

IN THE SEYCHELLES COURT OF APEAL

Reportable

[2020] SCCA 18 December 2020
SCA 17/2018
(Appeal from CA 28/2017)

In the matter between

1. WILFRED VIDOT

2. MAHE SHIPPING COMPANY LIMITED
(rep. by Edith Wong)

Appellants

and

1. RICKY HENRY

2. SHIRLEY HENRY
(rep. by Serge Rouillon)

Respondents

Neutral Citation: *Vidot & anor v Henry & anor* SCA 17/2018) [2020] SCCA 18 December 2020).

Before: Fernando PCA, Twomey, Dingake JJA

Summary: second appeal – subrogation - interpretation of clause in insurance discharge form - Articles 1156-1162 Civil Code- whether moral damages claimable from tortfeasor after payment of damages by insurance company –

Heard: 4 December 2020

Delivered: 18 December 2020

ORDER

On appeal from Supreme Court (Dodin J sitting as court of first appeal).

The appeal is dismissed and the matter remitted to the Magistrates court for assessment of moral damages payable by the appellants.

JUDGMENT

TWOMEY JA (FERNANDO PCA AND DINGAKE JA concurring)

- [1] The Appellants are before this Court on a second appeal; the first appeal having taken by the Respondents in the Supreme Court following a decision of the learned Magistrate Burian in which she dismissed a claim for moral damages arising out of a road traffic accident between the First Appellant and the Second Respondent.
- [2] The facts in this case are directly informative. The Respondents had purchased a brand new car in May 2014 and had parked it on private property at Anse Aux Pins on the 2 August 2014 whilst having lunch, when a pick up belonging to the Second Appellant and driven by the First Appellant collided into their vehicle damaging it. The Appellants subrogated the Respondent's claim for damages to their insurance company, H. Savy Insurance Co. Ltd who paid the sum of SCR 31,378 for the cost of repairs to the car.
- [3] In September 2014, the Respondents filed a Plaint in the Magistrates Court in which they claimed SR200, 000 for moral damages from the Appellants over and above the amounts they had already received for the repairs to their car from the Appellants' insurers. The learned magistrate, in her decision delivered on 12 October 2017 found that the Second Respondent had opted not to claim any amount in excess of the money she collected in respect of the repairs to the vehicle when she signed a discharge form with the Appellants' insurers and could therefore make no further claims in respect of the accident.
- [4] The Respondents appealed to the Supreme Court and in a decision delivered on 21 February 2018, the learned appellate judge, Dodin J, agreed with the Respondents, deciding that there was no agreement by the Respondents not to bring any further claim in respect of the accident. He found that damages arising from the accident and not covered or adequately covered by the Appellant's insurers could be claimed by the Respondents. He allowed the appeal on the ground of equitable estoppel and remitted the matter to the Magistrates' Court for the determination of the merits and quantum of damages to be awarded.
- [5] It is this decision that is now appealed by the Appellants on the following ground:

“The learned judge erred in law and in fact by failing to appreciate that the motor insurance form signed by the Respondents covered a claim of moral damages

against the Appellants and therefore the Respondents could not make any further claim.”

[6] In support of this appeal, Ms Wong for the Appellants has submitted first, that the point relating to subrogation canvassed by the Respondent and taken up by the learned appellate judge is of no relevance to the present appeal. Counsel for the Respondent has on the other hand submitted that the principle of *cumul d’indemnités* (aggregation of benefits) where an injured party can claim compensation from a tortfeasor irrespective of any payment he might have received from his insurer or any other source is especially relevant.

[7] I agree with Counsel for the Appellant that the principle of *cumul d’indemnités* has no relevance to the present case.

[8] As Sauzier J explained in *Sinon v Chang Leng* (1974) SLR 301, this French principle was derived from the concept that in life and accidents insurance,

“the insurance contract is not regarded as being one of indemnity but a contract of mutual risk in which the sums payable are calculated on the basis of the premiums paid, not on the basis of the loss.”

[9] Hence, the insured in *Sinon* was permitted to claim both directly from his insurer under his contract with them (the policy of insurance he had entered into with the insurer) and under delict from the tortfeasor to recover damages for the same incident.

[10] In further explaining the principle and its application in Seychelles, the Court of Appeal in *Ventigadoo v Government of Seychelles* SCA (2007) SLR 236 stated that:

“In our law, cumul d’indemnités operates in favour of the victim and not the tortfeasor. An injured party can claim compensation from the author of a delict irrespective of any payment he might receive from his insurance company or any other source.”

[11] In such circumstances, the insurer is not subrogated to the insured’s claim.

[12] On the other hand, in *Jacques v Property Management Corporation* (2011) SLR 7, where the Defendant had subrogated his obligation to his insurer and his insurer had already paid

damages on his behalf, the court rightly held that the Plaintiff could not again sue the Defendant.

[13] As pointed out by Counsel for the Appellant, the authorities of *Jacques, Ventigadoo* and *Sinon* are however, not helpful to this case as the issue to be resolved by this Court is not about subrogation and *cumul d'indemnités* but rather about the interpretation of a contractual clause contained in the discharge form signed by the Respondents.

[14] The Second Respondent had after agreeing to the sum of SCR 31,378.00 for repairs to her car, signed the following discharge form with the Appellants' insurers:

"I Ms Shirley Brigitte Henry hereby agree to accept the sum of SR 31,378/- from H. Savy Insurance Co, Ltd in full and final settlement for materials/labour/costs of repairs/total loss to vehicle S5769 that was involved in an accident on 02/8/2014. I further declare that no further claims will be made by me in respect of the above mentioned accident EXCEPT for the excess amount of ...which may be refunded to me upon the outcome of the Court Case." (verbatim Exhibit D1)

[15] Ms. Wong for the Appellants has submitted that the language in the form above is clear and that the blank space indicates that the Second Respondent could have claimed a further amount against the insurer in respect of the accident and that by leaving the space blank, the Second Respondent indicated that no further claims would be made by her in respect of the accident.

[16] It is also her submission that the learned appellate judge was wrong to conclude that a moral damage claim could have been made against the Appellants. Further, she adds, the term "no further claim" would imply that no further claim would be made.

[17] Mr. Rouillon for the Respondent has for his part submitted that the clause in the discharge form in the present case was the subject of interpretation by the Court in the case of *Mounac and Another v Benoiton Construction Company Ltd* (102 of 2009) [2010] SCSC 26 (04 June 2010). In that case, the court had accepted that the Plaintiff's signature and acquiescence of the settlement in respect of damage caused by an earth mover machine on exactly the same type of discharge form was only in respect of payment for the "contents of the house" as specified on the form and could not preclude a further claim from the

tortfeasor for personal injuries suffered by the Plaintiff. It is his submission that similarly since no amount was entered in the form in the present case, this meant that the Respondents were not limited by the amount they could claim from the Appellants.

[18] It is clear to me that the discharge form as drafted is capable of both meanings ascribed to it by the parties.

[19] The following provisions of the Civil Code are helpful with regard to the interpretation of contracts:

Article 1156 In the interpretation of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words. However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood.

Article 1157 When a term can bear two meanings, the meaning which may render it effective shall be preferred rather than the meaning which would render it without effect.

Article 1158 Terms capable of two meanings shall be taken in the sense which is more appropriate to the subject-matter of the contract.

Article 1159 Ambiguous terms shall be interpreted by reference to the practice of the place where the contract is made.

Article 1160 Usual clauses shall be implied in the contract even if they are not expressly stated.

Article 1161 All the terms of the contract shall be used to interpret one another by giving to each the meaning which derives from the whole.

Article 1162 In case of doubt, the contract shall be interpreted against the person who has the benefit of the term and in favour of the person who is bound by the obligation.

[20] In *Wilmot & Ors v. W&C. French (Seychelles) Ltd & Ors* (1972) SLR 144, where the issue of what was included in a sale was at issue, the Court held:

“en premier lieu, le juge doit tout d’abord rechercher qu’elle a été la commune intention des parties contractantes, conformément aux règles d’interprétation posées par les articles 1156 et suivants du présent code ...”

- [21] Similarly, in *Cook v Lefevre* (1982) SLR 416, Seaton CJ relied on Article 1156 of the Civil Code to find the intention of the parties in their contemplations before they entered into the contract and what was entered into the contract. He found that a party could not take advantage of any ambiguity in the contract.
- [22] In light of these authorities and the provisions above, and in view of the fact that I am not persuaded that a plain reading of the contract indicates the clear intention of the parties, I am of the view that I have to adopt the meaning *qui convient plus à la matière du contrat* (see Hugh Collins (ed), *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law*, Kluwer Law International 2008, 233- 234). In such circumstances, it is incumbent on the court to imply terms which the parties had intended but failed to incorporate into the contract in order to give efficacy to the transaction or to establish the content of the contract in issue.
- [23] I also note that this is also a case of one party putting a pre-prepared printed form of words for signature by the other party and it would be against public policy for such forms to be used as a trap for the unwary.
- [24] As I have stated, it is the court’s duty to put into effect the intention of the parties. In my considered view, the intention of the discharge form was to prevent the Respondents from being compensated twice for repairs to their car as they had claimed these specific damages from the Respondents who had subrogated their obligation to their insurers.
- [25] Moreover, the *contra preferentum* rule found in Article 1162 dictates that the court interprets the ambiguity in favour of the Respondents.
- [26] I am further strengthened in my interpretation of the clause in the discharge form by the provisions of Article 1135 of the Civil Code which provides that:

“Agreements shall be binding not only in respect of what is expressed therein but also in respect of all the consequences which fairness, practice or the law imply into the obligation in accordance with its nature.” (emphasis added)

[27] In the circumstances, I find that the appellate court came to the correct decision although for the wrong reasons. The English case of *Pickard v Sears* (1837) 6 A&E 475 and the principle of equitable estoppel relied on by the appellant judge has no application in our jurisdiction (see in this respect *Teemooljee v Pardiwalla* (1975) SLR 39).

[28] I find that the words contained in the discharge form signed by the Respondents did not preclude a further claim for moral damages by the Respondents. However, I agree with the appellate judge that as the learned magistrate had not made any determination on the merits or quantum of damages claimed, the matter has to be remitted to the Magistrates’ Court for the determination of the same.

[29] The appeal is therefore dismissed and the matter remitted to the learned magistrate to consider the merits of the Appellant’ claims.

Signed, dated and delivered at Ile du Port on 18 December 2020.

Twomey JA

I concur

Fernando, President

I concur

Dingake JA