

AM:-

Hon. Mr. Justice C.O.E. Cole	- Chief Justice
Hon. Mr. Justice S.C.H. Betts	- Justice of the Supreme Ct.
Hon. Mr. Justice E. L. Luke	- Justice of the Supreme Ct.
Hon. Mrs. Justice A.V.A. Awunor-Renner	- Justice of Appeal
Hon. Mr. Justice S.C.E. Warne	- Justice of Appeal

Civil Appeal No. 2/75

BEEN:-

Motor & General Insurance Co. Ltd. - Appellants

Vs.

P.C. 431 Arkurst

and

- Respondents

P.C. 173 Santigie

MENT

O. Garber Esc. (with him M.J. Clinton Esc. for the Appellants).

K. Basma Esc. (with him U.W. Coker Esc. &

Christine Harding and G. Betts Esc.) for the Respondents

HE. J.A.

My Lords, I have had the opportunity and pleasure of reading
erudite ^{judgment} ~~opinion~~ of my Honourable and Learned brother Luke, J.S.C.

I wish to express my gratitude and great appreciation for the
industry he has exerted and the lucid reasoning he has advanced in
arriving at his final conclusion. However, with the greatest respect
to him, I do not agree with his reasoning nor the final conclusion.
Accordingly, My Lords, I shall treat the cause before us in this way.

The facts of the case have been clearly stated by my learned
brother Luke, J.S.C. and the course the ~~cause~~ has travelled to this
point. I entirely agree with him on what is to be proved by the
Respondents as required by S. 11(1) of Motor Vehicles (Third Party
Insurance) Act Cap. 133 of the Laws of Sierra Leone (hereinafter called
"the Act"). I shall not tire you with a repetition of what my

Learned brother has already stated.

It is my considered ^{Judgment} ~~opinion~~ that the claim of the respondents under Section 11(1) ^{of the Act} is absolute. The respondents are not parties to the contract between the Insurer and the Insured, nonetheless this section gives the Respondents the right to make the claim. See sub-section 11(1) beginning at "notwithstanding"..... to the end.

I agree with the matters which, my Learned brother said are beyond dispute with regard to Police Sergeant Coker's evidence. Under (iv), I feel the requirements stated therein, in accordance with S. 6 of "The Act" and Rule 10 of the Motor Vehicles (Third Party Insurance) Rules deal with the issue of road licence for the vehicle. This has nothing to do with the third party under "The Act" except in so far as the expiry date of the policy of Insurance is concerned vis a vis his claim under S.11(1) of "The Act".

My Lords, I do not think it is necessary for this Court, in the instant case, to construe the provision of S. 6 of "The Act," since the issue of a valid road licence for car WU.6303 does not arise. In order to sustain their claim, the respondents did not have to prove whether the vehicle had a valid road licence or not.

What is the evidential value of Exh. "B"? I will concede that the Principal Licensing Authority entered more particulars in Exh. "B" than was required by law. Did this render the entry invalid or of no evidential value? I do not think so.

I will examine the provision of law which made Exh. "B" receivable in evidence. S. 61 (1) Road Traffic Act, No. 62 of 1960 had cured the infraction of what would otherwise be hearsay evidence.

S. 61(1) reads:

"In any cause or matter relating to a motor vehicle or to any licence, permit certificate or other document, issued under this Act or any regulation made hereunder, the production of a document purporting to be, a copy of any

entry in a register or a copy of a licence, permit, certificate or other document as aforesaid by or from the records of the Principal Licensing Authority or a Licensing Authority, or any officer deputed by such authority for that purpose, shall be prima facie evidence of any matter, fact or thing stated or appearing thereon."

It is therefore evident that the entries on Exh. "B" are prima facie evidence of what is stated thereon, provided the entries are ones required to be made according to law.

See Lyell V. Kennedy 14 App. Cas. 437 at 449

However a clear distinction must be drawn between the cases referred to by my learned brother and myself supra, from the instant case. This Hon. Court has never been called upon to interpret the entries on the Register of Motor Vehicles And Trailers, nor has it ever given an opinion on their evidential value. In a long line of cases it has been held, that what is not required to be entered according to law cannot be admissible in evidence as proof of such entries. It should be noted, however, that these cases have dealt primarily with registration of births, deaths, baptisms, marriages, and pedigree. In a cause of this nature, it is my considered view, the principle is not applicable.

As my learned brother has clearly pointed out the relevant entry on Exh. "B" is:

RENEWAL OF LICENCE

<u>PERIOD</u>					<u>INSURANCE POLICY</u>
Year	Licence No.	From	To	No.	Closing Date
1971	529	27/3	31/12	2	3.8.71

The entries about Insurance on Exh. "B" appear not to be those that should have been on it; but this was a document which ought to be produced under S. 6 of the Act to the Licensing Authority, to obtain road licence. I think the Principal F

licensing Authority had an implied duty to record ^{what is on} the Certificate Insurance as produced on Exh. "B". My Lords, the provision S. 6 would be defeated if this were not done. Indeed the object of the Act would be nullified and the interest of justice would not be promoted. In my opinion, this entry of the certificate of Insurance constitutes prima facie evidence, that Policy of Insurance identified "Z" expired on 3rd August, 1971.

One cannot go beyond what is on Exh. "B". S. 61 (1) ^{supra} refers: This evidence is rebuttable but this has not been done.

This is the evidence the respondents relied on to prove their claim against Appellants, that on the 1st August, 1971 when the accident took place, the vehicle WU.6303 was insured with the Appellant company.

In any case, Ken Daring J. in making his findings did not rely on this evidence, and rightly so. He considered the entire evidence before him. He relied also on the evidence of Muctarr Kamara the witness for the Appellants.

The Learned Judge had this to say:

"In fact there is no evidence before this Court that the defendants were Insurers against Third Party risks of Mr. Thompson at the material time the accident took place."

The Court of Appeal, the Court found that there was some evidence before the High Court and they proceeded to evaluate and draw the necessary inference; the Court went further and dealt with the issue of estoppel in view of the evidence. The evidence of Police Officer Coker has been stated in the ^{Indirect} opinion of my learned brother. The evidence of Muctarr Kamara is pregnant with facts which the respondents could not have known or given in evidence.

My Lords, I am of the opinion that the Court of Appeal, after careful consideration of the evidence before the Lower Court, drew the correct inference that WU.6303 was insured with the Appellant

Company on the 1st August, 1971.

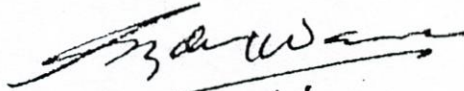
The Court had this to say:

"I think from this evidence it would have been proper to draw the inference that the vehicle was insured on the 1st August, 1971."

My opinion is fortified not only by the entry of the expiry date of Certificate of Insurance on Exh. "B", but also by the evidence of Kinnaird that "H.B.A. Thompson has a fleet policy with us. Payment Exh. D & E would be taken into account when it comes to payment of premium in respect of fleet policy: WU.6303 is part of fleet policy held by her. I cannot say whether the fleet taken in more than the two vehicles I have mentioned. She has more than 2 vehicles insured with us under fleet policy. Provided I am instructed I actually renew policy even ^{though} ~~through~~ premium not paid. I have previously renewed on instruction H.B.A. Thompson policy in respect of vehicle insured with us."

I will only add this point to what my learned brother has said about the issue of estoppel. That is to say, estoppel must be pleaded at the first opportunity. This, the Respondents failed to do. They therefore cannot avail themselves of the issue of estoppel.

My Lords, in view of what I have said supra, I would dismiss the appeal. ~~The appeal is accordingly dismissed.~~



S. C. E. Warne
Justice of Appeal.