

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: CV2010-02374**

**BETWEEN**

**NEESHA ROOPLAL GOBERDHAN**

**CLAIMANT**

**AND**

**SOOKCHAN HARRILAL**

**1<sup>ST</sup> DEFENDANT**

**AND**

**MOTOR ONE INSURANCE COMPANY LIMITED**

**2<sup>ND</sup> DEFENDANT**

**CLAIM NO: CV2010-02456**

**BETWEEN**

**PAUL ROOPLAL**

**CLAIMANT**

**AND**

**SOOKCHAN HARRILAL**

**1<sup>ST</sup> DEFENDANT**

**AND**

**MOTOR ONE INSURANCE COMPANY LIMITED**

**2<sup>ND</sup> DEFENDANT**

**CLAIM NO: CV2010-02484**

**BETWEEN**

**DURWATI ROOPLAL**

**CLAIMANT**

**AND**

**SOOKCHAN HARRILAL**

**1<sup>ST</sup> DEFENDANT**

**AND**

**MOTOR ONE INSURANCE COMPANY LIMITED**

**2<sup>ND</sup> DEFENDANT**

**Before the Honourable Madame Justice C. Pemberton**

**Appearances:**

**For the Claimant: Mr. E. Roopnarine instructed by Mr. Dassyne**

**For the Second Defendant: Mr. I. Khan instructed by Ms. Wendy Ramnath-Panday**

## **DECISION**

### **[1] BACKGROUND**

The Claimants in this matter, Neesha Rooplal Goberdhan (NRG), Paul Rooplal (PR) and Durwati Rooplal (DR), were all occupants of the motor vehicle registration number PBU-4400. On February 19, 2007 PBU-4400 was involved in a vehicular accident with motor vehicle registration number PBN-6841 which was owned and driven by Sookchan Harrilal (SH). NRG, PR and DR sustained physical injuries as a result of the collision and caused separate claims to be filed on June 11, 2010, June 15, 2010 and June 16, 2010 respectively. PR also claimed for damages to motor vehicle registration PBU-4400.

- [2] Prior to these claims, Larry Boochoon (LB) filed a claim in 2007 listing SH, Motor One Insurance Company Limited, PR and Capital Insurance Limited as defendants<sup>1</sup>. This resulted in judgment being entered against SH and Motor One Insurance Company Limited.
- [3] On July 28, 2010 Motor One Insurance Company Limited through its Attorney at Law Ms. Ramnath-Panday, filed defences in all three actions informing the Attorney at Law for NRG, PR and DR, Mr. Roopnarine, that SH died on November 29, 2009. On August 25, 2010 Mr. Roopnarine filed an application on behalf of PR that “*Motor One Insurance Company Limited be appointed the Representative Defendant of the deceased Sookchan Harrilal*”<sup>2</sup>. On August 26, 2010 two additional identical applications were filed on behalf of NRG and DR.
- [4] At the first Case Management Conference (CMC) on November 15, 2010. I dealt with all three claims simultaneously. The issue of the validity of the claim against the deceased SH was raised and I requested submissions on the point.
- [5] **CLAIMANT’S SUBMISSIONS**
- Mr. Roopnarine submitted that Motor One’s Defence failed to comply with Part 10.5(6)<sup>3</sup> of the **CIVIL PROCEEDINGS RULES, 1998 (CPR 1998)**, by failing to annex the death certificate of the deceased SH. He stated that Motor One’s “mere recital in the pleading of a death is manifestly insufficient.”<sup>4</sup>

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<sup>1</sup> This matter was before Dean Armorer, J. and is listed as **CV 2007-03000**.

<sup>2</sup> Notice of Application. Para 1. Filed on Aug. 25, 2010.

<sup>3</sup> Part 10.5(6) of the **CPR 1998** states, “*The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.*”

<sup>4</sup> Claimant’s Written Submissions. Para. 1, pg. 1. Filed Dec. 13, 2010.

[6] Additionally, Mr. Roopnarine submitted that the application to appoint Motor One as the representative party for SH has merit under Part 21.2(1) of the **CPR 1998**<sup>5</sup>. Mr. Roopnarine noted that such an appointment could only have been made after he became aware of SH's death. Mr. Roopnarine included an illustration in his submissions which stated that provided that an action was filed within the limitation period, if the Defendant's death is not communicated to the Claimant until after the action is filed, the Defendant is within his rights to substitute the deceased Defendant with a representative party.

[7] **SECOND DEFENDANT'S SUBMISSIONS**

Mr. Khan's submissions focused on the nullity of the action. This nullity Mr. Khan attributed to the fact that the First Defendant died on November 29, 2009, seven months before that action was filed against him on June 15, 2010. Mr. Khan referred me to the cases of **DAWSON**<sup>6</sup> and **ARCHIBALD**<sup>7</sup>. **DAWSON** addresses the filing of matters against a person who is deceased. **ARCHIBALD** on the other hand examines a matter which is a nullity.

[8] Additionally, Mr. Khan rebutted Mr. Roopnarine's reliance on Part 21.2(1) of the **CPR 1998**. Mr. Khan noted that Part 21 was inapplicable to the matter at Bar as that Part of the **CPR 1998** "*deals with one representative party being appointed to act on behalf of a group of persons.*"<sup>8</sup>

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<sup>5</sup> Part 21.2(1) of the **CPR 1998** states, "*An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.*"

<sup>6</sup> **DAWSON [BRADFORD] LIMITED & ORS v. DOVE & ANOR.** [1971] 1 QB 330 at p. 330D and 335 B-C.

<sup>7</sup> **ARCHIBALD v. CAMACHO** 1960 3 WIR 40.

<sup>8</sup> Submissions of Second Defendant.

[9] **ANALYSIS**

I must concur with MacKenna J. (as he then was) in **DAWSON**. MacKenna J. (as he then was) relied on Order 15 Rule 6 of the **ORDERS AND RULES OF THE SUPREME COURT (RSC)**, as well as **TETLOW v. ORELA LTD**<sup>9</sup>. In **TETLOW**, Russell J. (as he then was) held,

[T]hat he had no power to substitute the name of a new plaintiff where a writ was issued on behalf of a plaintiff who had died before the issue of the writ, and it is likely that the same principle would be held to apply where a writ had been issued naming a deceased person as defendant.

The Claimants cannot maintain a claim against a deceased person, SH since he died prior to the filing of the action. In other words, at the date of filing there was no party to sue. An action, as correctly suggested by Mr. Khan, should be brought against the estate of the SH. Since a related matter was determined before the courts, it is suggested that the parties examine that resolution in order to effect a settlement of this matter.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Claimant's Application to appoint Motor One Insurance Company Limited as the Representative of the deceased Defendant Sookchan Harrilal filed on August 25, 2010 be and is hereby denied.
2. The Claimant do pay the Defendant's cost of this Application to be assessed if not agreed.
3. Defendant to file and serve Statement of Costs on or before May 30, 2011.

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<sup>9</sup> **TETLOW v. ORELA LTD**. [1920] 2 CH. 24

4. Hearing to take place as part of FCMC on July 4, 2011 at 10:00 a.m. in SF 02

Dated this 13<sup>th</sup> day of April, 2011.

/s/ CHARMAINE PEMBERTON  
HIGH COURT JUDGE