CIV.APP.41/80

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:

Hon. Mr. Justice Ken E.O. During - Justice of Appeal

Hon. Mr. Justice M.E.A. Cole - Justice of Appeal

Hon. Mr. Justice S.T. Navo - Justice of Appeal

BETWEEN:

MOTOR & GENERAL INSURANCE CO. LTD., - APPELLANT

AND

MOHAMED SHERIFF - RESPONDENT

A.E. Manly-Spaine for Appellant.

J.B. Jenkins-Johnston for Respondent.

JUDGMENT DELIVERED THIS 12TH DAY OF NOVEMBER, 1984

KEN DURING J.A.

This is an appeal against the judgment of Johnson J. The action was commenced before Davies J. who died before delivering judgment and by consent Johnson J. delivered judgment on the evidence taken by Davies J.

Johnson J. awarded the total sum of Le.4,551 to the respondent being the value of goods on vehicle WR.9198 which he claimed were in the vehicle at the time of an accident which took place on the 28th January, 1976. The appellant claimed that he was entitled to be indemnified by the appellants for goods to the total value of Le.4,551.00 which were in the said vehicle and being carried for two customers who oned them.

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Evidence was led by the respondent in support of his claim and the Learned Judge made specific findings of fact viz:-

1. That the plaintiff's vehicle was comprehensively insured with the defendant company.
2. That the same vehicle was carrying goods to the value of Le.4,551.
3. That the goods were destroyed in an accident.
4. That the plaintiff (respondent) was liable for the loss of the goods belonging to the second and third witnesses and his

We hold that the evidence before the Learned Judge justifies each of the findings of fact.

The Learned Judge then went on to consider whether the goods in question were covered by the terms of the Policy of Insurance and he sets out portions of the policy of incurance. He considered Section 11, (1) (II) which states as follows:-

1. Subject to the limit of liability the Company will indemnify the insured against all sums including claimant's costs and Expenses which the insured shall became legally liable to pay in respect of

2. Damage to property caused by the use (including the loading and/or unloading) of the motor vehicle.

Section II (d) provides as follows:-

Provided always that the company shall not be liable in respect of

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(d) Damages to property belonging to held in trust by or in the custody of control of the insured or a member of the insured's household or being covered by the motor vehicle.

Apart from these printed provisions in the Police of Insurance, there is also inserted certain indorsements and the relevant portions considered by the Learned Judge read as follows:-

1. The Company shall not be liable in respect of

(a) Any accident loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss"

The vehicle was comprehensively insured for "goods and 25 passengers".

In his Judgment the Learned Judge said:-

> "In my judgment, I hold that the Defendant Company is clearly liable under Section II (II) of the Policy of Insurance, Exh.B. herein. I also hold that the Deft. was liable under the cover note, Exh.A. which provides comprehensive cover for goods and 25 passengers".

The appellants were informed in writing by the Respondent about the claim made by his customers and he let them know the figure claimed which had been quantified before legal proceedings were taken against them.

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In the Court below and before us Counsel for the Appellants argued that they were not liable to indemnify the Respondent for the loss and that they would only have been liable if judgment had been obtained against the Assured in action, instituted by the customers. Counsel cited no authority for such a proposition. In our view liability is incurred when the sum payable has been qualified and claim made by the Assured to the Insurer. There is definitely in this case privity of contract between the Insured and the Assured. The Third Party could not bring an action against the Insurer because there is no provity of contract between them and the Insurers. We see no reason why an Assured if a genuine claim is made by a Third Party should wait until Judgment has been entered against him before he makes a claim for indemnity. The learned Judge referred to the case In Re Law Guarantee Trust and Accident Society (1914) 2 Ch. at page.639, where BUCKLEY L.J. said:-

> "The equitable doctrine is that the party to be indemnified can call upon the party bound to indemnify him specifically to perform his obligation, and to pay the full amount which the creditor is entitled to receive, and that whether having received it he applies it in payment of that creditor or not is a matter with which the party giving the indemnity is not concerned".

We see no reason why the Appellants should not perform their obligation but try to escape liability by arguing that judgment should first have been entered against the Respondent before they are liable to honour their obligation. If it was contemplated that judgment should first have been obtained against the Assured before the Insurance Company becomes liable one would expect such a provision to have been made in the Police of Insurance.

We find no merit in the appeal which we dismiss with costs.

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