

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

*Judgment Book*

IN COMMON LAW

CLAIM NO. C.L. E002 of 2002

BETWEEN            WALTRAUD EAST                            CLAIMANT  
  
AND                    THE INSURANCE COMPANY  
                          OF THE WEST INDIES                        DEFENDANT

R. Francis, along with Miss D. Robinson and Mrs. A. McBean-Wisdom instructed by Frater, Ennis & Gordon for Claimant.

C. Kelman instructed by Myers, Fletcher & Gordon for the Defendant.

**HEARD:** 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> January, & 6th February, 2004

**SMITH, J.**

1. The 19<sup>th</sup> day of November 1987 was a watershed moment in the life of Waltraud East the claimant. She had recently married a Jamaican Altamont East and came to reside in Jamaica. While they were travelling in a motor car from Kingston to Ocho Rios on reaching Moneague, they were involved in a collision with a motor truck owned by Triple "C" Electrical Company and driven by Collin Crooks.

2. Fate was most unkind as the claimant's husband was killed as a result of the injuries he received and she was seriously injured and had to be hospitalized both locally and overseas.

3. The claimant brought an action against Triple "C" Electrical Company and Collin Crooks in September 1989.

4. On the 18<sup>th</sup> July 2000 the claimant was awarded damages of \$20,784,964.51 against the defendants, in the Supreme Court of Jamaica.

5. The claimant was unable to enforce the judgment against the defendants, as by then Triple "C" Electrical Company had ceased operating and Collin Crooks, could not be located.

6. To compound the claimant's woes the original insurers of Triple "C" Electrical Company, Motor owner's Mutual Insurance Limited, in 1988 ceased operations and had their Insurance portfolio taken over by the Insurance Company of the West Indies.

7. The claimant then demanded payment of the judgment sum from I.C.W.I. They paid over the sum of \$750,000.00 on the 23<sup>rd</sup> March 2001 stating that that sum was the extent of the liability for which they had insured Triple "C" Electrical Company at the time of the accident.

8. The claimant negotiated the cheque and brought this action for the total amount of the judgment and costs which were awarded against Triple

“C” Electrical Company Limited under Section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act.

9. **ISSUES:**

- (a) Whether an injured third party by virtue of Section 18(1) of the Motor vehicle insurance (Third Party Risks) Act is entitled to recover against the Insurer a sum above the statutory limit (and in this case the sum of the judgment awarded by the Court).
- (b) Whether the acceptance by the claimant of the defendant's payment of \$750,000 estopped her from alleging that she is entitled to the greater sum of the judgment.
- (c) Whether the defendant is liable to pay interest on the judgment sum.

10. The claimant submitted that the defendant is liable to pay the claimant the sum claimed by virtue of being the insurers of Triple “C” Electrical Company at the time of the accident.

11. The claimant further submitted that this is so based on the interpretation of Section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act given by the Judicial Committee of the Privy Council and the Jamaican Court of Appeal. The claimant cited the cases of Free Lanka Insurance Company Limited v Ranasinghe 1964 A.C. 541 and Jamaica Co-

op Fire and General Insurance Company v Sanchez 1968 11 JLR 5 in support of their submissions.

12. On the other hand the defendant argued that the effect of the provisions of Section 18 of the Motor Vehicle Insurance (Third Party Risks) Act is to limit the amount which an injured third party can recover directly from the insurers. The requirement to pay only extends to a liability covered under Section 5 of the Act and consequently the insurer cannot be required to pay more than the prevailing statutory limit in 1987.

13. The defendant relied on the Privy Council decisions in the cases of Free Lanka Insurance Company limited v Ranasinghe [1964] 1 ALL E.R. 457, Suttle v. Simmonds [1989] 2 Lloyd's Law reports 227 and Matadeen v Caribbean Insurance Company Limited P.C.A No.46 of 1999 and submitted that the Privy Council in those cases was construing statutory provisions in Celon, Bermuda and Trinidad which were similar to the Jamaican provisions of Section 18 of the Motor Vehicles Insurance (Third Party Risks) Act.

14. In considering this case I found the Jamaican authority of our Court of Appeal – S.C.C.A 70/99 – Globe Insurance Company of the West Indies v Johnson & Stewart delivered on the 14<sup>th</sup> April 2000 very helpful and most instructive. In an excellent exposition of the law, and review of the cases Walker J.A in his judgment articulated that in construing the provisions of

Section 18(1) and Section 5(1)(2) & (3) of the Motor Vehicle Insurance (Third Party Risks) Acts, the liability of the Insurers to third parties is limited to an amount, which is the equivalent of the minimum statutory coverage.

15. He opined, that ... "In its present form the Act produces an unjust result for innocent third parties, and should be appropriately amended with the least possible delay."

16. Four years later the Act has still not been amended and continues to produce unjust results for innocent third parties. I am bound by the decisions both of the Privy Council and the Court of Appeal of Jamaica.

17. On the basis of those decisions I concluded that the effect of the provisions of Section 18 of the Motor Vehicle Insurance (Third Party Risks) Act is to limit the amount which an injured third party can recover directly from the insurers.

18. In the present case, based on the evidence of the two defence witnesses Miss Singh & Miss Garriques, witnesses of truth and with great experience in the Insurance Industry, I find that the policy in this case was limited to \$750,000.00 for death and injury to any one person at the material time.

19. Having determined the 1<sup>st</sup> issue as I have done I do not consider it necessary to go on to deal with the question of estoppel as was argued by the defence.

20. On the question of Interest as argued by the claimant, having determined that there was in fact a limit of \$750,000.00 to the policy in this case for death and injury to any one person, I am of the view that on that question the claimant would not succeed.