

62

IN THE SUPREME COURT OF SIERRA LEONE

Civ. App. 2/75

C.O.E. Cole	Chief Justice
S.C.W. Betts	Justice of the Supreme Court
E. Livesey Luke	Justice of the Supreme Court
A. Awunor-Renner	Justice of Appeal
S.C.E. Varne	Justice of Appeal

OTOR & GENERAL INSURANCE COMPANY LIMITED - APPELLANTS

Vs.

P.C. 431 ARREST

&

P.C. 173 SANTIAGE

- RESPONDENTS

MR.O. Garber Esq. (with him H.J. Clinton Esq. for the
Appellants) S.N.K. Basma Esq. (with him U.W. Coker Esq.,
Mrs. Christine Harding and G. Betts Esq.) for the
Respondents

J U D G M E N T

COLE, C.J.:— My Lords, I have already had the benefit and
pleasure of reading before-hand the erudite ~~judgments~~ ^{judgments} of my
learned brother, the Hon. Mr. Justice E. Livesey Luke, as
well as that of the Honourable Mr. Justice S.C.E. Varne.
Let me straightaway make it clear that with the final
conclusion of the Honourable Mr. Justice Luke I have no
dissent.

There is one significant point, however, in the course
of the reasoning of the Honourable Mr. Justice Luke with which
I do not quite agree. It relates to that portion of his
~~reasoning~~ in which he dealt in extenso with Exhibit 'B'.

With the greatest respect, taking into account his
reasoning, I do feel that in this particular instance this
case can be distinguished from the cases he has quoted. I
agree that it may not have been expressly stated in our rele-
vant Acts that the Motor Traffic Licensing Authority has duty to
record in writing the pre-requisite requirements that an

/c-n-ah
c-n-ah

erative Certificate of Insurance should be produced to them either before or at the time a licence was issued. I do feel, however, that taking into consideration all the statutory provisions to which my learned brother Justice Luke has already referred - and I will not tire you by referring to them in detail again - there seems to me an implied duty imposed on the Motor Traffic Licensing Authority to place on some kind of record the details of the relevant Certificate of Insurance presented to that Authority as required by law. Such a Licensing Authority may wish to keep separate books for recording those details before a licence for a particular vehicle is issued.

I would however endorse the procedure now carried on by the Motor Traffic Licensing Authority as disclosed by Exhibit 'B' as being appropriate in the circumstances of this case.

In my view, this neither renders Exhibit 'B' invalid or worthless or valueless. It has some evidential value which ought to be taken into account by both the High Court, the Court of Appeal and ourselves in considering the case of the parties concerned. In fact, I have done so in coming to my final decision. If my learned brother Luke's view is accepted on this point it will mean that, quite apart from the sociological jurisprudential value which expounds that Courts should endeavour where possible to make the law in their society ^{work,} where a defendant mulcted in damages and costs the High Court refuses for good and sufficient reasons to produce the trial before the High Court his or her third party certificate of insurance to satisfy the provisions of Section 11 of the Motor Vehicles (Third Party Insurance) Act (Cap. 133) (which I shall hereafter refer to as 'The Act') and the insurer refuses

c-15-26

64

to do the same or gives excuses that he does not keep proper records; the public will have nowhere to turn to.

In my view the main purpose of the combined effect of Section 11 of the Act - the basis of the claim before the High Court - and Section 6 of the Act as well as Rule 10 of the Motor Vehicles (Third Party Insurance) Rules (Cap. 133) (hereinafter referred to as 'The Rules') is that what is required to be produced to the Motor Traffic Licensing Authority and what, in my view, should be entered in the records of that Authority amongst other things, is a Certificate to show that on the date on which the licence comes into operation there will be in force - and I stress the expression 'there will be in force' - an operative policy in respect of the motor vehicle which is being licensed.

The evidence before us prove the contrary in my view. For, according to Exhibit 'B' the relevant licence came into force on the 27th August 1971 when there appears to be no operative Certificate of Insurance in force.

In sum, what I am endeavouring to say shortly and simply, is this. Section 11 of the Act should quickly be amended establishing effective provisions in our laws to enable members of the public who have been given judgment by the superior courts of our Republic to be lawfully indemnified by insurers regardless of the fact that the evidence at the trial points to the fact (as in this case) that notwithstanding that the required proof produced to the Motor Traffic Licensing Authority at the relevant time shows that on the date when the licence comes into operation there will not be in force a policy of insurance, in spite of the fact that there is conclusive evidence pointing to the fact that on the date of the accident there is a valid operative policy covering third parties. This is of obvious and utmost importance because, if as the law stands at present the provisions of Section 6 of the Act as well as Rule 10 of the Rules are not complied with, then Section 11 of the Act is inoperative. It is sincerely hoped that legislative measures regarding the whole question

Motor Vehicles Third Party Insurance in Sierra Leone will be quickly reviewed in order to avoid hardship to the public in this case with particular reference to victims of Motor accidents.

Finally, on the question of estoppel I do agree with the views expressed by my learned brother Luke that the principles of law expressed in Vanderpitte's case propound very sound doctrines of law on the subject and I will adopt and apply them.

I do not think any useful purpose will be served in remitting this case to the High Court for a re-trial because Exhibit 'B' speaks for itself most eloquently. It is my sincere hope that in the particular circumstances of this case, the appellants would not take gross advantage of legal technicalities. I say no more on this; that they will be properly and suitably advised in the public interest by their legal representative.

I would allow the appeal.

C. O. E. Cole
C.O.E. Cole
Chief Justice

4 April, 1976.

Go page 35