

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCv2019/0360

BETWEEN:

NOEL JOSEPH

Claimant

and

ST. LUCIA MOTOR AND GENERAL INSURANCE COMPANY LTD

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Alvin St. Clair for the Claimant

Callistus Vern Gill for the Defendant

2021: October 21;
2022: July 28.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimant, Noel Joseph ("Mr. Joseph") has filed this claim against the St. Lucia Motor and General Insurance Company Ltd. ("St. Lucia Motor and General") for breach of their statutory duty under section 9 of the **Motor Vehicle Insurance (Third Party Risks) Act**,¹ ("the Act") by their failure to pay a judgment obtained by Mr. Noel in relation to an accident which occurred.

[2] The trial of this claim took place on 21st October 2021 and the Court had indicated that it would deliver its decision on 25th October 2021. However, prior to the scheduled judgment delivery, the Court was advised that there was a pending application by the Registrar of Insurance to place the defendant, St. Lucia Motor and General in judicial

¹ Cap. 8.02 of the Revised Laws of Saint Lucia.

management before the Commercial Division. By virtue of section 40(4) of the Insurance Act, that pending application stayed this claim and precluded any further proceedings without leave of the Court. Consequently, on 25th October 2021, this Court removed the matter from its list with liberty to restore.

- [3] On 26th May 2022, the Commercial Division of the High Court in the proceedings SLUHCM2021/0028 - The Registrar of Insurance v St. Lucia Motor and General Insurance Company Limited granted leave to the claimant, Mr. Joseph to continue the civil proceedings, being this claim SLUHCV2019/0360 solely for the purpose of delivery of judgment. I therefore in accordance with the said Order issue the following judgment.

Background

- [4] Mr. Noel was involved in a road traffic accident on 5th June 2019 and sustained damages as a result of which he filed a claim against Stephen Augustin and Lyndell Jacob. Default judgment was obtained against Mr. Augustin and Mr. Lyndell Jacob on 3rd March 2017 and damages were assessed to be paid by them in the sum of \$116,000.00 with interest at the rate of 6 % per annum from 10th April 2017 and costs of \$5,000.00. It is Mr. Noel's contention that Stephen Augustin was insured by St. Lucia Motor and General at the date of the accident.
- [5] Mr. Noel alleges that prior to claim no SLUHCV2016/0331 ("the 2016 claim") being filed he notified St. Lucia Motor and General of his claim against Stephen Augustin. They were informed of the judgment and their statutory duty to satisfy the judgment by letter dated 5th April 2018 but have failed or refused to pay the judgment sum to Mr. Noel.
- [6] St. Lucia Motor and General denies that Mr. Noel notified them at any time prior to filing of the 2016 claim of a claim being filed against Stephen Augustin as the correspondence referred to clearly refers to 'Steven' Augustin. St. Lucia Motor and General avers that it holds no insurance policy for Steven Augustin under registration number PJ3487 and further that to date there has been no report of the accident by Stephen Augustin or Steven Augustin to them. The insured they say has an obligation

to inform his insurer of any claim against him to allow the insurer an opportunity to participate in the proceedings. They say further that the 2016 claim was never served on them by Mr. Noel or brought to their attention by Steven Augustin, the defendant named in the 2016 claim.

- [7] They refer to a vehicle inspection form which shows the name Stephen Augustin in relation to a vehicle registration number HE2906. St. Lucia Motor and General avers that after they received the judgment dated 12th April 2017, they carried out a search of their files and confirmed that it held no policy for Steven Augustin nor for vehicle number PJ3487. They therefore deny that they are in breach of the any obligations to Mr. Noel under the Act and ask that this claim be dismissed with costs.
- [8] In reply, Mr. Noel avers that he became aware of the name Stephen Augustin as the correct spelling of the name of the defendant in the 2016 claim when the defendant in the 2016 claim produced his certificate of insurance, certificate number STLMGA15257 after judgment had been obtained.
- [9] Mr. Noel points out that the letter from Motor and General dated 6th June 2016 in response to his lawyer's letter dated 17th May 2016 itself referred to Stephen Augustin as referring to the defendant in the 2016 claim which was filed in the High Court. In fact, St. Lucia Motor and General when it received the judgment ought to have been seised of the letter dated 6th June 2016 which had introduced the name Stephen Augustin and this should have prompted them to have searched again for both Stephen and Steven Augustin. Therefore, the use of the names Steven or Stephen should not affect the fact that there was notice to St. Lucia Motor and General in 2016. The two names he says are used interchangeably by all parties including St. Lucia Motor and General.
- [10] Mr. Noel avers that he notified St. Lucia Motor and General prior to filing the 2016 claim and therefore met his obligation under the Act. He says that the Act places no obligation on him to serve the 2016 claim on the insurance company but simply requires him to give notice of intention to file a claim or notice of the filing of a claim.

Further, the policy covering the vehicle at the material time was STLMGA15257 which was mentioned in the police report regarding vehicle registration number PJ3487.

- [11] Mr. Noel avers that it was incumbent on St. Lucia Motor and General as a prudent insurance company having introduced the correct spelling of the name Stephen Augustin as their insured, to have made inquiries of its records with respect to both names, Stephen and Steven Augustin.

Issues

- [12] The issues for determination are:
- (i) Whether there was notice in accordance with Section 9 of the Act?
 - (ii) Whether St. Lucia Motor and General is in breach of section 9 of the Act by failing to satisfy the judgment dated 12th April 2017 granted in favour of Mr. Noel in Claim No. SLUHCV2016/0331?
 - (ii) Whether St. Lucia Motor and General is liable to pay the judgment dated 12th April 2017 granted in favour of Mr. Noel in Claim No. SLUHCV2016/0331?

The issues identified will be addressed together as they are inextricably linked.

- [13] It is Mr. Joseph's evidence that he came to know the owner of the vehicle who hit him on 5th June 2015 as Steven Augustin who later confirmed that his name was spelt Stephen Augustin. Mr. Augustin was a passenger in the vehicle that day and was being driven by Lyndell Jacob. Mr. Augustin and Mr. Jacob never stopped after hitting him and had to be arrested by the police.

- [14] He says at the time he consulted with his lawyer for advice on getting compensation he gave him a copy of the police report but he did not have the certificate of insurance of Mr. Augustin in his possession. He says the name Steven Augustin was used in the 2016 claim as this is the name used in the police report when speaking of Mr. Augustin. Mr. Noel said in his witness statement that it was during discussion and mediation in relation to the 2016 claim that Mr. Augustin produced his certificate of insurance and a receipt issued by St. Lucia Motor and General. However, at trial he clarified that he had actually received the certificate of insurance and the receipt from Mr. Augustin when the judgment summons was served on him for payment of the debt.

The certificate of insurance specifically stated the policy number which was the same as that stated in the police report. Mr. Noel says St. Lucia Motor and General has refused to satisfy the judgment debt.

- [15] Mr. Ross Gabriel is the Claims Manager of St. Lucia Motor and General Insurance for the last eighteen years. He says he remembers receiving the letter dated 17th May 2016 from Mr. Noel's lawyer about the 5th June 2016 accident involving one Steven Augustin owner of vehicle registration number of PJ3487 allegedly insured with St. Lucia Motor and General. He says upon receipt of that letter he reviewed the files and determined that they had no insured named Steven Augustin nor a vehicle registration number PJ3487. He says he also checked his records to see if any report had been made by one of their insured regarding a 5th June 2015 accident. Having made those findings, Mr. Gabriel wrote to Mr. Noel's lawyer formally by letter dated 8th June 2016.
- [16] He says nothing further was heard until the letter dated 5th April 2018 from Mr. Noel's lawyer advising of the judgment, was served on St. Lucia Motor and General. Mr. Gabriel says St. Lucia Motor and General was never served with the 2016 claim as required by the Act nor was the existence of the 2016 claim ever brought to his attention.
- [17] He says if the first defendant in the 2016 claim named as Steven Augustin was one of their insured, he never brought the claim to their attention as is required under his policy of insurance and so St. Lucia Motor and General was never given the opportunity to participate in the claim.
- [18] He says he first knew of the 2016 claim when he received the letter of 5th April 2018 from Mr. Noel's lawyer. He says he again checked his records and found information in relation to a STEPHEN AUGUSTIN who had been insured with St. Lucia Motor and General for the relevant period on the basis of an inspection in relation to a vehicle registration number HE2906. He says he did not think he needed to do anything further as the information in the 5th April 2018 letter reflected what was in the 17th May 2016 letter to which he had already responded indicating that St. Lucia Motor and General was not the insurer of Steven Augustin nor of PJ3487.

[19] He says St. Lucia Motor and General was subsequently served with the present claim on 8th August 2019 and for the first time a copy of the judgment was served, some two years after its entry.

[20] The current claim Mr. Gabriel says references “STEPHEN” and not STEVEN AUGUSTIN but there is no judgment against STEPHEN AUGUSTIN. It is against STEVEN AUGUSTIN. Mr. Noel also did not notify St. Lucia Motor and General about a claim against STEPHEN AUGUSTIN. Mr. Gabriel says he has acted in good faith and it was for Mr. Noel having received his letter dated 8th June 2016 to serve St. Lucia Motor and General with the claim, that is SLUHCV2016/0331.

Discussion and Analysis

[21] Section 9 of the Act states:

“9. DUTY OF INSURERS TO SATISFY JUDGEMENT AGAINST PERSONS INSURED AGAINST THIRD-PARTY RISKS

(1) If, after a certificate of insurance has been duly delivered under this Act to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy of insurance under section 4(1)(b) (being a liability covered by the terms of the policy to which the certificate relates) is obtained against any person who is insured by the policy then, although the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, he or she shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgements.

(2) No sum shall be payable by an insurer under subsection (1)—

(a) in respect of any judgement, unless before or within 7 days after the commencement of the proceedings in which the judgement was given (or within such other period as the court may in its **absolute discretion consider equitable**) the insurer had notice of the bringing of the proceedings;

...”

[22] It is important to understand the purpose of the notice requirement under the Act and what notice is required to be given to the insurer to satisfy section 9(2) of the Act.

[23] In any case, where notice is being contested, it is for the insured to prove that they were not notified as required by the Act. In **RICO MOHAMMED vs MARITIME**

GENERAL INSURANCE COMPANY LIMITED² at paragraph 25, the Court put it his way:

“The onus of proving that they had no notice lies on the Defendant, as Insurers, was established in the Judgment of des Iles JA in Civ Appeal No 18 of 1982 Motor and General Insurance Company Ltd. V Koongie. The Defendant will have a duty in fulfilling disclosure requirements for this matter to reveal all correspondence from the insured that are likely to have made them aware of the underlying matter even before the proceedings were commenced” (my emphasis)

[24] Lord Justice Kennedy in the English Court of Appeal in **Derek Wylie on behalf of SMP Motor Policies at Lloyds v Terence Francis Wake**³ at paragraph 29 of his judgment helpfully summarized the position regarding notice under a similar provision as our section 9.

“Pausing there, it seems to me that certain conclusions can be drawn from the authorities.

- (1) To show that the insured had notice of the bringing of the proceedings there must be more than evidence of a casual comment to someone who at times acted as an agent for the insurers (see Herbert v RPA Company).
- (2) Any notification relied upon must not be subject to a condition which may or may not be fulfilled (see Weldrick and Harrington) but if the only condition is one which requires action from the recipients which they choose not to take then by making that choice they render the notice unconditional and thus effective (see Ceylon Motor Insurance Association Ltd).
- (3) **The notice can be oral, and it need not even emanate from the claimant** (see Harrington and Desouza). **It can be given before proceedings have commenced, and it need not be specific as to the nature of the proceedings, (Desouza)** or the court (see Ceylon and Harrington).
- (4) Whether in any given case it is shown that the insurer had notice of the bringing of the proceedings (as opposed to the making of a claim) is a matter of fact and degree (Desouza).
- (5) **The essential purpose of the requirement of notice is to ensure that the insurer is not suddenly faced with a judgment which he has to satisfy without having any opportunity to take part in the proceedings in which that judgement was obtained (Desouza)”** (my emphasis)

² Trinidad and Tobago High Court Claim No. CV 2015-01892 delivered 25th February 2016.

³ [2000] EWCA CIV 349.

[25] Lord Justice Kennedy in **Wyle and Wake** referred to the judgment in **Desouza v Waterlow**⁴ where the Court in response to the argument that the use of 'the' in front of proceedings in section 152(1)(a) meant that what was to be given by way of notice to the insurers is notice of the particular proceedings brought by the third party. Lord Kennedy was of the view that the sub-section was not to be interpreted in that way. He went on to say that:

"As notice of the bringing of proceedings can be given before those proceedings are commenced, that is to say at a time when the proceedings do not exist, the notice that has to be given to the insurers is information that the third party intends to commence an action against the insurers insured. **Once the insurers have had that knowledge there is an onus on them to inform themselves of the precise details of the proceedings.**" (my emphasis)

[26] Section 9(1) imposes a duty on insurers to satisfy judgments against their insured in relation to liability which is covered by an insurance policy. That duty exists even where an insurer may be entitled to avoid or cancel a policy or has cancelled or avoided the policy. Section 9(2) makes the insurer's duty to satisfy a judgment against an insured in relation to third party contingent upon notice of the bringing of the proceedings being given (i) before or (ii) within 7 days after the proceedings in which the judgment was given begins. This section also gives the court a discretion to determine such other period of notice as it considers equitable.

[27] The section does not say by whom this notice is to be given. What is important is that the insurer has notice of the bringing of proceedings.

[28] In this case, St. Lucia Motor and General was notified by letter dated 17th May 2016 of intention to bring legal proceedings against STEVEN AUGUSTIN in respect of an accident involving Mr. Noel. That letter was in the following terms:

"May 17th 2016

...

Dear Sir

Your insured: STEVEN AUGUSTIN vehicle number PJ3487

...

On 5th June 2015, your insured Steven Augustin was involved in a vehicular accident with our client Noel Joseph....

⁴ [1999] RTR 71.

This serves to inform you and notify you that it is our intention to file a claim in the High Court against your insured should you or your insured fail to state that you and your insured will take full and unconditional responsibility for the injuries, pain and suffering and losses of our client as a result of being run down as aforesaid.

Please indicate whether you are minded to settle this matter so as to avert the filing of the matter in the High Court by the 25th day of May 2016 failing which legal proceedings will be filed.

...

[29] By that letter, St. Lucia Motor and General was put on notice about a potential claim against an alleged insured.

[30] St. Lucia Motor and General responded to this letter by letter dated 8th June 2016 which was in the following terms:

“8th June 2016

....

Dear Sir

RE: STEPHEN AUGUSTIN

VEH REG. NO: PJ3487

YOUR CLIENT: NOEL JOSEPH

Please refer to caption matter.

We acknowledge receipt of your letter on the above and advise that the name “Steven Augustin” nor vehicle registration number “PJ3487” appears on our records and as such cannot entertain your claim.

Please be guided accordingly.”

[31] Counsel for the defendant, Mr. Vern Gill (“Mr. Gill”) argued that the purpose of notice is to avoid the insurer being faced with a judgment which he has to satisfy without having any opportunity to participate in the proceedings in which the judgment was obtained and this is in line with the principles emanating from **Wylie**.

[32] In that letter of 8th June 2016, Mr. Gabriel says he checked his records and he did not have record of a STEVEN AUGUSTIN as an insured nor a registration number PJ3487. No other steps were taken by the insurer. No attempts were made to obtain the police report which would have at least alerted St. Lucia Motor and General to the insurance policy number. It is curious that in reply to the 17th May 2016 letter,

Mr. Gabriel's reference line is to a STEPHEN AUGUSTIN. If it is that records relating to a STEPHEN AUGUSTIN were found, it was for the insurer to seek to ascertain whether the STEPHEN in their records could possibly be the STEVEN being referred to. There is no evidence that this was done.

[33] Having received notice of a potential suit it is for the insured to take steps to seek information to ascertain what the matter relates to. The third party may not have the relevant information at all. Instead of trying to conduct further enquiries to obtain the accident report or attempt to contact the STEPHEN AUGUSTIN in their records, St. Lucia Motor and General did nothing save to simply deny any involvement or interest in the matter.

[34] In this case, St. Lucia Motor and General chose not to even attempt to participate or engage in the matter even when intended proceedings were threatened if there was no favourable response. Having not done so, they cannot say that it was for Mr. Noel to furnish them with more information given their response of 8th June 2016.

[35] In his submissions, counsel for the defendant, Mr. Gill contended that when the 2016 claim was filed it was incumbent upon and prudent for Mr. Noel to serve St. Lucia Motor and General as required by the Act and cited section 9(2) as the relevant section in support of his contention. Counsel also suggests that Mr. Noel failed to act within a reasonable time to bring the proceedings to the attention of St. Lucia Motor and General and only did so two years after.

[36] I repeat that there is no requirement for the third party to serve the proceedings on the insurer although most counsel acting for third parties may do so to avoid situations like we have in this case and to avoid an insurer saying that their insured never notified them of the claim, thus putting a third party in a precarious position. However, there is no statutory requirement.

[37] It may be correct for St. Lucia Motor and General to say that they were not served with the 2016 claim. However, they would have been put on notice of impending legal action, but they simply denied any involvement by their letter of 5th June 2016. I

therefore find in all the circumstances of the case that St. Lucia Motor and General did have notice that proceedings may have been instituted against a STEVEN AUGUSTIN who carried a similar name to their insured STEPHEN AUGUSTIN and therefore they ought to have carried out in depth investigations to ascertain whether in fact this was their client simply with a wrong spelling of a name. This was not a case of two very different names. This was the same name but with Stephen spelt as Steven which is not unusual at all. The question is, had St. Lucia Motor and General received oral notice via a telephone call of the intention to file proceedings against STEPHEN/STEVEN AUGUSTIN, would they have had the same response? Auditorily the two spellings of this name are pronounced in exactly the same way, therefore I would think not.

[38] At the time Mr. Gabriel received the 8th April 2018 letter he was put on notice about the certificate of insurance. Even at that point he could have still sought to get in touch with the STEPHEN AUGUSTIN which he said he found on his records. The copy of the judgment and certificate of insurance and receipt were referred to and attached to the 8th April 2018 letter. If Mr. Gabriel had examined the order dated 12th April 2018, he would have realized as pointed out by counsel for the claimant, Mr. Alvin St. Clair ("Mr. St/ Clair") that whilst the heading shows STEVEN AUGUSTIN, the signature on the consent order was that of STEPHEN AUGUSTIN. Additionally, if he had examined the certificate of insurance policy no. #: STLMGA15257, the very inspection which he produced to the Court and the police report, it would have been clear that these documents all refer to the same vehicle.

[39] St. Lucia Motor and General Certificate of Insurance Policy Number STLMGMA15257 refers to a Mazda E2000. The insured's name is stated as Stephen Augustin. There is no vehicle number stated on the certificate. The Chassis No. is stated as SRY0E2622858 and the Engine No. FE-483916.

[40] The Traffic Accident Report dated 24th July 2015 in the section dealing with vehicles it refers to: (i) Owner, Steven Augustin; (ii) Vehicle Number PJ3487; (iii) Make of the vehicle: Mazda/omnibus; (iv) Insurance Company: St. Lucia Motor & General; (v) Certificate #: STLMGMA15257.

- [41] The Inspection Certificate which is referred to in Mr. Gabriel's evidence shows: Stephen Augustin as the owner. The vehicle is stated as a 1989 Mazda, Model E2000/4 Seater. The Chassis No and Engine No. are the same as on the certificate of insurance Policy Number STLMGMA15257.
- [42] There is no doubt based on all the evidence that St. Lucia Motor and General carried a policy of insurance in relation to the vehicle which struck Mr. Noel on the day of the accident. It is the vehicle which is insured and it is to be noted that the certificate of insurance (which has not been challenged), the vehicle inspection and the police report all refer to the same vehicle.
- [43] To deny Mr. Noel's claim and refuse to pay his judgment as a third party would go totally contrary to the very intention of the Act which is to make provision for the protection of third parties against risks arising out of the use of motor vehicles.
- [44] It cannot be that an insurer can be permitted to hide behind a difference in the spelling of a name when (i) they were alive to the fact that they carried records in relation to a STEPHEN AUGUSTIN and (ii) all the relevant information is now available and confirms that they were on risk in relation to the particular vehicle and insured at the material time. Certainly, in the context of Saint Lucia, it would be understood that very often people have different spellings of their names and in light of this, St. Lucia Motor and General should have taken greater steps to get information which would have assisted and perhaps averted this claim.

Conclusion

- [45] I therefore find that St. Lucia Motor and General Company Limited has failed to satisfy the judgment dated 12th April 2017 and has therefore breached section 9(1) of the Act and consequently is liable to pay the judgment sum granted in favour of the claimant, Mr. Noel.

[46] In the circumstances and in light of the foregoing discussion, I make the following order:

1. Judgment is entered for the claimant.
2. The defendant is to satisfy the judgment dated 12th April 2017 and pay to the claimant the sum of \$116,000.00 plus interest at the rate of 6% per annum from 10th April 2017 and costs of \$5,000.00.
3. The defendant is to pay prescribed costs to the claimant on this claim in the sum of \$7,500.00 being 15% of \$50,000.00.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar