EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2023/0113

BETWEEN:

ANTHONY DOYLE

Claimant

V

SENTRY (WEST INDIAN INSURANCE LTD)

Defendant

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mr. Jomo Thomas and Mr. Noel Bruce for the Claimant

Ms. Kemiesha Joyles for the Defendant

2024: November 13

2025: May 26

JUDGEMENT

Introduction

[1] **THOM J (Ag):** This is a claim for compensation pursuant to a comprehensive policy of motor vehicle insurance for loss suffered to a motor vehicle.

[2] The Claimant Mr. Anthony Doyle was at all material times the owner of a flatbed truck T1322. The truck was insured with a comprehensive insurance policy from the Defendant Sentry (West Indian Insurance Limited) "Sentry".

[3] On the 8th day of June 2022, while the truck was en route to Diamond, the truck broke down in Kingstown. The truck was parked next to the Agricultural Input warehouse ("the Warehouse"). On the 15th day of June 2022, a fire of unknown origin destroyed the truck. Mr. Doyle made a claim for compensation pursuant to the insurance policy. Sentry having refused to pay compensation to Mr. Doyle, he instituted these proceedings.

<u>The Pleadings</u>

[4] Mr. Doyle in his pleaded case alleged that on 1st April 2022, he purchased a comprehensive vehicle insurance policy (the Policy) for his truck from Sentry. On 8th June 2022 while the truck was carrying materials for a customer, the truck developed mechanical problems. As a result, the truck was parked outside of the Warehouse. On 15th June 2022 the truck was destroyed by fire. Mr. Doyle made a claim pursuant to the Policy which required Sentry to compensate him for loss or damage to his truck. He further alleged that he took all reasonable steps and precautions to safeguard his truck from damage by parking it:

(a) at a safe place;

(b) taking steps to avoid further damage to the truck; and

(c) acting promptly to get the truck fixed before attempting to move it.

[5] Sentry by a letter dated 22nd day of November 2022 dishonoured the Policy. In so doing, Mr. Doyle alleged that Sentry breached the agreement in the Policy.

1. Mr. Doyle seeks the following reliefs:
   (a) Compensation up to the insured amount for his loss pursuant to the Policy.
   (b) Compensation for loss of use ($200.00 per day) from the date of the claim made to Sentry to the resolution of the claim.
   (c) Interest at the statutory rate.
   (d) Costs.

[6] Sentry in its defence contends that Mr. Doyle did not take all reasonable steps to safeguard his truck from further damage and therefore breached Clause 4 of the Policy. Further, Mr. Doyle parked the truck in an area that was relatively dark, there were no street lamps.

<u>The Evidence</u>

[7] Mr. Doyle testified and called as witness, Mr. Julian Sandy, Mr. Saintale Haynes, and P.C. Kwane Hamilton. Mr. Terron Davis and Mr. Mervin Homer testified on behalf of Sentry.

<u>Mr. Anthony Doyle</u>

[8] Mr. Doyle testified that in March 2022 he purchased a "Man Truck" from England. The truck was manufactured in 2009. It is a flatbed truck that is used for hauling heavy duty materials. He insured the truck with Sentry for the period March 31, 2022-March 30, 2023. The premium was $7,315.00. It was a comprehensive insurance policy.

[9] On 8th June 2022, while the truck was being driven by Mr. Saintale Haynes (Mr. Haynes) along Halifax Street on its way to Diamond to deliver steel for Coreas, the compressor of the truck was not working efficiently and therefore the truck could barely move. He contacted his mechanic who examined the truck and was able to effect some temporary repairs to the truck which enabled Mr. Haynes to take the cargo to Coreas at Bay Street instead of at Diamond. He instructed Mr. Haynes to take the truck to Edinboro where he normally parks the truck. However, after Mr. Haynes drove the truck, it broke down about five minutes after and Mr. Haynes parked the truck on a side street in front of the entrance of the Warehouse. Later the same day with the assistance of a relative he removed his tools from the cabin and some plywood from the back of the truck. Immediately thereafter, he made a few telephone calls to get assistance to move the truck to Edinboro. The truck could not be driven immediately since he had to import the part from the United Kingdom (UK). He sought assistance to move the truck. He spoke with Julian Sandy (Mr. Sandy) and he spoke to one "Yankee". Yankee did not have the necessary equipment to assist him. Mr. Sandy who has two flatbed trucks like his truck agreed to assist him. Mr. Sandy is his close friend who he knew for several years. Mr. Sandy encouraged him to start his trucking business. Mr. Sandy promised to assist him to get the part for the truck in the UK through a friend who normally assists Mr. Sandy with parts for his truck whenever he needs same.

[10] On 11th June 2022 he held discussions with Mr. Sandy about moving the truck to Edinboro and where the truck would be parked. An old car was parked in the place identified to park the truck. The car had to be removed to enable the truck to park. They agreed to move the truck the following Sunday the 12thJune 2023. On the 12th June, the truck could not be moved because it rained and it was not safe to move the vehicle in those conditions. They then arranged to move the vehicle on the following Sunday 19th June, 2022. The truck remained parked in front of the Warehouse.

[11] Mr. Doyle testified further that he checked the truck daily on his way to work. The area where the truck was parked was fairly lit. There was a streetlight in the vicinity. Also, there was a security booth at the entrance of the Warehouse. He also saw a security guard there.

[12] On 15th June, 2022 at about 6:00 a.m., while on his way home from work he received a telephone call from Mr. Guy Adams a mini-bus driver, who also lives at Edinboro, that his truck was on fire. He immediately went to the scene. The Police arrived shortly after. He gave a statement to the Police and later that day he reported the matter to Sentry. He does not know how the truck was burnt.

[13] Under cross-examination Mr. Doyle testified that he purchased a comprehensive insurance policy from Sentry. The Policy required him to secure the vehicle to prevent loss. He did not have any mechanical problem with the truck before the compressor issue. The truck is normally parked about 40-50 feet from his home at Edinboro.

[14] Mr. Doyle agreed that an old car belonging to him was parked by his home. There was not sufficient space to park the truck with the car there. The car had to be removed. He removed the car to have the truck parked.

[15] Mr. Doyle further testified that the Warehouse was not a lonely area. It was lit. He visited the truck several times while it was parked there. There was a street light close by. He did not check to see how many streetlights were there. Two businesses are in the area.

[16] On the evening of the 8th of June, he went to work about 9-10 p.m. He checked the door, and he peeped into the vehicle on his way to work. A security guard was at the security booth at the Warehouse. The security guard could have seen the truck from the booth. He was aware the security guard was not there to guard his truck.

[17] Mr. Doyle further testified that he did not know the Policy covered mechanical problems. He did not agree it was reckless not to call the Sentry after the truck broke down. He was not aware Sentry could have stored the truck.

[18] Mr. Doyle agreed that Mr. Sandy was not the only person who could have assisted him, but he emphasised that Mr. Sandy had the appropriate equipment to move the truck. He did not call other persons who could have assisted other than Yankee.

[19] Under re-examination, Mr. Doyle testified that he was not aware he could have called Sentry for assistance when the truck broke down. During the time the truck was parked by the Warehouse he was arranging to get it moved to Edinboro.

<u>Mr. Julian Sandy</u>

[20] Mr. Sandy testified that he is familiar with Mr. Doyle's truck. It is the same model as two of his trucks. He encouraged Mr. Doyle to become involved in the trucking business. Mr. Doyle called him the same day that the truck broke down. He discussed with Mr. Doyle how the truck could be moved to Edinboro. He visited about one or two days after the accident to see the place where Mr. Doyle wanted to park the truck. An old car occupied part of the space where Mr. Doyle wanted the truck parked. He agreed with Mr. Doyle that he would assist in moving the truck soon after Mr. Doyle moved the old car. The old car was removed on the Saturday 11th June 2022. They intended to move the truck on Sunday 13th June, but it rained. He nor his truck were available to move Mr. Doyle's truck until the following Sunday 19th June 2022. Mr. Doyle's truck was burnt on Wednesday June 15, before it could be moved.

[21] Mr. Sandy also testified that he had agreed to assist Mr. Doyle with getting the replacement part for the truck.

<u>Under cross-examination</u>

[22] Mr. Sandy agreed that other persons could have assisted Mr. Doyle but Mr. Doyle had confidence in him. He also agreed that the car was to be removed before the truck could be parked and if the car was removed earlier, it would have been possible to remove the truck before it was burnt.

[23] Mr. Sandy further testified that the area where the truck was parked by the Warehouse was lit. There was a light by the Security booth and a light by a plant shop that is next door.

P.C. Kwame Hamiliton

[24] Constable Hamilton testified that on 5th May 2022 at about 2:45 a.m. himself and other Police Officers from C.I.D. went to Lower Bay Street in relation to a fire. Officers from the Fire Department went to extinguish the fire that was coming from a truck. The area was partially lit from street lamps about 150ft away, and from lights in the yard of the Warehouse. He saw that the cab of the truck was completely burnt. During his interview of the Security guard at the Warehouse, he discovered that the fire was in the cab of the truck and the passenger door was open. About 6:45 a.m. he returned to the scene where he saw Mr. Doyle. He took photographs of the area. Further investigation was carried out. On 8th August, 2022 Mr. Doyle reported he had no useful information to give the Police. The cause of the fire remains unknown.

[25] Under cross-examination, Officer Hamilton testified that there is a streetlight in the area where the truck was parked, but there was no streetlight on the side where the truck was parked. From the Security booth a person could see the truck. There are no vagrants in the area. It is an area that is safe to park for an length of time. The cause of the fire was not determined.

Saintale Haynes

[26] Mr. Haynes testified that he has been in the trucking business for about 25 years. He has known Mr. Doyle for about 15 years. He was driving Mr. Doyle's truck the day it broke down. The compressor was malfunctioning. This affected the braking system of the truck. After delivering some steel at Coreas' warehouse on Bay Street, he parked the truck by the fence by the Warehouse because the truck could not be driven to Edinboro due to the compressor malfunction. He reminded Mr. Doyle of the tools and the other things on the truck that should be removed. He also discussed with Mr. Doyle how the truck would be moved. On 15th June 2022, Mr. Doyle informed him that the truck was burnt.

[28]. Under cross-examination he testified that he is not familiar with the area where he parked the truck at the Warehouse. There was a camera on the Warehouse. He saw a Security booth there. He did not believe the plywood at the back of the truck was not secure.

Defendant's Evidence

Terron Davis

[29] Mr. Davis is the Senior Claims Manager of Sentry. He testified that Mr. Doyle's truck was insured with Sentry at the time the truck was burnt. On 15th June 2022, Mr. Doyle advised Sentry that the truck was burnt while it was parked on the reclamation site road along the fence of the Warehouse.

[30] On the 27th day of June 2022, he instructed Mr. Mervin Homer to carry out an investigation relating to the burning of the truck. Mr. Homer determined that Mr. Doyle had failed to safeguard the truck from damage and loss. Consequently, he determined that Mr. Doyle had breached the policy.

[31] Under cross-examination Mr. Davis agreed that the truck is a very large truck. It is normal for the Sentry to inquire where the vehicle would be parked in determining whether to insure a vehicle. Mr Davis agreed that Sentry does issue insurance for vehicles that are parked on the road. A flatbed truck would have been able to move the truck. Mr. Davis agreed that it would not be unreasonable to wait to get the truck moved. It was also not unreasonable to delay movement of the truck due to rain. It was reasonable to select a day when the least traffic was on the road. The claim was denied under Clause 4 of the Policy. Mr. Doyle had a duty of care and he failed to secure the vehicle. He agreed if Mr. Doyle had difficulty moving the vehicle he could have parked the vehicle.

[32] Mr. Davis testified further that he visited the area where the vehicle was parked. He is not familiar with the plant shop. He agreed there were a lot of streetlamps in the area, but he was not sure if they all had lights. He does not know if there was a light 40-50ft. across from where the vehicle was parked. He visited the area more than five times. He cannot recall seeing any camera there. There was a lamp post directly in front of the truck. He agreed a truck must be parked if it is broken down. He however disagreed that by contacting one person Mr. Doyle would have done his best to remove the truck. Mr. Doyle could have contacted Sentry for Sentry to assist in moving the truck; and other persons who can move the truck. He agrees that

he does not know how difficult it is to move a flatbed truck when the compressor is malfunctioning.

[33] Under re-examination he reiterated that Mr. Doyle did not contact Sentry for assistance in moving or storing the truck. A prudent person would not leave a vehicle for seven days in a place where the truck was parked.

Mr. Mervin Homer

[34] Mr. Homer testified that he is a member of the Bermuda Police Force and an expert traffic collision investigator. I pause to state that an application to appoint Mr. Homer an expert witness was denied by the Master and in my view rightly so. His stated expertise is traffic collision, and this was not a case of a traffic collision. He repeated Mr. Doyle and Mr. Homer's account of the incident. His report was filled with conjecture and speculation.

Issue

[35] The Claimant's case is that his truck was insured under a comprehensive insurance policy with Sentry which provided for compensation/payment to him in the event of loss or damage. While Sentry acknowledges this, they contend that Mr. Doyle breached Clause 4 of the Policy in that he failed to take all reasonable steps to safeguard the truck from loss or damage when the truck broke down by leaving it unattended without proper care being taken to prevent further loss or damage.

[36] The issue to be determined is whether Mr. Doyle took all reasonable steps to safeguard the truck from loss or damage pursuant to Clause 4 of the Policy.

Submissions

[37] Learned Counsel Mr. Thomas for Mr. Doyle submitted that the onus was on Mr. Doyle to show that he took all reasonable care to prevent loss or damage to the truck. Learned Counsel submitted that this duty to take reasonable care is not a duty to take care to avoid every conceivable danger. Learned Counsel referred to Statement of the English Court of Appeal in Bolton v Stone AC 850, [1951] 1 AER 1078, that:

This duty is not to take care to avoid every conceivable danger, but rather to the dangers that are probable. The existence of some risk is an ordinary incident of life, even when all due care has been as must be taken."

[38] Learned Counsel alsorelied on the following statement in Renasa Company Ltd v Watson [2016] ZASCA 13.

> "Reasonable precaution requires the insured to take reasonable steps to safeguard the insured property, prevent accidents and minimize loss, damage or liability...The proof requires that a reasonable person in the position of the insured would have foreseen the reasonable possibility of loss eventually and would have taken reasonable steps to prevent the loss."

[39] Mr. Thomas submitted that the actions of the Claimant are in keeping with the action of a prudent and reasonable owner. Mr. Doyle acted immediately after he learnt of the problem. He called his mechanic who arrived about 20 minutes later. He examined the truck and determined it could not drive to Diamond. Mr. Doyle promptly acted on the advice and apprised Coreas of the difficulties, and the steel was delivered in Kingstown instead and he instructed Mr. Haynes to drive the truck to Edinboro. When the truck could not be driven to Edinboro, he sought the assistance of Mr. Sandy and one Yankee. Two days later himself and Mr. Sandy developed a plan on how to move the truck. They decided to move the truck on a Sunday when there was least traffic. It was howevernot safe to move the truck on the Sunday, because it rained. They then agreed the following Sunday.The truck was burnt the following Wednesday. In the circumstances, Mr. Doyle took all reasonable care to prevent loss or damage of the truck. Mr. Doyle having made arrangementssoon after the truck broke down with Mr. Sandy who has two similar trucks it was unreasonable to require Mr. Doyle to make other arrangements. Each day Mr. Doyle visited the truck to ensure all was well.

[40] Mr. Joyles in response submitted that the insurance policy is a contract and the legal principles applicable to contracts are applicable to an insurance policy. Learned Counsel referred to the following passage in the judgment of Gordon JA (Ag) in the Administrator General v National Employers Mutual Aggravation Ltd that "...the policy of insurance embodies a contract between the insured and theinsurers and that this policy can contain terms limiting the user of the vehicle and providing for the avoidance of the policy and the avoidance of liability if the user of the vehicle does not conform with terms stipulated in the contract."

[41] Learned Counsel submitted that Mr. Doyle failed to comply with the provisions of Clause 4 of the Conditions of the Policy which reads as follows:

> "The insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the motor vehicle in efficient condition and theCompany shall have at all times free and full access to examine the motor vehicle or any part thereof and or any driver or employee of the insured. In the event of any accident or breakdown the motor vehicle shall not be left unattended without prior proper precautions being taken to prevent further loss or damage and if the motor vehicle shall be excluded from the scope of the indemnity granted under this policy."

[42] Learned Counsel submitted that Mr. Doyle breached Clause 4 in that he failed to take reasonable steps to safeguard the vehicle from further loss or damage. This is supported by the evidence led at the trial. Learned Counsel relied on the following:

(1) Mr. Doyle failed to seek assistance other than from Mr. Sandy to remove the truck to Edinboro.

(2) The area where the truck was parked was not safe.

(3) No notice was given to Sentry as required by the terms of the Policy.

(4) Mr. Doyle's conduct was contrary to Section 30 (b) of the Moter Vehicles and Road Traffic Regulations SRO 35 of 1959, amended by SRO 34 of 2007 of the Moter Vehicles and Road Traffic Act Cap.483.

<u>Failure To Get Assistance</u>

[43] Learned Counsel submitted that Mr. Doyle failed to get assistance from persons other than Mr. Sandy to move the truck from the warehouse to Edinboro and in so doing he did not act with reasonable care. The evidence including the evidence of Mr. Sandy shows that there were other persons who could have assisted Mr. Doyle in removing the truck from in front of the Warehouse. Mr. Sandy agreed that there were other persons who had similar trucks like his truck and that they could have been used to move the truck. Further, Mr. Doyle agreed that he only sought assistance from one other person "Yankee" who was unable to assist him since his equipment was not suitable for the task.

[44] I agree that Mr. Doyle could have contacted other persons. However, Mr. Sandy was well known to Mr. Doyle. Mr. Sandy encouraged him to start the business. Mr. Sandy responded to

his call for help immediately and agreed to assist in removing the truck. Further, Mr. Sandyalso agreed to give assistance in getting the part needed to repair the truck. Mr. Sandy testified that within a day or two he visited Edinboro where the truck was to be parked and he worked out the strategy with Mr. Doyle how the truck would be moved.Since the truck's braking system was not working, it required two similar flat bed trucks to move the truck. One truck would have to be in front of the truck and another truck at the back.They agreed that Sunday was the best day to move the truck when there would be less vehicular traffic on the road. In my view, Mr. Sandy who undoubtedly had the capacity and he having worked out a feasible plan to safely move the truck to Edinboro, Mr. Doyle did not act unreasonably in not seeking assistance elsewhere. The arrangement for removing the truck was finalised within two days after the truck broke down. The plan was not implemented due to bad weather on Sunday 12, June which made it unsafe to move the truck.

[45] Learned Counsel Ms. Joyles also submitted that an old car was parked in the place where the truck was to be parked and that delayed the truck moving to Edinboro. However, Mr. Doyle in his evidence explained that the truck could park in the space while the old car is there, but because the braking system was not working and the truck had to be assisted by two other vehicles, the truck could not be parked with the old car there. In any event the evidence that the old car was removed the Saturday 11th June, before the truck was due to be moved on Sunday 12th June was not contradicted.

[46] Ms. Joyles also submitted that Mr. Doyle failed to seek the assistance of Sentry in moving the truck and storing it in a safe place. Learned Counsel referred to the evidence of Mr Terron Davis the Senior Claims Manager at Sentry who testified that the Policy of Mr. Doyle being a comprehensive policy provided for such benefits. Learned Counsel referred to Section 1(3) of the Policy which reads as follows:

> "Protection and Removal after accident
>
> 3. If Motor Vehicle is disabled by reason of loss or damage insured under this Policy the company will subject to the limits of liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained."

[47] A careful reading of the provisions show that for an insured to be able to benefit from reasonable cost of protection and removal to the nearest repairers, firstly the loss or damage

must be a loss or damage insured under the Policy. Secondly, it must be within the limits of liability.

[48] The question which arises is whether the mechanical problems with the compressor and braking system which Mr. Doyle's truck suffered was a loss or damage insured under the policy. The answer is to be found in the provision immediately after section 1(3). It reads as follows:

> **"Exception To Section 1**
>
> **The Company shall not be liable in respect of**
>
> **(a)** ....
>
> **(b)** ....
>
> **(c)** Depreciation wear and tear mechanical or electrical breakdowns failures or breakages."

[49] The provision is very clear. The benefits outlined in section 1(3) to which Ms. Joyles referred and Mr. Davis relied on in his testimony are not applicable in case of mechanical breakdowns. I have no doubt that Sentry does offer these services to customers who have a comprehensive policy including those who own trucks like Mr. Doyle's truck, but in the case of Mr. Doyle, based on the terms of his Policy it would have been gratuitous. Such benefits were not included in his Policy. Mr. Doyle's testimony is that he was not aware of this gratuitous benefit offered by Sentry. In my view Mr. Doyle cannot be faulted for not knowing of the gratuitous benefits offered by Sentry, particularly where the Policy specifically states that such benefits are only available where liability is covered by the Policy. The Policy specifically excluded mechanical breakdowns.

<u>Safety Of The Area</u>

[50] Ms. Joyles submitted that the area where the truck was parked by the Warehouse was not a safe area because no lights were in the area, the area was deserted, and further Mr. Doyle did not provide any security for the truck.

[51] Ms. Joyles referred to the evidence of Mr. Haynes the driver of the truck under cross-examination where he stated that he called Mr. Doyle to take his tools and other things out of the truck to avoid persons stealing them. Learned Counsel also referred to Mr. Doyle's evidence that he took his tools and some other things out of the truck, but when the truck is

parked at Edinboro he does not remove his tools. Also Mr. Doyle's testimony where he stated: "I honestly did not believe that my truck was at risk of being burnt. I thought if anything someone might break it open or something like that, not burn it." Learned Counsel submitted this evidence shows that both Mr. Doyle and his driver Mr. Haynes foresaw the possibility of loss or damage to the truck because the area was not safe. Further, the fact that Mr. Doyle was checking the truck daily shows that he did not believe that the area was safe.

[52] Learned Counsel also submitted that while there was a security guard at the Warehouse, there was no arrangement between Mr. Doyle and the security guard for the security guard to provide security for the truck.

[53] Learned Counsel further submitted that there were no streetlights in the area where the truck was parked. The photographs of the area that were exhibited show that no streetlights were on the street. Mr Homer's testimony is that there were no streets where the truck was parked. Also, the evidence of Police Officer Kwame Hamilton shows that there was no CCTV camera in the area. This evidence learned Counsel submits contradicted Mr. Doyle's testimony that there were streetlights on the street and Mr. Haynes' testimony that there was a CCTV camera at the Warehouse.

[54] Learned Counsel also sought to rely on paragraph 4 of the defence where reference is made to the report of Mr. Homer an Investigator for Sentry that the vehicle was burnt due to the negligence of Mr. Doyle. I pause to state that an application to deem Mr. Homer an expert was rejected by the Master. Further, pleadings are not evidence. Statements in pleadings have to be proved by way of evidence. The mere statement that a person was negligent is not evidence of negligence.

[55] In my opinion when the evidence is considered as a whole, it cannot be said that this is an unsafe area. There is no evidence of crimes being committed in the area. It is not an isolated area. There are two businesses on the street, the Warehouse and a plant shop. I agree that the truck was not parked on a main road, but on a side street. There it posed less obstruction to traffic. The truck had a braking problem.The driver could not be expected to drive a 40ft. flatbed truck with a braking problem around Kingstown bearing in mind the hilly terrain of St. Vincent, looking for a street with parking place under lights. Indeed Mr. Doyle would have acted unreasonable if he had caused the driver to so do and an accident occurred. While there were no streetlights on the street where the truck was parked, Police Officer Kwame Hamilton who investigated the incident, testified that there was a streetlight about 150ft. away from the

truck, also there was light in the warehouse yard. While the area was not well lit, it was also not pitch dark. PC Hamilton's evidence is it was partially lit.

[56] I agree with Learned Counsel Ms. Joyles that the security guard at the Warehouse was not there to guard the truck and there is no evidence to show that Mr. Doyle employed any security guard to provide security for the truck. It was quite reasonable for Mr. Doyle to assume that the presence of security in the area would make the area less likely to attract criminals. Mr. Doyle did not intend for there to be a permanent parking placefor the truck or for the truck to remain there for an extended period. He made arrangements to remove the truck.

[57] Learned counsel also submitted that Mr. Doyle's action in leaving the truckunattended on the street amounted to a contravention of the Motor Vehicle and Road Traffic Regulations. His conduct amounted to negligence in the circumstances. Mr Doyle did not take reasonable steps to safe guard the vehicle from loss or damage and was therefore in breach of the Regulations.

[58] The provision to which Learned Counsel referred is section 30(b) of the Motor Vehicles and Road Traffic Regulations SRO 35 of 1954 amended by SRO 34 pf 2007 of the Motor Vehicles and Road Traffic Act Cap 483 which read as follows:

> "30. **Repairs in Street etc**
>
> Any person who -
>
> (a) ......
>
> (b) Leaves, permits or causes to be left any vehicle in any street or any parking place for a period exceeding twenty-four hours
>
> Is guilty of an offence under these Regulations."

[59] There is no merit in this submission. Mr. Doyle was not charged with any offence. The Police investigated the incident, and no charges were brought against Mr. Doyle, and quite rightly so. The truck had a mechanical problem which affected the brake, and it required two other similar trucks to be able to move it. The truck was on a side street. It was not affecting the flow of traffic in the street. It needed special maneuvers to move the truck, and those arrangements were made to move the truck.

Failure to Give Notice

[60] Learned Counsel also submitted that Mr. Doyle breached the terms of the Policy in that he failed to give Sentry notice immediately of the breakdown of the truck. Learned Counsel referred to the bottom of the schedule to the Policy where it is stated:

> **"IMPORTANT NOTICE**
>
> Do not fail to notify the company of every accident, however slight; immediately upon occurrence. Do not delay sending in notice when unable to give all the information desired. Send a completed notice later. In no circumstances admit liability in any way whatsoever. Always take names and addresses of witnesses and forward them at once to the company."

[61] In my view this provision is very clear. It refers to circumstances where a policy holder is involved in an accident. This was not the situation in this case. Mr. Doyle's truck had a mechanical breakdown. It was not as a result of any accident for which someone may be liable nor did the breakdown result in loss or damage to the truck or any other person. The Policy did not require Mr. Doyle to give notice immediately whenever there was a mechanical breakdown

[62] Learned Counsel also referred to this Note on the Policy which reads:

> "COMMERCIAL VEHICLE POLICY
>
> Policy No: WVC – 11148/22
>
> Name of Insured: ANTHONY DOYLE
>
> Renewable at : 31st March 2023
>
> Notice of the happening of any accident or loss covered under this Policy must be given immediately to the Company."

[63] Learned Counsel also referred to Condition 5 of the Policy which states as follows:

> "Notification of Accident 5.
>
> 1. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars in writing not later than seven days of the date of the accident.In the event of failure to comply with the terms of the above condition and in particular if after seven days after such occurrence the company has not been notified as above set forth then all benefits under this policy shall be forfeited.

Every letter claim writ summons and process shall be notified or forwarded to the company immediately on receipt. Notice shall also be given to the Company immediately the insured or any person claiming to be indemnified shall have knowledge of any impending Prosecution inquest or fatal inquiry in connection with any such occurrence.

2. ....

3. In the case of theft or other criminal act which may give rise to a claim under this Policy the insured shall give immediately notice to the Police not later than seven days of the date of the incident and cooperate with the Company in securing the conviction of the offender. In the event of failure to comply with the terms of the above conditions and in particular if after seven days after such occurrence the company has not been notified as above set forth then all benefitsunder the policy shall be forfeited."

[64] It is not disputed that Mr. Doyle's truck was not involved in any accident. However, there was a loss of the truck. This however occurred on the 15th day of June, 2023. Mr. Doyle's testimony which is not disputed, is that the same day, June 15, he gave Sentry notice of the loss of the truck after he reported the incident to the Police.

[65] In conclusion, having reviewed the evidence, I find that Mr Doyle did not fail to take reasonable steps after the truck broke down to prevent further loss or damage. On receiving notice that the truck had broken down, Mr Doyle immediately contacted his mechanic. Mr Doyle directed his driver not to continue to Diamond but to make the delivery in Kingstown instead and for the truck to be taken to Edinboro. However, due to the mechanical problem, the truck could not be driven to Edinboro. The truck was parked on a street where there are two businesses, one of which had a security guard and there were lights on the property. Mr. Doyle made arrangements with a friend to secure the part for the truck and to remove the truck to Edinboro. It rained the Sunday that they planned to remove the truck and before it could be moved the following Sunday the truck was burnt. The cause of the fire is unknown. Mr. Doyle notified Sentry the very day of the fire after reporting the matter to the Police. The truck was not left in front of the Warehouse for an extended period. It broke down on June 8, 2023 and it was burnt on the early morning of June 15, 2023. Throughout that period Mr. Doyle made checks on his truck daily.

[66] For the reasons stated above, I find Mr. Doyle claim succeeds.

Order

[67] It is Ordered:

(a) Judgment is entered for the Claimant.

(b) The Defendant shall pay the Claimant damages to be assessed by the Court on the application of the Claimant, such application to be made within twenty-one (21) days.

(c) Costs to the Claimant to be determined at the assessment hearing.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar