

CONTEH v. NORTHERN ASSURANCE COMPANY LIMITED

(SUPREME COURT (Dobbs, J.): August 20th, 1965
(Civil Case No. 314/64)

- 5 [1] Insurance—motor vehicle insurance—obligations of insurers—liability
to indemnify permitted driver: By virtue of ss.7(1) and 11(1) of
the Motor Vehicles (Third Party Insurance) Act (*cap.* 133), an in-
surance company is bound to indemnify a person who while using a
motor vehicle with the permission or on the order of a person insured
10 with the company incurs liability by reason of the death of or bodily
injury to a person (page 264, lines 15–28).
- [2] Insurance—motor vehicle insurance—permitted driver—insurers liable
to indemnify permitted driver: See [1] above.
- 15 [3] Insurance—motor vehicle insurance—rights of third parties—no direct
right of action against insurers for property damage: A third party
is not able to require insurers to compensate him under the terms of
s.11(1) of the Motor Vehicles (Third Party Insurance) Act (*cap.* 133)
if he obtains a judgment against the assured in respect of property
damage, even though the policy actually insures the assured against
20 liability for such damage, since it is not a liability required by s.7(1)
of the Act to be covered by a policy (page 263, line 29—page 264,
line 2).
- [4] Insurance—motor vehicle insurance—rights of third parties—no direct
right of action against insurers where liability not required to be
covered: The obligation to satisfy the claims of third parties, imposed
25 on insurers by s.11(1) of the Motor Vehicles (Third Party Insurance)
Act (*cap.* 133), is one in respect of liabilities required by s.7(1) of the
Act to be covered by a policy; insurers cannot therefore be made
liable by a third party to satisfy a claim in respect of a liability in fact
covered by the policy but not required to be so covered (page 263,
line 29—page 264, line 2).
- 30 [5] Road Traffic—insurance—obligations of insurers—liability to indemnify
permitted driver: See [1] above.
- [6] Road Traffic—insurance—permitted driver—insurers liable to indem-
nify permitted driver: See [1] above.
- 35 [7] Road Traffic—insurance—third party liability—rights of third parties—
no direct right of action against insurers for property damage: See [3]
above.
- [8] Road Traffic—insurance—third party liability—rights of third parties—
no direct right of action against insurers where liability not required
40 to be covered: See [4] above.

The plaintiff brought an action against the defendant insurance company to recover compensation in respect of property damage

sustained as the result of an accident involving a motor vehicle insured with the defendants.

The plaintiff had obtained a judgment against a Mr. Bah in an action for damages for negligence in the driving of a motor vehicle. Mr. Bah was insured with the defendant company. The judgment was in respect of damage to the plaintiff's property and not for loss of life or bodily injury. The plaintiff sought to recover the amount of his judgment from the defendants on the basis of ss.7 and 11(1) of the Motor Vehicles (Third Party Insurance) Act (*cap.* 133).

Statute construed:

Motor Vehicles (Third Party Insurance) Act (Laws of Sierra Leone, 1960, *cap.* 133), s.3:

The relevant terms of this section are set out at page 262, lines 15-20.

s.7: The relevant terms of this section are set out at page 262, line 23—page 263, line 4 and page 264, lines 5-9.

s.11: The relevant terms of this section are set out at page 263, lines 7-19.

Smythe for the plaintiff;

Candappa for the defendants.

DOBBS, J.:

The plaintiff in this case obtained a judgment against one Mr. Bah on October 2nd, 1964 in this court for the sum of Le1,870.00 in an action for damages for negligence in the driving of a motor vehicle. It is agreed by counsel on both sides that the judgment was for damage to property and not for loss or bodily injury to a person.

Mr. Bah (hereinafter called "the insured") was insured with the defendant company under a commercial vehicle policy issued in respect of a motor vehicle which was involved in the accident giving rise to the claim for damages. By consent the policy was put in and marked Exhibit A. The insured was covered in the following terms:

"Subject to the limits of liability, the company will indemnify the insured against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of—

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle."

There are certain exceptions to liability which are not relevant in this action.

The plaintiff has sued the defendant company to recover the amount of his judgment obtained against the insured. It was agreed by both counsel that under the general law the defendant company is under no liability either in contract or in tort to the plaintiff. The plaintiff maintains, however, that by virtue of the Motor Vehicles (Third Party Insurance) Act (*cap.* 133) (hereinafter referred to as "the Act") the defendant company is bound to satisfy the judgment obtained against the insured. It was agreed by counsel that a decision on this point would dispose of the action and in consequence no witnesses were called to give evidence.

Let us examine the relevant provisions of the Act. Section 3(1) provides:

"Subject to the provisions of this Act no person shall use, or cause or permit any other person to use a motor vehicle unless there is in force in relation to the user of that motor vehicle by such person or such other person, as the case may be, such a policy of insurance . . . in respect of third party risks as complies with the provisions of this Act."

The requirements for such a policy of insurance are set forth in s.7(1) of the Act, which is as follows:

"A policy of insurance for the purposes of this Act must be a policy which—

(a) is issued by an insurer approved by the Governor in Council; and

(b) insures such person 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 of or bodily injury to any person caused by or arising out of the use of a motor vehicle covered by the policy:

Provided that such policy shall not be required to cover—

(a) 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; or

(b) save in the case of a passenger vehicle or where persons are carried by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to a person being carried in or upon or enter-

ing or getting on to or alighting from a motor vehicle at the time of the occurrence of the event out of which the claims arise; or

(c) any contractual liability."

The provisions for direct recourse to the insurer are contained in s.11(1) of the Act, the relevant portions whereof are as follows:

"If after a certificate of insurance has been issued 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 . . . issued for the purpose of this Act, 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 this section, pay to the persons entitled to the benefit of such judgment any sum payable thereunder in respect of the liability including any sum payable in respect of costs and any sum payable by virtue of any law in respect of interest on that sum or judgment."

As I understand Mr. Smythe's argument, it is that the insured is clearly covered by the policy against liability for damage to a third party's property. I may say that I agree with him so far. Invoking the words "being a liability covered by the terms of the policy" contained in the sub-section, he maintains that the plaintiff has obtained a judgment in respect of such liability and therefore he is entitled to direct recourse to the defendant company to satisfy his judgment.

With respect, I do not agree. The words I have quoted must not be divorced from their context. In my opinion, the words "being a liability covered by the terms of the policy" are an adjectival phrase qualifying the word "liability" which appears in the earlier phrase "judgment in respect of any such liability as is required to be covered by a policy issued for the purposes of this Act." Reference to s.7(1) of the Act shows that the liability which is required to be covered by a policy issued for the purposes of the Act is for the death of or bodily injury to a person. In the present case, the judgment obtained by the plaintiff against the insured was not for the death of or bodily injury to a person, so that it is immaterial that it happened to be in respect of a liability actually covered by the policy. I therefore hold that this case does not fall within s.11(1) of the Act so as to enable

the plaintiff to demand satisfaction of his judgment from the defendant company.

In passing, I think I should deal with a further point made by Mr. Smythe. He referred to s.7(2) of the Act, which is as follows:

“Notwithstanding anything in any law contained a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of person.”

With respect, I cannot see how this affects the question whether the plaintiff can recover direct from the defendant company. In the hope that it may be of assistance to members of the profession who have to advise on motor insurance matters, I shall try to show what I think is the effect of the sub-section. I think I can best do so by taking a hypothetical set of circumstances. Suppose in respect of my motor car I have an insurance policy wherein the insurance company states that in addition to myself it will cover any person who is driving on my order or with my permission. I lend the car to a friend who negligently runs over and injures a pedestrian. The pedestrian sues my friend and obtains judgment against him. Although the insurance company has stated in the policy that they will indemnify my friend, they might on his demand to be indemnified say: “We made no contract with you to indemnify you and you cannot force us to.” In view of the terms of the sub-section, in the case I have instanced the insurance company could not refuse to indemnify my friend and the pedestrian would be entitled to proceed under and subject to the terms of s.11 to have his judgment satisfied by my insurance company.

The action is accordingly dismissed with costs to the defendant company to be taxed.

Suit dismissed.