

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012 -04002.

BETWEEN

PREMDATH SEEGOLAM

Claimant

AND

**COLONIAL FIRE AND GENERAL
INSURANCE COMPANY LIMITED**

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. P. Deonarine instructed by Ms. R. Chattergoon for Claimant.

Ms. S. Persad for the Defendant.

REASONS (ORAL)

On 16th April 2011 the Claimant's son was driving the Claimant's car with the Claimant's permission. At approximately 3:00 a.m. he came to a standstill position and parked the car when he was held up at gunpoint and the car stolen from him. He was at the time under 25 years of age. At the material time there was a policy of insurance issued by the Defendant to the Claimant with respect to the car which insured it against theft. The policy was a fully comprehensive policy in respect of which the Claimant had paid a premium of \$2,912.07.

Pursuant to the insurance policy the Claimant made a claim against the Defendant for the loss. The Defendant has refused to pay the claim on the ground that at the time of the theft the

Claimant's son was not an authorised driver, he being under the age of 25 years.

By this action the Claimant seeks to be indemnified against the loss by the Defendant. Both the Claimant and the Defendant have agreed that: (i) if entitled, the Claimant's damages amount to \$56,800.00, the limit on the policy and (ii) the sole issue for my determination is whether the Defendant can refuse to indemnify the Claimant on the basis of the car being driven at the time by a person not an authorised driver.

The facts relied on by the parties, except one, are all contained in the pleadings and are not in dispute. Not contained in the pleading is the date when the Defendant's son obtained his driver's permit. In this regard the Claimant has placed before me a photocopy of the relevant driver's permit. This permit reveals that at the time of the theft the Claimant's son had been the holder of a driver's permit for over two years.

This case turns on the interpretation to be placed on memo 8 of the policy and in particular that part of the clause, which deals with drivers other than the policyholder or a named or specified driver. The Claimant says that the clause permits a person to drive with his permission if that person is either over 25 years or has held a driver's license for more than two years. The Defendant on the other hand submits that persons under 25 years or persons who have held a driver's license for less than two years are only authorised drivers if they are mentioned in the policy schedule.

The relevant clause is Memo 8 which states:

Authorised Driver

The Policy Holder

- (i) the policyholder may also drive a private motorcar not belonging to or hired (under both hire purchase agreement or otherwise) to him/her or his/her employer or his/her partner.
- (ii) Any other person who is driving on the policyholder's orders or with his/her permission, except where that person is under the age of 25 years or holding a driver's license less than 2 years
- (iii) Provided, however that this condition shall not attach to any named/specified driver mentioned in the policy schedule

There are no named or specified drivers mentioned in the policy schedule.

It is clear that this clause is a precondition for the Defendant's liability to pay under the contract. Indeed the policy specifically provides that, subject to the terms exceptions and conditions contained in the policy or endorsed thereon, the Defendant will indemnify the Claimant against loss or damage as a result of theft.

The clause therefore defines authorised driver as:

1. the policyholder,
2. a named or specified driver mentioned in the policy schedule, and
3. any person driving on the policyholder's orders or with his permission, but not (a) a person under the age of 25 years or (b) a person holding a driver's license for less than two years.

With respect to an unnamed driver therefore any person driving with the policyholder's permission will be considered an authorised driver subject to two exceptions if the person is under 25 years or if the person is holding a driver's license for less than two years. Either one or both of these exceptions will disqualify the person from being considered an authorised driver under the policy. In order to qualify as an authorised driver under the policy therefore a driver, who is not the policyholder or named or specified under the policy, must have the Claimant's permission, have held a license for over 2 years and be over 25 years.

In accordance with the clause therefore there are three classes of authorised drivers: the policyholder; a named or specified driver and a person over 25 years who has held a driver's permit for in excess of 2 years. Although not referred to in any of the submissions this interpretation to my mind is consistent with that part of the proposal form which states: "the policy does not cover drivers who are under the age of 25 years and/or have been driving for less than 2 years unless specified".

On the facts before me the Claimant's son, although driving with the Claimant's permission and holding a drivers license for more than two years, was under the age of 25 years. So that unless he was a named or specified driver mentioned in the policy schedule he was not an authorised driver at the time and the liability of the Defendant to indemnify the Claimant does not arise.

The Claimant further submits that the terms of the excess clause in the policy are also relevant to my consideration since by virtue of the inclusion of the excess clause a driver under the age of 25 is permitted to drive the vehicle in any event on the payment of the appropriate excess. As I

understand the Claimant's submission the incorporation of the excess schedule in the policy of insurance raises an uncertainty as to the terms of the policy of insurance and in those circumstances in accordance with the case of **Zainool Mohammed and Another v Capital Insurance Company Ltd and another HCA No S-50 of 1987** this uncertainty must be resolved against the insurance company and in favour of the Claimant.

Under the rubric "Exceptions to section 1" the policy provides that the Defendant shall not be liable to pay for the amount applicable in the Excess being the first portion of the amount otherwise payable in respect of each occurrence. Section 1 is the section by which the Defendant covenants to indemnify the insured with respect to the risks covered during the period of insurance "subject to the terms, exceptions and conditions" contained in the policy. I interpret the clause on the payment of the excess to mean therefore that in circumstances where the Defendant is liable to the insured under section 1 the sums identified in the excess schedule shall first be deducted from any sums due to the insured. Memo 7 relied on by the Claimant merely lists the excess payable in certain cases. It must therefore be read in the context of section 1 of the policy and the exceptions to section 1. Given the interpretation of memo 8 however since the Claimant's son is not covered by the policy the Excess provision will not apply. Neither in my opinion does any ambiguity arise from the terms of the excess schedule.

In my opinion the case relied on by the Claimant does not apply to the facts before me. The decision in that case was based on a particular set of circumstances not reflected in the facts before me. In the instant case no question of the application of an excess arises. Neither in my opinion is there any ambiguity in the provisions of any of the contract documents placed before

me so as to trigger the contra preferandum rule with respect to the authorised driver clause as in the case of Zainool Mohammed.

In the circumstances I agree with the submissions of the Defendant on the interpretation of the clause. Accordingly I find that the Claimant's son was not an authorised driver under the policy.

In the circumstances the Defendant is not liable to indemnify the Claimant with respect to the loss. The claim is therefore dismissed.

Dated this 8th day of September, 2013.

Judith Jones
Judge