

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2004/0322

BETWEEN:

ROSEMOND ADAMS

Claimant

and

ST. VINCENT INSURANCE LTD
T/A VINSURE

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Nicole Sylvester for the claimant

Mr. Samuel Commissiong for the Defendant

2014: July 4.

JUDGMENT

On oral and written submissions

[1] **ACTIE, M. [AG.]**: Before the court is an application for assessment of damages.

Background

[2] On 1st February 2010, judgment in default was entered in favour of the claimant in the sum of \$66,319.74 as special damages with general damages to be assessed.

[3] The facts giving rise to this claim are as follows. On 20th September 1998, the claimant's vehicle registration number MHC 10290 driven by Lyndon Neverson was involved in an accident causing injury to a third party. The third party issued

proceedings against the claimant and Mr. Neverson in claim number 212 of 1999 (hereinafter the 1999 suit). In the 1999 suit, the court by order dated 7th February 2003, directed the claimant with Mr. Neverson to make an interim payment in the sum of \$50,000.00 to the injured party on or before 28th February 2003. The failure to comply with the order of the court resulted in enforcement proceedings whereby the bailiff of the High Court seized a motor vehicle registered as HJ506 owned by the Mr. Adams.

Claimant's submissions

[4] The claimant by claim form with statement of claim filed on 1st July 2004 claims against Vinsure Insurance Company for loss as a result of breach of contract as follows:

"Judgment was entered against the claimant on 7th February 2003 in the sum of \$50,000.00. The defendants failed to honour their contract for Motor Insurance due under the policy numbered MHC 10290 whereby the schedule provides cover up to the sum of \$50,000.00. To date the defendants have made payment in the sum of \$40,000.00 and the claimant has been held liable by the court for satisfaction of the said judgment. As a consequence the claimant has suffered the following losses:

- (a) The vehicle bearing registration number HJ 506 was used as security against the claimant's bank loan for \$76,000.00 in respect of the said vehicle. Following seizure of the vehicle the claimant has been made unable to meet the monthly repayments. Arrears have accrued since September 2003.
- (b) At the time the said vehicle was seized in September 2003 it was in the process of being repaired. Its value was \$55,000.00. The repairs were being carried by a garage in St. Vincent under the three years warranty but the parts required were not available. The claimant requested that the vehicle not be seized until such time as the repairs had been fully carried out thus maintaining vehicles value. But the vehicle was seized in any event before the repairs had been fully completed. Because of its condition it has not been sold and has been parked at the court since that date.
- (c) As a result the vehicle has depreciated substantially in value. The claimant maintains that the vehicle's value to be no more than \$40,000.00."

- [5] The claimant submits that he had comprehensive insurance policy coverage with the defendant at the time of the accident. The claimant avers that as a result of the judgment in the 1999 suit a vehicle belonging to the claimant with Registration HJ 506 was seized by the bailiff against the debt resulting in considerable loss.
- [6] The claimant avers that the loss and damage suffered is due to the defendant's failure to honour its obligations to indemnify the insured under the insurance contract. The claimant relies on the provision of the **Motor Vehicles Insurance (Third Parties Risks) Act**¹ and avers that the insurance policy is a contract of indemnity against damage to the insured's motor vehicle and third parties, arising from accidents and other causes. The claimant upon reliance of his indemnity contract of insurance expected the defendant to abide with the terms of the policy and to have settled the interim payment in the sum of \$50,000.00 awarded in the 1999 suit.
- [7] The claimant cites the following authorities namely; (i) **The President of India v Lips Maritime Corporation [1987] 3 All ER Lloyd's Rep. 281**; (ii) **Apostolos Konstantine Ventouris v Trevor Rex Mountain ("The Italia Express")**; (iii) **Sprung v Royal Insurance (UK) Ltd [1999] 1 Lloyd's Rep. 111**. The claimant concedes that the authorities cited indicate that an insured is not entitled to recover damages for consequential losses flowing from an insurer's failure or refusal to pay a valid claim under an indemnity policy but states that the instant case is distinguishable from the established principle.

The Defendant's submissions

- [8] The defendant states that the damages sought by the claimant are misconceived in law. The defendant also states the claimant has not provided this court with any authority to support the assertion.

¹ Cap 356 of Laws of Saint Vincent and the Grenadines.

Analysis

- [9] The assessment before this court is as a result of a default judgment granted by the court office on 1st February 2010. The issue to be determined is whether the claimant is entitled to the general damages claimed consequential to the seizure of his vehicle for the non-payment of the Judgment debt.
- [10] The defendant in its submissions filed on 11th February 2014 and 31st May 2014 respectively raised several issues which in essence dispute the claim filed by the claimant. It is to be noted that a defendant against whom a default judgment has been entered on a claim and who has not sought to set aside the judgment is only entitled to be heard or make representations in relation to general damages and costs. Any dispute in relation to the claim should have been reduced in a defence which the defendant failed to do in this instant case.
- [11] The defendant in his submissions avers that the default judgment entered on 1st February 2010 is plainly wrong and should be removed from the judgment. There is no evidence that the default judgment has been challenged by the defendant. The Privy Council in the case of **Isaacs v Robertson**² held that an order of the court is valid unless set aside, varied or successfully appealed. Therefore, the default judgment granted on 2nd January 2010 directing the defendant to pay special damages not having been appealed or set aside stands.
- [12] I am of the view that the claimant in this instant case has befuddled the issues. I am entirely in agreement with the defendant, but for different reasons, that the damages claimed by the claimant are misconceived. The seizure of the vehicle in enforcement proceedings in the 1999 suit was not as a direct result of the failure of the insurance company to compensate the insured. The seizure was as a consequence of the failure of the claimant to obey the court's order made in February 2003. The claimant was under an obligation to satisfy the judgment debt made by the court. If he wished, he could have pursued separate action against

² 3 WLR 705.

the insurance company for indemnification under the insurance policy. But whether or not the insurance company paid out moneys under the policy it did not remove the claimant's obligation to obey the order of the court made on 7th February, 2003.

[13] Specifically, the judgment of the court made in the 1999 suit directed the claimant to pay an interim sum of \$50,000.00 to the injured party. The insurance company was not a party to those proceedings and it was not named in the said order of the court. Section 8 of the **Motor Vehicle Insurance (Third Party Risks) Act**³ imposes a duty on insurers to satisfy judgments against persons insured in respect of third party risks. The insurance company is under an obligation to indemnify the insured under the insurance policy up to the sum insured. The submissions before the court indicate that the insurance company paid the sum of \$10,000.00 into court and a further payment of \$40,000.00 by cheque dated 9th December 2004 to OR Sylvester & Co by the firm of Samuel Commissiong. The defendant contends that the total sum of \$50,000.00 being the liability under the insurance policy was paid to the claimant. The court notes that the cheque was dated way after the 28th February 2003 deadline date by which the defendant was ordered to make the interim payment. The court was not provided with evidence as to whether those sums have been paid to the claimant in this instant case.

[14] Having failed to obey the order of the court to pay out the interim sum ordered in the 1999 suit, the claimant was at risk for the order to be enforced against him. Accordingly, the seizure of the motor vehicle followed as a natural consequence of the claimant's default in complying with an order of the court made against him. The insurance company had a statutory obligation to indemnify the claimant pursuant to the **Motor Vehicle Insurance (Third Party Risks) Act**, however the claimant had the corresponding obligation to obey the order of the court. The claimant was under a duty to mitigate his losses. He had a right of action against the insurance company for failing to honour its statutory obligation to indemnify the

³ Saint Vincent and the Grenadines Cap 309

insured. The claimant also had the option to seek a stay of the enforcement proceedings while proceeding against the insurance company.

[15] A judgment creditor has the right of seizure and sale of the judgment debtor's assets or goods for the satisfaction of a judgment debt. The claimant asserts that the vehicle seized by the bailiff was not the vehicle involved in the accident. This assertion again is misconceived as a judgment attaches to all assets, capable of being seized, owned by the judgment debtor. In enforcement proceedings it is open to the judgment creditor to levy against assets of sufficient value belonging to the judgment debtor to satisfy a judgment debt. The judgment debt does not only attach to the asset that is the subject matter of the claim.

[16] The claimant states that the vehicle seized is still in the custody of the bailiff and has significantly diminished in value. The facts suggest a different cause of action. It was the obligation of the sheriff to ensure that the vehicle seized be sold to realise the judgment debt and not to allow the vehicle to deteriorate. Accordingly, having reviewed the facts and authorities I am of the view that the claimant is not entitled to the general damages claimed against the defendant in this instant claim.

[17] For the foregoing reasons I make the following order:

- (1) The application for the assessment of general damages is not granted.
- (2) Costs in the sum of \$ 750.00 to the respondent.

Agnes Actie
Master [Ag.]