IN THE COURT OF APPEAL OF BELIZE AD 2022
CIVIL APPEAL NO 2 OF 2018

KLAAS REIMER (as administrator for the Estates of Gerhard Thiessen, Dora Thiessen, Martin Reimer And Duane Reimer) Appellant

v

INSURANCE CORPORATION OF BELIZE LIMITED Respondent

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BEFORE:

The Hon Madam Justice Marguerite Woodstock Riley	-	Justice of Appeal
The Hon Madam Justice Sandra Minott-Phillips	-	Justice of Appeal
The Hon Mr. Justice Peter Foster	-	Justice of Appeal

A Marshalleck SC with J Ysaguirre for the appellants.
D Bradley with J A Bradley for the respondent.

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20 October 2021 and 18 May 2022

WOODSTOCK RILEY, JA

[1] This was the rehearing of an Appeal by Klaas Reimer (as administrator for the Estates of Gerhard Thiessen, Dora Thiessen, Martha Reimer and Duane Reimer) ("Reimer") and the application by Insurance Corporation of Belize Limited ("the Insurer") to vary the Trial Judge's decision.

Background

[2] Reimer as administrator of the estates of four persons fatally injured in a motor vehicle accident brought an action against Linea Dorado Mundo Maya Tourist Transportation of Guatemala and Francisco Mayen Sevalles, owner and driver of the other vehicle involved. (''the Insured'')

[3] The Insurer was duly served with a true copy of a Notice of Action to Insurer pursuant to the provisions of the Motor Vehicle Insurance (Third Party Risks) Act ("The Act") and the Registrar of the Supreme Court also in accordance with the Act, duly certified that the proceedings were correct and in order.

[4] Reimer obtained a judgment against the Insured on the 4th May 2012 with interest on the judgment at the rate of 3.5 percent per annum from June 22, 2004 to May 4, 2012 and at the rate of 6 percent per annum from May 4, 2012 until payment. Costs of $74,013.60 were also awarded.

[5] Proceedings were then instituted by Reimer against the Insurer pursuant to section 19 of the Motor Vehicle Insurance (Third Party Risks) Act ("The Act") seeking payment of the full sums awarded.

[6] The Insurer shortly after the institution of the claim paid to Reimer's attorney-at-law the sum of $108,756.00, comprising damages, prejudgment interest and costs, less payment previously made by the Insurer. The breakdown was attached to the Defence. That was the extent it claimed of its obligation to Reimer pursuant to the cover provided and the Act.

[7] The Insurers had issued the Insured a cover note in respect of the motor vehicle which provided as follows:

> "*Having proposed to the Insurer for insurance of the motor vehicle described in the Schedule and having paid the Deposit Premium the Cover Note indicated below is provided in terms of the Insurer's usual form of Policy applicable thereto subject to*

the Special Conditions or Restrictions (if any) indicated below for the period of Cover stated."

"Cover – Third Party Act"

"CERIFICATE OF MOTOR INSURANCE

I HEREBY CERTIFY that this Cover Note is issued in accordance with the provisions of the Motor Vehicle Insurance (Third Party Risks) Ordinance 1980."

[8] "Cover" – was a typed section of the cover note and "Third Party Act" was hand written in the space provided.

[9] Reimer submitted entitlement to recover the full amount of the judgment by virtue of section 19 of the Act:

> "*By reason of the provisions of section 19 of the Act the Defendant is liable to pay to the Claimant the full amount of the judgment being $654,285.54 together with interest thereon at the rate of 6 percent per annum from the 4th May, 2012 until payment in full and, if the amount of the judgment exceeds its liability under the terms of the Policy, to claim that excess pursuant to section 19(4) from the insured, Linea Dorada*." (Paragraph 6 of Statement of Claim)

[10] The Insurer pleaded that the cover note issued to the owners of the motor-bus covered the liabilities of the owners and their authorized driver only to the extent required by the Act. The alleged liability to pay the full amount of the judgment was disputed.

Judgment

[11] The Trial Judge identified the issues as

1. "*Whether liability is unlimited under the Cover Note issued by the Defendant;*

2. *Whether the Defendant as the insurers are liable to pay the full judgment less the amount already paid to the claimant as the third party pursuant to section 19 (1) of the Motor Vehicles Insurance (Third party risks) Act. Chapter 231 ("the Act") or is the Claimant's liability limited to the Statutory minimum cover under the Act of $50,000.00 per persons and $200,000.00 in total for any one accident; and*

3. *Assuming that recovery is so limited, whether awards of interest and costs are recoverable by the third party from the insurers in excess of the minimum statutory amounts*."

[12] The Trial Judge's findings were:

(i) The cover note did not confer unlimited liability in the form issued by the Insurer but that it was issued to provide to the insured the minimum cover required by the Act. "*Such is the plain and ordinary meaning of the words in the cover note*."

(ii) The Insurer was not liable to pay the full judgment but that liability was limited to the statutory minimum cover under the Act of $50,000.00 per person and $200,000.00 in total for any one accident.

(iii) With regard to interest and costs, *"I unhesitatingly find that the Claimant is entitled to recover interest on the sum paid pursuant to the Cover Note and costs thereon pursuant to S. 19(1) of the Act."*

The Appeal

[13] Reimer appeals as follows:

Grounds of Appeal

(i) The Learned Trial Judge erred in law and misdirected himself in construing the terms of the cover note to find that the cover fixed upper limits on the insurance coverage it provided in accordance with the lower limits of coverage required by the Motor Vehicle Insurance (Third Party) Risks Act.

(ii) The Learned Trial Judge erred in law and misdirected himself in ordering that judgment was to be entered for the Claimant for interest on the sum paid from May 6th, 2012, a date arbitrarily determined, until payment in full and for prescribed costs on that sum.

(iii) The Appellant seeks an order that judgment and order of the Chief Justice be set aside and an order that judgment be entered for the Claimant for the amounts claimed in the claim and costs.

[14] The Insurers sought a variation of the Trial Judge's decision contending.

1) Having correctly found that the Claimant's policy limit were the minimum statutory limits, the Learned Trial Judge erred in law in awarding the Claimant interests and costs on the sums awarded in so far as those costs and interest exceeds the mandatory statutory limits of liability and the Respondent's Policy limit.

2) The Learned Trial Judge erred in law and misdirected himself in finding that the Claimant is entitled to recover interest on the sum paid pursuant to the Cover Note and costs thereon pursuant to section 19(1) of the Motor Vehicle Insurance (Third Party Risks) Act even where such interest and costs is over and above the statutory minimum, which was the cover provided by the Claimant.

3) The Learned Trial Judge erred in law and misdirected himself in finding that the word "including" in section 19(1) of the legislation was to be

construed as meaning 'in addition to' or 'as well as', and so found that section 19(1) imposed an obligation on an insurer to pay costs and interest over and above the limit imposed by the Policy without reference to said limit.

[15] The Trial Judge and both parties reviewed the various authorities that have considered the issue of interpretation of Third Party Acts and the liability of Insurers.

The Statutory Framework: The Motor Vehicle Insurance (Third Party Risks) Act

[16] **Section 3** of the Motor Vehicle Insurance (Third Party Risks) Act of Belize prohibits a person from using "*a motor vehicle on a public road in Belize unless there is in force in relation to the use of the motor vehicle ……. a policy of insurance in respect of third party risks as complies with the requirements of this Act"*.

[17] **Section 4** of the Act sets forth the requirements which a policy of insurance must satisfy in order to be compliant with the Act. Section 4 provides:

> "4 (1) *In order to comply with the requirements of this Act, a policy of insurance must be a policy which,*
>
> *(a) Is issued by a person who is an insurer;*
>
> *(b) Insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death or bodily injury to any person or damage to any property caused by or arising out of the use of the motor vehicle on a public road; and*
>
> *(c) Insures such person, persons or classes of persons as may be specified in the policy in respect of any statutory*

liability which may be incurred by him or them under the provisions of this Act relating to the payment of the benefits mentioned in section 5, but such policy shall not be required to cover,

(i) *liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment;*

(ii) *except in the case of a motor vehicle in which passengers are being carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death or bodily injury to persons being carried in or upon entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which the claims arise;*

(iii) *any contractual liability;*

(iv) *liability for death or bodily injury in excess of fifty thousand dollars in respect of any one claim by one person;*

(v) *liability for death or bodily injury in excess of two hundred thousand dollars in respect of the total claims arising from any one accident;*

(vi) liability in excess of twenty thousand dollars for damage to any property, arising from any one accident;

(vii) liability for damage to the motor vehicle or to property owned by or in the control of the insured.

(2) Notwithstanding anything in any enactment, rule of law or the common law, a person issuing a policy of insurance under this section shall be 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.

…

…

….”

[18] Section 5 (1) – “*Notwithstanding anything in any enactment, rule of law or the common law and without prejudice to any claim or action for damages made as a result of negligence, the insurer of a person who was using a motor vehicle at the time of an accident involving the said vehicle out of which any bodily injury arose shall, irrespective of whether such person be negligent of not, pay as benefits to the injured third party all reasonable expenses incurred as a result of that injury for necessary medical, surgical, dental, hospital and nursing services up to an amount not exceeding five thousand dollars*.”

[19] Section 19 (1) – “*If*, *after a certificate of insurance has been issued under section 4(3) … 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 4(1)(b) or (c) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then,… …, … … the insurer shall, subject to 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:

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability he shall be entitled to recover the excess from that person."

[20] The Trial Judge ultimately determined that the handwritten reference to "Third Party Act" in the section "Cover" meant that the cover note was restricted in respect of liability to the third parties to the extent of the requirements of the Act. At paragraph 17 he noted "*As I see it, the words have to be read together to achieve their full meaning. Plainly, the insurers were identifying in one group of words that the cover note was in respect of liability to the third parties to the extent of the requirements of the Act. This would be in contradistinction to the issuance of comprehensive cover or cover up to specified monetary limits whether above or below the minimum prescribed as mandatory by the statute. This construction stands to reason and is consistent with the explanation embodied in the affidavit of Evodia Lawrence, where she said that this is the basic cover required under the law with no additional or other benefit. There is no evidence before the Court to suggest that the word "basic" would be integral to such cover or is recognized by industry usage.*"

[21] It is important to note that in the cases cited by both Counsel **Harker v Caledonian Insurance Company [1980] 1 Lloyd's REP** and **Eric Gallet v Motor General Insurance Belize 141 of 1976**, while confirming that an Insurer is entitled to limit its liability in the terms of the statutory minimum provided in Third Party Acts and not be liable for the full judgments obtained by Third Parties, the cover was expressly limited. As Counsel for the Appellant points out the policies therein being interpreted, on their faces limited liability of the Insurer to the statutory minimum.

[22] In **Harker**, Lord Diplock noted "*The policy issued in the instant case expressly excluded any liability of the insurers to indemnify the assured for any sums in excess of the money limits so specified*".

[23] In the case before us the Insurer did not expressly set out the minimum required by the Act, it identified cover as "Third Party Act". Is that sufficient to indicate clearly the coverage provided?

[24] There is considerable authority on the rules of construction applicable to insurance policies. The Appellant emphasized that the cover note is sparse in its terms and was prepared by the Insurer so that the contra proferentem rule applied. Where there is ambiguity in the policy the court will apply the contra proferentem rule, since the printed parts and usually the written parts are produced by the insurers, it is their business to see that precision and clarity are attained and if they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the injured[1]. The insurer here could have written in the actual minimum cover, or minimum as required by Third Party Act, or "bare", or "basic" or any other similar designation.

[25] However, that consideration alone does not resolve the issue, the authorities including Halsbury as cited, equally indicate that where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit only one meaning the rule has no application. Further, on a reasonable construction, where there are two possible interpretations, only one of which makes commercial sense the contra proferentem principle would be considered inapplicable.

[26] There was no merit in the Insurer's submission that the Appellant was seeking to expand the cover. The issue is the interpretation of the cover indicated as provided.

[27] The Insurer raises the issue of privity of contract. The legal principles arising from the doctrine of privity of contract prevent a third party from suing under a policy of insurance to which he is not a party. The general legal limitation is removed by section

[1] Volume 25 Halsbury's Laws of England; 4th Edition; paragraph 87

19 of the Act which permits an injured third party who has secured judgment against an insured to enforce that judgment directly against the insurer notwithstanding that he is not a party to the contract of insurance. Counsel for the Respondent submitted that only the insured and not the third party could rely on contra proferentem. However, before the court is the interpretation of the contract of insurance and all points of construction can be considered.

[28] There is merit in the submission of the Insurer that the factual matrix should be considered in interpretation and the business efficacy of the contract. That the Court should not be able to indicate a limit of the coverage and would in effect be determining that there was unlimited cover, an open ended exposure on the Insurer.

[29] One interpretation is that "Third Party Act" means cover is the minimum required of the Act. The other would be that the Third Party Act prescribes a minimum but does not set a limit, there can be other coverage in compliance with the Act, and having not specified coverage, coverage is unlimited.

[30] The Construction of a policy is a question of law not a question of fact. A policy of insurance is to be construed in the first place from the term used in it, which terms are themselves understood in their primary, natural and ordinary sense. Wherever possible a policy will be construed in accordance with commercial commonsense.

[31] The Jamaican Court of Appeal in ***NCB Insurance Company Limited v Claudette Gordon-McFarlane*** [2014] JMCA Civ. 51 had this to say as well about interpreting formal documents:

> "*… in interpreting any provision in a contract, one must give the words their plain and ordinary meaning, and this meaning can only be displaced if it produces a commercial absurdity (per Lord Dyson in John Thompson and Janet Thompson v Goblin Hill Hotels [2011] UKPC 8). In such a case one might get assistance from the context, the background and the other provisions in the document*."

[32] Counsel for the Respondent relied on the Jamaican Court of Appeal decision **Globe Insurance Company of the West Indies Limited v Paulette Johnson** a decision in which the court considered itself bound by the Privy Council decision in **Goberdhan v Caribbean Insurance Co Ltd** {1998} 2 Lloyds's Law Reports 449, that the relevant section of the Act regarding liability to third parties did not render the insurer liable to the third party for a greater sum than the amount provided in the legislation. In that regard whatever the interpretation of 'Third Party Act', even if interpreted as unlimited, recovery would be restricted to only the statutory prescribed amount.

[33] I would be in agreement with the frustration the Hon. Mr Justice Forte, P. (as he then was) expressed in **Globe**, citing an earlier decision he gave. '*Such a construction would in my opinion not be in keeping with the purpose of the Act ie to protect the rights of third parties. To say that the insurer could enter into a contract of insurance to indemnify the insured in respect of liabilities to third parties, to an amount in excess of the minimum statutory requirements and then deny the third party of that protection by reliance on the very section of the statute which is directed at securing his protection, would to my mind, be absurd, and would do injustice to the intention of the legislation*'.

[34] That nonetheless is the position taken on the interpretation of the legislation. This Court of Appeal is not similarly bound by the Privy Council and in my opinion not only is the outcome of the interpretation absurd it is not sustainable on an interpretation of section 19 of the Act.

[35] However, the issue before us remains what was the coverage provided by the cover note and what can the Appellant recover. When one considers the reasonable interpretation of specifying "Third Party Act" as the cover it is a reasonable conclusion that the coverage provided is that indicated in the Third Party Act as a minimum requirement to satisfy the Act. As pointed out by Counsel for the Respondent the evidence in the Affidavit of Evodia Lawrence, General Manager of Insurance Corporation of Belize Limited was unchallenged and relied on by the Trial Judge. The contract specifically identifies the Act as its coverage and that would be the minimum provisions required in the Act. In the circumstances the Appeal would be dismissed except as indicated below.

[36] **Re Interest and Costs**

Section 19 of the Act provides "*The insurer shall, subject to 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***".

[37] The Insurer seeks to assert that interest and costs awarded also fall within the coverage limit. The **Harker** case was cited, but does not in fact support the Insurer's contention. In that case interest and costs were considered in addition to the award. Lord Diplock noted, "*There are instances, of which costs and interest on the judgment are examples, where the insurer would be liable in the direct action for sums in excess of the permissible monetary limits upon the cover afforded by the policy*".

[38] The Learned Trial Judge reviewed the considerable authorities where the Courts in the region and the Privy Council construed that and similar provisions. In **Greaves v New India Assurance Co Ltd (1975) 27 WIR 17**, Justice Williams construing words equivalent to s.19 (1) of the Act noted "*In my view the obligation of an insurer under the section is to pay over and above the limit imposed under the policy, the costs of the suit and interest awarded without reference to any limit*".

[39] The Court of Appeal of Trinidad and Tobago in the case of **Prudential Insurance Co Ltd v Stafford (1997) 52 WIR 449**; the Privy Council in **Matadeen v Caribbean Insurance Co Ltd [2002] UKPC 69**; and in Belize, **Joel Clarke et al v Home Protector Insurance Co Ltd Claim No. 182 of 2010** all noting that interest and costs are separate, 'in addition to', 'as well'.

[40] The Respondent submitted there was a line of authority interpreting 'including', relying on the Eastern Caribbean Supreme Court decision **Jackilyn Henry McGibbon v**

National General Insurance Corporation N V. In that decision George-Creque J reviewed several decisions on this point including those cited above, ultimately indicating her agreement with the dissenting opinion in **Prudential** interpreting 'including' in its 'ordinary meaning' and determining interest and costs being subsumed within the statutory minimum.

[41] While all would be persuasive authority I am persuaded the provisions of section 19 mean as well as. The section identifies what an insurer is liable to pay a third party in respect of the liability, any amount in respect of costs and any sum payable as interest "on that sum".

[42] In the circumstances the Respondent's application to vary the Trial Judge's decision is dismissed. The decision will be varied only to the extent that the date from which interest runs is varied from May 6th 2012 to May 5th 2012. Interest at 3.5% per annum was awarded to May 4th 2012 and interest at 6% should therefore run from May 5th 2012.

[43] Costs

Each party to bear their own costs of this Appeal.

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WOODSTOCK RILEY, JA

MINOTT-PHILLIPS, JA

[44] I had the privilege of reading in draft the reasoned decision expressed by my sister, Woodstock Riley JA. I agree with her decision and reasons and have nothing to add.

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MINOTT-PHILLIPS, JA

FOSTER, JA

[45] I likewise have read the draft decision of my learned sister Justice of Appeal Woodstock-Riley and I concur with the reasons and the decision. I have nothing further to add.

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FOSTER, JA