IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.357 OF 1994

BETWEEN	BEVERLY'S TRANSPORT LIMITED	PLAINTIFF
A N D	THE JAMAICA GENERAL INSURANCE COMPANY LIMITED	DEFENDANT

D. A. Edwards for Plaintiff.

Mr. P. Foster for Defendant.

Mr. J. Graham watching on behalf of George Anderson.

HEARD: 20th October, 1994 and
25th November, 1994.

SMITH J.

By Originating Summons dated 31st August, 1994 the plaintiff seeks the determination of the following question:

> "Whether a person who intends to travel on a motor bus and who while standing on the ground outside of the motor bus in assisting the conductor and sideman to load his goods on to the top of the said motor bus can be said to be a person who is "being carried in or upon or entering or getting on to or alighting from the motor vehicle?"

The plaintiff company operates motor buses in rural Jamaica.

The defendant company was the insurer of these buses by virtue of Insurance Policy No. MP.00405/8.

George Anderson was injured in an accident involving one of the plaintiff's buses. The undisputed facts as appear in the affidavit of Mr. Lawrence Anson a Director of the plaintiff company are as follows:

Anderson carried his goods to the terminus where the plaintiff's bus was parked with the intention of loading his goods on the bus and thereafter to board the said bus. While Anderson was standing outside the bus on the ground assisting the conductor and sideman to load his goods on to this bus, a bag of flour owned by Anderson fell on him while being loaded on to the bus. The bus was parked for the purpose of facilitating the embarkation of passengers and the loading of goods thereon.

Section 2 (1) (a) of this policy is relevant. The caption is "Liability to Third Parties" and it reads:

> "The company will subject to the limits of Liability indemnify the insured in the

> event of accident caused by or arising out of the use of the motor vehicle or in connection with the loading or unloading of the motor vehicle against all sums including claimant's cost and expenses which the Insured shall become legally liable to pay in respect of:-
>
> (a) death of or bodily injury to any person
>
> (b) .....

As to limits of liability the schedule provides:

> "Limit of amount of the Company's Liability under Section 2 - 1 (a):
>
> (i) in respect of death or bodily injury to any person $250,000.00
>
> (ii) .....

On 1st April, 1982 the limit was revised and now stands at $750,000.00.

However Endorsement 19(m) of the policy reads:

> "As and from 22nd December, 1982 it is hereby understood and agreed that Exception (iii) to Section 2 of this Policy is deemed to be cancelled."
>
> It is further understood and agreed that notwithstanding anything contained to the contrary in the Limits of Liability the limit of the company's liability under Section 2 - 1 (a) in respect of death of or bodily injury to any person being carried in or upon or entering or getting on to or alighting from the motor vehicle shall not exceed:
>
> (a) in respect of death or bodily injury to any person $100,000.00
>
> (b) .....

It will be noted that Endorsement 19(m) derogates from the general provision as to the limit of the company's liability and makes a special provision in respect of persons "being carried in or upon or entering or getting on to or alighting from" the motor vehicle. By virtue of this endorsement the company's limit of liability in respect of such persons is $100,000.00 whereas by virtue of the schedule as revised the general limit is $750,000.00. In other words there is a higher limit of liability in respect of persons who fall within the provisions of Section 2 (1) (a) but cannot be categorised as persons being carried in or upon or entering or getting on to or alighting from the motor vehicle than for persons who can so be categorised.

Persons who do not fall within the provision of Endorsement 19(m) but are

otherwise covered by Section 2 (1) (a) of the policy are hereinafter referred to as "outsiders."

Dr. Edwards, for the plaintiff, contends that at the material time Anderson was not "being carried upon or entering or getting on to or alighting from the vehicle" and thus the limit of liability contained in Endorsement 19(m) does not apply in relation to the defendant's liability. In other words, Dr. Edwards is contending that Anderson was an 'outsider' and accordingly the limit of the defendant's liability is $750,000.00.

On the other hand Mr. Foster for the defendant argues that on the facts Anderson was at the material time "entering or gettin on to" the bus and thus falls within the provision of Endrosement 19(m) and accordingly the limit of the defendant liability is $100,000.00. Of course, and Mr. Foster is not saying otherwise, on the facts it could not be argued that Anderson was "being carried in or upon" or "alighting from" the bus.

The real question to be determined therefore is whether or not the words "entering or getting on to" can be so construed as to embrace or encompass a person who, intending to travel on the bus, is "standing on the ground outside of the bus assisting the sideman and conductor to load his goods on the top of the bus."

Dr. Edwards submitted that the court must look at the policy as a whole to find out what the parties intended. He argued that there are two different regimes of compensation in respect of 'passengers' and 'outsiders.'

The regime for 'passengers,' he submitted, was put in with a higher risk because of the number of persons who would be likely to be carried on the vehicle. He referred to Section 2 of the policy and submitted that a person who is outside of the vehicle and is injured in connection with the loading or unloading of the vehicle is an 'outsider' and is covered by that section.

He contended that when one looks at the regimes of the policy, how the policy is structured and applies the ordinary grammatical meaning of the words, the facts of this case do not come within the phrase "any person entering or getting on to" a bus.

Mr. Foster submitted that the process of entering or getting on to the vehicle should not be confined to the narrow and artificially restrictive meaning. He contends that the phrase refers to a process whereby a person intending to get on the motor bus

actually commences a process of physical acts which are directly related to and connected with entering or getting on to the motor vehicle.

He closely examined Endorsement 19(m) and Section 2(1) and contended that Section 2(1) was designed to cover situations involving third parties who were injured in accident arising out of the use of the motor vehicle or in connection with the loading or unloading of the motor vehicle.

In contrast, he argued, Endorsement 19(m) was intended to deal with persons who had nexus with the vehicle such as passengers or those entering or getting on the vehicle. He referred to Brien v. Bennett C and P 724 and urged that this case reinforces his submission that the artificially restricted meaning is not appropriate in this case.

I must therefore endeavour to ascertain the meaning of the words "entering or getting on to" in their context. In doing so I must not assume that the parties intended to use the words "entering" and "getting on to" interchangeably. There certainly seems to be an overlapping of the meaning of these words. In my view, "getting on to" has a wider meaning than entering. It seems to me that "entering" would necessarily involve "getting on to" but the converse is not necessarily true.

I am of the view that the phrase "getting on to" was used to embrace conducts necessarily connected with embarkation, thus a person may be said to be "getting on to" the bus if he does certain acts which unquestionably demonstrate the intention of "entering" the bus.

I agree with Mr. Foster that acts of loading are indispensable and necessary acts that must be done by a person who intends to travel on the bus with luggage. The fact that Anderson's luggage was being loaded on to the bus by the conductor and the sideman clearly indicates at least a consent on their part to accept him as a passenger. He could not therefore be said to be an "outsider" as contended by Dr. Edwards.

The case of Brien v. Bennett (supra) is perhaps helpful. "In an action for negligence the declaration stated that the plaintiff 'had agreed to become a passenger' of the defendant's omnibus and that the defendant received the plaintiff as such passenger. It was pleaded that the plaintiff did not become a passenger and that the defendant did not receive him as such.

The facts appeared to be that the defendant's omnibus was passing on its journey

when the plaintiff held up his finger to the driver who stopped to take him up, and that just as the plaintiff was putting his foot on the step of the omnibus, the driver drove on, and the plaintiff fell on his face. Lord Abinger C.B., held that this was evidence to go to the jury in support of the declaration, as the stopping of the omnibus implied a consent to take the plaintiff as a passenger.

This supports the view earlier expressed that in the instant case the loading on to the bus of Mr. Anderson's luggage by the conductor and sideman clearly indicates a consent to take him as a passenger. Mr. Anderson had begun the process of "getting on to" the bus by assisting them in loading his goods on to the bus. Indeed an officious by-stander looking on and seeing Mr. Anderson assisting the sideman and conductor "to load his goods on the top of the bus" would have no doubt in proferring the advice that Mr. Anderson was "getting on to" the bus.

It is my view that Mr. Foster's contention that on the facts of this case Anderson had begun the process of getting on to the bus is correct. I accordingly answer the question affirmatively.

The plaintiff must pay the costs of the defendant as taxed or agreed.