IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2006/0058

BETWEEN:

EDMUND BICAR

Claimant

and

EASTERN CARIBBEAN INSURANCE LTD

Defendant

Appearances :
Mr. M. Maragh for Claimant
Ms. P. Augustin for Defendant

2008: March 14

JUDGMENT

[1] **COTTLE, J.:** The Claimant suffered loss in a motor vehicle accident. The vehicle in which he was driving was struck by a vehicle owned by John Noel and driven by Nyle Monrose. Monrose was responsible for the accident. He had fallen asleep at the wheel. John Noel's vehicle was insured by the Defendant.

[2] The Claimant brought an action against Noel and Monrose. The Defendants brought a claim against John Noel. In their claim which was consolidated and heard with the Claimant's case Shanks J. ruled against the Defendants. They had paid money to Noel to compensate him for the damage to his car. They argued that Noel had breached the terms of his insurance contract by renting the vehicle to Monrose. Shanks J found that there had been no rental but that Monrose had

contracted to buy the car. His employers would provide the purchase price provided they approved of the vehicle. Noel had permitted Monrose to leave with the vehicle over the weekend so he could show it to his employers on Monday and return with their cheque to pay Noel once they were satisfied. It was over the weekend that the accident occurred. Shanks J concluded that Monrose, while driving with Noel's knowledge and permission, was not thereby rendered a servant or agent of Noel so as to fix Noel with vicarious liability for the accident.

[3] At the trial before me these facts were not contested. Indeed neither party had appealed the judgment of Shanks J.

[4] Instead Mr. Maragh for the Claimant sought to recover on the basis that Monrose was an insured person under the contract of insurance. Judgment having been obtained against Monrose and this latter having failed to pay the Claimant now wished to recover from the insurers.

[5] Ms. Augustin for the insurers says that they cannot be liable. They insured John Noel. No judgment has been obtained against Noel and thus they have no liability to reimburse the Claimant for his injuries suffered.

[6] Interestingly despite the fact that the resolution of this dispute turns on the interpretation of the insurance contract, neither side has seen it fit to adduce the entire contract into evidence. Mrs. Gina Girard for the Defendants swore a witness statement. She attests that Clause 2 (ii) of the policy of Liability to third parties states:

> **"In terms of and subject to the limitations of and for the purposes of this section the company will indemnify any authorized driver who is driving the motor vehicle provided that such authorized driver (1) shall as though he were the insured, observe fulfill and be subject to the terms of this policy in so far as they can apply."**

[7] It is convenient to dispose of one issue raised by the Claimant at this stage. Mr. Maragh urges me to find that the Defendants are estopped from denying liability. This he says, is on the basis that they paid to the Claimant his special damages for the loss of the car and required him to submit his documents in proof of his injuries for compensation. Thus, he concludes they should not now be permitted to reside from their admission of liability.

[8] I do not agree with Mr. Maragh. The Defendants acted in good faith. They began paying. Later they were advised that there was no legal liability to pay. They cannot now be punished for acting on the advice belatedly received.

[9] The issue which remains for determination is whether the insurers are legally obliged to compensate the Claimant for his loss.

[10] It has long been established that a third party must first obtain judgment or an admission of liability which fixes liability in the insured before the obligation to pay arises in the insurers. This position can be gleaned from an examination of the cases cited by Ms. Augustin for the insurers.

[11] The fact that Mr. Noel has already been determined not to be vicariously liable for Mr. Monroses' negligent driving is at the heart of the understandable confusion that has arisen. But once the issue is put differently that confusion evaporates. I see the question to be as follows. Does the Defendant by his policy of insurance agree to indemnify Mr. Noel only or does the cover include any authorized driver as well?

[12] When the matter is viewed in this light the answer becomes clear. The insurers must pay not because Mr. Monrose is the servant or agent of the insured who then himself becomes vicariously liable, but because they contracted with Mr. Noel to indemnify him and any authorized driver.

[13] Mr. Monrose was an authorized driver. Mr. Noel can, under the terms of his insurance contract compel the Defendant to indemnify Mr. Monrose. Any sums they pay will be held by Mr. Noel in trust for Mr. Monrose.

[14] The Learned authors of MacGillivray on Insurance Law, Tenth Edition at para 29 - 18 put it thus:

> "**A motor insurance policy frequently contains a clause extending the cover to persons driving the vehicle with the permission of the assured. In Williams v. Baltic Insurance Association of London Ltd the insurers agreed to indemnify the assured against, inter alia, "all sums for which the insured (or any licensed personal friend or relative of the insured while driving the car with the insured's general knowledge and consent) shall become legally liable". The assured's sister drove the car with the assured's consent and accidentally caused injury to third parties who recovered a judgment for damages against her. The assured made a claim for an indemnity against the amount of the judgment, to be paid to her or to himself as her trustee. It was held by Roche J. that the purpose and effect of the extension clause was to bind insurers to indemnify the persons referred to in it rather than to indemnify the assured for a liability falling on him as a result of their driving the car, so that the insurance became one for the named assured and for those persons' benefit".**

[15] This view is reinforced by the provision of section 4 (7) of the Motor Vehicle Third Party Act:

> **"Despite anything in any enactment or rule of law, a person who issues a policy of insurance under this section is liable to indemnify**

the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

[16] For the above reasons, I find for the Claimant. The quantum of damages has already been fixed at $79,719. On this sum, I award prescribed costs of $19,943.80.

[17] For purposes of completeness, the claim for exemplary damages is not awarded. I find that the Defendant's actions were not motivated by malice but bonafide on the advice of their professional advisors.

BRIAN S. COTTLE
HIGH COURT JUDGE