

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

SAINT LUCIA

SLUHCVAP2018/0039

BETWEEN:

JOSEPH CADETTE

Appellant

and

ST. LUCIA MOTOR & GENERAL INSURANCE COMPANY LIMITED

Respondent

Before:

The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Gerard St. C. Farara, QC
The Hon. Mde. Margaret Price-Findlay

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

Appearances:

Mr. Leslie Prospere, Ms. Kristian Henry and Mrs. Megan Du Boulay Lee for the Appellant
Mr. Dexter Theodore, QC, with him, Ms. Sueanna Frederick for the Respondent

2020: December 11;
2021: February 22.

Civil appeal – Statutory Interpretation – Insurance Law – Motor Vehicles Insurance (Third Party Risks) Act – Section 4(7) – Requirements in respect of policies of insurance – Section 9 – Duty of insurers to satisfy judgment against persons insured against third party risks – Whether respondent on risk at time of accident and thereby obliged to satisfy judgment obtained against its insured - Section 11(1)(i) – Avoidance of restrictions on scope of policies covering third party risks – Whether learned master correctly construed and applied sections 4(7) and 9(1) of the Act in light of sections 11(1) and (2) – Unlicensed operator of motor vehicle – Whether section 11(1)(i) vitiated condition of certificate of insurance issued by respondent excluding persons not disqualified by order of court or law from driving motor vehicle – Whether respondent can rely on contractual defences under terms of insurance policy in its defence

Mr. Joseph Cadette (“Mr. Cadette”) was the registered owner of a vehicle which was involved in a collision with another motor car registered in the names of Messrs. Guy Anglion and Stephen Linor. At the time of the accident, the motor car was insured by St. Lucia Motor &

General Insurance Company Limited (“St. Lucia Motor”) and was being driven by Ms. Hannah John (“Ms. John”), an unlicensed driver.

Following the collision, Mr. Cadette filed a claim in the High Court for damages against Ms. John and Messrs. Anglion and Linor as driver and owners of the motor car, respectively. After securing a default judgment, Mr. Cadette wrote to St. Lucia Motor seeking to be indemnified under the insurance policy. Upon refusal of St. Lucia Motor to satisfy the judgment on the basis that Ms. John was an unlicensed driver at the time of the collision, Mr. Cadette filed a claim against St. Lucia Motor alleging that it breached its statutory obligation to indemnify him under section 9(1) of the Motor Vehicles Insurance (Third Party Risks) Act (“the MVIA” or “the Act”). In its defence, St. Lucia Motor contended that it was under no obligation to indemnify Mr. Cadette in circumstances where a term of the insurance policy exempted it from liability in respect of any accident, loss, damage, or liability caused or sustained while the vehicle was being operated by an unlicensed driver.

Upon consideration of the three preliminary issues raised during case management of the claim, the learned master dismissed Mr. Cadette’s claim with costs after determining that St. Lucia Motor was not on risk under the terms of the policy of insurance for the motor car at the time of the collision, and therefore had no obligation to satisfy the default judgment obtained by Mr. Cadette.

Mr. Cadette, being dissatisfied with the learned master’s decision, has appealed on five grounds which may be helpfully crystallised into two issues, namely: (i) whether the learned master correctly construed and applied the provisions of sections 4(7) and 9(1) of the MVIA in light of the provisions of sections 11(1) and (2) of the MVIA; and (ii) whether St. Lucia Motor can rely on any contractual defences under the terms of the policy of insurance in its defence of Mr. Cadette’s claim against it.

Held: dismissing the appeal; affirming the order of the learned master; and ordering costs to St. Lucia Motor in the sum of no more than two-thirds of the prescribed costs in the court below to be assessed by a master if not agreed within 21 days, that:

1. The legislative intent of the MVIA is to protect third parties against risks such as bodily injury, loss, death or property damage arising out of being involved in a motor vehicle accident. The compulsory nature of the MVIA is evidenced by section 3 which creates a mandatory requirement for all drivers to be insured against third-party risks. Further, section 4(7) of the Act imposes an obligation on insurers to indemnify injured third-parties for any liability which the policy covers; and section 9 creates an obligation on insurers to satisfy judgments obtained by injured third-parties resulting from any conduct of the insured which is covered by the policy.

Sections 3, 4 and 9 of the **Motor Vehicles Insurance (Third Party Risks) Act**, Cap. 8:02 of the Revised Laws of Saint Lucia applied; **Asiyah Grant v Javier Maduro** BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) considered.

2. It is clear that under the MVIA, the obligation on an insurer to satisfy a third-party judgment and the right of a third-party to seek satisfaction of its judgment(s) by the insurer are governed by section 9(1). Section 9(1) can only be properly invoked once the conditions outlined are met and does not oblige the insurer to satisfy any judgment obtained in respect of a liability falling outside the scope of the policy. Applying section 9(1) and its clear effect, it is evident that in so far as the certificate of insurance issued by St. Lucia Motor to Messrs. Anglion and Linor expressly excludes from coverage any incidents arising from the use of the insured motor vehicle by a person who is not qualified to drive in Saint Lucia, St. Lucia Motor is not liable under section 9(1) of the MVIA to satisfy any judgment obtained against the insured in those circumstances.

Section 9(1) of the **Motor Vehicles Insurance (Third Party Risks) Act**, Cap. 8.02, Revised Laws of Saint Lucia applied; **The Presidential Insurance Company Ltd v Resha St. Hill** [2012] UKPC 33 applied; **The Presidential Insurance Company Ltd v Mohammed and others** [2015] UKPC 4 applied.

3. It is settled law that the Court must give effect to the natural and ordinary meaning of words used in the context of the legislation and may only depart where that meaning leads to an absurd result which cannot reasonably be supposed to have been the intention of Parliament. In this case, there is no ambiguity in section 11(1)(i) of the MVIA which clearly speaks to 'persons named in the policy who may or may not drive the vehicle'. This could not be interpreted as covering an unlicensed driver operating the motor vehicle, and thereby vitiating the restriction contained in the certificate of insurance. This is more so particularly where the application of that restriction would exclude coverage in relation to Ms. John who, at the material time, was not a person named in the policy. Accordingly, there was no need to resort to the social and historical context in order to properly interpret the clear legislative provisions since, by way of emphasis, there was no ambiguity in the relevant legislative provisions. It is evident that the master correctly construed and applied sections 4(7) and 9(1) in light of sections 11(1) and (2) and properly concluded that St. Lucia Motor was not on risk at the material time and consequently not liable to cover the judgment debt under section 9 of the Act. Her decision cannot be impugned.

Sections 9 and 11 of the **Motor Vehicles Insurance (Third Party Risks) Act**, Cap. 8.02, Revised Laws of Saint Lucia applied; **Smith v Selby** [2017] CCJ 13 (AJ) applied; **Attorney General of the Turks and Caicos Islands v Misick and Others** [2020] UKPC 30 applied; **The Labour Tribunal v St. Lucia Electricity Services Limited** [2020] ECSCJ No. 120 (delivered 8th April 2020) followed.

4. Whilst sections 9(2) and (3) set out specified circumstances or statutory 'let-outs' under which an insurer may avoid indemnifying a third-party judgment creditor, as exceptions to the general duty to indemnify, there is nothing in the language of section 9 which limits an insurer's avoidance of indemnification to the named

circumstances under sections 9(2) and (3) only. An insurer may rely on contractual defences provided that they do not run afoul of the provisions of the statute. Though the courts have recognised that exemptions provided for in the statute cannot be ignored, this cannot be interpreted to mean that the statutory ‘let-outs’ limit an insurer’s reliance on contractual defences generally, especially in circumstances where they do not offend any of the provisions of the MVIA as in the appeal at bar.

Sections 9 of the **Motor Vehicles Insurance (Third Party Risks) Act**, Cap. 8:02 of the Revised Laws of Saint Lucia applied; **Matadeen v Caribbean Insurance Co. Ltd** [2002] UKPC 69 applied; **Mecheck Willis v Globe Insurance Company of Jamaica Limited** [2015] JMCA Civ 36 applied.

5. Sections 4 and 9 of the MVIA do not impose an obligation on insurers to satisfy judgments obtained by a third-party for risks outside the terms of the policy except as specified under section 11 which does not invalidate an insurer’s limitation on coverage to persons not disqualified by law to drive a motor vehicle. Accordingly, St. Lucia Motor is not precluded from availing itself of a contractual defence in Mr. Cadette’s claim against it, particularly where the driver at the material time was not an authorised driver entitled to indemnity.

Section 4 and 9 of the **Motor Vehicles Insurance (Third Party Risks) Act**, Cap. 8:02, Revised Laws of Saint Lucia applied **Prudence Robinson v Sagicor General Insurance Inc** [2019] ECSCJ No. 315, (delivered 18th September 2019) distinguished; **Matadeen v Caribbean Co Ltd** [2002] UKPC 69 applied; **The Presidential Insurance Company Ltd v Resha St. Hill** [2012] UKPC 33 applied; **The Presidential Insurance Company Ltd v Mohammed** [2015] UKPC 4 applied.

JUDGMENT

Introduction

- [1] **BLENMAN JA:** This is an appeal by Mr. Joseph Cadette (“Mr. Cadette”) against the decision of Master Agnes Actie (as she then was), dated 30th October 2018, by which the learned master dismissed Mr. Cadette’s claim against St. Lucia Motor & General Insurance Company Limited (“St. Lucia Motor”) for an alleged breach of its statutory duty, as an insurer, to satisfy a judgment obtained by him for losses sustained consequent to a collision with a vehicle insured by St. Lucia Motor. Mr. Cadette is aggrieved by the decision of the master and has challenged it on several grounds. St. Lucia Motor strenuously resists the appeal and contends that the

learned master came to the correct conclusion and therefore this Court should not interfere with the decision.

- [2] I now give a brief summary of the background to the appeal and the proceedings before the learned master in order to provide the context.

Background

- [3] There is common ground as to the background. I would gratefully adopt the background as indicated in the agreed statement of facts filed by the parties. Mr. Cadette was the registered owner of a Toyota Rav 4 SUV which, on 11th May 2013, was involved in a collision along the Vieux Fort/Laborie Highway in Saint Lucia with a Toyota Sprinter motor car registered in the names of Messrs. Guy Anglion and Stephen Linor. At the time of the accident, however, the vehicle was being driven by Ms. Hannah John, who was an unlicensed driver. St. Lucia Motor was the insurer of the motor car at the time of the collision. Following the collision, Mr. Cadette filed a claim in the High Court against Ms. John, as driver of the Toyota Sprinter, and Messrs. Anglion and Linor, as owners of the vehicle, for damages following from the collision. On 10th October 2016, Mr. Cadette secured a default judgment against the driver and the owners of the motor car for general and special damages. Mr. Cadette wrote to St. Lucia Motor seeking to be indemnified under the policy of insurance, however, St. Lucia Motor refused to satisfy the default judgment on the basis that Ms. John was an unlicensed driver at the time of the collision, breaching the terms and limitations of the policy of insurance which limited the coverage to persons not disqualified under the law from driving.

- [4] Mr. Cadette filed a claim against St. Lucia Motor alleging that it had breached its statutory obligation to indemnify him under section 9(1) of the **Motor Vehicles Insurance (Third Party Risks) Act**¹ ("the MVIA"). In its defence, St. Lucia Motor contended that it was under no obligation to indemnify Mr. Cadette in circumstances where a term of the policy of insurance exempted it from liability in respect of any

¹ Cap 8.02, Revised Laws of Saint Lucia.

accident, loss, damage, or liability caused or sustained while the motor vehicle was being operated by an unlicensed driver.

The Claim Below

[5] During case management of the claim, the parties requested the learned master to determine three preliminary issues which they contended would have disposed of the claim given the absence of any factual disputes between the parties. The preliminary issues were:

- (i) whether St. Lucia Motor was on risk at the time of the accident in respect of which judgment was obtained by Mr. Cadette;
- (ii) if yes, whether Mr. Cadette was entitled to be paid the judgment obtained; and
- (iii) whether St. Lucia Motor can rely upon any contractual defences arising under the terms of the policy of motor insurance in its defence of Mr. Cadette's statutory claim under section 9(1) of the MVIA.

The Master's Decision

[6] Upon consideration of the preliminary issues, the learned master dismissed Mr. Cadette's claim with costs after determining that St. Lucia Motor was not on risk under the terms of the policy of insurance for the motor car at the time of the collision, and therefore had no obligation to satisfy the default judgment obtained by Mr. Cadette.

[7] The learned master's reasons for dismissing the claim may be shortly summarised as follows. In determining the first preliminary issue, the learned master considered the provisions of sections 4(1)(b) and 9 of the MVIA and applied the principles elucidated by the Privy Council in the cases of **Matadeen v Caribbean Insurance Co. Ltd**² and **The Presidential Insurance Company Ltd v Mohammed and others**.³ She concluded, based on the application of the authorities to the facts that:

² [2002] UKPC 69.

³ [2015] UKPC 4.

“...Section 9 of the MVIA did not impose a liability on the insurer which it had not undertaken in the policy of insurance. The policy of insurance provides a clear condition that unlicensed drivers were not covered. Section 9 of the MVIA did not transfer a right to [Mr. Cadette] which the insured was not entitled to the first place. In the circumstances, the response to the first preliminary issue is in the negative. [St. Lucia Motor] was not [on] risk at the time of the accident.”⁴

- [8] Having so determined the first preliminary issue, the learned master concluded that this rendered the second preliminary issue otiose.
- [9] In dealing with the third preliminary issue the master considered the provisions under sections 9 and 11 of the MVIA. She reasoned that the statutory language under section 11 does not provide for an unlicensed driver as part of the list of inoperative restrictions, while section 9(1) ‘indicates that the insurer is under an obligation to satisfy judgments obtained against its insured and the obligation to pay ‘is only for a liability covered by the terms of the policy’. She therefore concluded that Mr. Cadette also failed as it relates to the third preliminary issue and the claim ought to be accordingly dismissed.

The Appeal and Condensed Issues

- [10] Mr. Cadette, being dissatisfied with the learned master’s decision, has appealed on five grounds of appeal which may be crystallised into two issues as follows:
- (i) Whether the learned master correctly construed and applied the provisions of sections 4(7)⁵ and 9(1) of the MVIA in light of the provisions of sections 11(1) and (2) of the MVIA; and
 - (ii) Whether St. Lucia Motor can rely on any contractual defences under the terms of the policy of insurance in its defence of Mr. Cadette’s claim against it.

Appellant’s Submissions

⁴ See paragraph 22 of the judgment below.

⁵ This Court notes that due to a typographical error in the learned master’s judgment the parties’ submissions referenced section 4(2) of the MVIA where it was intended to reference section 4(7).

[11] It is crucial to note that from the outset, learned counsel, Mr. Leslie Prospere, on behalf of Mr. Cadette, accepted both in his written and oral submissions the legal soundness of the Board's decisions in **Matadeen** and **Mohammed** on which the learned master based her interpretation of section 9(1) of the MVIA. Mr. Prospere agreed that **Matadeen** and **Mohammed** clearly establish the principle that where a motor vehicle is used outside the scope of its policy of insurance then no liability may attach to the insurer under the provisions of section 10(1) of the Trinidad MVIA, which parallels section 9(1) of the MVIA in Saint Lucia. He, however, urged this Court to construe sections 4(7) and 9(1) of the MVIA within the framework of section 11(1), and in accordance with applicable principles of statutory interpretation which he opined may not have been considered by the Board in the Trinidad cases.

[12] Relying on the authorities of **Smith v Selby**⁶, **Rowell v Pratt**⁷ and **Chettiar v Mahatmee and another**,⁸ Mr. Prospere summarised the applicable principles of statutory interpretation to which he referred as follows:

- (i) A court when construing a specific provision of a statute should have regard for the socio-historical context of the said statute as well as other relevant provisions of the statute which may throw important light on its interpretation. Further, that the court construing the enactment should also consider other related enactments that may throw important light on the enactment being interpreted.
- (ii) If the words of a provision are fairly capable of two interpretations, the court should adopt the one that better accords with what is just, reasonable and convenient; and
- (iii) When construing imported legislation, the local courts of former colonies should not, without more, presume that the local parliament was aware of or intended to adopt the interpretation accorded to the said legislation by

⁶ [2017] CCJ 13 (AJ).

⁷ [1937] 3 All ER 660.

⁸ Privy Council Appeal No. 33 of 1949.

the English courts. As such, the local courts are duty bound to consider any local conditions that may render the English court's interpretation inappropriate.

[13] Mr. Prospere posited that the legislative policy behind the MVIA was to ensure that drivers of motor vehicles have third-party insurance so as to be able to adequately compensate those who might be injured or who may suffer property damage consequent to a motor vehicle accident, and to create a duty on insurers to satisfy judgments against their insured obtained through claims for loss or injury covered by the policy. He sought to rely on **Mohammed and Prudence Robinson v Sagicor General Insurance Inc**⁹ in support of this submission.

[14] Mr. Prospere argued further, that while the learned master appropriately directed her mind to the provisions of section 11 of the MVIA in construing sections 4(7) and 9(1), she erred by determining that section 11 did not assist Mr. Cadette in circumstances where its exhaustive list of inoperative exemptions under a policy of insurance did not include restrictions relating to unlicensed drivers. He asserted that the mischief behind the promulgation of section 11 was to counterbalance the absence of a Motor Insurers' Bureau in Saint Lucia to provide an alternative avenue of compensation for innocent third-parties who are otherwise incapable of recovering from insurers. He indicated further that the English legislative framework upon which the MVIA is framed¹⁰ is supported by a privately run Motor Insurers' Bureau in England and that a similar Bureau does not exist in Saint Lucia.

[15] Mr. Prospere also adverted this Court's attention to the fact that, though section 11(1) of the MVIA shares very similar language to its Trinidad counterpart, section 12(1), the language is not identical since section 11(1)(i) contains an additional inoperative exemption in a policy of insurance relating to 'persons named in the policy who may or may not drive the vehicle'. Mr. Prospere asserted that the policy

⁹ [2019] ECSCJ No. 315, (delivered 18th September 2019).

¹⁰ The MVIA was enacted based on the English Road Traffic Act 1934.

of insurance for the motor car expressly provided policy coverage for the policy holders, Messrs. Anglion and Linor, and drivers who were using the car under the policy holders' permission, however, an express restriction in the policy of insurance required them to not be disqualified from driving. He argued therefore that in circumstances where section 11(1)(i) was intended to preserve coverage of these classes of persons by rendering inoperative any provision which sought to restrict that coverage, section 11(1)(i) vitiated that restriction under the policy of insurance purporting to avoid liability on account of the driver's disqualification from driving and/or their driving experience. He contended that a contrary construction would render section 11(1)(i) hopelessly inefficacious thus defeating the mischief and social evil which Parliament intended to cure given its cognisance of the absence of a Motor Insurers' Bureau.

- [16] On the second issue of whether St. Lucia Motor can rely on any contractual defences under the terms of the policy of insurance in its defence of Mr. Cadette's claim against it, Mr. Prospere submitted that the insurer is not permitted to rely on any conditions contained in the policy of insurance in its defence to defeat a claim by a third-party judgment creditor as he could in an action brought by the insured. He purported to rely on the authorities of **Prudence Robinson and Mecheck Willis v Globe Insurance Company of Jamaica Limited**¹¹ for this submission. He further contended that an insurer could only avail himself of a contractual defence where it is specifically provided for in the statutory 'let -outs' under sections 9(2) and (3) of the MVIA and cited **Mecheck** and **Matadeen** as authorities for this principle. He submitted that since a limitation on coverage to drivers not disqualified from driving was not provided for under section 9, St. Lucia Motor could not use this contractual defence against Mr. Cadette in his claim. He urged this Court to conclude therefore, that in circumstances where St. Lucia Motor was on risk at the time of the collision and since St. Lucia Motor is unable to raise any contractual defences to the claim brought by Mr. Cadette, the appeal against the learned master's decision ought to be allowed with costs to him (Mr. Cadette).

¹¹ [2015] JMCA Civ 36.

Respondent's Submissions

- [17] Learned Queen's Counsel, Mr. Dexter Theodore, maintained that the provisions of the MVIA are clear and unambiguous, and that the law has been settled on the manner in which the court ought to construe provisions dealing with an insurer's liability in respect of third-party claims where the judgment debtor is not covered by the policy of insurance. He argued further, that even where it was necessary, as Mr. Prospere asserts, for the court to have regard to the socio-historical context of the MVIA for the purpose of construction, it could not have been Parliament's intention to impose a duty on insurers to pay for damages caused by persons who fall outside the scope of the policy of insurance, especially as it relates to unlicensed drivers.
- [18] Mr. Theodore asserted that the learned master correctly construed sections 4(7), 9(1) and 11(1) and (2) of the MVIA and addressed her mind to the relationship between the various sections of the MVIA in determining the issues which were before her. He relied on the cases of **Mohammed** and **The Presidential Insurance Company Ltd v Resha St. Hill**¹² in support of his submission that section 9(1) of the MVIA does not impose on an insurer a liability that the policy of insurance did not purport to cover. He further submitted that it is clear that the insurer is entitled to revert to the terms of the policy where a third-party seeks to enforce judgment, and that the insurer is entitled to mount a contractual defence where the liability is not as is covered by the terms of the insurance contract.
- [19] Mr. Theodore stated that the decision in **Prudence Robinson** ought not to be regarded as setting a general proposition of law as it relates to the use of contractual defences. He argued that **Prudence Robinson** concerned a case where an insurer denied liability on the basis that there was no insurance contract despite there being a valid cover note giving comprehensive coverage and is therefore not analogous to the present case where the driver of the insured vehicle was unlicensed. He further submitted that **Mecheck** does not avail Mr. Cadette either since the dicta in

¹² [2012] UKPC 33.

that case accords with the legal principles espoused by the Board in **Mohammed** and **Resha St. Hill** which both support the learned master's decision in the case below. He also referred this Court to the case of **Insurance Company of the Bahamas Ltd v Eric Antonio**¹³ where the Board in construing section 12(1) of the Bahamas Road Traffic Act, which is similar to section 9(1) of the MVIA, found that section 12(1) does not override a policy restriction to named drivers. Mr. Theodore therefore argued that this pronouncement supports the principle that an insurer is entitled to rely on contractual defences in claims against it by third-parties.

[20] Mr. Theodore was adamant that the learned master did not err in finding that Mr. Cadette's claim could not be maintained against St. Lucia Motor. He asserted that for this Court to reverse the learned master's decision, in the circumstances, would amount to an imposition of liabilities on insurers which they are not required to bear either under their policy of insurance or under the MVIA.

[21] Accordingly, Mr. Theodore urged this Court to dismiss the appeal with costs to St. Lucia Motor, since there was no basis for disturbing the findings of the learned master.

Discussion and conclusion

The MVIA

[22] It is sufficiently important and necessary to recite the relevant provisions of the MVIA, to which I now turn.

[23] Section 3(1) of the MVIA reads:

"3. Users of motor vehicles to be insured against third-party risks

(1) Subject to the provisions of this Act, it is not lawful for a person to use, or to cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks as complies with the requirements of this Act."

¹³ [2015] UKPC 47.

[24] It is also necessary to set out the provisions of section 4 of the MVIA in order to clarify that which is being mandated under section 3(1) as ‘a policy of insurance in respect of third-party risks as complies with the requirements of this Act’. Section 4 sets out generally the requirements in respect of policies of insurance. The relevant sections 4(1) and (7) provide as follows:

“4. Requirements in respect of policies of insurance

(1) In order to comply with the requirements of this Act, a policy of insurance must be a policy which—

(a) is issued by a person who is an insurer; and

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or her or them in respect of injury to persons being carried in or upon or entering or getting on to or alighting from the motor vehicle or the death of or bodily injury to or damage to the property of any person caused by or arising out of the use of the motor vehicle on a public road.

...

(7) Despite anything in any enactment or rule of law, a person who issues a policy of insurance under this section is liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.”

[25] Section 9 is also important to the resolution of this appeal. It sets out the duty of insurers to satisfy judgment against persons insured against third-party risks. Sections 9(1), (2) and (3) provide as follows:

“9. Duty of insurers to satisfy judgment 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 judgments.

- (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;
 - (b) in respect of any judgement, so long as execution thereon is stayed pending an appeal; or
 - (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either —
 - (i) before the happening of the said event, the certificate, was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or
 - (ii) after the happening of the said event, but before the expiration of a period of 14 days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom it was delivered made such a statutory declaration as aforesaid, or
 - (iii) either before or after the happening of the said event, but within the said period of 14 days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.
- (3) No sum shall be payable by an insurer under subsection (1), if, in an action commenced before, or within 3 months after, the commencement of the proceedings in which the judgement was given, the insurer has obtained a declaration that, apart from any provision contained in the policy, the insurer is entitled to avoid the policy on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if the insurer has avoided the policy on that ground, that the insurer was entitled to do so apart from any provision contained in the policy.”

[26] This appeal also brings into sharp focus section 11 of the MVIA. Section 11 renders inoperative a specifically prescribed and exhaustive list of restrictions on the scope of a policy of insurance covering third party risks. Sections 11(1) and (2) state as follows:

“11. Avoidance of restrictions on scope of policies covering third-party risks

(1) Despite any provision to the contrary in this Act, where a certificate of insurance has been delivered under section 4(8) to 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 the policy by reference to any of the following matters, this is to say —

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the times at which or the areas within which the vehicle is used;
- (f) the horsepower or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus;
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under this Act; or
- (i) persons named in the policy who may or may not drive the vehicle,

shall, as respects such liabilities as are required to be covered by a policy under section 4(1)(b) be of no effect.

(2) This section shall not require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.”

[27] The general scheme of the MVIA is not in dispute. Helpfully, it has been set out by this Court in the case of **Prudence Robinson** where Carrington JA [Ag.], writing on behalf of the Court, stated as follows at paragraph 13 of the judgment:

“The Act has been enacted in much the same form throughout the Eastern Caribbean and is based on the early English Road Traffic Act 1934. The purpose of this legislation is to recognise the potential for injury and damage from moving vehicles and to provide protection to third parties by making it compulsory for vehicles to be insured at the minimum against liability for injury to persons and damage to property and to create a duty on insurers to satisfy judgments against their insured in relation to claims for loss or injury covered by the policy, with the correspondent right on the part of the judgment creditor to enforce such judgments against insurer, provided that the requirements *inter alia* as to notice under the Act had been met. In furtherance of this purpose, the regulations under the Act require that all persons applying for registration or licensing of a motor vehicle must produce a certificate of insurance indicating that on the day when the licence or registration comes into operation there will be in force a policy of insurance in relation to the user of the vehicle and that motor vehicles are [to] display the insurance sticker. The expression ‘policy of insurance’ is defined in the Act as including a covering note.”

[28] In **Mohammed**, which concerned the construction of the Trinidad MVIA, Lord Hodge pronounced as follows regarding its legislative purpose at paragraph 9 of the judgment:

“The MVIA seeks to ensure that people who drive motor vehicles have third party insurance in order to provide adequate compensation to people who are injured in or suffer property damage as a result of motor vehicle accidents...”

[29] As stated by the learned Chief Justice Pereira in **Asiyah Grant v Javier Maduro**¹⁴ in relation to the **Motor Vehicle Insurance (Third Party Risks) Ordinance**¹⁵ of the British Virgin Islands, the scheme of the MVIA of Saint Lucia is built on the conjoint effect of three basic provisions. At paragraph 32 of **Asiyah Grant**, the learned Chief Justice stated as follows:

“In my view, the object and purpose of the MVIO is clear. The scheme created by the MVIO is built primarily on the conjoint effect of the following provisions:
(a) section 3, which creates a mandatory insurance requirement for all drivers, except users of motor vehicles owned by the Government of

¹⁴ BVIHC VAP2019/0001 (delivered 13th November 2019, unreported).

¹⁵ Cap. 242, Revised Laws of the Virgin Islands, 1991.

the Territory or by Her Majesty's Government, who are duly authorised and on official duty;

- (b) section 4(2), which imposes an obligation on insurers to indemnify an injured third-party for all liability covered by the MVIO, and a corresponding right of action by an insured person against an insurer for damages flowing from incidents covered by the policy; and
- (c) section 10, which creates an obligation on insurers to satisfy judgments obtained as a result of the insured's conduct which is covered by the policy, and a corresponding right of action to an injured third-party for satisfaction of a judgment granted in its favour."

[30] The above provisions as set out by the learned Chief Justice Pereira are captured under sections 3(1), 4(7) and 9 of the MVIA in Saint Lucia. Section 3(1) of the MVIA creates a mandatory requirement for all drivers to be insured against third-party risks; section 4(7) imposes an obligation on insurers to indemnify injured third-parties for any liability which the policy covers; and section 9 creates an obligation on insurers to satisfy judgments obtained by injured third-parties resulting from any conduct of the insured which is covered by the policy. I therefore helpfully adopt her authoritative pronouncements above.

Analysis

Issue 1- Construction of Sections 4(7) and 9(1) of the MVIA

[31] The gravamen of this issue is whether the learned master correctly construed and applied the provisions of sections 4(7) and 9(1) of the MVIA in light of the provisions of sections 11(1) and (2) of the MVIA. Mr. Cadette's main contention under issue 1 is that section 11(1)(i) operated to vitiate the condition of the certificate of insurance issued by St. Lucia Motor to Messrs. Anglion and Linor, which excludes persons who are 'not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle', from coverage under the policy. This submission is misplaced for reasons which I now give.

[32] It is clear that under the MVIA, the obligation on an insurer to satisfy a third-party judgment and the right of a third-party to seek satisfaction of its judgments by the

insurer are governed by section 9(1) of the MVIA. Section 9(1), when broken down to its basic premises, is comprised of the following conditions which must be present for its proper invocation:

(i) A certificate of insurance must first have been duly delivered under the MVIA;

(ii) Judgment has been entered against the person who is insured by the policy, in relation to any liability as is required to be covered by a policy of insurance under section 4(1)(b); and

(iii) The liability to which the judgment pertains is one which is covered by the terms of the policy to which the certificate relates.

[33] The conditions under section 9(1) are conjunctive in nature. Once these conditions are present, it is clear that an injured third-party becomes entitled to seek satisfaction of its judgment from an insurer including any amount payable for costs and interest, without prejudice to the right of the insurer to avoid or cancel the insurance contract as between itself as the insurer and the insured.

[34] Section 9(1), by its clear words, places primacy on the fact that the liability to which the judgment pertains is one which is both required to be covered by the MVIA, and one which is covered by the terms of the policy to which the certificate of insurance relates. Indeed, this was the observation of the Lord Mance in **Resha St. Hill** in reference to the section of the Trinidad MVIA which parallels section 4(7) of the MVIA in Saint Lucia. He stated at paragraphs 11 and 14:

“11. ... the Board considers that the retention of the plural ‘those persons’ at the end of the amended s.4(7) **points strongly towards a conclusion that the amended section was (like its unamended predecessor) not intended to impose on any insurer a liability which the policy did not purport to cover in respect of the person insured or the persons driving or using the vehicle with his or her consent.**

...

14. ... s. 4(7) **does not intend to override policy language, by obliging insurers to meet liability incurred by drivers not within the scope of**

the policy cover, but to whose driving or use of the vehicle the policyholder has consented.” (emphasis supplied)

[35] In **Mohammed**, the Board followed and applied the reasoning of Lord Mance in **Resha St. Hill**¹⁶ where His Lordship stated, at paragraph 7 of his judgment, that the purpose of the phrase- ‘if the policy purports to cover them, as this policy does’, was not to impose on any insurer a liability which it had not purported to undertake. On the contrary, it was ‘to facilitate enforcement of the indemnity which insurers had undertaken to the policyholder to provide to other persons’.

[36] At paragraph 20 of his judgment, Lord Mance further pronounced as follows:

“Third, and perhaps even more significantly, insurers customarily rate motor insurance policies by reference to the driving experience and claims history of those permitted to drive the vehicle insured. **If s. 4(7) exposes insurers, contrary to the express terms of their policies, to having to indemnify any person injured by anyone driving the vehicle with the consent of the person insured, even though the policy precludes the insured from extending cover to such driver by giving such consent, then insurers would face an open-ended exposure.** A named driver(s) clause could no longer have its traditional significance for rating, or indeed much significance at all, unless insurers were expected to undertake the very different and difficult task of assessing the moral risk that their policyholders might, contrary to the policy wording, permit others to drive. Further, even assuming that some implied right would exist to recover from the policyholder sums paid to discharge a liability incurred by such other drivers, that would be cold comfort in many cases, and certainly of no real assistance to insurers in rating policies. It would seem unlikely under this scenario that policy holders could continue to expect to receive the benefit or full benefit of the reduction in premium which normally follows from agreement to a limitation of policy cover to only one or more specified drivers.” (Emphasis added)

[37] The observations of Lord Mance in **Resha St. Hill** are equally relevant to the MVIA and I respectfully adopt and apply them to the case at bar. It is clear that section 9(1) does not impose any obligation on an insurer to satisfy any judgment if the judgment was obtained in respect of a liability falling outside of the discrete terms of the contract of insurance as between the insurer and the insured. Applying section

¹⁶ [2012] UKPC 33.

9(1) and its clear effect, as elucidated by the Board in **Resha St. Hill**, the default position in this appeal is that in so far as the certificate of insurance issued by St. Lucia Motor to Messrs. Anglion and Linor expressly excludes from coverage any incidents arising from the use of the insured motor vehicle by a person who is not qualified to drive in Saint Lucia, St. Lucia Motor is obviously not liable under section 9(1) of the MVIA to satisfy judgment obtained against the insured in those circumstances.

- [38] To Mr. Prospere's specific point on the effect of section 11 on the clause of the insurance contract limiting coverage to persons not disqualified to drive the motor vehicle, it is noteworthy firstly that the effect of sections which are equivalent to section 11 has been authoritatively discussed by the Board. At paragraph 15 of **Resha St. Hill**, Lord Mance in discussing the nature and effect of the equivalent section under the Trinidadian legislation, stated as follows:

“...Likewise, 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 section 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.”

- [39] This pronouncement is apt, and I would apply it to case at bar. Indeed, it is clear that the effect of section 11 is to render inoperable or null any provisions of an insurance contract which seek to restrict coverage provided thereunder in the manner specified in the section. These restrictions, as set out in section 11, include limitations with reference to the age and mental capacity, the condition of the vehicle and critically limitations concerning ‘persons named in the policy who may or may not drive the vehicle’ under section 11(1)(i).

- [40] Section 11 very evidently confers protection onto innocent third-parties for their losses arising from the operation of motor vehicles and works in conjunction with

section 4 which indicates what matters are required to be covered by a contract of insurance under the MVIA. The effect of section 11, in the context of section 4 of the MVIA is to provide a base-line for adequate protection to third-parties who sustain damage as a result of motor vehicular accidents.

[41] By way of emphasis, Mr. Prospere's specific argument is that section 11(1)(i) which speaks to 'persons named in the policy who may or may not drive the vehicle' operates to invalidate the provision in the policy of insurance which restricts coverage in circumstances where the driver of the vehicle is disqualified from driving. He contends that the social and historical context of section 11(1)(i) is such that the court ought to interpret section 11(1)(i) as invalidating the restriction contained in the certificate of insurance. By way of reminder, the social and historical context to which Mr. Prospere specifically refers is that there is no Motor Insurers' Bureau established in Saint Lucia to provide compensation for third-parties injured in circumstances where they were not covered by the policy of insurance or involving a breach of the insurance contract. I fail to see how section 11(1)(i) which clearly speaks to '**persons named in the policy** who may or may not drive the vehicle' (emphasis mine) could be interpreted as covering an unlicensed driver operating the motor vehicle, and thereby vitiating the restriction contained in the certificate of insurance. This is more so particularly where the application of that restriction would exclude coverage in relation to Ms. John who, at the material time, was not a person named in the policy.

[42] I reiterate that Mr. Prospere has insisted that where the policy of insurance provides for coverage of the policyholders in addition to persons driving the motor car with the policyholders' permission, to that extent, Ms. John was 'named in the policy'. I do not agree with this proposition since the persons driving with the policyholders' permission were subject to the requirement of not being disqualified from driving under the law. In that way, Ms. John cannot be said to have been 'named in the policy' having not met the requirements of that which constituted a person 'driving on the Policyholder's order or with his/her permission'. To state this proposition is sufficient for it to be rejected.

[43] It is settled law that this Court must give primacy to the natural ordinary meaning of words used in the context of the legislation, from which the court may only depart where the natural and ordinary meaning of the words give rise to an undesirable end result. This principle was given judicial recognition by this Court in **The Labour Tribunal v St. Lucia Electricity Services Limited**.¹⁷ This was recently affirmed in the Board in **Attorney General of the Turks and Caicos Islands v Misick and others**¹⁸ where the Board stated that ‘...the first question is what is the natural or ordinary meaning of the particular words or phrases in their context...’. The Board in **Misick** further affirmed that:

“It is only when that [natural or ordinary] meaning leads to some result which cannot reasonably be supposed to have been the intention of the Governor when making or of the House of Assembly when approving the Regulations that it is proper to look for some other possible meaning of the word or phrase...”.

[44] Along similar lines, the learned President of the Caribbean Court of Justice (‘the CCJ’) Sir Dennis Byron PCCJ (as he then was) enunciated as follows in **Selby**:

“[9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judge’s view of what is just and expedient.”

[45] Critically, the learned Byron PCCJ stated as follows in relation to the use of the social and historical context when interpreting statutory words:

“[10] **The social and historical context can be decisive in ensuring that the words are interpreted to give effect to the meaning and purpose of the Act. But that does not extend to distorting the language used by Parliament.** It must be remembered that the court’s responsibility is to give effect to the intention of Parliament not to correct legislation to ensure that it is just and expedient. If the court considers that there is a variance between the language used and its understanding of the special purpose of the Act it should be left to Parliament to amend the legislation. **Where the words of the statute are not ambiguous there could be no justification**

¹⁷ [2020] ECSCJ No. 120 (delivered 8th April 2020) at paragraphs 36 to 39.

¹⁸ [2020] UKPC 30.

for interpreting them in a manner that would alter their meaning, unless it may be necessary to resolve an inconsistency within the statute itself. So, the conjecture that Parliament may have intended a meaning that is different to the words used is not a sufficient reason for departing from their ordinary and natural meaning.

[11] In giving effect to these principles the court, when interpreting any part of a statute, should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed. The underlying principle is that the courts must use the available material to discover and give effect to the intention of Parliament. There can be no doubt that consideration of the purpose of an enactment is always a legitimate part of the process of interpretation.” (emphasis supplied)

[46] It is noteworthy that in **Selby** Sir Dennis Byron PCCJ specifically stated that the social and historical context may be decisive in circumstances where the wording of the legislation is not clear, however the context cannot be used to distort the language used by Parliament. In the present appeal, the natural and ordinary meaning of section 11(1)(i) is clear and unambiguous. The words in their ordinary sense cannot be taken as purporting to speak to the legal standing of the driver to drive a vehicle. Neither can it be said that the legal standing to drive a vehicle could fit within any of the other named restrictions under section 11(1)(a) to (h). In the appeal at bar, there is no ambiguity and therefore no need to depart from the natural and ordinary meaning of the clear legislative provisions. To give the provisions the interpretation contended for by Mr. Prospere would lead to an absurd result and bring chaos to the insurance industry. Insurers would be unable to calculate their possible exposure should that interpretation be given to section 11(1)(i).

[47] In any event, even if the words used in section 11(1)(i) were ambiguous and therefore justified the Court’s resort to social and historical context, it is interesting that learned counsel Mr. Prospere, in seeking to address this Court on the relevant social and historical context (the absence of a Motor Insurers’ Bureau) has not substantiated his view of the social and historical context, any at all, with any document or other proof evidencing that Parliament bore the presence or absence of a Motor Insurers’ Bureau in mind when enacting section 11(1)(i) the MVIA. In other words, Mr. Prospere has not provided any material which this Court could

utilise in assessing the social context. Indeed, where an argument of this nature is made, and the court is asked to depart from the clear words used by Parliament in legislation, it behoves the parties to place the court in possession of material outside of the mere text of the legislation to make such an assessment. This was not done.

- [48] For the sake of completeness, I would add that the effect of the absence of a Motor Insurers' Bureau on the interpretation of the Trinidad MVIA was considered by the Board in **Resha St. Hill** and in **Mohammed**. In **Mohammed**, the Board adopted the observation of Edoo J in **Eligon v NEM (West Indies) Insurance Ltd**¹⁹ when considering the clear lacuna that existed in the Trinidadian legislation for the compensation by insurers of third-parties who had sustained injuries in circumstances where the policy of insurance was breached. Edoo J in **Eligon v NEM (West Indies) Insurance Ltd** stated as follows:

"It is ironic that legislation enacted primarily to protect persons who suffer injury and loss by accident arising out of the use of a motor vehicle on a public road is of no avail where there is a breach of a policy affording cover for such injury or loss, in effect leaving the policy holder uninsured. While it is true that the third party can sue the policy holder and recover any amount for which the latter is liable, if the policy holder is a man of straw, the third party is left without any relief. In such circumstances, the very purpose for which the Motor Vehicles Insurance (Third Party Risks) Act (supra) was enacted, is defeated.

Our law has not kept pace with developments in other countries. In the United Kingdom, a Motor Insurers Bureau is established by law to secure compensation for the victim of road accidents in cases where they are deprived of such compensation through the driver of vehicles being uninsured or untraced. **The establishment of some such organization in this country is necessary if victims of road accidents, like the present one, are left without recourse against the insurers.**" (emphasis supplied)

- [49] The Board in **Mohammed**, adopting the above observations, concluded that the absence of compensation for injured third-parties in these circumstances is a matter for Parliament to address. Being fully aware of the comments of the Board, who adopted the remarks of Edoo J, it cannot be, in my view, that the mere absence of

¹⁹ Case No 686 of 1974, 23rd April 1982.

a Motor Insurer's Bureau can have the impact of ascribing to the MVIA the interpretation proposed by Mr. Prospere. The observations of the Board in **Mohammed** make clear that coverage, 'regardless of the policy definition of the persons covered', is not easily implied from the wording of the MVIA. In my opinion, this is even more so the case in this appeal, where the words used in section 11(1)(i) of the MVIA of Saint Lucia are clear and unambiguous and do not lend to such an interpretation without resulting in the undermining of the integrity of the legislation.

[50] In my opinion, by the clear wording of section 9, Parliament has clearly placed a primacy on the terms of the insurance contract when considering the circumstances in which the insurer should be made to satisfy the judgment of a third-party. The legislative scheme as a whole simply does not make provision for satisfaction of judgments outside the terms of the policy of insurance, and section 11 by its clear words does not invalidate the provision that disqualified persons are not covered under policies issued in accordance with the MVIA. Indeed, it would be passing strange if, by enacting sections 9 and 11, Parliament intended to create a situation where insurers may never be certain about the extent of the risks, they assume in the policies they issue. Taking into consideration the relevant authorities referred to above, and the unambiguous meaning of sections 9 and 11, the ineluctable conclusion is that St. Lucia Motor is not liable to cover the judgment debt under section 9 of the MVIA. It could never have been the intention of Parliament to provide for the contrary, in the circumstances, and the clear wording of the legislation buttresses my view.

[51] I am therefore fortified in the view that in addressing her mind to the circumstances of this case, the learned master had correctly construed and applied the provisions of sections 4(7) and 9(1) of the MVIA and gave appropriate consideration to the provisions of sections 11(1) and (2). She therefore correctly determined that St. Lucia Motor was not on risk at the time of the collision and accordingly that Mr. Cadette is not entitled to an indemnity in respect of a risk which was not covered by the policy of insurance.

[52] In my view, the determination of this issue would effectively dispose of the entire appeal. However, in so far as the contractual defences have been argued extensively by both learned counsel and out of deference to them, I will address the second issue, namely contractual defences.

Issue 2 - Contractual Defences

[53] I now turn to issue 2 which concerns whether St. Lucia Motor can rely on any contractual defences under the terms of the policy of insurance in its defence of Mr. Cadette's claim against it. In so far as I have determined that sections 4 and 9 do not operate to impose an obligation on insurers to satisfy judgment obtained by a third-party for risks outside the terms of the policy of insurance except as specified under section 11; and that section 11 does not operate to vitiate an insurer's limitation on coverage to persons not disqualified by law to drive a motor vehicle, it is pellucid that the MVIA does not preclude St. Lucia Motor from availing itself of a contractual defence in Mr. Cadette's claim against it.

[54] It is apposite to address the pronouncements made by this Court in **Prudence Robinson**, since Mr. Prospere asserted that they are authority for the general principle that an insurer cannot rely on a contractual defence in a claim against him by a third-party judgment creditor. The facts in **Prudence Robinson** were vastly different from those in the case at bar. In **Prudence Robinson** the appellant obtained default judgment against the driver and owners of a motor truck which caused him severe injury. The judgment debtors failed to satisfy the judgment debt and the appellant sought to enforce it against the insurance company pursuant to section 9 of the MVIA. As part of its defence, the insurance company alleged that there was no existing policy of insurance since the owners of the motor truck had not paid the premium at the time of the accident. The judge in the High Court dismissed the claim on the ground that the appellant had failed to prove that there was a valid policy of insurance with the insurer for the motor truck. The appellant appealed to this Court and the appeal was allowed on the basis that a valid policy

of insurance continued to exist since the insurer had not actually cancelled the policy upon the owners' failure to pay the premium.

[55] It is clear that **Prudence Robinson** was decided by this Court on its peculiar facts, in circumstances where the insurer attempted to avoid liability on the basis that there was no insurance contract due to the policyholder's failure to pay the premium. A key feature of the factual matrix in **Prudence Robinson** is that while the insurer was entitled to cancel the coverage of the policy due to non-payment of the premium, it had failed to do so resulting in the contract of insurance having continued and valid effect. The result therefore was that the insurer continued to be at risk to indemnify third-parties for any liabilities incurred by its insured which were covered in the terms of its policy. It was in those circumstances that this Court held that the insurer could not rely on the defence that the insurance contract was breached to avoid its liability to the affected third-party judgment creditor. The insurance contract was clearly voidable but not void, which led this Court to the conclusion that the defence of the breach could not be used against the third-party in that appeal. Accordingly, there is absolutely no tension between the principles elucidated in **Matadeen, Mohammed** and **Resha St. Hill** and that which was held in **Prudence Robinson**. since it still remained that the insurer in **Prudence Robinson** did not have imposed on it 'a liability which the policy did not purport to cover'. The principle arising out of **Prudence Robinson** is not authority for the general proposition of law that Mr. Prospere has urged on this Court namely that the insurer cannot rely on a contractual defence against a claim by a third-party.

[56] It is also important to address Mr. Prospere's contention that contractual defences can avail an insurer only if it is provided for in the statutory 'let-outs' under sections 9(2) and (3) of the MVIA. Sections 9(2) and (3) set out specified circumstances under which an insurer may avoid indemnifying a third-party judgment creditor, as exceptions to the general duty to indemnify provided under section 9(1). Mr. Prospere purported to rely on **Matadeen** and **Mecheck** as authorities for this proposition. In his submissions, Mr. Prospere relied on the following passage at

paragraph 47 of **Matadeen**, which was considered by the Jamaican Court of Appeal in **Mecheck**:

“[47] ... The section 10 cause of action is sui generis. It requires that a certificate of insurance has been delivered and that a judgment has been obtained by the injured party against a person covered by the policy. Subject to those conditions precedent (and to the let-outs in sub-sections (2) and (3)), it allows recovery by the injured party against the insurer subject to a ceiling of the specified minimum. Contractual defences that would enable the insurer to resist claims by the insured are of no avail.”

[57] After quoting the above passage from **Matadeen**, the learned Panton JA, as he then was, stated as follows in **Mecheck**:

“The last two sentences of this passage gave fodder for the submission that the learned trial judge concentrated on the contract when she ought to have given attention to the statute. The submission however overlooked the fact that the earlier sentence pointed to the ‘let-outs’ in subsections (2) and (3), suggesting that exemptions provided for in the statute cannot be ignored. Section 10 of the Trinidadian statute, it should be noted, does not contain the ‘let-out’ that is in our own legislation in the form of section 18(2) (quoted earlier). The ‘let-out’ was inserted in the Act in 1989 and relieves the insurer of liability where such liability ‘is exempted from the cover granted by the policy pursuant to subsection (4) of section 5’. Driving without a driver’s licence was exempted from coverage in the instant case.”

[58] I do not agree that **Matadeen** or **Mecheck** establish the principle here asserted by Mr. Prospere. Firstly, the Board in **Matadeen** was considering specifically an insurer’s attempt to rely on the minimum payout specified in its policy of insurance, in circumstances where section 4(2) of the Trinidad MVIA specifically provided a statutory minimum to be paid under a policy of insurance. The issue of whether the insurer could rely on the minimum stated in its policy was premised on the interpretation of section 10(1) of the Trinidad MVIA (the equivalent of section 9(1) of the MVIA in Saint Lucia). In applying the provisions under section 10(1) the Board concluded that where section 10(1) sets out the duty of insurers to satisfy the judgments of third-party judgment creditors, and mandated them to ‘pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability’, the following words ‘including any amount payable in respect of costs and any sum payable in respect of interest...’ meant that the injured party’s

right of recovery against the insurer consisted of costs, interest as well as the statutory minimum. It was in circumstances where the costs and interest to be paid to Mr. Matadeen took the aggregate sum well over the minimum pay-out stated in the insurer's policy that the Board held that the insurer could not avail itself of the contractual defence, since it would have circumvented that which was provided for in the statute.

[59] In the above quoted passage from **Matadeen**, the Board set out the requirements for a cause of action by the injured party under section 10(1) and stated that the injured party's ability to recover the specified minimum under the statute was subject to the statutory 'let-outs' under section 10(2) and (3). Placed in context, it is clear that **Matadeen** does not establish any general principle which precludes an insurer from relying on its contractual defences unless allowed by the statutory let-outs. **Matadeen** simply elucidates that an insurer may not rely on contractual defences which run counter to the provisions of the statute, which is a fundamentally different principle. There is nothing in the language of section 9 of the MVIA which limits an insurer's avoidance of indemnification to the named circumstances under sections 9(2) and (3) only. Based on the pronouncements in **Matadeen**, the Jamaican Court of Appeal in **Mecheck** recognised that the 'exemptions provided for in the statute cannot be ignored'. I fail to see how this could be interpreted to mean that the statutory 'let-outs' limit an insurer's reliance on contractual defences generally, especially in circumstances where they do not offend any of the provisions of the MVIA, as in the case at bar. Mr. Prospere's submissions as it relates to **Matadeen** and **Mecheck** do not therefore stand up to scrutiny. There is nothing in the MVIA that is contrary to the policy of insurance in the present appeal and the two can peaceably coexist.

[60] Furthermore, the Board has recognised that innocent third parties do suffer from the serious and unfortunate reality of being unable to seek indemnification from insurers in circumstances where they incur loss or damage as a result of the negligence of an uninsured driver. In **Mohammed**, the Board stated:

“The Board recognises that there remains a serious problem about innocent victims suffering bodily injury or property damage as a result of the negligence of uninsured drivers. Parliament has attempted to address this social evil but loopholes remain. In Resha St. Hill the Board noted that there was no equivalent of the Motor Insurers Bureau or other facility to ensure that the victims of negligent but uninsured drivers did not go uncompensated. It is also pointed out (para 31) that section 12 might be the natural section on which to build if the legislative aim is to provide compulsory insurance cover, regardless of the policy definition of the persons covered, when anyone uses an insured vehicle with the policyholder’s consent.”

- [61] It is clear from the above that the Board has considered and acknowledged the existence of instances where an insurer is legally allowed to avoid liability toward a third-party under its policy of insurance for an insured vehicle, in circumstances where the driver is not covered by the terms of the policy, or is, in other words, ‘uninsured’.
- [62] The foregoing analyses lead me to the ineluctable conclusion that an insurer is not precluded from relying on its contractual defences in a claim against it by a third-party. In light of the above considerations, I am fortified in the view that St. Lucia Motor is entitled to rely on its contractual defence in Mr. Cadette’s claim against it, particularly where the driver of the vehicle at the material time was not an authorised driver who is entitled to indemnity. It is evident that insurers must know beforehand the risk(s) they are undertaking and their exposure. The rhetorical question arises as to why one would enter into a contract if a party is able to entirely disregard its terms and yet receive the benefits accorded by the same contract. An amorphous exposure to the risks for the insurance company could never have been the intention of Parliament. The risk that St. Lucia Motor clearly did not accept, based on the contract of insurance, was to be saddled with paying damages that were incurred due to the negligent driving of an unauthorised driver. Basic contractual principles will correctly frown upon the court preventing St. Lucia Motor from relying on a viable and good contractual defence.

Conclusion

- [63] Given the totality of the circumstances, in my considered view, there is no provision under the MVIA which imposes an obligation on St. Lucia Motor to satisfy the judgment obtained by Mr. Cadette for the risk of the motor car being operated by an unlicensed driver, which is entirely outside the terms of its policy of insurance. Furthermore, nothing precludes St. Lucia Motor from relying on the contractual defence that it did in avoidance of indemnifying Mr. Cadette as an injured third-party. There is no basis upon which this Court can impugn the master's decision. I therefore affirm the decision of the learned master and accordingly dismiss Mr. Cadette's appeal.

Costs on Appeal

- [64] St. Lucia Motor has successfully resisted Mr. Cadette's appeal and is therefore entitled to its costs in accordance with rule 64.6(1) of the **Civil Procedure Rules 2000**. Accordingly, St. Lucia Motor is awarded its costs on appeal, with such costs being no more than two-thirds of the prescribed costs awarded in the court below.

Disposition

- [65] For the reasons given, I would dismiss the appeal, and affirm the order of the learned Master Agnes Actie. Costs on the appeal are awarded to St. Lucia Motor and shall be no more than two-thirds of the prescribed costs in the court below. These costs are to be assessed by a master of the court below if not agreed within twenty-one (21) days of the date of this judgment.

[66] I gratefully acknowledge the assistance of all learned counsel for their helpful submissions.

I concur.
Gerard St. C. Farara, QC
Justice of Appeal [Ag.]

I concur.
Margaret Price-Findlay
Justice of Appeal [Ag.]

By the Court

Chief Registrar [Ag.]