

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2019/0019

BETWEEN:

**[1] METROCINT GENERAL INSURANCE COMPANY LIMITED
[2] SAMUEL DE ROCHE**

Appellants

and

MERCEDES DELPLESCHE

Respondent

Before:

The Hon. Mde. Margaret Price-Findlay
The Hon. Mr. Trevor Ward
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Tonya Da Silva for the First Appellant
No appearance for the Second Appellant
Mr. Cecil A. Blazer Williams for the Respondent

2023: July 25;
September 18.

Civil appeal – Motor vehicle accident – Judgment against insured for damages – Section 8 of the Motor Vehicle Insurance (Third Party Risks) Act (“the Act”) – Third Party statutory right to be indemnified by insurer for judgment debt – Appellate interference with case management decisions – Whether the learned master erred in striking out parts of the first appellant’s defence – Statutory interpretation – Section 14(1)(h) of the Act - Whether the learned master erred in holding that section 14 of the Act invalidates the restrictions relied on by the insurer in the insurance policy – Whether the learned master applied too broad an interpretation to section 14(1)(h) of the Act – Whether the Act creates exceptions to third party statutory rights which the insurer can rely on to avoid liability to indemnify the second appellant under the Act

On 31st July 2012 the respondent, Ms. Mercedes Delplesche obtained judgment in default of acknowledgement of service against the second appellant, Mr. Samuel De Roche in the sum of \$23,815.00. The judgment originated from a claim by Ms.

Delplesche that she was injured in an accident involving a motor vehicle owned and driven by the second appellant, Mr. De Roche. Ms. Delplesche asserted that Mr. De Roche had only paid a total of \$3,600.00 towards the judgment debt and accordingly filed a claim in the court below against the insurer, Metrocint General Insurance Company Limited ("Metrocint") pursuant to section 8 of the Motor Vehicle Insurance (Third Party Risks) Act ("the Act").

In a judgment delivered on 19th February 2019, the learned master referred to his powers under Rule 26.3 of the Civil Procedure Rules, 2000 ("CPR") to strike out parts of a statement of case if it disclosed no reasonable ground for bringing or defending the claim. After employing a broad interpretation of sections 8 and 14 of the Act, the learned master ordered, *inter alia*, that paragraph 5 of the amended defence filed on 19th September 2018 be struck out as it did not disclose any reasonable ground for defending the claim. Paragraph 3 of the amended defence was also struck out for its failure to comply with Rule 10.5 of the CPR.

Dissatisfied with the decision, Metrocint appealed, seeking to have the learned master's orders set aside in their entirety. At the hearing, counsel for Metrocint abandoned grounds 3 and 4 of the appeal and proceeded with grounds 1 and 2, which can be condensed into a single issue, that is, whether the learned master wrongly interpreted section 14 of the Act and therefore erred in striking out parts of Metrocint's defence.

Held: dismissing the appeal, affirming the learned master's order and ordering costs of the appeal to the respondent, Ms. Delplesche to be paid by the first appellant, Metrocint, such costs to be assessed by a judge or master of the High Court if not agreed within 21 days, that:

1. As the CPR expressly entrusts the High Court with the power and responsibility to actively manage its cases, great deference is paid to a judge's exercise of discretion in case management decisions. Accordingly, a litigant who challenges a case management decision or order must reach a very high threshold in order to justify an appellate court's interference with such a decision or order. The test for interfering with a judge's case management decision is not whether the Court of Appeal would have exercised its own discretion differently or made a different order. The Court must be satisfied that the decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Multibank FX International Corporation v Von Der Heydt Invest S.A.
BVIHCP2022/0061 (delivered 5th July 2023, unreported) followed.

2. The modern approach to statutory interpretation is that the court seeks to give effect to the purpose of the legislation, which must be derived from its language and context. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose, so that controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which lead to its enactment. In light of what is now understood to be the modern approach, the Court does not accept the appellant's assertion that the literal rule should be the first resort in

this case. Further, the ambiguity leading to the instant proceedings indicated the need to consider the section in its wider context. The purposive rule must therefore be applied, and the Act must be construed to suppress the mischief and achieve the objective of the legislature.

Gorbachev v Guriev [2023] KB 1 followed; **Asiyah Grant v Javier Maduro** BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) followed.

3. Applying this approach to the interpretation of section 14 of the Act, the Long Title of the Act (which states that the purpose of the Act is to 'make special provisions for the protection of third parties against risks arising out of motor vehicle accidents, and related matters') reveals that the rationale behind the Act is to govern the relationship between insurance companies, policyholders and third parties who may be affected by the insured's actions or negligence, to ensure that the interests of the third parties are protected. Section 14(1)(h) prevents the insurer from excluding liability in situations where the negligent driver was someone 'named in the policy who may or may not drive a motor vehicle'. In this case, Mr. De Roche was the sole holder of, and person named in the policy, and therefore he is a person named in the policy who may drive the vehicle. Further, Metrocint's contention that he was not in compliance with the licensing laws means that he could also be categorised as a person named in the policy who may not drive the vehicle. The learned master was therefore correct to employ a broader interpretation of this section so as to give effect to the purpose of the section, which is to restrict or exclude certain provisions in the insurance policy to extend its cover to ensure greater protection of third party risks.
4. Cases may arise where a holder of a driving licence for light motor vehicles is found to be driving a vehicle for which he has no licence. In each case, on evidence, a decision must be made as to whether the fact of the driver possessing a licence for one type of vehicle but found driving a vehicle of another type, was the main or contributory cause of the accident. If it is found that the accident was caused solely because of some unforeseen or intervening causes with no nexus with the driver not possessing the requisite type of licence, the insurer will not be allowed to avoid its liability under section 8 of the Act merely for a technical breach of conditions concerning the driving licence. In this case, Mr. De Roche was driving a vehicle that he owned and was insured by Metrocint, despite not having the requisite class of licence. Nonetheless, he was driving a regular vehicle, that just so happened to be a hired vehicle, and not any type of heavy-duty vehicle requiring special skill to drive. There is no evidence to suggest that the accident was brought about by his inability to properly drive the hired vehicle. Accordingly, the learned master did not err in striking out paragraph 5 of Metrocint's defence. The learned master considered all the relevant factors and actively managed the case to prevent the matter from proceeding to trial based on a defence which had no realistic prospect of success.

Ishwar Chandra and Others v The Oriental Insurance Co. Ltd. and Others Appeal (Civil) 1213 of 2007 considered.

JUDGMENT

- [1] **FARARA JA [AG.]:** This is an appeal brought by the first appellant against the judgment and orders of Moise M (“the learned master”) in which he struck out certain parts of the first appellant’s defence in the court below, and in which he gave directions for the first appellant to amend the said defence to bring it into compliance with Rule 10.5 of the **Civil Procedure Rules 2000** (“CPR”). Leave was also granted to the respondent to file a reply to the amended defence and the matter was to be listed for further case management thereafter. The first appellant has sought to have the judgment set aside in its entirety and the relevant background is set out below.

Background

- [2] On 31st July 2012, Ms. Mercedes Delplesche (“Ms. Delplesche”) obtained judgment in default of acknowledgement of service against Mr. Samuel De Roche (“Mr. De Roche”) in the sum of \$23,815.00. This judgment originated from a claim by Ms. Delplesche that she was injured in an accident involving motor vehicle number H6423 owned and driven by Mr. De Roche. She asserted that Mr. De Roche had only paid a total of \$3,600.00 towards the judgment debt and she accordingly filed a claim in the court below against his insurer, Metrocint General Insurance Company Limited (“Metrocint”) pursuant to section 8 of the **Motor Vehicle Insurance (Third Party Risks) Act** (“the Act”).¹
- [3] Metrocint then filed a defence, essentially asserting that it was not obligated to satisfy the judgment against Mr. De Roche. It claimed that at the time of the accident, Mr. De Roche did not possess the class of licence which would permit him to drive the insured vehicle, which was a hired vehicle. This, Metrocint asserted, was in direct contravention of the insurance policy which stipulated that it would not be liable for any damage caused when the vehicle was being driven by a person who did not hold a valid licence to drive the insured vehicle.

¹ Cap. 309 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

- [4] At the first case management conference, Mr. De Roche was not a party to the claim but, given that the outcome of the claim was likely to have an effect on him, the learned master granted leave to Ms. Delplesche to include him as a party to the proceedings. Mr. De Roche was served with these proceedings via substituted service with the leave of the court, but to date is unable to be located and has taken no part in the proceedings below or in this appeal.
- [5] At a case management conference held on 19th September 2018, the parties conceded that the facts are not generally in dispute and that the primary issue to be determined is whether Metrocint is liable to satisfy the judgment debt on behalf of Mr. De Roche. The learned master, of his own motion, raised the issue of whether Metrocint's defence, or parts thereof, ought to be struck out on the basis that it disclosed no real prospect of successfully defending the claim.
- [6] In a judgment delivered on 19th February 2019, the learned master referred to his powers under rule 26.3 of the CPR² to strike out parts of a statement of case if it disclosed no reasonable ground for bringing or defending the claim. He cited the case of **Eastern Caribbean Insurance Ltd v Edmund Bicar**³ as support for the proposition that third party risk legislation was created to provide an avenue whereby a third party may recover compensation from an insurer even though he is not privy to the insurance contract between the insurer and the policyholder. The learned master therefore concluded that section 8 of the Act, which forms the basis of Ms. Delplesche's claim, allowed her to claim satisfaction of the judgment by Metrocint, despite not being privy to the insurance contract between Metrocint and Mr. De Roche.
- [7] He also cited the decisions of the Privy Council in **Presidential Insurance Company Ltd v Mohammed and others**⁴ and **Presidential Insurance Company Ltd v Resha St. Hill**⁵ and concluded that section 14 of the Act

² Now replaced by the Civil Procedure Rules (Revised Edition) 2023 which came into effect on 1st August 2023.

³ SLUHCVP2008/014 (delivered 3rd May 2010, unreported).

⁴ [2015] UKPC 4.

⁵ [2012] UKPC 33.

invalidates the restrictions in the policy relied on by Metrocint. The restrictions in the policy relate to a person named in the policy who may or may not drive a motor vehicle, and Metrocint contended that as Mr. De Roche's driver's licence did not permit him to drive a hired vehicle, he was not covered under the policy. The learned master found that under section 14 of the Act, this restriction is void and the section works to override the language of the insurance policy to extend its cover. The learned master also noted that section 14 makes provision for an insurer to recover the amount paid to the third party from the insured, but it is not allowed to rely on the restriction in the policy which makes reference to who may or may not drive the motor vehicle as a means of circumventing a third party claim.

[8] On this basis, the learned master concluded that even if Metrocint were to prove that Mr. De Roche was not endorsed in the policy of insurance to drive the motor vehicle in question, it would be unable to escape Ms. Delplesche's action to pay the judgment debt under the provisions of section 8(1) of the Act. He accordingly made the following orders:

“(a) Paragraph 5 of the amended defence filed on 19th September, 2018 is struck out as it does not disclose any reasonable ground for defending the claim;

(b) Paragraph 3 of the amended defence filed on 19th September, 2018 is struck out for its failure to comply with Rule 10.5 of the CPR;

(c) [Metrocint] is granted leave to further amend its defence for the limited purpose of bringing paragraph 3 into compliance with Rule 10.5 of the CPR;

(d) The amended defence is to be filed and served within 14 days from the date of delivery of this judgment;

(e) [Ms. Delplesche] is granted leave to file a reply to the defence within 14 days from the date of service of the amended defence filed by [Metrocint] in compliance with order (d) above;

(f) The matter will thereafter be listed for further case management of the outstanding issues in this claim.”⁶

⁶ See paragraph 21 of the judgment.

The appeal

- [9] By notice of appeal filed on 30th September 2019, Metrocint, sought to have the learned master's order set aside in its entirety. Although 4 grounds of appeal were raised, counsel for Metrocint indicated that grounds 3 and 4 were being abandoned and that she would only be proceeding with grounds 1 and 2. These two grounds can further be condensed into a single issue to be determined by this Court: Whether the learned master wrongly interpreted section 14 of the Act and therefore erred in striking out parts of Metrocint's defence.

Whether the learned master wrongly interpreted section 14 of the Act and therefore erred in striking out parts of Metrocint's defence

Metrocint's submissions

- [10] The gravamen of Metrocint's submissions, as put forward by learned counsel, Ms. Tonya Da Silva, is that Metrocint is not liable to indemnify Mr. De Roche with respect to the judgment entered against him in favour of Ms. Delplesche. She accepts that the Act enables third parties to seek satisfaction of judgments from the insurer of the judgment debtor, but she posits that an exception exists in this case which relieves Metrocint of liability. She argued that the learned master applied too broad of an interpretation to section 14(1)(h) of the Act in ruling that it overrides the requirement in the insurance policy for the driver to be in possession of a valid licence. In order for section 14(1)(h) to apply, there must be actual persons named in the policy who are not permitted to drive the vehicle, and not simply a general statement that a person who does not hold a valid driver's licence is not permitted to drive the vehicle.
- [11] Ms. Da Silva advocated for the use of the literal rule to determine whether the term in the insurance policy that liability does not extend to an insured who does not hold a valid licence in respect of the insured vehicle, offends section 14(1)(h) of the Act. She contended that the literal rule has prima facie preference and is only to be displaced if the wording of the statute is vague and ambiguous. The real meaning of section 14(1)(h) is clearly ascertainable from the words used and it speaks only to the naming of persons who are permitted or prohibited

from driving the insured vehicle; not to terms which require compliance with licencing laws and regulations.

Ms. Delplesche's submissions

[12] Counsel for Ms. Delplesche, Mr. Cecil A. Blazer Williams, argued that the literal rule of statutory interpretation could not apply in this case and that the purposive rule would have to be applied as section 14(1)(h) must be read in the context of the statute as a whole. The aim of the Act is to provide protection to third parties against risks arising out of motor vehicle accidents and the sections should be interpreted to give effect to this purpose. He argued that Mr. De Roche was the owner, driver and policyholder of the vehicle, and no evidence was led by Metrocint to show whether, at the time of signing the policy, he was told that he could not drive the vehicle.

[13] He also noted that the Act provides an avenue whereby the insurer can recover any monies paid out to a third party on the basis of section 14(1)(h) from the policyholder. He argued that Metrocint is liable under section 14(1)(h) of the Act to satisfy the judgment debt in favour of Ms. Delplesche, however, any perceived breaches of contract or breaches of the insurance policy are to be raised with Mr. De Roche and Metrocint can seek to recover from him the amount eventually paid out to Ms. Delplesche.

Discussion

[14] As this appeal emanates from a case management decision made by the learned master in the court below, I shall first set out the law in relation to appellate interference with case management decisions. In **Multibank FX International Corporation v Von Der Heydt Invest S.A.**,⁷ Michel JA at paragraph 55 said:

“As the CPR expressly entrusts the High Court with the power and responsibility to actively manage its cases, great deference is paid to a judge’s exercise of discretion in case management decisions. Accordingly, a litigant who challenges a case management decision or order must reach a very high threshold in order to justify an appellate court’s interference with such a decision or order. The test for interfering

⁷ BVIHCPMAP2022/0061 (delivered 5th July 2023, unreported).

with a judge's case management decision or order is not whether the Court of Appeal would have exercised its discretion differently or made a different order or come to a different decision; the Court must be satisfied that the decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."

[15] With this in mind, I turn to a consideration of the issues which arise on this appeal. I also note that the decision being challenged in this appeal is the decision of the learned master to strike out parts of Metrocint's defence on the basis that it does not disclose any real prospect of successfully defending the claim. The matter in the court below is still at the case management stage, the issues not having been fully ventilated at trial. Therefore, this Court cannot embark upon a full evaluation of the issues and can consider them only to the extent necessary to determine whether the learned master erred in striking out parts of Metrocint's defence.

[16] It is helpful at this juncture to set out section 14 of the Act, which is at the heart of this appeal:

"14. Avoidance of restriction on scope of policies covering third party risks

- (1) Where a certificate of insurance has been issued under subsection (4) of section 4 in favour of the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured by reference to any of the following matters –
 - (a) the condition of the motor vehicle;
 - (b) the number of persons that the motor vehicle carries;
 - (c) the weight or physical characteristics of the goods that the motor vehicle carries;
 - (d) the times that or the areas within which the motor vehicle is used;
 - (e) the horse-power or cubic capacity rating of the motor vehicle;
 - (f) the carrying on the motor vehicle of any particular apparatus;
 - (g) the carrying on the motor vehicle of any particular means of identification other than any means of identification required to be carried by this Act; or
 - (h) persons named in the policy who may or may not drive a motor vehicle,is void with respect to the liabilities required to be covered by a policy under section 4(1).
- (2) ...
- (3) Nothing in this section requires an insurer to pay any amount in respect of the liability of any person otherwise than in or towards the

discharge of that liability, and any amount paid by an insurer in or towards the discharge of any liability of a person covered by the policy by virtue only of this section is recoverable by the insurer from that person.”

[17] I will also set out the section of the insurance policy on which Metrocint seeks to rely:

“The Company shall not be liable in respect of (1) any accident, loss, damage or liability caused sustained or incurred... (b) whilst any motor vehicle in respect of which indemnity is provided by this Policy is... (iii) [b]eing driven by or is for the purpose of being driven by any person who does not hold a valid licence to drive the Insured Vehicle.”⁸

[18] Both parties accept that the purpose of the Act is to enable a third party who has obtained judgment against a person to whom a policy of insurance has been issued, to recover the full amount of the judgment from the judgment debtor’s insurer even though the third party is not a party to the contract of insurance. Section 14 of the Act extends this coverage by invalidating certain restrictions in insurance policies covering third party risks. The subsection in dispute is section 14(1)(h) which provides that any insurance policy that purports to restrict coverage with reference to ‘persons named in the policy who may or may not drive a motor vehicle’ is void.

[19] The learned master, in interpreting this section, along with the relevant section in Mr. De Roche’s insurance policy, considered the decision of the Privy Council in **Presidential Insurance Company Ltd. v Mohammed and others** which made reference to section 12 of the Trinidadian legislation, which is written in similar terms to section 14 of the Act. He noted that the section seeks ‘to make void certain limitations placed within the policy of insurance itself and prevents the insurer from denying liability to satisfy third party claims on the basis of these restrictions’.

[20] He also made reference to **Presidential Insurance Company Ltd. v Resha St. Hill** where the Privy Council went further to explain the relevance of section 12 in the Trinidadian legislation. The Board at paragraph 15 said as follows:

⁸ See page 19, Supplemental Record of Appeal.

“...s.12(1) invalidates in respect of claims by injured persons policy restrictions relating to matters such as the age or physical or mental condition of persons driving the vehicle, or the condition of the vehicle, or the number of persons or weight or physical characteristics of the goods that the vehicle carries, or the times at which or areas within which the vehicle is used, etc. Again, there is in s.12(2) a protective provision, to the effect that nothing in s.12(1) obliges the insurer to pay any sum other than in discharge of the liability to the injured person and that an insurer who pays any such sum only by virtue of s.12(1) may recover the same from the person whose liability is thereby discharged.”

- [21] The learned master noted that despite the similarities between section 12 of the Trinidadian legislation and section 14 of the Act, section 14 is broader and goes somewhat further in subsection (1)(h). In interpreting and applying section 14(1)(h) to the facts of this case, he said:

“[13] ...Here [Mr. De Roche] is not only the person named in the policy, he is in fact the policy holder and authorised to drive the motor vehicle. The restrictions under the policy to which the [Metrocint] refers relate to a person named in the policy who may or may not drive a motor vehicle. Under section 14 this restriction is void and, as the Privy Council notes, the section works to override the language of the insurance policy to extend its cover. Subsection (3) of section 14 goes on to make provision for the insurer to recover the amount paid to the third party from the insured. What the insurer is not entitled to do is rely on this restriction in the policy as a means of circumventing the third party claim and this restriction is overridden by the content of section 14(1)(h) of the Act.”⁹

- [22] Metrocint argued that this was too broad of an interpretation of this section and that in order for the section to apply, specific persons must be named in the policy who are not permitted to drive the vehicle. As the issue boils down to one of statutory interpretation, it is important at this stage to set out the modern approach to statutory interpretation. In **Gorbachev v Guriev**,¹⁰ the English Court of Appeal in considering the authorities on statutory interpretation said this:

“**22.** The modern approach to statutory interpretation is that the court seeks to give effect to the purpose of the legislation, which must be derived from its language and context. Thus in *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687 Lord Bingham of Cornhill said at para 8 that:

⁹ See paragraph 13 of the judgment.

¹⁰ [2023] KB 1.

“The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

23. Similarly, in *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs* (formerly *Inland Revenue Comrs*) [2022] AC 1, Lord Reed PSC and Lord Hodge DPSC said:

“It is the duty of the court, in accordance with ordinary principles of statutory construction, to favour an interpretation of legislation which gives effect to its purpose rather than defeating it.”

[23] Furthermore, in **Asiyah Grant v Javier Maduro**,¹¹ a decision of this Court, the learned Chief Justice said as follows:

“[27] The Court, in its quest to interpret statutes, has concerned itself with discerning and giving effect to the intention of parliament when it passed the enactment. Traditionally, heavy reliance has been placed on the strict and literal meaning of words as evidencing that intention. Cases such as *The Sussex Peerage* and *Abel v Lee* well-encapsulate that traditional approach.

[28] For several decades now, there has been a discernible shift from a slavish insistence on the literal meaning of words in an enactment, and it is now well settled that the immediate, legislative context of statutory words, along with the statute's object and purpose, are required to inform the assessment of parliament's intention. There is now a strong stream of jurisprudence supporting this purposive approach to interpretation. The House of Lords in *Pepper v Hart* remarked:

“...The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”

[29] This Court, very recently, in *Rajiv Gunness v Saint George's University Limited* (Owners and Operators *St. George's University*) et al recognised the high importance of the purposive interpretation of legislation, stating:

“It is a well-established principle that in interpreting legislative provisions the court would adopt a purposive interpretation so as to give effect to what is taken to have been intended by

¹¹ BVIHCVAP2019/0001 (delivered 13th November 2019, unreported).

Parliament. The court will presume that Parliament does not intend to legislate so as to produce a result which is inconsistent with the statute's purpose or make no sense or is anomalous or illogical.”

- [24] In light of the authorities and what is now understood to be the modern approach to statutory interpretation, I cannot accept Ms. Da Silva's proposition that the literal rule should be the first resort in this case. Furthermore, there is clearly some ambiguity or room for interpretation in the section which has led to the instant proceedings and thus there is a need to consider the section in its wider context. The purposive rule must therefore be applied, and the Act must be construed to suppress the mischief and achieve the objective of the legislature.
- [25] I shall start with the Long Title of the Act which states that the purpose of the Act is 'to make special provisions for the protection of third parties against risks arising out of motor vehicle accidents, and related matters'. It is evident, that the entire *raison d'être* behind the Act is to govern the relationship between insurance companies, policyholders and third parties who may be affected by the insured's actions or negligence, to ensure that the interests of the third parties are protected. The legislation therefore operates to limit the restrictions to liability that an insurer can claim to avoid satisfying claims of third parties. Consequently, section 14(1)(h) must be interpreted to give effect to this intention.
- [26] Section 14(1)(h) prevents the insurer from excluding liability in situations where the negligent driver was someone 'named in the policy who may or may not drive a motor vehicle'. In this case, Mr. De Roche was the owner of the vehicle and was the policyholder. He was the sole person named in the policy and was listed as the authorised driver – therefore he is a person named in the policy who may drive the vehicle. To my mind, this in and of itself would have been sufficient to bring the matter under 14(1)(h). However, going further, based on Metrocint's contention that he did not possess the requisite permit to drive the vehicle and that he was not in compliance with the licencing laws, it appears to me that he could also be categorised as a person named in the policy who may not drive the vehicle. It is not practical to expect that a policyholder, upon

negotiating his contract of insurance, would include in his policy a list of persons who may not drive the vehicle. The statute must be taken to refer to persons named in the policy, who for some reason or the other, were not permitted to drive a particular vehicle or drive in particular circumstances. The section would amount to an absurdity otherwise. The learned master was therefore correct to employ a broader interpretation of this section so as to give effect to the purpose of the section, which is to invalidate or restrict certain sections in the insurance policy to extend its cover to ensure greater protection of third party risks.

[27] I do not see any way in which Metrocint could escape liability to compensate Ms. Delplesche in these circumstances. Counsel for Metrocint also cited sections 29 and 34 of the **Motor Vehicle and Road Traffic Act**¹² which in essence state that driving without a permit is an offence and that a driving permit shall not be valid save in respect of the classes of motor vehicle therein mentioned. This, she asserts, means that Mr. De Roche did not have lawful authority to drive the vehicle. Counsel for Ms. Delplesche made reference to the case of **Ishwar Chandra and Others v The Oriental Insurance Co. Ltd. and Others**,¹³ a decision of the Supreme Court of India, where Sinha J stated:

“Cases may also arise where a holder of driving licence for light motor vehicle is found to be driving a maxi-cab, motor-cab or omnibus for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.”

[28] While this case only serves as persuasive precedent in this jurisdiction, I adopt the reasoning of the judge, especially when it is considered in conjunction with section 14(1)(h). Mr. De Roche was driving a vehicle that he owned and which was insured by Metrocint. This Court does not know the circumstances under which he came to be insured to drive a vehicle for which he did not possess the

¹² Cap. 483 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹³ Appeal (Civil) 1213 of 2007.

requisite class of licence, but nonetheless he was issued a certificate of insurance which placed certain responsibilities on the insurer. He was driving a regular vehicle, that just so happened to be a hired vehicle, and not any type of heavy machinery or heavy-duty vehicle which required a special skill to drive. There is no evidence to suggest that the accident was brought about by his inability to properly drive the hired vehicle, which, he was insured to drive.

[29] I cannot imagine that the drafters of section 14(1)(h) would have intended for the section not to cover the owner of the vehicle who was named as the authorised driver in the policy and was the policyholder himself. To allow an insurer to escape liability in these circumstances, at the very least to compensate the injured third party, would offend the entire ethos of third party insurance law and would open the floodgates for other such claims in relation to minor licencing defects, such as expired licences. Whether or not there was a breach of the insurance contract between Metrocint and Mr. De Roche is a separate issue, and ought to have no bearing on the right of the third party to have its judgment satisfied. This is why the Act makes provision under section 14(3) for the insurer, who has been made to satisfy a third-party claim only on the basis of section 14(1), to recover the monies paid to the third party from the insured for any alleged breach of contract or contravention of the policy.

[30] I am of the view that the learned master conducted a thorough assessment of the issues and wrote a well-reasoned judgment with reference to applicable authorities, and that he did not err in striking out paragraph 5 of Metrocint's defence in the court below. It was well within his powers under CPR 26.3(1)(b) to strike out parts of the defence if he found that they did not disclose any reasonable ground for defending the claim. In fact, the CPR, in particular the overriding objective, encourages the court and the parties to bring disputes to an end as early as possible and with minimal use of judicial time and resources. The learned master considered all of the relevant factors and actively managed the case to prevent the matter from proceeding to trial on the basis of a defence or parts thereof which were not sustainable and which had no realistic prospect of success.

[31] Furthermore, although the learned master struck out paragraph 3 of the defence, which he found not to be in compliance with the CPR, he afforded Metrocint the opportunity to amend it and make it compliant. It is clear therefore that he gave thorough consideration to Metrocint's defence and made the appropriate case management orders. Accordingly, Metrocint has not reached the very high threshold required to justify this Court overturning the case management order made by the learned master. His decision to strike out paragraph 5 was not blatantly wrong such that it was outside the ambit within which reasonable disagreement is possible and the appeal must therefore fail.

[32] For completeness, I note that Metrocint, in its notice of appeal sought to appeal the learned master's decision in its entirety. However, no grounds of appeal were advanced in relation to paragraphs (b) and (c) of the order of the learned master which struck out paragraph 3 of the Metrocint's defence for its failure to comply with rule 10.5 of the CPR, and which gave Metrocint the opportunity to amend the defence to bring it into compliance with the rule. I also find that this order was reasonable and was not blatantly wrong such that this Court should interfere.

Disposition

[33] For the foregoing reasons, I would order as follows:

- (1) The appeal is dismissed in its entirety and the order of the learned master is affirmed.
- (2) Costs are awarded to Ms. Delplesche, to be paid by Metrocint, such costs to be assessed by a judge or master of the High Court if not agreed within 21 days.

I concur.

Margaret Price-Findlay

Justice of Appeal

I concur.

Trevor Ward

Justice of Appeal

By the Court

Chief Registrar