

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0184

BETWEEN:

MAURICE RICHARDSON

CLAIMANT

AND

LENNOX ISRAEL

FIRST DEFENDANT

METROCINT GENERAL INSURANCE CO. LTD

SECOND DEFENDANT

Appearances:

Mr. Sten Sergeant (Amicus) for First Defendant

Ms. Jenelle Gibson with Ms. Rose-Ann Richardson for Second Defendant

2018: April 20

Reasons for Decision

Byer, J.:

- [1] These reasons for decision were delivered by this court orally in April 2018. It was upon the application of the counsel for the second defendant in November 2020 that these reasons have now been produced.
- [2] The parties sought the court's determination as to the applicable statutory provision that would govern the payment by the insurance company (the second defendant) to a third party under the policy of insurance held by the first defendant in satisfying his liability to the claimant in these proceedings.
- [3] I have considered the submissions of both counsel on this point and although they were both well thought out and argued; I however accept and am persuaded by the arguments for counsel for the second defendant in relation to the act that is operational in all the circumstances.
- [4] I therefore find that the Motor Vehicle Insurance (Third Party Risks) Act CAP 356 (the Act) is the applicable piece of legislation for these purposes.

- [5] I am further fortified in this decision when I accept that the fundamental basis of the third-party risk payment is based on a contractual relationship between the insurer and its insured. It is in this court's view that it would indeed be unconscionable to impose on an insurer who assessed the risk for a particular client at a particular rate based on the exposure to liability created by one statute, to then be expected to simply absorb a higher risk for which the insured nor the insurer have negotiated.
- [6] That being said, the further question posited by the first defendant was what sum is therefore due and owing for interests and costs, that is, against what base sum is that figure to be calculated.
- [7] It was unfortunate that I did not have any assistance from counsel for the Second defendant in this regard; however the section is clear that any such sums must be additional to that sum due and payable on the question of liability.
- [8] So although I hold that the Act applies as to the quantification of quantum, the question must be if sums are payable today, what is to be paid- thus it must be as of today that the 2003 act is the operative act when it comes to that quantification. Section 8 (1) of the Act states *inter alia*"...the insurer shall subject to this section and to any limitations on the total amount payable under the policy in consequence of that subsection, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of liability in addition to 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" (my emphasis added).
- [9] On this point, I must agree with the submissions of the first defendant which stated that all sums due and owing as costs and interest are sums which are **additional** to the sum that is awarded on by virtue of the statutory provisions and are not **included** as is usually the wording of the legislation with regard to this issue.
- [10] In relying on the basic tenet of construction, that the words must be given their ordinary meaning, I find that the words "in addition" to any sums due for liability can only mean that sums for interests and costs must be just that. An additional sum to the statutory amount that would become due.
- [11] However, the critical point of departure for the court and counsel for the first defendant on this issue is what would constitute that base sum for the purposes of the calculation.
- [12] In this court's mind the submission made by counsel for the first defendant seemed to suggest that this sum must be referable to the actual judgment, not the sum as stated would be due pursuant to the statutory provisions. However, when this court addresses its mind to the Act and the provisions contained therein, there is a clear indication that the payment of interest and costs are payable on the sum due in respect of liability. Such sum is not the judgment sum in this court's mind, but rather what has been obtained by the direct action against the insurer by the injured party for which the insurer is in fact liable to pay.
- [13] The only case from this jurisdiction which seemed to suggest that the interest and costs were referable to the actual judgment obtained and not the sum of the statutory limit was the case of **James Woodward v John Stanislaus** in which Justice Hariprashad-Charles ordered on a similar application for the payment of monies pursuant to similar statutory provisions for the

payment of costs and interest to be paid on the basis of the sum entered by the trial judge. However, what was clear in that case was that there had been no indication as to the judge's reason for so finding and in all the circumstances I do not feel bound by the same, it being a decision of a court of concomitant jurisdiction.

- [14] Indeed, this court is more persuaded by the authority of **Presidential Insurance Co Ltd v Stafford** out of the Court of Appeal of Trinidad and Tobago¹. In that judgment Sharma JA had this to say *"it would seem to be wholly illogical to hold that whereas the insurer was only legally liable to pay \$50,000.00 under the Act and by that same Act the insurer is held legally liable to pay interest on the whole judgment debtin my judgment ...it would be absurd to place such a construction on the section"*.
- [15] Additionally, his brother Hamel-Smith JA stated that where the statutory amount is awarded to the third party, the insurer in his mind must pay the costs incurred in recovering **that** amount together with interest on the sum recovered.
- [16] It appears to be me therefore, that the logical conclusion is that costs and interests that are liable to be paid by the insurer would amount to those that are calculated on the statutory amount recovered.
- [17] Indeed in the case of **Jacklyn Henry McGibbon v NAGICO** George-Creque J (as she then was) was also in agreement with that proposition albeit obiter as she was not required to make a finding on that point, but did determine that any such interpretation *"accords with commercial reality and also recognizes that at the end of the day the relationship between insured and insurer is a contractual one"*.
- [18] I therefore find that the interest and costs payable will be referable to the sum due under the Act at \$20,000.00. I also make no order as to costs on the application.

Nicola Byer

HIGH COURT JUDGE

By the Court

Registrar