Privy Council Appeal No. 32 of 1985

Capital Insurance Limited *Appellant*

v.

Rajendranath Seeraj *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY 1986

Present at the Hearing:

LORD KEITH OF KINKEL
LORD GRIFFITHS
LORD MACKAY OF CLASHFERN
LORD OLIVER OF AYLMERTON
LORD GOFF OF CHIEVELEY

*[Delivered by **Lord Mackay of Clashfern**]*

This is an appeal from the judgment of the Court of Appeal of Trinidad and Tobago (Kelsick C.J., Hassanali and Bernard JJA.) delivered on 10th April 1984 allowing with costs the respondent's appeal from the judgment of Warner J. in the High Court on 4th June 1980. Warner J. had dismissed the respondent's claim to enforce against the appellant a judgment for $42,941.00 and costs obtained by the respondent against Rudolph Agaid ("Agaid") in an action for negligence in respect of personal injuries suffered on 7th January 1973.

Agaid was the owner of a motor vehicle bearing the registration number PH 1318 which he drove negligently on 7th January 1973 and so caused personal injuries to the respondent in respect of which the respondent obtained the judgment which he sought to enforce against the appellant pursuant to the Motor Vehicles Insurance (Third Party Risks) Ordinance, Cap. 16 No. 4. The only issue in the case is whether the appellant had issued to Agaid, in respect of the said motor vehicle, a policy of insurance and a certificate of insurance which were effective on 7th January 1973. If such policy and certificate were issued the respondent is entitled to succeed. If not his claim fails.

Regrettably no discovery was given and when the case came on for trial which it did in May 1980 the only witness adduced by the respondent to give evidence on this question was Rasheed Ali, a Police Constable, who had visited the scene of the accident on 7th January 1973 and who testified that Agaid, as driver of vehicle PH 1318, produced to him an insurance certificate number R-18-9538-73 effective from 3rd January 1973 to 3rd July 1973 issued by the appellant. This evidence was accepted by the trial judge who accordingly found that a certificate of insurance appearing to have been issued by the appellant to Agaid on 3rd January 1973 and effective for a period of six months was produced by Agaid to Ali.

The only evidence for the appellant was Mrs. Bellamy, secretary of the appellant, who produced documents showing that on 24th May 1972 the appellant issued a certificate of insurance under the Motor Vehicles Insurance (Third Party Risks) Ordinance in respect of PH 1318, the policyholder being Agaid and the date of expiry being 24th November 1972, that on 8th January 1973 a certificate of insurance R-18-9538-73 was issued by the appellant in respect of vehicle PH 1380, the policyholder being Agaid and the date of expiry being 8th July 1973, and that the relevant policy of insurance was issued in response to a proposal form which appeared to be dated 8th January 1973 and to have been submitted at 10.50 a.m. on that date. This was also the hour of issue of the certificate of insurance according to the copy of it produced. She also produced monthly sheets in which certificates of insurance issued by the appellant were recorded in numerical sequence.

No objection was taken at the trial to the production of documents made by the appellant's witness.

Attention was drawn at the trial to the difference between the signature of the proposer on the proposal form of 24th May 1972 which led to the issue by the appellant of a policy and a certificate of insurance on that date and the signature on the proposal form of 8th January 1973 and the judge held that on the balance of probability they were written by different persons.

The judge asked himself the question - on the evidence did Agaid obtain the certificate from the appellant on 3rd January 1973, whether in respect of vehicle PH 1318 or PH 1380? He went on:-

> "I have considered the evidence fully and I am satisfied that it was not until 8th January, 1973 that an application for motor insurance coverage was made to the ["appellant"] Company, that

> application purporting to come from Rudolph Agaid. I find that as a result of that application a certificate of insurance was issued as shown by the records produced. The difference between the signature on the proposal of 24th May, 1972 and that of 8th January, 1973 and the fact coverage was sought and given in respect of PH 1380 instead of PH 1318 are matters arousing suspicion, but are not necessarily the result of fraudulent action on the part of the ["appellant"] Company. The fact that the writing on the proposal form is that of a company official is not necessarily evidence of fraud on the part of the company. It is not difficult to see that Agaid who had failed to get insurance after the expiry date 24th November, 1972 would have been anxiously seeking to put matters right as far as he could by the 8th January, 1973, seeing that he was involved in an accident on the 7th and the Police were calling for his insurance certificate. What I have found is that on 7th January, 1973 there was no certificate of insurance from the company in relation to either PH 1318 or PH 1380. I also find that on that date there was no policy of motor insurance issued to him by the company in respect of any vehicle with either of these numbers. The different signature and the number of the non-existent PH 1380 instead of PH 1318 could result from several things even including an attempt to deal with the matter hastily over the telephone or the dispatching of an uninformed representative to look after the business at the company's office. With regard to the genuineness of the certificate produced by the company I have taken into account the numbering system as shown on the monthly sheets, the certificates being given numbers in sequence so that the number shown on the certificate would not have been reached before the 8th January, 1973.
>
> On the whole I am satisfied that any presumption that the certificate produced to Constable Ali had been issued by the Company on 3rd January, 1973 has been fully rebutted."

He accordingly found that the respondent had failed to prove that it was during the currency of a policy issued by the appellant and while a certificate of insurance issued by it was in force and effect that on 7th January 1973 the respondent received the personal injuries in respect of which the judgment, which he now seeks to enforce against the appellant, was obtained. The judge accordingly dismissed the action.

Evidence had been given for the respondent by a licensing officer that there was no such vehicle as

PH 1380 and it was on this basis that the learned judge described that vehicle as non-existent.

The respondent appealed to the Court of Appeal who unanimously reversed the decision of the trial judge. The first judgment was given by Bernard J.A. he put the matter thus:-

> "In my opinion, the real question for determination in this appeal is whether the evidence of Bellamy was of such cogency and quality as to discharge the onus cast on the [appellant] to rebut the presumption which the trial judge found in favour of the [respondent] to the effect that Agaid had produced a certificate of insurance for PH 1318 to Ali for the period in question which was issued by the [appellant]. The question, therefore, was whether the presumption was rebutted on the grounds of fraud as alleged by the [appellant] based as it was on the evidence of its witness, Bellamy."

After referring to authorities from which he deduced that, although the standard of proof required in a civil case is as a rule one of a balance of probabilities, the degree of proof varies according to the circumstances of the case, he went on:-

> "Applying the test enunciated in the cases cited above and with due deference to the trial judge, I am of the view that the evidence of Bellamy was not of the kind to rebut the presumption which was found by the judge in the [respondent's] favour. I hold this view for a number of reasons. For one thing her evidence, strictly speaking, did not, it appears to me, satisfy the requirements of section 39 of the Evidence Act to render it admissible as such. Even if it was or for that matter that it was open to the trial judge to consider the evidence called by the [appellant] since no objection was taken to its admissibility at the trial, still, in my opinion, it was devoid of that degree of cogency that was necessary in the circumstances of this case to rebut the presumption which the trial judge found in favour of the [respondent]."

He then went on to refer to various aspects of the evidence which he found to be unsatisfactory and to which their Lordships need not refer in detail.

In order to render a statement contained in a document admissible in evidence under section 39 of the Evidence Act, which is Chapter 7.02 of the Laws of Trinidad and Tobago, it is necessary that the record should be compiled by a person acting under a duty from information which was supplied by a person whether acting under a duty or not, who had or may reasonably be supposed to have had, personal

knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries, each acting under a duty.

In terms of the regulations made under sections 7 and 24 of the Motor Vehicles Insurance (Third Party Risks) Ordinance, to which their Lordships have already referred a duty is cast on every company by whom a policy is issued to keep a record of particulars relative thereto and of any certificate issued in connection therewith. It appears to their Lordships accordingly that the documents produced by the witness Bellamy were kept by the appellant in performance of this duty and the appellant being a company that duty could be performed only by individual officers to whom responsibility was delegated. Their Lordships conclude accordingly that the evidence in question was admissible under section 39 if the proper procedure of intimation had been carried out and that in any event, since the documents were admitted at the trial without objection, they were properly before the learned judge for his consideration.

The other matters which the Court of Appeal found lacking in the evidence for the appellant were in their Lordships' judgment matters for consideration by the learned judge who presided at the trial. The only record available of the evidence is the judge's note which is necessarily not a verbatim record of the proceedings. Although it is ambiguous in some respects it appears to their Lordships that it is likely that Mrs. Bellamy had available at the trial all the records which were relevant to the issue and that she dealt as fully with the matter as was required by the examination and cross-examination to which she was subjected. A number of matters do not appear to have been explored very fully in evidence and there are apparent omissions in the documents to which counsel for the respondent at the hearing before their Lordships drew attention. It appears to their Lordships that these omissions may well be explained by a rather hasty application being made to the appellant through an agent by Agaid on the morning after the accident for insurance cover, which it was urgently necessary for him to obtain, and they are certainly at least as consistent with this explanation which commended itself to the trial judge as with the explanation that the documents were forgeries by the appellant. If the appellant's staff were to forge such documents why should they not make a complete job of it and why leave unnecessary gaps? The appellant's evidence was also criticised because it did not include evidence from any member of the appellant's staff or any agent of the

appellant who had personal knowledge of the transactions. Having regard to the lapse of time between the transactions in question and the date of the trial their Lordships do not find this a valid criticism. In any event all of these matters were, as their Lordships have already said, for the trial judge and they see no reason to suppose that the trial judge left any relevant aspect of the facts out of account in coming to his conclusion.

While the evidence of Ali, had it stood alone and unchallenged, might have sufficed to establish the respondent's case the evidence as a whole laid before the trial judge did not satisfy him that the appellant had issued, prior to 7th January, a policy of insurance to Agaid which covered his liability incurred on that date to the respondent and this was a conclusion which in their Lordships' opinion the trial judge was well entitled to reach.

Their Lordships accordingly reverse the decision of the Court of Appeal and restore the judgment of Warner J. The appellant must have the costs in the Court of Appeal and before this Board.

The result is that the respondent has suffered a grievous injury as a result of negligent driving on a public road for which he will receive no compensation. If the driver whose negligence caused the accident had been insured at the relevant time, as the applicable statutory provisions in Trinidad and Tobago required, the respondent would have been entitled to recover the damages which he has been awarded from the negligent driver's insurer. Their Lordships learn from counsel and greatly regret that there are in Trinidad and Tobago no arrangements made by the insurance industry to make good losses to persons injured as a result of negligent driving by a person who is uninsured such as are provided in Great Britain by the Motor Insurers' Bureau. The insurance industry in Trinidad and Tobago and the responsible authorities may feel in the light of this case that arrangements on these lines in Trinidad and Tobago are highly desirable.