

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBMCVAP2020/0006

BETWEEN:

ARNOLD ADAMS

Appellant

and

[1] AUSTAWAKI COKER

[2] AUSTIN COKER

Respondents

Before:

The Hon. Mde. Esco L. Henry

Justice of Appeal

The Hon. Mde. Kimberly Cenac-Phulgence

Justice of Appeal

The Hon. Mr. Gerard St. C. Farara

Justice of Appeal [Ag.]

Appearances:

Ms. Hadya Dolphin for the Appellant

Ms. Zenitaa Singh for the Respondents

2026: April 22

Civil Appeal – Negligence – Motor vehicle accident – Claim for damages – Whether the learned magistrate erred in dismissing claim – Whether claim may be dismissed in entirety where some losses proven – Whether insurance proceeds reduce damages recoverable from tortfeasor – Distinction between measure of damages and indemnity principle – Subrogation – Whether absence of subrogated proceedings affect claimant's right to recover – Whether subrogation operates to limit liability of tortfeasor – Unjust enrichment – Whether recovery by insured claimant constitutes double recovery – Relationship between insurer and insured – Remittal for assessment of damages

REASONS FOR DECISION

- [1] **CENAC-PHULGENCE JA:** This is an appeal against the decision of the learned magistrate Karen Hill-Hector delivered on 24th November 2020, whereby the appellant's claim in negligence arising out of a motor vehicle accident was dismissed and judgment was entered for the respondents with costs to them in the sum of \$1,200.00.
- [2] On 22nd April 2026, this Court heard the appeal and made the following Order:
- (1) "The appeal is allowed.
 - (2) The Court shall provide written reasons to follow.
 - (3) The matter of quantum of damages/loss is remitted to be considered and determined by the learned magistrate in the court below on the basis of the record of the proceedings and the oral and documentary evidence led in the court below.
 - (4) Costs of the appeal agreed in the sum of \$1000.00 to be paid to the appellant within 21 days of the date of this order."

These are the reasons for that decision.

- [3] The appeal raises important questions at the intersection of the law of damages and insurance law, in particular the proper treatment of insurance proceeds in claims against tortfeasors and the scope and operation of the doctrine of subrogation.

Factual Background

- [4] The appellant instituted proceedings in the Magistrate's Court claiming damages in the sum of \$18,723.99 arising from a motor vehicle accident which occurred on or about 6th January 2016, which he alleged was caused by the negligent driving of the second respondent, the driver of a motor omnibus owned by the first respondent.

- [5] The appellant's claim comprised expenses in relation to the following items: repair of the vehicle, towing, estimate of repairs, loss of income, medical expenses, and the cost of an accident report.
- [6] The learned magistrate found, on the evidence, that the appellant had received payment from his insurer in respect of the damage to his vehicle. She further found that the claim was not brought as a subrogation action on behalf of the insurer. On that basis, the learned magistrate concluded that the appellant was only entitled to recover 'uninsured losses' and, finding that such losses had not been sufficiently proven, dismissed the claim in its entirety.
- [7] It is this reasoning which lies at the heart of the present appeal.

Issues on Appeal

- [8] The grounds of appeal raise two central issues:
- (1) Whether the learned magistrate erred in law in holding that the appellant's recoverable damages were limited by the loss covered by and/or paid pursuant to his insurance policy; and
 - (2) Whether the learned magistrate erred in concluding that the appellant failed to prove his losses.

Issue 1: Whether Insurance Payments Reduce Recoverable Damages

- [9] The starting point must be the well-entrenched common law rule that benefits received by a claimant from independent or collateral sources are not to be deducted from damages recoverable from a tortfeasor.
- [10] This principle is deeply rooted in the common law and was clearly articulated in **Parry v Cleaver**.¹ Lord Reid explained that insurance proceeds fall within a category of benefits which are not to be taken into account because they are the product of the claimant's own prudence and contractual arrangements.

¹ [1970] AC 1.

[11] The underlying rationale is one of justice and public policy. As Lord Reid observed that:

“It would be revolting to the ordinary man's sense of justice, and therefore contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large, and that the only gainer would be the wrongdoer.”²

[12] The rule thus serves a dual function. First, it ensures that the loss lies where it ought properly to fall, upon the wrongdoer. Secondly, it preserves the integrity of private insurance by ensuring that the insured receives the benefit of the bargain for which he has paid. To permit a tortfeasor to rely on such insurance would, in effect, transfer that benefit to a stranger to the contract.

[13] It follows that the inquiry into damages in tort is concerned exclusively with the loss caused by the defendant's wrongdoing. That inquiry is not conditioned or diminished by the claimant's prudence in obtaining insurance. Any other approach would distort the compensatory principle by introducing irrelevant considerations extraneous to the tort itself.

The Doctrine of Indemnity and Subrogation

[14] The respondents sought to justify the learned magistrate's approach by reliance on principles of indemnity and subrogation, as articulated in **Castellain v Preston**.³ While those principles are well-established, their application in the present context reflects a fundamental misapprehension of their proper scope and operation.

[15] It is correct that a contract of indemnity is governed by the principle that the insured is to be fully indemnified, but no more than indemnified, for the loss suffered. As Brett LJ explained in **Castellain v Preston**, the object of indemnity insurance is to place the insured, so far as money can do so, in the same position as if the loss had not occurred. However, that principle is strictly

² Ibid [14D].

³ (1883) 11 QBD 380.

confined to the contractual relationship between insurer and insured. It does not qualify, diminish, or otherwise affect the liability of a third-party tortfeasor.

- [16] The error in the respondents' argument lies in transposing a rule designed to regulate recovery under a contract into the distinct and autonomous domain of tort liability. The tortfeasor's obligation to compensate arises from his wrongful act and is measured by the loss thereby caused; it is not contingent upon, nor reducible by, the claimant's private insurance arrangements.
- [17] The doctrine of subrogation must be understood within this same conceptual framework. Subrogation, as explained in **Napier and Ettrick (Lord) v RF Kershaw Ltd**,⁴ arises to prevent double recovery by ensuring that the insurer may recoup sums paid once the insured recovers from a third party. Crucially, subrogation does not create a new cause of action, nor does it transfer the insured's cause of action to the insurer in a proprietary sense. Rather, it confers upon the insurer a right to stand in the shoes of the insured, and to enforce the insured's existing rights in the insured's name.
- [18] Lord Templeman in **Napier** made clear that the insured may recover both from the insurer and the wrongdoer but must thereafter account to the insurer. The doctrine therefore regulates the distribution of recovery, not the existence or extent of the cause of action.
- [19] This distinction is of critical importance. The prohibition against double recovery is not achieved by reducing the tortfeasor's liability, but by regulating the ultimate distribution of the recovered sums as between insurer and insured. The two stages ought not to be conflated.
- [20] Similarly, Lord Diplock in **Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd**⁵ states:
- “...‘subrogation’ is concerned solely with the mutual rights and liabilities of the parties to the contract of insurance. It confers no rights and

⁴ [1993] AC 713.

⁵ [1962] 2 QB 330.

imposes no liabilities upon third parties who are strangers to that contract. It vests in the insurer who has paid a loss no direct rights or remedies against anyone other than the assured. He cannot sue such parties in his own name; he is bound by any release given by the assured to a third party. The insurer's rights against the assured cannot be affected by any subsequent contract, or dealings between the assured and a third party..."⁶

[21] Lord Diplock's statement makes plain that subrogation has no bearing on the liability of third parties, who are strangers to the insurance contract. The tortfeasor cannot invoke subrogation as a shield against liability, nor can he rely on it to reduce the damages otherwise payable.

[22] The conceptual independence of these doctrines is further underscored in **Bee v Jensen**,⁷ where it was made clear that subrogation must not be conflated with broader notions of unjust enrichment. While both doctrines may address the risk of overcompensation, subrogation does so within the confines of the insurer–insured relationship and contract of insurance and does not alter the primary liability of the wrongdoer.

[23] To permit a tortfeasor to rely on the existence of insurance would be to invert the doctrine of subrogation, transforming it from a shield against unjust enrichment into a sword for the benefit of the wrongdoer. Such a result would be contrary to the intent behind the subrogation doctrine.

Misapplication by the Learned Magistrate

[24] A perusal of the learned magistrate's decision reveals that she effectively treated the insurance payment received by the appellant as reducing or extinguishing his claim against the respondents. This approach involved a fundamental error of law.

[25] Firstly, it fails to recognise the juridical independence of the appellant's cause of action in tort. The right to damages arises from the respondents' negligence

⁶ Ibid p. 340.

⁷ [2006] EWHC 3359 (Comm).

and is to be assessed by reference to the loss thereby caused. It is not conditioned by, nor dependent upon, the appellant's private contractual arrangements with his insurer.

[26] Secondly, the learned magistrate conflated the rule against double recovery with the measure of damages. The former is concerned with preventing the claimant from retaining more than his loss and is enforced through the mechanism of subrogation or reimbursement. It does not operate to reduce the quantum of damages recoverable from the tortfeasor in the first instance.

[27] Thirdly, the reasoning adopted would, if correct, produce a plainly anomalous and unjust result, namely, that an insured claimant would be in a worse position than an uninsured claimant. Such a result would not only offend basic notions of fairness but would also undermine the policy rationale underpinning both the collateral source rule and the law of insurance.

[28] Fourthly, the learned magistrate appears to have attached significance to the absence of a formal subrogation claim or assignment. That consideration is immaterial. As recognised in **Caledonia North Sea Ltd v Norton (No 2) Ltd (in liquidation)**,⁸ the insured ordinarily sues in his own name, even where the insurer has an interest in the recovery. The form in which the proceedings are brought does not affect the substantive right of recovery.

[29] In essence, the learned magistrate's approach resulted in the respondents obtaining the benefit of a contract of insurance to which they were not parties and for which they had provided no consideration. That is precisely the outcome which the common law has consistently rejected.

[30] The learned magistrate therefore erred in law in holding that the appellant could only recover uninsured losses.

⁸ [2002] 1 All ER (Comm) 321.

Unjust Enrichment Argument

- [31] Whilst it appears from the record that the respondents had made submissions before the learned magistrate on unjust enrichment, a perusal of the reasons for decision do not show that this formed the basis for the learned magistrate's decision. However, both the appellant and respondents addressed this in their submissions before this Court.
- [32] In any event, such a submission proceeds on a mischaracterisation of both the doctrine of unjust enrichment and its relationship to the law of damages.
- [33] Unjust enrichment is concerned with the reversal of benefits unjustly retained at the expense of another. It requires, at a minimum, (i) an enrichment, (ii) at the expense of the claimant, (iii) which is unjust, and (iv) in respect of which no applicable defence arises. None of those elements is satisfied in the present context as between the appellant and the respondents.
- [34] The appellant's receipt of insurance proceeds does not constitute an enrichment at the expense of the respondents. The benefit derives from a contract of insurance funded by the appellant's own premiums. The respondents have contributed nothing to that benefit. As such, there is no basis upon which they can invoke the law of unjust enrichment to reduce their liability.
- [35] As explained in **Bee v Jenson**, the doctrines of subrogation and unjust enrichment, though sometimes addressing similar concerns, are conceptually distinct doctrines and must not be conflated. Any potential overcompensation is addressed through the insured's obligation to account to the insurer, not by relieving the tortfeasor of liability.
- [36] Put shortly, the question whether the appellant might ultimately retain more than his loss is not a matter that concerns the respondents. It is a matter governed, if at all, by the appellant's obligations to his insurer. The tortfeasor's liability is neither reduced nor qualified by that consideration.

Issue 2: Whether the Appellant Proved His Loss

- [37] It is well established that special damages must be specifically pleaded and strictly proved. However, the requirement of strict proof does not demand perfection. The court must evaluate the totality of the evidence and determine whether the claimant has established his loss on a balance of probabilities.
- [38] The respondents submitted that the appellant failed to prove several heads of damage, including repair costs and loss of income, and relied on the absence of corroborative documentation and the self-serving nature of certain evidence.
- [39] It is clear from the notes of evidence that the claimant gave evidence and was extensively cross-examined in relation to the losses for which he sought damages. What is evident from the learned magistrate's decision is that she did not undertake a detailed assessment of each head of damage. Instead, having concluded that the appellant could only recover uninsured losses and that these were not sufficiently proven, she dismissed the claim in its entirety.
- [40] In the Court's view, this approach was flawed for two reasons. Firstly, it was premised on the erroneous legal conclusion that insurance payments limited the recoverable damages. Secondly, it failed to recognise that even if certain heads of damage were not proven, the appellant was still entitled to recover those losses which were proven.
- [41] The law does not require a claimant to succeed on every pleaded head of damage in order to obtain relief. Where some losses are proven, the court is obliged to assess and award damages accordingly.
- [42] The wholesale dismissal of the claim, in circumstances where liability was not in dispute and some losses were clearly proven, was therefore unsustainable.

Appropriate Disposal

- [43] Having found that the learned magistrate erred in law and that her assessment of the evidence in relation to damages was affected by that error, the question arises as to the appropriate appellate response.
- [44] While this Court has the jurisdiction to make its own assessment of damages, it is generally slow to do so where the exercise requires primary findings of fact and an evaluation of the weight to be attached to oral and documentary evidence.
- [45] The learned magistrate, having had the advantage of seeing and hearing the witnesses, remains the tribunal best placed to undertake that evaluative exercise, provided it is conducted in accordance with correct legal principles.
- [46] In those circumstances, the just and proportionate course is to remit the matter for assessment of quantum of damages on the basis of the existing record, including the oral and documentary evidence adduced at trial.

Conclusion

- [47] This appeal ultimately turns on a fundamental principle: a tortfeasor cannot escape or reduce his liability because the claimant has prudently obtained insurance. The law draws a clear and principled distinction between the assessment of damages in tort and the allocation of loss as between insurer and insured.
- [48] The doctrines of indemnity and subrogation ensure that the insured does not recover more than his loss, but they do so by regulating the relationship between insurer and insured, not by diminishing the liability of the wrongdoer.
- [49] The learned magistrate's approach, if upheld, would permit the respondents to benefit from a collateral contract to which they were not privy and would produce results that are both unjust and anomalous.

Disposition

[50] For these reasons, the Court made the following Order:

- (1) The appeal was allowed.
- (2) The judgment of the learned magistrate dated 24th November 2020 is set aside.
- (3) The matter of the quantum of damages/loss is remitted to be considered and determined by the learned magistrate in the court below on the basis of the record of the proceedings and the oral and documentary evidence led in the court below.
- (4) Costs of the appeal agreed in the sum of \$1000.00 to be paid to the appellant within 21 days of the date of this order.

I concur.

Esco L. Henry
Justice of Appeal

I concur.

Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar