

KINGSTON
JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 75/87

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN

THE ADMINISTRATOR GENERAL
(ADMINISTRATOR OF ESTATE
HOPETON SAMUEL MAHONEY
DECEASED)

PLAINTIFF/
APPELLANT

AND

NATIONAL EMPLOYERS MUTUAL
ASSOCIATION LIMITED

DEFENDANTS/
RESPONDENTS

FEBRUARY 19, 1990

ROWE, P.:

Hopeton Mahoney died as a result of the negligent driving of motor vehicle NC 3590 by Johnathan Daley. The administrators of Mahoney's estate obtained judgment against Daley in the sum of \$271,000.00 and costs to be taxed or agreed. The judgment remained unpaid and attracted interest of \$70,569.85. A writ was therefore filed against the respondents under the provisions of Section 10 (1) of the Motor Vehicles Insurance (Third-Party Risks) Act seeking to obtain from them, as insurers of motor vehicle NC 3590, the amount of the unpaid judgment. Patterson J., on May 19, 1987 dismissed the action, but on November 29, 1988 this Court allowed the appeal and entered judgment as follows:

"Judgment of the Court below set aside. Judgment entered for the Appellant in the sum of \$250,000.00 with interest. Costs of proceedings to the appellant before Malcolm J, Patterson J., and before this Court to be agreed or taxed. Interest to be calculated at 3% per annum on \$250,000.00 from 15th April, 1983."

Problems developed over the interpretation of this judgment of the Court. The question whether the Court had jurisdiction to clarify its own judgment was not argued and the Court therefore accepted that it had jurisdiction as the parties were anxious to know what interest rates to apply having regard to the terms of the Order of this Court.

It is to be observed that the judgment entered against Mr. Daley is considerably in excess of the sum of \$250,000.00. This figure was arrived at by the Court of Appeal which held, following Central Fire and General Insurance Co Ltd v. Hylton, S.C.C.A. 84/84, that the maximum amount that an injured party can obtain from an Insurance Company under Section 18 (1) of the Motor Vehicles Insurance (Third-Party Risks) Act is the sum for which the person was insured. In this case the maximum of the policy was \$250,000.00.

What was the character of this sum of \$250,000.00? Was it a judgment which would attract interest at the rate of 6% prescribed in Section 51 of the Judicature (Supreme Court) Act as contended for by Mr. Gayle? Section 18 (1) requires the insurer to:

"... pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

An insurer who places a ceiling in the contract of insurance on the amount which he will pay on the policy, is entitled to the benefit of that ceiling if it exceeds the minimum statutory amount. This Court so held in Central Fire v. Hylton (supra) and in the decision in the instant case in S.C.C.A. 75/87. One has to look at the language of the statute to see what that maximum recoverable sum is to embrace and one

finds that the provision leaves no room for doubt. It means that at the date when the liability of the insurer is determined he must face the sum of money represented by the judgment debt, costs and interest accrued. If that sum is less than the maximum sum insured, the insurer must pay all. If on the other hand that sum exceeds the maximum insured, the insurer is only liable to pay the insured amount.

The insurer was under a liability to satisfy the judgment debt, costs and interest against their insured, but until a Court ordered the insurer to pay, that liability would not be converted into a judgment debt. The Court of Appeal appears to have equated the indebtedness of the respondent to the appellant with general damages and ordered that interest be payable at the rate of 3% from the date of judgment of Malcolm J., to the date when by their judgment Patterson J., ought to have entered judgment for the appellant against the respondent, that is to say on May 19, 1987. Thereafter the judgment would attract interest at the statutory rate until date of payment.

We answer the questions raised in this clarification appeal by saying:

As between the appellant and the respondent the appellant is entitled to interest on the sum of \$250,000.00 from April 15, 1983 to May 19, 1987 at the rate of 3% per annum and thereafter at 5% per annum.
As between the appellant and any other party there are no proper proceedings before us. We make no order as to costs.