

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2016/0028

BETWEEN:

ALFRED MORAIN

Claimant

and

MASSY UNITED INSURANCE FUND

Defendant

Appearances:

Ms. Daniella Williams-Mitchell for the Claimant
Ms. Kimber Guy- Renwick for the Defendant

2017: June 14.

JUDGMENT

- [1] **ACTIE, M.:** This Court is asked to rule on applications for summary judgment filed by the claimant and the defendant respectively on the ground that the statements of case filed do not disclose any reasonable cause of action or defence capable of succeeding. A brief history of the facts will put the applications into perspective.

Background Facts

- [2] On 29th January 2011, a car owned by Jacinta Sylvester and driven by Tevin Sylvester was involved in a collision with a car owned and driven by the claimant, Alfred Morain. Tevin Sylvester was unlicensed to drive at the time of the accident. Jacinta Sylvester's vehicle had an insurance policy with the defendant, Massy

Insurance Limited pursuant to the Motor Vehicles Insurance (Third Party Risks) Act (MVIA).

- [3] On 23rd May 2012, Alfred Morain filed a claim against Jacinta Sylvester and Tevin Sylvester. The claim was served on Massy Insurance Limited on 25th May 2012. On 16th June 2015, the Court entered judgment in favor of Alfred Morain in the sum of \$12,605.00 with interests and costs. The Sylvester's did not satisfy the judgment so Alfred Morain decided to file this extant claim against the defendant, Massy United Insurance.
- [4] Massy United Insurance denies liability on the grounds that: (i) the liability claimed was not covered under the policy of insurance; (ii) Tevin Sylvester was an unlicensed driver at the time of the accident and was unauthorized under the policy of insurance; and (iii) Jacinta Sylvester failed to report the accident and to give the required notice of the claim as required under the Act.

The First Application

- [5] Massy United Insurance applies for summary judgment on the grounds that:
1. The claim is premised on section 14A of the Motor Vehicles Insurance (Third Party Risks) Act which is not applicable in these circumstances; and
 2. Section 14 of the Act is the applicable provision but the action is barred by section 22B of the Act as it is a claim for property damage in excess of \$7,000.00.
- [6] In addition, Massy United Insurance contends that, if it is liable to indemnify the insured, its liability is limited to the sum of EC\$7,000.00 pursuant to section 22B of the MVIA.

The Second Application

- [7] Alfred Morain's application for summary judgment is premised on the ground that Massy United Insurance has a duty to satisfy the full amount of the judgment debt. Mr. Morain contends that Massy United Insurance is not entitled to deny liability and payment of the judgment debt, even if the insured was in breach of her obligation under the policy of insurance or permitted a breach of the policy.
- [8] Mr. Morain contends that the right of a third party pursuant to section 14A of the MVIA to recover from an insurer is not fettered by section 4(1)(b)(ii) of the said Act. Mr. Morain contends that Massy United Insurance is estopped from denying liability as it failed to exercise its right to avoid the policy in accordance with section 14(3) of the MVIA. Mr. Morain further avers that section 14A is a distinct provision from section 14 of the Act and accordingly section 22B does not operate to restrict liability under section 14A to \$7,000.00 as contended by Massy United Insurance.

Law and Analysis

- [9] Rule 15.2 grants the court jurisdiction to enter summary judgment where parties do not have any realistic prospect of succeeding on the statement of case.
- [10] The first issue to be determined is whether the insurance policy covered the liability in issue.
- [11] The law relating to Third Party Insurance Risks is provided in the **Motor Vehicles Insurance (Third Party Risks) Act¹ (MVIA)**. Section 4 of the MVIA provides the requirements in respect of policies of Insurance and reads as follows:
- “4(1) In order to comply with the requirements of this Act, a policy of insurance shall be a policy which -

¹ Cap 202 Laws of Grenada

- (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, subject to sections 14A and 16 (emphasis added)*, in respect of any liability which may be incurred by him or her or them in respect of the death of or bodily injury to any person or damage by any property caused by or arising out of the use of the motor vehicle on a public road:

Provided that such a policy shall not be required to cover-

- (i) ...
- (ii) Claims exceeding two hundred thousand dollars which such persons or classes of persons shall become liable to pay in respect of damage to property regarding one accident.
- (iii) Claims exceeding one hundred thousand dollars in respect of either the death of or bodily injury to a person or damage to property which such persons or classes of persons shall become liable to pay to any one person regarding any one accident.
- (iv) ...
- (v) ...
- (vi)

[12] Section 14 of the **MVIA** imposes a liability on insurers to satisfy judgments obtained against insureds in respect of third party risks and provides as follows:-

“14(1) Subject to section 22B, if, after a certificate of insurance has been delivered under Section 4(4) of this Act to the person by whom *judgment in respect of any such liability as is required to be covered by a policy under Section 4(1)(b)* a policy has been effected, *(being a liability covered by the terms of the policy)* **(emphasis added)** is obtained against any

person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer 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 that sum by virtue of any enactment relating to interest on judgments”.

- [13] The insurer’s liability under section 14 must be one covered by the policy of insurance. The material terms of the insurance policy between Massy United Insurance and Jacinta Sylvester, the owner of the car, extended to the insured and authorized drivers. “An “**Authorized Driver**” was defined as:

- (a) The insured and
- (b) Any other person who is driving on the Insured’s order or with her permission

“Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle and is not disqualified by order of a court of law or by reasons of any pertinent enactment or regulation from driving such motor vehicle and also provided that where the person authorized to drive is the holder of a valid learner’s permit that person must comply with all the relevant laws, regulations, conditions and restrictions relating to such learner’s permit.”

- [14] It is incontrovertible on the evidence that Tevin Sylvester, who was the driver at the time of the accident, was an unlicensed driver. The issue is whether the damages caused by a driver who was unlicensed at the time of the accident was a liability which falls within the scope of the liability stated in section 14. The policy of insurance provides a clear condition that unlicensed drivers were not covered under the policy of insurance. Jacinta Sylvester, the policy holder, contravened a fundamental term of the policy of insurance when she permitted the vehicle to be

driven by Tevin Sylvester who was an unlicensed driver. By so doing, she went outside the scope of the cover of the policy.

[15] Counsel for the claimant avers that Massy Insurance Limited was under an obligation to obtain a declaration to avoid the policy within the time limits provided in the **MVIA** when it was discovered that the driver was unlicensed at the time of the accident.

[16] A proper interpretation of the language of section 14(1) of the **MVIA** indicates that the section is applicable only to a “*liability covered by the terms of the policy*”. The policy of insurance clearly did not cover an unlicensed driver, even when permitted to drive by the insured which, it may be noted, is an unlawful act. Any liability incurred during that mode of use is not covered by the terms of the policy. The provision, that an insurer shall be liable notwithstanding that it “*may be entitled to avoid or cancel or may have avoided or cancelled the policy*”, can only avail a claimant where the insurer is liable under the policy, because the policy covers the liability, but the insurer has the right in law to avoid or cancel the policy. Clearly, this provision does not have any application where the policy does not cover the liability, as here, in relation to an unlicensed driver.

[17] For clarity, I mention that an insurance company’s option to avoid or cancel a policy of insurance arises in situations such as where the policy is voidable for misrepresentation or non-disclosure of material facts. As I have stated, the option to avoid or cancel does not apply to situations where the liability is not covered under the policy. Massy Insurance Company was not under an obligation and had no need to avoid or cancel the policy of insurance as the policy, by its terms, did not cover unlicensed drivers. The general exclusion clause puts beyond doubt that the insurance company was not liable.

- [18] The Privy Council in **The Presidential Insurance Company Ltd v Mohammed and others**² 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 the **MVIA** 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.
- [19] The decision of the Privy Council is a clear authority that Massy United Insurance had no need to avoid the policy of insurance as there was no liability to avoid to bring the claim within the provisions of section 14(2) of the **MVIA**.
- [20] Counsel for Massy United Insurance in the application for summary judgment contends that Mr. Morain's claim instituted under 14A is misconceived and should have been instituted under section 14 of the **MVIA**. I am of the view that counsel for both parties are misconceived in their interpretation and application of sections 14 and 14A of the **MVIA**.

Whether the Claimant can maintain an action under section 14A of the MVIA

- [21] Counsel for Mr. Morain avers that Massy United Insurance, pursuant to section 14A, is legally bound to satisfy the full amount of the judgment sum not exceeding the liability covered under the insurance. Massy United Insurance contends that subject to section 22B, its liability to compensate Mr. Morain is limited to the sum of \$7,000.00 in full satisfaction of the judgment sum.
- [22] An amendment to the **MVIA** in 1994 created sections 14A and 22B. Section 14A provides for rights of third parties to recover from the insurer and reads as follows:

² [2015] UKPC 4

“Notwithstanding any enactment or rule of law to the contrary, a third party who has obtained judgment against a person to whom a policy of insurance has been issued under this Act may recover from the insurer the full amount of the judgment not exceeding the liability covered by the policy even though the third party is not a party to the contract of insurance to which the policy relates and “*the liability covered*” (**emphasis added**) by the policy is not required to be covered under this Act.”

[23] Section 22B provides for when sections 6, 14 and 16 shall not apply and reads:
“Sections 6, 4 and 16 shall not apply to claims in respect of damages to property where such claims exceed seven thousand dollars.”

[24] Counsel for Massy Insurance contends that sections 14 and 14A ought to co-exist and section 14A cannot then be read to include circumstances which are covered by section 14.

[25] Sections 14 and 14A of the **MVIA** are two distinct and stand-alone provisions. Master Taylor-Alexander in **Roger Williams v Eastern Caribbean Insurance Ltd**³ ruled that:

“Section 22B, in so far as it restricts a claim for liability under section 14 of the Act does not operate so as to restrict liability under section 14A of the Act, section 14A being a separate and distinct provision of the Act, not forming part of section 14 of the Act.”

[26] Section 14 of the **MVIA** provides for the duty of insurers to satisfy judgments against persons insured in respect of third party risks. The new section 14A gives third parties who are to benefit under the policy of insurance, but not parties to the contract, the ability to bring a direct action against the insurer to recover under a judgment against its insured.

³ GDAHCV2001/0086

- [27] Both sections 14 and 14A are circumscribed by section 14(2) of the **MVIA**. Section 22B only references section 14 but does not include section 14A. Specific mention of 14A would have been included in the new section 22B had Parliament intended to include reference to section 14A which were both created in amendments to the **MVIA** in 1994.
- [28] The qualifications to whom a “policy of insurance” has been issued and “the liability covered” are important in the application and interpretation of section 14A. A third party claimant cannot recover the sums payable by virtue of a judgment on the basis of section 14A of the **MVIA**, unless the liability is one which is covered by the policy of insurance.
- [29] The new section 14A did not impose a liability on the insurer which it had not undertaken in the policy of insurance. Section 14A gives a third party the statutory right to bring a direct action against the insurer to satisfy a judgment obtained against a person to whom “*a policy of insurance*” had been issued under the **MVIA**. The third party may recover the full amount of the judgment sum not exceeding the “liability” covered by the policy. The “liability covered” is the liability actually covered as a matter of fact and not as a matter of possibility.
- [30] Section 14A does not alter the fundamental position set out in section 14. The new section 14A could not have been intended to cover persons even if the policy holder consented to a driver who was not within the scope of the liability covered under the policy. To give such an interpretation would mean that insurance companies would be exposed to unrestricted liability contrary to the express terms of their policies of insurance. It would result, as in the case before this Court, in the insurance company being liable to indemnify its insured in respect of the liability of the insured to a third party who suffered injury or property damage from an accident caused by an unlicensed driver, whom the insured had given permission to drive the vehicle, even when the insurance policy specifically excludes cover of such a liability. This, in my view, could not have been the intent and purpose of section 14A.

[31] The Motor Insurers Bureau in the United Kingdom makes provisions for instances such as the one before this Court. The Motor Insurers Bureau deals with compensation 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. The Court is not aware of a similar arrangement in place in this jurisdiction to make provisions for situations as in this extant claim.

[32] I am satisfied that section 14A did not purport to make provision to compensate for such instances as in the United Kingdom. Had Parliament intended to make such a provision, it would have expressly so stated in the amendment in section 14A and, no doubt, there would have had to be other legislation establishing the equivalent of the Motor Insurers Bureau. I am of the view that in the absence of such provisions, the interpretation of section 14A as contended by the claimant is unsustainable.

[33] CPR 15.2 provides that the court may give summary judgment on a claim or on a particular issue if it considers that the:-

- (a) Claimant has no real prospect of succeeding on the claim or the issue or
- (b) Defendant has no real prospect of successfully defending the claim or the issue

[34] The Court of Appeal in **Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste**⁴ states that summary judgment should only be granted by a court in cases where it is clear that a claim or (defence) on its face obviously cannot be sustained or is in some other way an abuse of the process of the court.

⁴ HCVAP2009/008 delivered on 11th January 2011.

ORDER

[35] For the reasons I have given, I am satisfied that the claim before this Court is unsustainable. The claimant does not have any realistic prospect of success as the liability is not covered under the policy. The enforcement of the judgment debt should be pursued against the judgment debtors. I therefore dismiss the claim, with costs in the sum of \$750.00 to the defendant.

Agnes Actie
Master

By the Court

Registrar