Privy Council Appeal No. 33 of 1952

The Ceylon Motor Insurance Association Limited - - *Appellant*

v.

P. P. Ṭhambugala - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JULY, 1953

Present at the Hearing:

LORD PORTER
LORD TUCKER
LORD ASQUITH OF BISHOPSTONE
THE CHIEF JUSTICE OF CANADA
(MR. T. RINFRET)
MR. L. M. D. DE SILVA

[*Delivered by* MR. L. M. D. DE SILVA]

This is an appeal from a decree of the Supreme Court of Ceylon dated the 20th May, 1952, dismissing an appeal from a decree of the District Court of Colombo dated the 24th October, 1950, in favour of the respondent.

The respondent had been injured by a car belonging to one K. Stephen Perera who had been duly insured against third party risks with the appellant company in accordance with the requirements of the Motor Car Ordinance No. 45 of 1938. In an earlier action in the District Court of Colombo the respondent obtained a decree against Perera for Rs.10,000 with legal interest and costs. The amount due on that decree on the 5th April, 1950, was Rs.13,881.22. The respondent, availing himself of the provisions of sec. 133 of the Motor Car Ordinance, brought this action on that day for the recovery of the said sum from the appellant company.

Section 133 of the Ordinance says:—

> "133.—(1) If after a certificate of insurance has been issued under section 128 (4) to the persons by whom a policy has been effected, a decree in respect of any such liability as is required by section 128 (1) (*b*) to be covered by a policy of insurance (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 sections 134 to 137, pay to the persons entitled to the benefit of the decree any sum payable thereunder in respect of that liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum under such decree.

(2) In this section, 'liability covered by the terms of the policy' means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy."

Section 134 is to the following effect :—

" 134. No sum shall be payable by an insurer under the provisions of section 133—

(*a*) in respect of any decree, unless before or within seven days after the commencement of the action in which the decree was entered, notice of the action had been given to the insurer by a party to the action ; or

(*b*) in respect of any decree, so long as execution thereof is stayed pending appeal."

It will be seen that no sum is payable by the appellant unless the respondent has given the notice of action provided for by section 134. The only ground upon which the appellant seeks to avoid liability is that notice under the section has not been duly given. Sections 136 and 137 of the Ordinance enable the insurer to obtain a declaration of non-liability on certain grounds in legal proceedings instituted for the purpose provided that they are instituted before the expiration of a specified period and provided, in certain circumstances, notice is given of the proceedings by the insurer to the injured party within a prescribed time. Their Lordships are of the opinion that one of the objects, but not the sole object, of the notice of action required by section 134 is to enable the insurer to institute within time proceedings under sections 136 and 137.

On the 21st May, 1946, the respondent's proctors wrote the following letter to the appellant company:—

" *Re* Car No. X—4851.

" We are instructed by Mr. P. P. Thambugala of . . . to file an action for the recovery of Rs.15,000 against Mr. Kodituwakku Aratchige Stephen Perera of . . . being damages sustained by our client as a result of the above car knocking down our client on the 1st September, 1945, by reason of the negligent and careless driving on the part of his driver.

" We are given to understand that the above car has been insured with your Company.

" Our client is still under treatment and unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car."

The only question for decision by their Lordships is whether this letter is a sufficient notice of action under section 134 of the Ordinance.

The Motor Car Ordinance No. 45 of 1938 follows to a large extent the English legislation on the subject of the liability of an insurer to a third party. Section 134 (*a*) bears a resemblance to section 10 (2) (*a*) of the English Road Traffic Act which reads :—

" No sum shall be payable by an insurer under the foregoing provisions of this section in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which judgment was given, the insurer had notice of the bringing of the proceedings."

In the case of *Weldrich* v. *Essex & Suffolk Equitable Insurance Society Ltd.*—83 Lloyd's List Law Reports, page 91, the question arose as to whether a notice in the following terms was a sufficient compliance with its provisions :—

" We understand your Society has repudiated liability, and we shall be grateful to have your confirmation thereof in writing, because you will appreciate we will have to take proceedings as against

Mohamed, and also against the owner of the other vehicle and at the same time give notice to the Motor Insurers Bureau of your repudiation of liability."

It was held that it was not. But their Lordships are of the view that this decision does not help the appellant. They agree with the learned District Judge "that the main purport of this letter was to obtain confirmation of an alleged repudiation of liability," and that it was not possible to say that it was a proper notice complying with the provisions of 10 (2) (*a*) of the Road Traffic Act. Other English cases have been cited to their Lordships which are distinguishable from the present case on a variety of grounds. They involve the interpretation of the words "notice of action" in various statutes and their Lordships would observe about them generally that the interpretation of such a set of words in a particular statute does not always greatly assist the interpretation of the same words in another. Their Lordships think it necessary to refer to only one of these cases namely *Lewis* v. *Smith* (Holts Nisi Prius C.P. 1815, page 27). In that case an Act of Parliament incorporating the West India Dock Company was under consideration. It enacted that no action could be brought against the Company unless fourteen days' notice of such action had been given. A letter upon which the plaintiff in that case relied as giving notice bears in some respects a resemblance to the letter under consideration by their Lordships but was thought by Gibbs C.J. to leave "it open to conjecture what legal proceedings were in contemplation and against whom they were to be brought." He held that the letter under consideration in that case was not a proper notice of action under the Act. The letter sent by the respondent to the appellant however in the present case says that the proceedings were to be for the recovery of damages and that they were to be brought against Perera the owner of the car. It was consequently free from the defects referred to by Gibbs C.J.

It has been argued that the letter which is challenged should have contained the name of the Court in which it was proposed to file action. An action cannot be specified with precision without reference to its number and to the name of the Court in which it is filed. It is to be noticed however that section 134 contemplates the possibility of giving notice before the action is filed. In that event no number could be given. It follows that the section contemplates something containing less than a precise specification of the action. The name of the Court could no doubt be given but their Lordships do not think that the section requires that this should be done. It does not do so expressly and there is nothing from which it can be said to do so by implication. Then it was said that the words "unless our clients' claim is settled" reduced the notice to one which was conditional and insufficient for the purposes of section 134. Their Lordships agree with the view of the Supreme Court that the words must be taken to mean "settled by you" namely by the appellant company. But they are of opinion that even if they meant "settled by you or someone else" the words do not vitiate the notice. A notice of action without such words necessarily carries with it the implication that action will be filed only if the claim is not settled, and the addition of the express statement does not alter its meaning or its effect.

The notice which has been sent in this case sets out the name and address of the proposed plaintiff, the name of the owner and number of the car which caused injuries, the date of the accident and the sum which was being claimed from the owner as damages. Their Lordships are of the opinion that these elements taken together constitute a sufficient notice of action under section 134 and that there are no elements in it which in any way reduce it to something less than a sufficient notice.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant will pay the respondent's costs of appeal.

(19922) Wt. 8096—I 100 8/53 D.L./P.3

In the Privy Council

THE CEYLON MOTOR INSURANCE ASSOCIATION LIMITED

v.

P. P. THAMBUGALA

DELIVERED BY MR. L. M. D. DE SILVA

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