

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007 - 04224

BETWEEN

ISHA BISNATH

CLAIMANT

AND

KAZUHIKO SHAIYANA

TERRANCE SAMMY

THE NEW INDIA ASSURANCE COMPANY LIMITED

DEFENDANTS

Before The Hon. Madam Justice Pemberton

Appearances:

For the Claimant: Mr Ramoutar holding for Mr E. Roopnarine

For the Defendants: N/A 1st and 2nd Defendants

Mr R. Jagai/Ms R. Chattergoon for 3rd Defendant

DECISION

Let me begin by apologizing profusely for the lateness of this decision.

I have read the submissions of Counsel for both sides on the issue.

Can a Third Party claim be avoided in the event of an alleged breach of the contract of Insurance between the insured and the insurer?

The short answer to that is yes - see **VELMA GERMAINE ELIGON V NEM (WEST INDIES) Insurance Ltd.**

I reiterate and wholly adopt Edoo J's as he then was dicta at pp 11 – 12.

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.

Reluctantly, I give judgment in favour of the Defendant Company. The plaintiff's claim is dismissed with costs of the Defence to be taxed and paid by the plaintiff.

The Second Defendant seeks to set up this as a Defence. It is with respect an issue of fact. The statements produced must be tested at trial for me to properly determine whether the vehicle PBF 7824 was included being used “off insurance”.

CPR – PART 10.5 (b)

With respect to the requirements of Part 10.6 CPR, it is my view that the interpretation placed by Counsel for the Second Defendant is to be preferred. This is that the CPR 10.5 (b) allows a Defendant to “identify in” his defence the documents which he considers

necessary to his defence. The further steps of filing a List and Inspection and Exchange of documents will provide the Claimant and the court with the necessary details.

EFFECT OF DEFAULT JUDGMENT

The effect of a default judgment against one or more parties should not affect other Defendants to an action unless that default judgment speaks “with complete precision” to the issue raised in the defence of that other party¹.

The defence in this case speaks to liability as to the cause of the accident. It does not speak to the insurer’s ability to avoid the insurance policy on the terms of the said policy.

In the premises, this matter must go to trial to determine whether the facts as pleaded by the insurer are sufficient to advance his defence and avoid his liability in this case.

DIRECTIONS:

1. List of Documents to be filed and served on or before 25th March 2011.
2. Disclosure and Inspection to be completed on or before 5th April 2011.
3. Further Case Management Conference on 11th April 2011 at 10:00 a.m. SF02.

The court wishes to re-iterate its profoundest apologies for the lateness of the decision.

Dated this 14th day of February 2011.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE

¹ See CA 138 of 2006 BRIAN SAUNDERS v NELLIE DES VIGNES et al – per Mendonca J.A. paragraphs 18, 21, 22, 24 & 25.