THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2008

CLAIM NO. AXA HCV 2008/0048

BETWEEN:

JACKILYN HENRY McGIBBON

Claimant

AND

NATIONAL GENERAL INSURANCE CORPORATION N.V.

Defendant

APPEARANCES:

Ms. P. Nicola Byer for the Claimant
Mr. Damien Kelsick for the Defendant

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Date: 2008: 19th September
28th October

JUDGMENT

[1] **GEORGE-CREQUE, J.:** On 4th December, 2007, Judgment comprising an award for damages for personal injuries ("The Judgment") was delivered in favour of Mrs. McGibbon against Mr. Charles Liddie in respect of a collision between Mrs. McGibbon's and Mr. Liddie's Motor Vehicles. Mr. Liddie, at the time of the collision, was said to be insured by the Defendant herein, "NAGICO", in respect of Third Parties pursuant to the Motor

Vehicles Insurance (Third Party Risks) Act[1] ("The Act"). She has brought this claim against NAGICO and seeks a judgment against it for payment of The Judgment.

[2] At the date of the collision (6th August, 2001) the amount or statutory limit in respect of which The Act required Mr. Liddie to be covered was EC$10,000.[2] Counsel for the Claimant conceded in light of authority that the maximum sum in respect of which NAGICO could be liable on the principal award was limited to the sum of $10,000.00. The question arose, however, as to whether NAGICO was liable to pay interest and costs calculated by reference to the principal award in The Judgment or whether such calculations were to be undertaken only by reference to the sum of $10,000.00 as the maximum limit under The Act. Counsel were accordingly directed to file and exchange written submissions on this issue whereupon the court would make a ruling thereon.

[3] Section 3 of the Act sets out the monetary limits in respect of the Insurer's liability in respect of third parties. The relevant section for the purpose of the issue raised herein, however, is section 6 which states in part as follows:

*"6 (1) If after a certificate of insurance has been issued under section 3(4) in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 3(1)(b) and (c) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, **including** any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. (my* emphasis).

[4] This section has been the subject of varied and in some instances inconclusive judicial pronouncements over time which leads me to conclude that perhaps the language used in the section is not as clear as it can be and thus avoid the differing interpretations given to

[1] Cap. M105 R.S.A.
[2] See: sec. 3(1)(v) of The Act.

this provision. Counsel for NAGICO rightly point out in his written submissions that there is no binding authority in this jurisdiction which establishes that costs and interest are payable in addition to the statutory limit and thus the starting point must be firstly to determine this question and secondly to determine whether those sums are calculated with reference to the statutory limit. I trust that the conclusion I arrive at will hopefully clarify and provide some guidance rather than add to the current state of confusion in this area of the law.

[5] Counsel for Mrs. McGibbon relies heavily on the case of **Prudential Insurance Co. Ltd. -v- Stafford**[3] in which the majority of the Court of Appeal of Trinidad and Tobago construed the word *"including"* in the identical section of the law in that country as meaning ***"in addition to"*** *or* ***"as well as"***. It was held in that case that the third party claimant was entitled to be paid not only the statutory limit but in addition, costs and interests on that statutory limit. This decision is of persuasive authority only. Sharma JA was of the view that the section was clear. His reasoning for arriving at the conclusion that "**including"** meant **"as well as"** was skilfully summarized by counsel for NAGICO in his written submissions. I can do no better than adopt them.

(*a*) *an inclusive interpretation would render otiose and meaningless the words that follow.*

(b) *If it had been the intention of Parliament to achieve the purpose contended for [by counsel for the Appellant], there would have been no difficulty in framing the language in such a way as to make its intention clear, for example after "liability" the words "such sum to include" any amount payable thereunder in respect of costs …"*

(c) *The words "such liability" as the section was originally framed can only refer to liability in respect of personal injuries or death. Therefore if a person suffered personal injuries and property damage and brought one action he could only recover costs incurred in the prosecution of the claim for personal injuries.*

(d) *When Parliament provided for the statutory minimum, this sum was intended to cover damages for personal injuries and /or death'. He found it difficult to accept*

[3] (1997) 52 W.I.R 449

that it was the intention of Parliament that the costs and interests had to be included in the statutory amount for the mere reason that costs "especially nowadays" could substantially diminish or wipe it out altogether, the net result being 'the complete annihilation of one of the most important objectives of The Act. Indeed the result will be absurd."

Hamel–Smith JA concurred with Sharma J.A. in concluding that the word **"including"** meant "**as well as"** and also took the liberty of giving further reasons for so holding. I do not consider it necessary to delve into those additional reasons here.

[6] Permanand JA. delivered a dissenting opinion in **Prudential.** She referred to the dictum of Williams J. in **Greaves –v- New India Assurance Co. Ltd**[4] where in construing a similar provision he concluded, on a reading of section 9(1) in conjunction with section 9(4)[5] that the insurer was obliged to pay the costs and interests over and above the limit imposed under the policy without reference to any limit. She then referred to **Free Lanka Insurance Co. Ltd.-v- Ranasinghe**[6] which established that an insurer is not in law liable to pay a third party, whatever may be the amount of the judgment and costs. She also cited a passage from **Harker -v- Caledonian Insurance Co.**[7] in which Lord Diplock at pg.559 stated as follows:

"My lords, Lord Denning MR, considered that the result of the Ordinance would be unjust if it were given its plain and unambiguous meaning. It is not for this House to speculate what reasons of policy lay behind the decision in British Honduras in 1958 to impose monetary limits upon the liability to third parties against which users of motor vehicles were to be compelled to insure. An obvious commercial consequence of monetary limits would be that the premiums for such insurance as was compulsory before a vehicle could be used upon the road … . would be much smaller than if the insurer's liability were unlimited; and the policy may have been to keep the cost of compulsory insurance down to a figure that the average motorist…. could afford. To limit the insurer's liability to his assured to a modest figure but to leave them with unlimited liability to the victim of the assured's negligence would make a similar reduction of premium commercially impossible, and if this

[4] (1975) 27W.I R.
[5] Section 9(1) and 9(4) are in identical terms as section 6(1) and 6(4) of The Act.
[6] [1964] AC 541
[7] [1980] Lloyds Rep. 556

were the effect of section 20(1), the legislation would appear to get the worst of both worlds."

She concluded that irrespective of the quantum of the judgment costs and interest, the total amount to which the third party was entitled from the insurer was the monetary or statutory limit which in that case was $50,000. Having reviewed the history of the legislation and with obvious approval of the dictum of Lord Diplock, she further opined that it is a matter for Parliament in its wisdom to revise or increase the monetary limits from time to time having regard to inflation and devaluation of local currency.

[7] The Judgment of the Privy Council in **Matadeen –v- Caribbean Insurance Co. Ltd.**[8] bears reference. At paragraph 13 of that Judgment Lord Scott of Foscote made the following observation:

"*A further point of construction arising under s10(1) that needs to be mentioned relates to the words 'including any amount payable in respect of costs and any sum payable in respect of interest…' The words are inherently ambiguous. They might mean that the … statutory minimum is inclusive of any such costs and interest. Or they might mean that the injured party's right of recovery against the insurer is to include costs and interest as well as the statutory minimum. The latter construction seems to their lordships to make more sense than the former."*

This statement tends to support the majority decision of the Court of Appeal in **Prudential.** No reason was advanced as to why their Lordships felt that the latter construction made more sense. In any event, it is accepted that the observation was made obiter as the appeal did not turn on this issue.

[8] Within our own jurisdiction the industry of counsel for Mrs. McGibbon turned up the case of **James Woodward Jr. –v- John Stanislaus**[9] in which Hariprashad–Charles J, whilst discharging the insurer from further liability having paid out the limit of its liability, ordered the insurer to pay costs and interest ***"as specified in the judgment of Saunders J.."*** On a review of the judgment it becomes clear that the parties in that case accepted the case of **Prudential** as settled authority on the payment of costs and interest as well as or in addition to the monetary limit. The insurer was ordered to pay costs and interest

[8] (2002) 61 W.I.R. 535
[9] SLUHVC 1999/409

calculated, it seems, with reference to the judgment and not with reference to the monetary limit under the policy. This decision appears to go further than the case of **Prudential** and would appear to support or be line with the ruling of Williams J **Greaves.** Even though the case of James Howard is a decision of our court, it is not binding on me given the similar original jurisdiction being exercised.

[9] The Privy Council decisions in **Toolsie Goberdhan & anr.-v- Caribbean Insurance Co. Ltd**[10] arising out of an appeal from Bermuda and **Suttle –v- Simmons**[11] maybe considered as having settled the general proposition that a third party is only entitled to recover in a direct action against the insurer such sum as is stipulated under the policy as the monetary limit fixed by the relevant law.

[10] Counsel for NAGICO referred to the natural meaning of the word **"include"** being ***'to confine within'*** *or* ***"to enclose"*** and submitted that there is no justification for giving to the word a secondary meaning since giving the word its natural meaning does not lead to an absurdity.

[11] Having given thoughtful consideration to the matter, I, in like manner as Permanand JA in **Prudential,** am persuaded by the argument for according to the word **"include"** its ordinary and natural meaning. Indeed, in so doing, it creates no absurdity and fits without difficulty into the entire scheme of the Act. In this regard, I endorse and adopt the reasoning of Lord Diplock in **Harker** recited above. His reasoning accords with and to my mind accurately reflects social conditions in many Caribbean Islands. Such conditions no doubt influence Parliaments in Anguilla and other Caribbean Islands to ensure that premiums charged for compulsory third party insurance would not be so highly priced as to prevent the average motorist from being able to own and drive a motor vehicle. I am in full agreement with the statement made by Permanand JA that it is not for the court to legislate so as to cause the Act to keep pace with changing times in respect of inflationary considerations or currency devaluations and the like, but rather the purview of parliament

[10] (1998) 53 W.I.R 409
[11] (1989) 37 W.I.R 133

to do so, as and when the prevailing conditions warrant. Indeed, in reviewing the history of the Act in Anguilla it does appear that Parliament has sought to catch up with the changing pace. In this regard, I note that since 2001 the Act was amended in 2006 which brought about an increase in the monetary limit to $250,000. Given the rapid rise in inflation in Anguilla, there may very well be a need to review this limit in less time than the time taken in respect of the last review. It remains however, an exercise to be undertaken by Parliament.

Conclusion

[12] Whilst I entertain no doubt that this construction may have the result in certain cases of leading to hardship in respect of a third party victim particularly in cases of serious injury and where the insured is a man of straw, nonetheless, for the reasons given above, I feel constrained, with the utmost respect, to part company with the decision of my learned sister and the majority of the Court of Appeal in **Prudential.** I accordingly rule that the amount which Mrs. McGibbon is entitled to claim from NAGICO, whether in respect of damages, interest and/or costs, is limited to the statutory limit of $10,000. Having arrived at this conclusion I need not address the second question. In the event that I am wrong however, and costs and interest are to be awarded ***in addition*** to the statutory limit then I would have been prepared to hold that costs and interest, for similar reasons as advanced above, would be referable to the monetary limit being the liability of the insurer under the policy and the Act. This, to my mind, also accords with commercial reality and also recognizes that at the end of the day the relationship between the insured and insurer is a contractual one.

[13] Finally, I am grateful to counsel in rendering to the court all their assistance in a timely manner.

Janice M. George-Creque
High Court Judge