

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

Comment [a1]: Final copy. Handed to parties on June 21, 2001.

Suit No. 186 of 1992
BETWEEN:

MAGDALEN BONNAIRE

Plaintiff

and

(1) GREAT NORTHERN INSURANCE CO. LTD
(2) LAWRENCE SMITH

Defendants

Appearances:

Ms Cybelle Cenac for the Plaintiff

Mr. Anthony McNamara for the Defendants

2001: April 24.

Comment [a2]:

ORAL JUDGMENT

- [1] **BARROW, J. (Ag.)** It is a very unfortunate case that is before me and I am in a position to give my decision now. I will give my decision and I will make it expressly clear that what I am doing is simply giving an indication of the basis upon which I have come to my conclusion but that this does not represent my settled decision in this case. I therefore specifically, emphatically declare that in the preparation of a written decision I may incorporate all sorts of things which I do not mention at this stage. So this simply giving an understanding or a sense of the basis upon which I am making my decision.
- [2] The Plaintiff's claim is to recover the insured value of a motor vehicle that she bought and insured with the first defendant under a comprehensive policy. The second Defendant, for whose benefit the Plaintiff bought the motor vehicle for him to operate as a passenger vehicle, drove the vehicle into the Entrepot River. It was a total loss. The first Defendant refused to pay the claim on the basis that the second Defendant was under 25 years of age and it was a condition of the policy that it excluded cover for drivers under that age. The age of the second Defendant had been falsely stated on the proposal form as 26 years.
- [3] In summary, the crucial factor is as contained in a witness statement of Ms Bonnaire, at paragraph 9, that she did not know Lawrence Smith's age, so that whatever he may have told her or the Insurance lady, she would have believed. And I think the essence of the case and the beginning and the end of the case is that Mrs. Bonnaire is a victim of Lawrence Smith's conduct. I cannot make the Insurance Company a victim of that conduct, I cannot make anybody else a victim of that conduct and I cannot make the Insurance Company the perpetrators. Very simply, it appears to me that Lawrence Smith himself knew of the age

requirement by that Insurance Company and probably by Insurance companies generally. He was a motor omnibus driver by occupation at the time. He was living in St.Lucia, Mrs. Bonnaire was not living here and I can well understand she many not have known these things. She was not the holder of a driver's licence and it was therefore easy to accept that she had not a clue. When Lawrence Smith told the Insurance company, and I fully accept that he told Mrs. James, that he was 26 years, he did that with a clear understanding that there was a requirement that to become an insured person driving a passenger omni bus, with the much higher liability that it carried, such a person had to be 25 years of age and over . So he deliberately lied because he wanted to get the benefit of this enterprise that his cousin very kindly, very generously went into with a view to benefiting Mr. Lawrence and Mrs. Bonnaire was simply taken advantage of by Lawrence smith and she was made a victim of his deceit.

- [4] It is a sad situation in which Mrs. Bonnaire finds herself. Mr. McNamara described the conduct in signing the form and binding herself to what she signed as reckless. It may in a sense be reckless, but I think it is more fatalistic, it is something that persons do regularly in daily life. I myself am not sure that many of us in this court room do not do it; we take the view that this institution requires me, as a condition of their giving me the benefit of what I am seeking from them, whether it is a loan, whether it is a mortgage, whether it is insurance or the rental of a car - that this is what they want me to sign, I will sign and if anything happens then I will deal with it at the time. There is a recognition that really the choice between taking it on their conditions and not taking it is no choice, so whatever their conditions are I will take it. And I think that is what Mrs. Bonnaire did. As she says, the answers she gave were truthful and therefore she had no reason to read over anything else. If she had read over the form, she would have seen the notation that the answers given formed the basis of the contract and that would have legally, I guess, alerted her but I don't think it would have made the slightest difference. She would have signed it and she would have accepted it because she thought that everything contained in the proposal form was true; and again this was purely because she had no reason to believe that Lawrence Smith was lying. In the same way that Mrs. James had no reason to believe that Lawrence Smith was lying.
- [5] I therefore find very clearly, that based upon the proposal form she got a contract of insurance, a policy of insurance, which excluded a non-licenced driver as she was; obviously, it excluded her, the owner of the vehicle, from driving and it excluded a driver under 25 years of age. She may not have seen the document before, but she bound herself to it and certainly after she received it whenever she did, or even if she did not receive it, it was her duty to have sorted it out. She would have had sufficient time to look at it and if there was anything or provision in the policy which was not to her satisfaction which she wanted to object to, it would have been open to her to take such steps as she may have been advised including cancelling that policy and seeking a policy from another insurance company or doing whatever else she would have been advised to do.
- [6] I am terribly sorry, I have cast about, I can tell you, to see in what way this result might not have been as inevitable as it now seems to me and I could find no other way to resolve this matter. As a matter of justice between the parties, it is not for me to seek to bend the law or to stretch the law to achieve a particular result which I think might be desirable as a matter of sympathy in the circumstances of this particular case.

[7] I must therefore dismiss the Plaintiff's claim and give judgment for the Defendant. I must also award costs. I think the sum of \$1,500.00 would be appropriate in the circumstances.

Denys A. Barrow S.C.
High Court Judge (Ag.)