

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.222 OF 1998

BETWEEN:

RICHARD PATTERSON-MATTHEWS

Plaintiff

and

ST VINCENT INSURANCES LTD

Defendant

Appearances:

Arthur F Williams Esq for the Plaintiff

Samuel E Commissiong Esq for the Defendant

2000: March 28, April 17, May 2

JUDGMENT

[1] MITCHELL, J: This is a dispute between a car owner and his insurer.

[2] By a specially endorsed writ, the Plaintiff claimed that his car PB799 had been comprehensively insured with the Defendant company. According to the statement of claim, on 23 February 1998, while covered by the insurance policy, the car was involved in an accident when it ran off the road while being driven by one Herley Samuel-Matthews. It was damaged beyond repair. The accident was duly reported to the Defendant company. Despite several demands, the Defendant company had failed to settle the Plaintiff's claim. The Plaintiff claimed the value of the car at \$19,172.00, less the deductible of \$750.00.

[3] By its defence filed on 2 July 1998, the Defendant company denied liability. It admitted the policy but denied practically everything else. The defence as filed denied the value of the car was \$19,172.00. It denied Herley Samuel-Matthews had driven the car at the material time. It denied that either the Plaintiff or his father Patrick Matthews was the holder of a valid driver's licence. The Plaintiff had left the car in the hands of his father Patrick Matthews for mere storage. It denied that Patrick Matthews had any authority from the Plaintiff to drive the car. Patrick Matthews had signed a claim form in which he admitted that the speed of the car at the time of the accident was 40-45 mph, at 3.00 a.m. on the morning of the accident. The defence questioned the contents of the claim form. The driver of the car was mentally impaired. The driver of the car did not have the Plaintiff's permission to drive the car at the time. Since the car was not driven with the consent of the owner, the Defendant company had properly rejected the claim. The claim for indemnity was a fraudulent conspiracy hatched by the Plaintiff and Herley Samuel-Matthews to receive payment for the car knowing full well that the car had been driven without the consent of the owner. The Plaintiff was not entitled to the relief he sought. Those were the Defendant company's allegations in its filed defence.

[4] When the matter came up for trial, I indicated to both counsel that, as the owner of a motor vehicle in St Vincent, I was personally insured with the Defendant company. There was a possibility that that fact might cause one or other of the parties to be concerned at my adjudicating in the dispute. Both counsel insisted that there was no objection on the part of their clients to my continuing to deal with the case. In the circumstances, I agreed to hear the evidence and to dispose of the case. It was agreed that at this stage the issue of liability only would be tried. The quantum of damages, if any, would be dealt with at a later stage.

[5] The Plaintiff and his father gave evidence. The Defendant called no witnesses and stood on a submission at the close of the case for the Plaintiff. The facts as I find them are as follows. The Plaintiff is a sailor on a cruise ship, and is frequently

at sea and absent from St Vincent. His brother and his friends are sailors. He bought the car in question in March 1997 for \$19,172.00. He insured it with the Defendant company under a policy of comprehensive insurance. The Schedule to the Policy stated that the following persons were entitled to drive the car:

The Insured.

Any other person who is driving on the Insured's order or with his/her/their permission. Provided that the person is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by any reason of any enactment or regulation in that behalf from driving the Motor Vehicle.

- [6] After the Plaintiff bought the car and licensed and insured it, he used it for his purposes. Whenever he went back to sea, he left the car in the care of his father, Patrick Matthews. Patrick Matthews is a mason, unable to read or write, and has never held a driving licence. During the Plaintiff's absences at sea, his father is in charge of everything he owns, including the vehicle. Herley Samuel-Matthews of Goumea in St Vincent is a cousin of the Plaintiff, and a sailor like the Plaintiff. On the evening of 23 February 1998, the father of the Plaintiff gave Herley Samuel Matthews permission to take the car and to drive it. Herley Samuel-Matthews was at the time the holder of a St Vincent Temporary Driving Permit. The photocopy of the temporary driving permit put in evidence was barely legible. It stated that Herley Samuel-Matthews was the holder of a licence (the number of which was illegible), issued by a country, the name of which was equally illegible, but obviously meant to be St Vincent. This temporary permit had been enough to cause suspicion on the part of the Defendant company. Under the licensing regulations of St Vincent locals do not normally get issued temporary driving permits. West Indians holding driving licences from other Caricom countries are permitted to drive in St Vincent on their home licences for up to 6 months, and are not required to take out temporary driving permits when they visit St Vincent. Only

foreign tourists visiting St Vincent are usually issued temporary driving permits. Why would a Vincentian citizen and resident hold a temporary driving permit issued in St Vincent? Herley Samuel-Matthews was at sea, and could not be asked to explain how he came to hold such a licence.

[7] While the car was being driven in Kingstown at about 1.15 a.m. on 24 February 1998, it was involved in the accident which wrote it off. Herley Samuel-Matthews did not give evidence. He is a sailor, and was at sea at the time of the trial. At the time of the accident, the Plaintiff himself had been at sea. The Plaintiff could not give evidence of the circumstances surrounding either the accident or the reporting of the accident by his father and Herley Samuel-Matthews to the Defendant company. His father gave evidence, which was uncontraverted, of having lent the car to Herley Samuel-Matthews who drove the car out of his yard on the evening of the accident. He had learned of the accident, and had immediately reported it to the Defendant company. He was cross-examined on the contents of the accident report form in the possession of the Defendant company. Patrick Matthews could not answer questions on the details of the report of the accident, as he had not been present at the accident. He could not even read the accident report form. He could not himself have explained to the Defendant company how the accident had occurred. From the particulars of the report of the accident read out to him at the trial, it was clear that the details of the explanation of the accident recorded on the report form had been given to the Defendant company by the driver of the car at the time of the accident. The Defendant company, which was in possession of the accident report form, did not seek to put the accident report in evidence.

[8] The Defendant company's correspondence to the Plaintiff was put in evidence. By a letter of 1 May 1998, the Defendant wrote to the Plaintiff referring to the report of the accident. The letter simply stated that the company has sought legal advice and was unable to honor the Plaintiff's claim. By another letter of the same date,

the defendant company cancelled the policy and offered to refund the plaintiff a pro rata amount of the premium.

[9] At the close of the case for the Plaintiff, the Defendant chose to call no witnesses. Counsel indicated that the Defendant did not intend to establish any of the matters raised in its filed defence. As the Defendant chose to call no witnesses, it was not required to prove any of the matters alleged in the defence it filed. If the Defendant had chosen to call evidence, one would look to see if the Defendant had on a balance of probabilities proven the matters, such as the fraudulent conspiracy, it had raised in its filed defence. Counsel elected instead to rely on a submission that the Plaintiff had not produced sufficient evidence to support the claim against his insurer. The case fell to be determined solely on the evidence led by the Plaintiff and that emerged in cross-examination. As it is, the Defendant has no burden to prove any of the matters set out in its filed defence. The question for the court must be, has the Plaintiff proven on a balance of probabilities the matters raised in his statement of claim. Has he proven that he had a valid contract of insurance with the Defendant company? Has the Plaintiff proven on a balance of probabilities that he complied with the terms of his insurance policy? Has the Plaintiff proven on a balance of probabilities that the Defendant company has breached its contract of insurance with him? If so, there must be judgment for the Plaintiff for damages to be assessed.

[10] Counsel submitted first that there was no evidence that a claim had been made by the Plaintiff against the Defendant company. The question about the claim form raised by the filed defence was the report that the car had been doing 40-45 mph at the time of the accident. Such speed was not in itself a matter that would avoid the responsibility of the Defendant company to meet the claim of the Plaintiff under his contract of insurance with the Defendant company. The defence further stated that the driver of the car had been mentally impaired. It was not clear if that was a commentary on the speed that the car was being driven at when the accident occurred, or if it was a medical analysis of the mental condition of the driver of the

car at the time of the accident. In any event, there was no evidence from which the court could conclude either that the speed was extraordinary or that the driver of the car must have been mentally impaired at the time of the accident. The evidence in the correspondence described above suggested that the Plaintiff had made a claim under his insurance policy. The Defendant was the only party that had and could have produced into evidence the disputed claim form. The claim form was not put in evidence by the Defendant, although some of its contents was read aloud to the Plaintiff's father. I am satisfied from the correspondence referred to above that a claim had been made by or on behalf of the Plaintiff and that claim had been rejected by the Defendant.

[11] Counsel next submitted that there was no evidence that the father had the authority of the Plaintiff to allow anybody to drive his car. The father, he submitted, as an unlicensed person, was a mere bailee of the car. As bailee of the car, he owed his son a duty to protect the car and to ensure it was not moved from his yard without his son's express authority. The Plaintiff, he submitted, had failed to prove a critical point. He had not testified that when he left his car in his father's care the father was free to lend out the car. He submitted that the court ought not to imply that the father had the insured's implied consent. Nor was there any evidence, he submitted, of a course of conduct or dealing in-so-far as the car was concerned to suggest that the father was free to lend the car to whom he pleased. The evidence was that the Plaintiff had been at sea at the time of the accident. The Plaintiff said in evidence that the car had been left with his father Patrick Matthews who was his agent for all his property, including the car, while he was sailing. The Plaintiff's evidence was that he left the car in the care and control of his father. It was not suggested to him or his witness that he had prohibited his father from lending out his car either generally or to Herley Samuel-Matthews in particular. There was no hint in his evidence in chief or in his cross-examination that his father had been acting outside his powers in permitting the cousin of and sailing colleague of the Plaintiff to drive the car on the night of the accident. That care and control, I find, in the absence of an express prohibition by the Plaintiff,

necessarily included the right to permit a licensed driver to use the car. I find that the driver of the car at the time of the accident was Herley Samuel-Matthews. I find that at the time of the accident he had been driving the car with the consent of the Plaintiff through his father.

[12] Counsel submitted further that there was no direct evidence as to who the driver of the car was at the time of the accident. Let us immediately say that there was no eye-witness evidence or police evidence of statements made at the time of the accident to prove who was driving the car at the time of the accident. The Plaintiff did not call as a witness at the trial Herley Samuel-Matthews who was allegedly out to sea at the time of the trial. The evidence was that he had been driving the car when it left the father's yard. The driver of the car at the time of the accident had obviously given the Defendant insurance company the details contained in the accident report form questioned by the filed defence and read aloud to the father at the trial. It was not put to any of the witnesses for the Plaintiff that any person other than Herley Samuel-Matthews had been driving the vehicle at the time of the accident. There was no suggestion in the pleadings, the correspondence, or the evidence, that anyone else than Herley Samuel-Matthews had been the driver of the car at the time of the accident. If there had been any suggestion that someone else had been the driver, I am quite sure that would have come out in evidence. The uncontraverted evidence all pointed to Herley Samuel-Matthews having been the driver at the time of the accident. I find that Herley Samuel-Matthews had been the driver of the car at the time of the accident.

[13] Counsel's further submission was that the Plaintiff had failed to prove that the driver of the vehicle at the time of the accident had been licensed to drive the car in question. The temporary licence held by Herley Samuel-Matthews had caused the Defendant company great concern. No suggestion was made, nor any evidence produced to suggest, that this temporary driving permit had been illegally obtained or was not valid at the time of the accident. It may, I accept, have been unusual for a Vincentian to be holding a Vincentian temporary driving permit. But,

there was nothing shown to be illegal about such a state of affairs. In the absence of anything to the contrary in the law or the regulations pointed out to me, I find that if the St Vincent authorities choose to issue a Vincentian driver with a temporary driving permit, then that driver is licensed to drive a vehicle in St Vincent so long as the permit is valid.

[14] Given the findings set out above, there must on the evidence be judgment for the Plaintiff against the Defendant for damages to be assessed and for his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge