

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 539 of 1999

BETWEEN

KEN GLASGOW

(by his Attorney on record FRANCIS DA SILVA)

Claimant

AND

ST. VINCENT INSURANCES LTD

Defendant

Appearances:

Mr. Ronald Jack for the Claimant

Mr. Samuel Commissiong and Ms. Suzanne Commissiong for the Defendant

2003: October, 29,

2004: January, 29

JUDGMENT

BLENMAN J.

[1] On 3rd December 1997, Mr. Ken Glasgow (“Mr. Glasgow”) effected a Policy of Motor Vehicle Insurance, no. MP C11579, with St. Vincent Insurances Ltd (“the Company”) under which the Company agreed to indemnify the Claimant against loss and damage to a

Nissan Pathfinder Registration Number P4130 (“the Pathfinder”) during its operation in St. Vincent and The Grenadines.

[2] Condition 3 of the Insurance policy provided that “the Insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor vehicle in an efficient condition”.

[3] On 1st August 1998, the Pathfinder was involved in a collision with another vehicle, which bore the Registration Number P8538 (“the other vehicle”), which was owned by Edward Porter. Both vehicles sustained damage. Mr. Glasgow reported the accident to the Company and made a claim on the Company to be indemnified in the sum of \$21, 675.18 in accordance with the policy. On the 9th day of November 1998, the Company wrote to the Insurance Brokers disclaiming liability and thereby rejecting Mr. Glasgow’s claim. The grounds for rejecting the claim were that at the time of the accident, the driver was operating the vehicle in a reckless and dangerous manner and that he was driving the vehicle in excess of the speed limit.

[4] As a consequence, Mr. Glasgow had effected the repairs not only to the Pathfinder but also to the other vehicle. The sums incurred by him were \$17,175.18 and \$4,500.00 respectively.

ISSUE TO BE TRIED

[5] The sole issue to be tried was whether at the time of the accident the Pathfinder was in a roadworthy condition in keeping with Mr. Glasgow’s obligation under the policy. More particularly, I was asked to determine as a fact of whether the tyres on the Pathfinder were defective thereby rendering the vehicle unroadworthy and in violation of Mr. Glasgow’s obligations under the insurance contract.

LAW

[6] The legal position is that for liability to be affixed to the Company the insured must have complied with all of the requirements of cover at the time of the incident, which triggered the claim. The burden of proving that the insured was in violation of the contract lies on the

insurance company. Therefore, Mr. Commissiong correctly conceded that the burden of proof rested on his client, the company to establish that the tyres on the Pathfinder were defective thereby rendering the vehicle unroadworthy and enabling the Company to avoid liability to indemnify Mr. Glasgow.

ADDITIONAL EVIDENCE

[7] Counsel for the Defendant, during the cross-examination of the Mr. Glasgow's witness, sought to introduce the alleged worn knuckles of the Nissan Pathfinder as an additional basis for the Company's refusal to indemnify Mr. Glasgow. Parties are bound by their pleadings. The CIVIL PROCEDURE RULES Part 29 1 enables the Court to control the evidence to be given at a trial as to the issues on which it requires evidence. ¹ Mr. Jack objected to the introduction of additional evidence on the issue of worn knuckles during the cross examination of Mr. Dennis Joyette. Neither the Defendant's pleadings nor the witness statements filed on his behalf at any time even alluded to the allegation that the knuckles on the Nissan Pathfinder vehicle were worn. I therefore ruled that the only issue before the Court was whether or not the tyres on the Nissan Pathfinder were defective thereby rendering the vehicle unroadworthy. The trial therefore proceeded on the issue of whether the tyre on the Pathfinder was defective or not and a consequence the motor vehicle was unroadworthy.

EVIDENCE

CLAIMANT'S CASE

[8] Mr. Glasgow called three witnesses to assist his case. They were Mr. Francis Da Silva, Mr. Dwight Da Silva and Mr. Dennis Joyette.

[9] FRANCIS DA SILVA

Mr. Da Silva stated that was an experienced driver. He knew that they the Nissan Pathfinder had been well maintained and was in a state of good repair. He stated that he was unaware of what causes a vehicle to wobble. Under cross-examination, he stated clearly that the tyres on the Nissan Pathfinder were not defective.

¹ See Civil Procedure Rules 2000.

[10] **DWIGHT DA SILVA**

This witness was the driver of the Pathfinder on the day of the collision. He stated that he was driving the Nissan Pathfinder uphill at about 40 mph. The vehicle was quite normal until he reached the vicinity of the Botanical Clinic when it started to wobble. He struggled to control the Pathfinder but was unable to avoid a collision with the other vehicle, which was owned by Mr. Edward Porter. The Pathfinder collided with the other vehicle despite his best efforts to prevent that occurrence. Mr. Commissiong failed to shake his testimony in cross-examination. He remained adamant in his account of the collision, that the vehicle did not wobble prior to the uphill drive and that the tyres were not defective.

[11] **DENNIS JOYETTE**

Mr. Dennis Joyette is the owner and operator of a business by the name of Joyette's Auto Collision Works. He is a mechanic with some 45 years experience and has been engaged in his own business for some 38 years. He stated that he considers himself as an experienced mechanic. He stated that after the accident in the month of October in 1999 he examined the Nissan Pathfinder and found that the tyres were in good condition. Under vigorous cross-examination by Mr. Commissiong, Mr. Joyette stated that having examined the Pathfinder he submitted a report in which he concluded that the tyres were in good condition at the time of the collision. He indicated that he found that some of the knuckles were worn. He stated that the report, which he prepared, was based on instructions of the Company. He stated that he advised the Company that the Pathfinder ought to have been repaired and not replaced. He reiterated that he had written that the tyres were in good condition on the form, which he submitted to the Company.

[12] Mr. Joyette further stated that in the month of October 1999, after the collision, he repaired the Pathfinder for Mr. Francis Da Silva. He stated that the total cost of repairs was \$17,175.18

[13] **ASSESSMENT OF CLAIMANT'S WITNESSES**

The Company did not contradict Mr. Dwight Da Silva's evidence. He maintained a consistent account of the collision and the state of the tyres. I have no reason to disbelieve him. In fact, both he and Mr. Frank Da Silva were very consistent under cross-

examination with their evidence in chief on the important aspect of the condition of the Nissan Pathfinder. Their evidence was uncontroverted on the fact that the tyres of the Nissan Pathfinder were at all times in a roadworthy condition.

- [14] More specifically, Mr. Joyette in his testimony did not state that the wearing of the knuckles could have contributed in any way to the collision. No evidence was elicited from him, which would have led me to conclude that the condition of the knuckles amounted to the vehicle not being in a roadworthy condition. I propose to make no further comment on that. I am satisfied that Mr. Joyette is a witness of truth. In fact, Mr. Joyette proved to be a vital witness in assisting me to determine the issue of liability.

DEFENDANT'S WITNESSES

- [15] The Company led evidence through Mr. Samuel Goodluck and Mr. Peter Ferrari.

SAMUEL GOODLUCK

Mr. Samuel Goodluck testified that he is the Managing Director of the Company. The relevant part of his evidence in chief spoke as follows: "The wheels of the vehicle are not supposed to wobble, and if they do that is an indication that some part of the front end of the vehicle has a defect which would make it unroadworthy, particularly when it was being driven at high rates of speed especially uphill. The front end of the vehicle would include any part of the steering mechanism and the front wheel system. Accordingly, I consulted Fitz-Allan Richardson on the roadworthiness of the insured vehicle. Indeed I further consulted another mechanic Patrick Ferrari of Ferrari Foundation Limited on the issue of wobbling wheels of vehicles when they are mobile on the public road (EX. "PF1")."

- [16] His evidence continued: "As a result of information I received in the course of the inquiry and from Patrick Ferrari I rejected the claim of the Claimant because I came to the conclusion that the vehicle was unroadworthy." Under cross examination, he admitted to Mr. Jack that by way of letter (referred to above) he rejected Mr. Glasgow's claim on the basis that the vehicle was being driven dangerously and recklessly at the time of the accident. He admitted further that he was defending the matter on the basis that at the time of the accident, the Nissan Pathfinder had a defective tyre. He admitted that his

instructions to Mr. Commission were not consistent with what was pleaded. He admitted as well that the Nissan Pathfinder was sent to Joyette Auto Repairs for an examination and a report in a post accident state, and that the report was forwarded and he received it. He conceded that Mr. Joyette had indicated in the report that the tyres were in a fair condition.

[17] **PETER FERRARI**

Mr. Peter Ferrari stated that he was an experienced motor mechanic of some 23 years standing. He testified that he was asked by Mr. Goodluck, the Company's Managing Director some five years after the date of the collision to give him an opinion on the causes of wobbling motor vehicle wheels when they are being used on the highway. He gave such a report. Under cross-examination, Mr. Ferrari stated that in his opinion, wheel wobbling could be caused by a variety of factors, these include Tyre-Non-uniformity; Worn Steering components/Incorrect Wheel Alignment; Wheel Imbalance; Steering Box Out of Adjustment; Incorrect Tyre Inflation and Different Size Tyres. He admitted that he did not inspect the Nissan Pathfinder and he was therefore unable to give evidence on the condition of the tyre and to state specifically what caused the wheel to wobble.

ANALYSIS OF DEFENDANT'S WITNESSES

[18] Mr. Goodluck's request for the opinion as to the cause of the wobble was some 5 years after the accident. He did not testify that at any time Mr. Ferrari advised him that the vehicle wobbled because the tyres were defective or even that it wobbled because the knuckles were worn. I am not satisfied the Mr. Goodluck was of the view that the vehicle was indeed in an unroadworthy state as pleaded. This is supported by the fact of his letter of rejection to Mr. Glasgow, which has not been contradicted, did not refer at all to the most important fact that the tyres were in a defective state. Instead he had relied on the manner of driving the Pathfinder on the day in question as the basis for rejecting the claim. I am therefore satisfied that this witness has been unable to advance the Company's case that the Pathfinder was in an unroadworthy condition at the time of the collision, and more particularly, that the tyres on the Pathfinder were in a defective state.

[19] I accepted Mr. Ferrari as a credible and believable witness. His evidence was equivocal in explaining the reasons for the wobbling wheels. He gave me assistance by stating several factors that can contribute to wobbling wheels on a motor vehicle. At no time however, did he state that the wobbling was caused by Mr. Glasgow's failure to maintain the Pathfinder in a roadworthy manner. It is very possible that the defects, which the vehicle possessed, were latent. Since he did not inspect the vehicle he could provide me with no pertinent and useful information, which could have advanced the Company's case.

[20] I have come to the conclusion that there is not a scintilla of evidence from these witnesses to support the Company's contention that Mr. Glasgow had failed to maintain the Nissan Pathfinder in a roadworthy condition hence the reason for the collision. The witnesses could and did not provide any evidence as to the roadworthiness of the Nissan Pathfinder at the time of the collision. The Company therefore has not discharged the burden of proof placed upon it by the law.

CONCLUSION

[21] Upon a consideration of all of the circumstances there is no doubt that the Claimant has amply demonstrated that he is entitled to be indemnified by the Company for the loss and damage he has suffered as a consequence of the accident. The Company has not established that Mr. Glasgow has failed to maintain the Nissan Pathfinder in a roadworthy manner in breach of the policy of Insurance.

IT IS HEREBY ORDERED AND DIRECTED AS FOLLOWS:

- (1) That judgment be and is hereby entered for the Claimant Mr. Glasgow.
- (2) That the Defendant Company does pay to the Claimant damages in the amount to be assessed by the Master in Chambers.

- (3) That the costs of this action to this stage be paid by the Defendant to the Claimant in the sum of \$2,000.00

**Louise Esther Blenman
High Court Judge.**