

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub Registry, San Fernando

No.S-1120/92

Between

**Vishnu Samaroo Singh and
Gajadhar Samaroo Singh** Plaintiffs

And

B & L Insurance Company Limited Defendant

Before the Honourable Mr. Justice J. Tam

Appearances:

Mr. W. Seenath for the plaintiffs

Mr. E. Roopnarine for the defendant

Judgment

This action was commenced on the 17th June 1992 by the filing of the plaintiffs' Writ of Summons against the defendant insurers.

The Pleadings:

By their Statement of Claim in this action, the plaintiffs allege that by a certain policy of insurance issued by the defendant insurers within the meaning of S.4 (1) (b) of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 48:51 (*the said Act*) to me Ramdath Moonilal, the defendant, in consideration of the premium paid to it, agreed to indemnify the said Ramdath Moonilal in respect of any liability incurred due to death, bodily injury, or damage to any person or their property caused by or arising out of the use on a road of motor vehicle registration no. HAF-8619. On the 5th December 1981, during the currency of the said policy, an accident occurred while the said

HAF-8619 was being driven by the aforesaid Ramnath Moonilal along the Fyzabad Main road, Avocat Village, and as a result of which the 1st named plaintiff, then an in fact, was injured.

On the 4th December 1984 the plaintiff commenced H.C.A. No. S-2335 of 1984 (hereinafter referred to as "*the said H.C.A.*") against the aforesaid Ramnath Moonilal for compensation.

On the 6th December 1984 the plaintiffs allege that a copy of the Writ of Summons and Statement of Claim in the said HCA were sent to the defendant insurers by registered post.

On the 20th March 1990, judgment was entered in the said HCA by consent in favour of the plaintiffs for the sum of \$7,000.00 with costs which were taxed in the sum of \$5,300.00.

By letter dated 30th January 1991 written by the plaintiff's then attorney and sent to the defendant insurers by registered post on the 31st January 1991, the plaintiffs called on the defendant insurers for payment of the said judgment debt and the said costs which to date remain unpaid. The plaintiffs therefore claim, in the instant action, that by S.10 of the said Act, the defendant company is liable to pay to the them the said judgment debt and the said taxed costs.

By its defence, the defendant company contends that the Writ of Summons and Statement of Claim discloses no, or no reasonable claim against the defendant company. The contention however to the credit of Counsel for the defendant insurers was not pursued. The defence further contends that no report was made to the defendant company by its insured, the said Ramdath Moonilal, and that this amounted to a breach of condition 4 of the policy of

insurance. Paragraph 2 of the defence is somewhat confusing in that it reads as follows:

“Without prejudice to the above plea the Defendants say that no report were made to them of the said accident by the insured nor were they aware that they were served with any proceedings and if same were served upon them they failed to forward same to the Defendants.”

The word “*they*” in that paragraph must necessarily refer to the insured, Ramdath Moonilal, and not to the insurers, i.e. the defendant company, in order for the paragraph to make any sense, since, if it is to refer to the defendant company, it is quite inconceivable that the defendant company would be forwarding “*any proceedings*” served to itself. Thus, my understanding of that paragraph as pleaded is that:

- (a) Moonilal, the insured, failed to make any report of the accident to the defendant company;
- (b) The defendant company was not aware that Moonilal was ever served with any proceedings (presumably the Writ of Summons and Statement of Claim in the said HCA; and
- (c) If he was so served, he failed to forward the documents to the defendant company. Presumably therefore, the defendant company’s contention is that Moonilal’s failure at (a) and (c) amount to a breach of condition 4 of the policy. But the defence nowhere states that the defendant company is not liable to pay the said judgment debt and the said taxed costs due to Moonilal’s breach of condition 4. Rather, the defence expressly states instead that by condition 10 of the policy the defendant company is not entitled to pay the plaintiffs’ claim.

The purpose of the pleadings is to define the issues and to make it clear to the opposing sides precisely what is admitted what is denied and, therefore, what they are required to prove at the trial. O.18 r.13 provides that:

In the 1991 WB at page 316 under the rubric “*Effect of rule*” it is stated that this pleadings, that

And at page 317-318 under the rubric *Traverse must be specific, not general*” it is stated that “Every allegation of fact must be specifically denied or specifically not admitted... A general denial, or a general statement of essential allegations.”

Thus, on the pleadings, it appears that the allegations in the Statement of Claim must be taken to be admitted by the defendant company since there has been so, or no sufficient traverse of those allegations.

The only witness to testify in this case was the 1st named plaintiff, Vishnu Samaroo whose oral evidence is unchallenged. And since the defendant company close to lead no evidence whatsoever at the trial, there is nothing to assist me with regard to the provisions of conditions 4 and 10 of the policy on which the defendant company has sought to rely. I am therefore unable to determine whether there has been a breach of those conditions and if so, whether it entitles the defendant insurers to avoid liability in this case. The defence is not well pleaded. What is left is an attempted reliance by the defendant company on a post-accident breach of the policy of insurers by its insured in circumstances in which, the laws, as stated in the case of **Insurance Company Ltd. v. Pavy** (1993) 43WIR 430 is against them. Counsel for the defendant company accepts that **Pavy’s case** is against his client. He nevertheless contends that the plaintiffs have failed to establish even a prima facie case. According to him in the oral testimony of the 1st plaintiff, the 1st plaintiff alludes to monies “*agreed*” to be paid. Counsel therefore contends that the instant case is one in contract and not S.10 of the said Act. I must however, to find anywhere in the evidence where any such agreement is alluded to. Moreover, it is quite clearly pleaded that this is an action under

S.10 of the said Act and not pursuant to any contract between the instant parties.

S.10 of the said Act provides that:

The defendant company is clearly liable to the plaintiffs in this case and I therefore order that there be judgment for the plaintiffs against the defendant company for the sum of \$12,300.00 (being \$7,000.00 judgment debt and \$5,300.00 taxed costs in HCA No, S-2335/84) with interest thereon at the rate of 6% per annum for the 20th March 1990 to today's date.

On the issue of costs, Counsel for the defendant company has submitted that the plaintiffs should be denied their costs since **Pavy's case** was decided in 1993 and therefore the plaintiffs could have proceeded by O.14 rather than by trial. Counsel has cited HCA No. S630/95 **Sidoo Shipley v. Capital Insurance Ltd.** in support of his contention. The decision in **Pavy's case** was given by the Judicial Committee of the Privy Council in December 1993 by which date, the instant action had several months before been entered on the general list of cases for trial.

It is not clear from Sidoo Shipley's case if the action had already been set down on the general list for trial. On an O.14 application brought in that case, the learned judge having considered that there was delay in bringing the applicant without there being any explanation for such delay, awarded only $\frac{3}{4}$ of the plaintiff's costs to her. I, of course, am not bound by that decision. I consider that the instant case is somewhat different to **Sidoo-Shipley's case**. When **Pavy's case** was described, it ought to have been especially clear to both parties that the defence in the instant case would have been considerably weakened. The matter already having been entered for trial, perhaps the plaintiffs considered it the more prudent cause to wait for the trial. I see nothing wrong with that approach in these circumstances and therefore I am

not persuaded that the plaintiffs ought to be denied their costs or any part thereof. The defendant company shall pay to the plaintiffs their costs of the action to be taxed in default of agreement.

Dated this 30th day of June 1999.

Joseph Tam

Joseph