GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 22 OF 2002

BETWEEN:

NATIONAL GUARANTEE INSURANCE COMPANY LIMITED

Appellant

and

WINSTON GEORGE

Respondent

Before:

The Hon. Sir Dennis Byron	Chief Justice
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]

Appearances:

Dr. Francis Alexis for the Appellant
Mrs. Celia Edwards for the Respondent

2002: November 25

JUDGMENT

[1] REDHEAD, J.A.: This is an appeal by the appellant from an award of damages assessed by the Learned Master Pemberton. The damages were assessed as follows:-

General Damages $84,000.00

Special Damages $17,184.00

Interest at 6 percent from date of accident to date of payment

Costs of $5000 to the Respondent.

[2] The appeal as argued centered around two issues:

(1) The interpretation of section 14(2) of Motor Vehicles Insurance (Third Party Risks) Act which provides:

"No sum shall be payable by an insurer under subsection 1A.

(a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury.

(c) The registration of the body corporate is revoked pursuant to this Act."

[3] The other issue argued by Dr. Alexis on behalf of the Appellant is the question of quantum.

[4] I turn now to address the question of the interpretation of s.14 of the Motor Vehicles Insurance (Third Party Risks) Act.

[5] First of all I should encapsulate the factual basis which gives rise to this dispute, the subject of these proceedings. On 24th May, 1999, the respondent sustained injuries resulting in the loss of an eye as a consequence of a collision of his vehicle and a vehicle owned by one Gretha Franklyn. Both vehicles were insured by the appellant company.

[6] The respondent brought civil proceedings on 27th June, 2000, against the owner and the driver of the other motor car (Civil Suit No. 346 of 2000). On 28th June, 2000, a copy of the writ was delivered to Donna Patterson, an employee of NALGICO, at the registered office of National Guarantee Insurance Company Limited (NALGICO) the appellant company.

[7] Dr. Alexis argued that that service was ineffective. He referred to Order 50 rule 3(1) Rules of the Supreme Court 1970 which provides:

"Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in

> accordance with rule 2 on the chairman or president . . . secretary, treasurer or other similar officer thereof."

[8] Dr. Alexis contended that there was failure by the respondent to comply with Order 50 because Donna Patterson was not an officer of the company and consequently there was non-compliance with section 14(2) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap. 202.

[9] Mrs. Edwards contended that the Motor Vehicles Insurance Act does not require personal service on the company in accordance with the Rules of the Supreme Court. It requires the company to have notice of the bringing of the action. Learned Counsel supports that contention by reference to Halsbury's 4th Edition Volume 25 paragraph 776 where it is stated:

> "The notice must be of sufficient formality to be understood by a reasonable man as an intimation of legal proceedings although no formality is required."

[10] Mrs. Edwards, learned Counsel, for the respondent argued that the notice is to be effected on the insurance company under and by provisions of the Companies Act s.513 which is delivery at the registered office of the Insurance Company. In that way "provision is otherwise made by enactment". Consequently, Order 50 rule 3(1) is not applicable.

[11] Finally, Mrs. Edwards contended that there could not be a better and more effective way of giving notice of the bringing of proceedings other than by service of the writ on the Insurance Company. Mrs. Edwards drew attention to the fact that the Insurance Company was not a party to the action in Civil Suit 346 of 2000. It was served in order to give notice in compliance with the statutory requirements of s.14(2). I agree entirely with that interpretation and I so hold that is the interpretation that must be given to s.14(2) of the Motor Vehicles Insurance (Third Party Risks) Act Cap. 202.

[12] I now address the question of quantum of damages. The respondent was awarded general damages in the sum of $84,000. This includes a sum of $75,000 awarded for the loss of an eye.

[13] Dr. Alexis argued that the sum awarded was much too high and suggested a figure of $50,000.

[14] The award of damages is an exercise of a judge's discretion and unless the award is so excessive or out of proportion or the learned trial judge exercised a wrong discretion, for example, taking into account things which he ought not to, a Court of Appeal would not lightly interfere with an award of damages. See Martin Alphonso et al v Deodat Ramnath [1996] 56 WIR 183.

[15] It cannot be said in my judgment that the award of damages in the instant case is out of proportion or the learned trial judge in awarding damages took into account things which he ought not to.

[16] The appeal is dismissed with costs to the respondent. The judgment of the learned trial judge is affirmed. Costs agreed in the sum of $9,000.00.

Albert Redhead
Justice of Appeal

I Concur

Dennis Byron
Chief Justice

I Concur

Ephraim Georges
Justice of Appeal (Ag.)