

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: SLUHCV2017/0066

BETWEEN:

Joseph Cadette

Claimant

and

St. Lucia Motor & General Insurance Company Limited

Defendant

Before: Ms. Agnes Actie

Master

Appearances: Mr. Leslie Prospere for the claimant
Mr. Dexter Theodore Q.C. for the defendant

2018: October 30

JUDGMENT

[1] **ACTIE M:** On 11th May 2013, the claimant's vehicle was involved in a motor collision with a vehicle registered in the names of Guy Anglion and Stephen Linor. The vehicle was insured under a policy of insurance with the defendant company. At the time of the accident, the vehicle was driven by Hannah John, who was an unlicensed driver.

[2] The claimant, having suffered the loss of his motor vehicle and other consequential losses, filed a claim in negligence against Hannah John, Guy

Anglion and Stephen Linor. On 19th October 2016, the claimant obtained judgment for special and general damages.

- [3] The claimant wrote to the defendant seeking indemnity under the policy of insurance. The defendant refused to honor the request on the ground that Hannah John, the driver at the time of the accident, was not the holder of a driver's licence in breach of the insurance policy.
- [4] The claimant filed this instant claim against the defendant alleging that the defendant is under a statutory obligation to indemnify the claimant pursuant to Section 9 (1) of the **Motor Vehicles Insurance (Third Party Risks) (MVIA)**¹.
- [5] The claimant contends that the defendant, having failed to obtain a declaration from the court in accordance with the provisions section 9 (3) of the **MVIA**, entitling it to avoid the policy of insurance, is under an obligation to indemnify the claimant under the insurance policy.
- [6] The defendant contends that it is not under an obligation to indemnify the claimant as it was a term of the policy that the defendant would not be liable in respect of any accident, loss or damage or liability caused or sustained whilst the motor vehicle was being driven by a person who did not hold a valid licence to drive the insured vehicle.
- [7] The parties at a part hearing on November 23, 2017 and on written submissions requested the court to engage its case management powers to determine three (3) preliminary issues. The parties in support filed an agreed statement of facts where in summary, it was agreed that (i) it was a term of the policy that the defendant would not be liable in respect of any accident, damage or liability caused or sustained while the vehicle was being driven by a person who did not hold a valid licence; (ii) at the time of the accident the vehicle was being driven by one Hannah John who did not hold a valid licence to drive; (iii) the defendant denies that it is

¹ Cap 8.02 of the revised laws of Saint Lucia 2005.

under an obligation to satisfy the judgment debt because the policy was not in force at the time of the happening of the accident.

[8] The three preliminary issues to be determined are:

- (1) whether the insurance company (the defendant) was on risk at the time of the happening of the accident in respect of which judgment was obtained by the claimant and,
- (2) if yes, whether the claimant is entitled to be paid the judgment obtained;
- (3) whether the defendant can rely upon any contractual defences arising under the terms of the policy of motor insurance in its defence of the claimant's statutory claim under section 9 (1) of the **Motor Vehicles Insurance (Third Party Risks) Act, Cap 8.02 of the Revised Laws of St Lucia**.

Issue 1:- Whether the insurance company (the defendant) was on risk at the time of the happening of the accident in respect of which judgment was obtained by the claimant

The Legislative Provision

[9] The **Motor Vehicles Insurance (Third Party Risks) Act Cap 8.02 of the Revised Laws of St Lucia, (MVIA)**, makes it compulsory for motor vehicles to be insured against third party risks. Section 4 (1) (b) of the **MVIA** provides the requirements in respect of policies of insurance and reads as follows:

“(1) In order to comply with the requirements of this Act, a policy of insurance shall be a policy which:

- (a) is issued by a person who is an insurer, and
- (b) *insures such 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 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.

- (2) 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.*** (my emphasis)”

[10] Section 9 of the **MVIA** imposes a duty on insurers to satisfy judgments against persons insured against third party risks and provides:

- (1) if, after a certificate of insurance has been duly delivered under this Act to the person by whom a policy has been effected, judgment 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) (emphasis added)** 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 judgment 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 subsections (1) --...
- (a) in respect of any judgment, unless before or within 7 days after the commencement of the proceedings in which the judgment 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 judgment, 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 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 that event, the certificate was
surrendered to the insurer or the person to whom the
certificate was issued made a statutory declaration
stating that the certificate had been lost or destroyed; or

(ii) after the happening of that 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 the certificate was
issued made such a statutory declaration as aforesaid; or

(iii) before or after the happening of that event but within the
period of 14 days the insurer 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 judgment 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.

- [11] Counsel for the claimant submits that section (9) of the **MVIA** is intended to protect third-parties who have sustained damages from the negligence of a person covered by a policy of motor vehicle insurance. Counsel argues that Section (9) (1) of the **MVIA** does not operate automatically but is triggered after an affected third-party establishes (i) that a certificate of insurance was issued to an insured (ii) a judgment was obtained by the affected third-party and an insurer is incapable of relying upon any of the “let out” or “exemption” provisions stipulated under section 9 (2) and (3) of the Act.
- [12] In support, counsel relies on the Privy Council decision in **Matadeen v Caribbean Insurance Co. Ltd. (Trinidad & Tobago)**² which applied Section 10 of the MVIA of Trinidad & Tobago which is equivalent to Section 9 of **MVIA** in the case at bar. In **Matadeen’s** case, Mr. Matadeen had sued the insurer under section 10(1) of the Insurance Act but had secured payment only of a small part of the judgment which he had obtained against the insured’s company; it was a payment lower than would have been payable under the terms of the policy. Since the company had meanwhile gone into liquidation, Mr. Matadeen therefore commenced a second action against the insurer under section 17(1) of the Act and the issue was whether the second action was time-barred. The matter came up before the court for determination of three preliminary issues namely: was the new action, which had been commenced on 22 March 1992, statute-barred?; whether the action was barred by the “former recovery” principle from bringing the section 17 action; the issue of estoppel.

² 46 of 1999.

[13] Their Lordships conclude that Section 17 of the Act provides a statutory transfer to the injured party of the insured's contractual rights against the insurer. It does not create a new cause of action. What would be transferred, in both cases, would be the contractual rights, warts and all.

[14] In the case at bar, counsel for the defendant contends that the insurance policy did not purport to cover liability while the vehicle was being driven by someone who was not the holder of a valid driver's licence. Counsel avers that the **MVIA** only requires an insurer to indemnify when the liability is covered by the terms of the policy.

Analysis

[15] Under a Third-Party Insurance Policy, the insured can look to the insurer to be indemnified against liability to the third party. Section 9 of the **MVIA** provides a statutory transfer of the contractual rights under the policy of insurance to the injured third-party. However, recovery will be restricted by any contractual limitation expressed in the policy. The scope of the indemnity clause in the policy must be read in the context of the insurer's obligation under the contract of insurance. The Privy Council in the **Matadeen's** case made it clear that what is transferred is the insured contractual right under the insured policy of insurance.

[16] Their Lordships in the **Matadeen's** case cited the authority in **Post Office v Norwich Union Fire Insurance Society Ltd. [1967] 2 QB 363** where Lord Denning MR said, at p 374:

"Under [section 1 of the Third-Parties (Rights Against Insurers) Act 1930] it is clear to me that the injured person cannot sue the insurance company except in such circumstances **as the insured himself could have sued the insurance company.**" (my emphasis)

[17] Whether the defendant was at risk at the time of the happening of the accident depends on the expressed terms of contract of the insurance. It is an agreed fact that the insured policy of insurance did not provide indemnity for damages caused

by an unlicensed driver. It is also an agreed fact that Hannah John, the driver at the time of the accident, was an unlicensed driver in breach of the expressed term of the policy.

[18] I am in agreement with counsel for the claimant that Section 9 of the **MVIA** imposes an obligation on the insurer to indemnify a third-party under a policy of insurance. However, the scope of the indemnity clause of Section 9 of the **MVIA** must be read in the context of the insurer's obligation under the contract. The "**liability covered**" is the liability actually covered as a matter of fact. In order for the claimant to succeed, the liability must be one that the policy purports to cover.

[19] The Privy Council in **The Presidential Insurance Company Ltd. v Mohammed and others**³, had to deal with a principal issue as to whether the **MVIA** enables someone who suffered property damage caused by a motor vehicle accident can obtain indemnity from the vehicle owner's insurers when the driver, who caused the damage, was not authorised by the insurance policy to drive the vehicle. The Privy Council held that section 4(7) did not impose on an insurer a liability that 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.

[20] The Privy Council, at paragraph 14, stated that:

14. "The starting point is section 4(1), which sets out the nature of the insurance policy that is required in order to comply with the Act. It expressly leaves it to the parties to the insurance contract to determine who is covered by the policy when it speaks of "such person, persons or classes of persons as may be specified in the policy".

[21] Their Lordships, at paragraph 16 stated further, that Section 10(1) (similar-to Section 9 of the **MVIA**) also does not alter the fundamental position set out in section 4(1). The reference in Section 10 to section 4(1)(b) and the words in parenthesis, "**(being a liability covered by the terms of the policy)**", make it

³ [2015] UKPC 4.

clear that the section does not prevent an insurance company from pleading successfully the defence that the claim is not covered by the terms of the policy.

[22] From the foregoing authorities, it is clear that the claimant is not entitled to an indemnity in respect of a risk that is not covered by the policy of insurance. 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 the claimant which the insured was not entitled to in the first place. In the circumstances, the response to the first preliminary issue is in the negative. The defendant was not a risk at the time of the accident.

[23] The response to the first preliminary point puts to rest the 2nd preliminary issue and now leads to the 3rd preliminary point.

Issue 3 - Whether the defendant can rely upon any contractual defences arising under the terms of the policy of motor insurance in its defence of the claimant's statutory claim under section 9 (1) of the MVIA

[24] The claimant contends that the defendant, having failed to obtain a declaration from the court entitling it to avoid the policy of insurance, in accordance with sections (9 (2) (3) of the **MVIA**, is incapable of availing itself of the contractual defences. The claimant asserts that the defendant is therefore under an obligation to pay compensation under the insurance policy.

[25] Counsel for the defendant citing the decisions in **Maisie Harris V Guyana and Trinidad Mutual Life Insurance Co. Ltd**⁴ and **Claire Emmanuel et al v St Lucia Motor & General Insurance Company Ltd**⁵ avers that the defendant's option to avoid or cancel the policy of insurance under section 9 (2) (3) would only arise in circumstances where the liability is covered.

⁴ (1972) WIR 203

⁵ SLUHCV2013/0784

- [26] Counsel for the defendant referred to Section 11 of the **MVIA** which renders of no effect, on certain limitations in a policy of insurance. Section 11 provides an exhaustive list of instances for the avoidance of restrictions and to be of no effect on scope of policies covering third-party risks. The list covers (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 horse-power 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 (i) the persons named in the policy who may or may not drive the vehicle. Unfortunately, the unlicensed driver does not form part of that list.
- [27] The option to avoid or cancel does not apply in situations where the liability is not covered under the policy. The risk not being covered, therefore, the defendant was not under an obligation to avoid the policy or to seek a declaration from the court to bring the matter within the realms of Sections 9(2) and (3) of **MVIA**. The “let out” provisions in Sections 9 (2) and (3), referred to in paragraph 10 above, are circumscribed by section 9 (1) of the **MVIA**. The statutory language of Section 9 (1) of the **MVIA** 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**”. In the circumstances, the claimant also fails on the third preliminary issue.
- [28] For the forgoing reasons, it is axiomatic that the claimant cannot successfully maintain the claim against the defendant. The claimant having obtained a judgment against the driver and the registered owners of the vehicle will have to recover the debt by way of enforcement against the judgment debtors.

Postscript

- [29] The obvious frustration faced by third parties who suffer damages as a result of unlicensed drivers in many of the Caribbean jurisdictions was of grave concern in the Privy Council case, **The Presidential Insurance Company Ltd. (Appellant) v Mohammed and others**. The Board recognised that there remains a serious problem with innocent victims suffering bodily injury or property damage as a result of the negligence of uninsured drivers. 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.
- [30] In the United Kingdom, the Motor Insurers Bureau provides relief for claims arising out of accidents caused or contributed to by an uninsured driver. The Bureau would usually consider dealing with a claim for compensation from the “victim” where it is shown that no policy of insurance exists covering the responsible party’s vehicle. The **Road Traffic Act** of the United Kingdom requires every insurer dealing with compulsory motor insurance to belong to the Bureau and to contribute to its funding. Unfortunately, this court is not aware of similar provisions in place in this jurisdiction to compensate in such unfortunate situations.

ORDER

- [31] In summary and for the foregoing reasons, it is ordered that:
1. The claim form and statement of claim filed against the defendant stands dismissed.
 2. Prescribed Costs to the defendant in accordance with CPR 65.5.

**Agnes Actie
Master, High Court**

By the Court

Registrar