement of compliance. He also failed to indicate which matters were assumptions, which were established facts, and which were his own inferences.

[25] More concerning is the fact that Mr. Sargeant made assessments of the Claimant's credibility suggesting, for instance, that Mr. James's account was unlikely or contradicted by the physical evidence without testing those issues directly with the Claimant. He also relied in part on statements from third parties that were not disclosed, cross-examined, or otherwise subject to scrutiny. These include unverified comments about the Claimant's intended route, alleged witnesses' doubts, and findings of physical evidence which were not preserved, photographed, or documented in a transparent manner.

¹ [2016] UKSC 6

[26] Taken together, these shortcomings undermine the reliability of the report. While I accept Mr. Sargeant has relevant expertise in accident reconstruction, the quality of his investigative process in this matter, and his failure to maintain professional detachment, limit the probative value of his conclusions. I therefore admit the report into evidence but give it very little weight. The Defendant's reliance on it, particularly in repudiating the claim without first disclosing it or giving the Claimants a chance to respond, is further reason to discount it.

[27] I consider Mr. Sargeant's evidence to be compromised by his dual role as both claims investigator and purported expert. His evidence was selective in scope and leaned heavily towards affirming the position of the Defendant. He failed to maintain a professional distance and did not approach his analysis with the independence required by law. His failure to explore alternative explanations, to engage with the Claimants on the relevant issues, and to distinguish fact from assumption all weigh heavily against the reliability of his conclusions. In cross-examination, his answers revealed gaps in his methodology and a reluctance to acknowledge uncertainties. For these reasons, while I accept that Mr. Sargeant possesses technical competence in his field, I find his report to be unreliable in the circumstances of this case.

[28] The Defendant also relied on the evidence of its claims manager, Ms. Arlain, to support its decision-making process. Her evidence confirmed that the Claimants were never informed of the specific nature of the inconsistencies or given a chance to respond prior to denying the claim. She acknowledged under cross-examination that the decision to deny the claim was based solely on Mr. Sargeant's conclusions, without any independent review or follow-up. Her evidence, rather than supporting the Defendant's case, reinforced the procedural deficiencies in how the claim was handled. I do not find her evidence untruthful, but it reveals a lack of procedural fairness and transparency that reflects poorly on the Defendant's conduct.

[29] The Defendant now seeks to invoke legal principles such as those in **Agapitos v Agnew et al**² and **Axa v Gottlieb**³, which entitle an insurer to repudiate a claim even if valid in part, if it is dishonestly exaggerated. But the threshold for invoking such a rule is high. As set out in **Khalique Browne v West Indian Insurances Ltd**⁴, the court must be satisfied, on a balance of probabilities, that the insured acted dishonestly. That standard is not met here. The inconsistencies raised may suggest areas for clarification, but they do not establish fraud, nor were they ever put to the Claimants to respond.

[30] In light of all the above, I accept the Claimants' version of events. Their account was consistent, coherent, and, most importantly, plausible when tested against both the contemporaneous documentation and the inherent probabilities of the situation. The Defendant's challenge was speculative in parts and relied heavily on expert assumptions that were never tested with the Claimants before the claim was rejected.

Conclusion

[31] In all the circumstances, I find that the Claimants acted in good faith. The accident occurred as they described, and the decision to repudiate the claim was not justified. The Defendant did not act fairly in the manner it handled the claim and did not adhere to the mutual duty of good faith that is the hallmark of insurance contracts.

[32] Regarding the quantum of damages to be awarded, the Claimants have conceded that the policy did not have enhanced coverage for medical expenses and have abandoned the sum claimed of \$450.00 in special damages, as well as general damages for personal injuries.

[33] Furthermore, the Claimant has submitted that the excess of \$5,000.00 ought not to be deducted from any award of the Court, since it has not been raised in the defence. The policy states that the excess is "the amount you [the policyowner] first have to pay

² [2002] 1 All ER (Comm) 714

³ [2005] EWCA Civ 112

⁴ SVGHCV2020/0122

towards the agreed cost of any claim for loss or damage to your motor vehicle". I agree with the Defendant that the payment of the excess is a precondition in the contract of insurance for the processing and honouring of the claim. In this regard, the excess sum of \$5,000.00 is to be deducted from the award.

Orders:

[34] For the reasons above, I make the following orders:

- 1) Judgment is entered for the Claimants against the Defendant.
- 2) The Defendant shall pay to the Claimants damages in the sum of \$96,000.00, the net loss after salvage, along with \$1,600.00 in ancillary expenses, less the excess of \$5,000.00 totaling \$92,600.00.
- 3) Pre-judgment interest is awarded at the rate of 3% per annum from the date of the accident to judgment (2,180 days in the sum of \$16,591.89), and post-judgment at the rate of 6% per annum from today until payment.
- 4) The Defendant shall pay the Claimants 75% (reduced by 25% based on the claim for personal injury being withdrawn at trial) of their prescribed costs of this claim on the value of the awards made, including pre-judgment interest (\$109,191.89) calculated in the sum of **\$13,986.74**.



Alvin S. Pariagsingh
Judge

By the Court,

Registrar