IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW

SUIT NO. C.L. 1275 of 1967

BETWEEN EMILY DILLON PLAINTIFF

AND JAMAICA CO-OPERATIVE FIRE AND GENERAL INSURANCE COMPANY LIMITED DEFENDANT

27th,29th MAY 5th,8th,9th JUNE, 1970

Mr. H.D. Carberry for the plaintiff
Mr. R.H. Williams for the defendant.

On the 17th January, 1960 the plaintiff sustained personal injuries and consequential loss as a result of having been struck down by a truck owned and driven by one Donat Minott (hereinafter referred to as "the insured"). At the material time there was in existence in relation to the user of this truck a policy and certificate of insurance issued by the defendant (hereinafter referred to as "the insurer") to the insured in consideration of the payment of a premium. By this policy the insurer undertook, subject to the conditions and limitations therein contained, to indemnify (i) the insured in the event of an accident caused by or arising out of the use of the insured's truck against all sums which the insured might become liable to pay in respect of the death of, or bodily injury to, any person; and (ii) any authorised driver who drove that truck. An authorised driver was, as if he were the insured, subject to the terms and conditions of the policy insofaras they applied, and included the insured provided that he was permitted, in accordance with the Road Traffic Law, Cap. 346 and the regulations made thereunder, to drive the said truck, or had been so permitted and was not disqualified by order of a court, or by reason of any enactment or regulation in that behalf from driving that truck.

On the 20th June, 1964 the plaintiff brought an action in the Supreme Court against the insured to recover damages in respect of her personal injuries, loss and expense. On the 8th May, 1967 she was awarded a judgment in that action in the sum of £663.15.0 with costs taxed on the 19th May, 1967 at £165.6.3.

In this action the plaintiff now seeks to recover the sum of £829.1.3. with interest thereon, the insurer having refused to satisfy the judgment debt and costs. The plaintiff insists that by reason of the

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provisions of Sec. 16 (1) of the Motor Vehicles Insurance (Third-Party Risks) Law Cap. 257, the insurer is obliged to satisfy her judgment and taxed costs since the policy issued by the insurer to the insured was one which, in the words of Sec. 4 (1) (b) of Cap. 257, insured a person specified (the insured) therein "in respect of any liability which may be incurred by him ... in respect of ... bodily injury to any person caused by, or arising out of, the use of the (truck) on a road." The provisions of Sec. 16 (1), insofaras they are material, are:-

> "If after a certificate of insurance has been issued under sub-section (4) of section 4 of this Law in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 4 of this Law (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, ...the policy, the insurer shall, subject to the provisions of this section, 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."

On the other hand, the insurer says that at the material time the insured was the holder of a driver's licence issued by the Licensing Authority which entitled him to drive only motor cars and trucks not exceeding 5,000 lbs. laden weight and not licensed as a Public Passenger Vehicle. The insured's truck was stated as having a maximum laden weight of 8,904 lbs. In these circumstances, the insurer contends, the insured was not an authorised driver within the meaning of the policy, and it must follow, therefore, firstly, that the insurer cannot be held liable to indemnify the insured since the insurer was not at the material time, on risk; and secondly, that the insurer is under no obligation to satisfy the judgment obtained by the plaintiff against the insured.

It is clear that there is only one real issue, albeit a crucial issue, between the insurer and the plaintiff and it may be stated thus: Was the insured at the material time, a person authorised within the ordinary meaning of the policy to drive a truck the user of which was insured,

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i.e. a truck with a maximum laden weight of 8,904 lbs. while he was the holder of a general driver's licence which on its face purported to permit him to drive trucks not exceeding 5,000 lbs. laden weight?

I proceed now to attempt to resolve this issue bearing in mind that there does not appear to be any case in the books in which this point has ever arisen.

The vehicle insured by the policy was a 1959 24 H.P. Thames Trader truck lettered and numbered H. 1792. Neither the policy nor the Proposal Form contains any reference to the weight, laden or unladen, of this truck. One of the questions in the Proposal Form was: Do you hold a full licence to drive such a vehicle? To this question the insured gave the answer: Yes. Apparently the insurer was not concerned to ascertain the weight of the vehicle described in the Proposal, nor was it concerned to ascertain the accuracy or otherwise of the insured's answer. It may be said, however, that the insurer took no steps to avoid or cancel the policy. It may be noted, too, that the Proposal Form was signed by the insured on the 3rd November, 1959, the same date on which the policy came into effect. A general driver's licence had been issued to the insured on the 10th of April, 1958. The Certificate of Competence issued to the insured is dated the 9th April, 1958. It follows, therefore, that the insured had held a general driver's licence for less than nineteen months prior to the issue of the policy. Notwithstanding this, the insured stated in the Proposal that he had been driving vehicles of the type to be insured for four years (presumably without a licence). It is not unfair to say that many of the problems which insurers and their policy holders, not to mention innocent third parties, are required to face are, for the most part, mainly of the insurer's own making. If the same searching enquiries were made when proposals were being submitted as are made when insurers are faced with claims, much of this type of litigation would be avoided.

In April, 1958 the insured signed an application to the Licensing Authority in Kingston for a general driver's licence. This application was made pursuant to Reg. 41, on Form F.2 and was accompanied by a Certificate of Competence on Form G.1, in compliance with Reg. 42 (1). In his application the insured was required to state, inter alia, the "type of vehicle" in respect of which he desired to have a driver's licence. In connection with this particular item of information Form F.2 on its face appeared to

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require an applicant to advise the Licensing Authority whether the type of vehicle involved was a Public Passenger Vehicle or not, and no more. Certainly there was no reference to the weight of the vehicle. If the weight of the vehicle, the subject of the application, was thought to have been material, I would imagine that Form F.2 would have so specified. Nevertheless the information appearing in the insured's application in connection with the type of vehicle with which the application dealt was: "C.M.C. VANS 5,000 L.W." I am quite unable to decide who was responsible for the inclusion of the words and figures "VANS 5,000 L.W." Nor do I know whether these were added by someone other than the insured in the office responsible for his driving test after his application had been submitted. They are written in a different ink and apparently by a different hand. Happily, however, I find it unnecessary to investigate this matter further.

Following upon the application by the insured and prior to the issue to him of a Certificate of Competence he was, in accordance with Reg. 43 (3), required to "satisfy on test" a Certifying Officer as to his ability to drive "a motor vehicle of the particular class, construction or design, to which the application relate (d) without danger to other users of the road," among other things. I pause here to ask: To what particular class, construction or design of vehicle did the insured's application relate? As noted earlier Form F.2 deals with the type of vehicle. No reference is made therein to class, construction or design. It may be that in the ordinary use of language, and more particularly in view of the fact that the word "type" is frequently used to indicate the essential characteristics of a class, the three words - class, construction and design - were intended to be comprehended by the word "type." It is not without some significance that Mr. Candlyn Hope, the Senior Inspector of Motor Vehicles, said in his evidence:

> "A test of his mechanical knowledge of a motor car, i.e. the function of the engine, minor repairs, and so on, was carried out as also a test of his competence re the type of vehicle he brought in - not necessarily the vehicle mentioned in his application. If an application relates to a van, applicant would not be tested on a car, he would have to bring in the type specified in his application, or a heavier type. The purpose of the test would be to test his competence to drive the type of vehicle in respect of which the application is made."

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One may very well ask: What would be the position if an applicant brought in a heavier type vehicle than that to which the application related? Would the Certifying Officer issue a Certificate of Competence in relation to the lighter, or the heavier type? Nothing is known of the particular vehicle in respect of which the insured "satisfied on test" any Certifying Officer as to his competence to drive. More particularly, it is not known whether it was, to use Mr. Hope's words, of a type heavier than that specified in the insured's application. What is clear, however, is that a driving test is required to be conducted with reference to a vehicle of a particular class and not with reference to a particular vehicle. It would be unthinkable, for example, that in order to obtain a licence to drive a car a person should be required to undergo a test as to his competence to drive a particular car, say a car with a 4 cylinder engine, and thereafter find himself prohibited from driving a larger and heavier car with an 8 cylinder engine, unless he undergoes another test in respect of the latter car. So stated, the situation becomes manifestly untenable.

It is important to note here the provisions of certain regulations under Part VI, and of certain sections of the Law. Section 51 (e) enables the Minister to make regulations in respect to the maximum unladen weight of trucks and the maximum laden weight of all motor vehicles.

Reg. 150 provides:-

> "The gross weight ... of a truck ... shall not exceed 16,000 lbs...."

Reg. 151 provides:-

> "The laden weight of any motor vehicle shall not exceed the weight permitted in the Second Schedule hereto, or the weight fixed by the Island Traffic Authority by Notice published in the Jamaica Gazette if such vehicle is not mentioned in the said Schedule."

I pause here to observe that the Thames Trader does not appear in the relevant schedule; nor is there any evidence before me to indicate that the Island Traffic Authority has ever fixed the permitted maximum laden weight of a Thames Trader truck.

Sec. 42 provides:-

> "For the purposes of this Law, the weight unladen of any motor vehicle shall be taken to be the weight of the vehicle inclusive of body and all parts which

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are necessary to or ordinarily used with the vehicle when in use on a road ..."

It is abundantly clear, I think, that the manifest object of these provisions is to fix the maximum permitted weight, laden and unladen, of the several classes of motor vehicles set out in Sec. 8. The legislature undoubtedly had a very good reason for enacting, and permitting to be enacted, these provisions as to maximum weights. If it were considered desirable that some other authority should have the right to further limit these weights with reference to drivers' licences I would have expected to find some clear, unequivocal provision to that effect. In any event I confess that I cannot even pretend to understand how a laden weight of 8,904 lbs. was arrived at in this case. In this respect, as in several others, the evidence put before me falls far short of the many items of information I would have thought it desirable to have. I am driven to assume, for example, that the licence issued to the insured on the 10th April, 1958 was the same licence he held on the 17th January, 1960. In view of the evidence of Mr. Bennett of the Half-Way-Tree Tax Office, I am far from happy that this is a legitimate assumption. Mr. Bennett said:

> "It is possible that the general licence issued to Minott could have been surrendered and a wider licence issued. I would not know. Minott would know. The licence issued to Minott permits him to drive trucks. We would not have anything except the Certificate of Competence. I would not know if the general licence issued to Minott in fact contains any limitation. I did not issue this licence."

Section 8 Cap. 346, so far as is material, reads:-

> (1) "Motor vehicles shall, for the purposes of this Law and regulations made thereunder, be divided into the following classes -
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> (b) Trucks: That is to say, motor vehicles (not being classified under this section as motor cars) which are constructed themselves to carry a load or passengers or both.
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> (c) Motor cycles: That is to say, motor vehicles (not being classified under this section as "invalid carriages") with less than four wheels and the unladen weight of which does not exceed eight hundred weight.

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(f) Invalid carriages: That is to say, motor vehicles, the weight of which unladen does not exceed five hundred weight and which are especially designed and constructed, and not merely adapted, for the use of persons suffering from some physical defect or disability, and are solely used by such persons."

It is important to observe two things about this section. Firstly, motor vehicles, for the purposes of the Law and the regulations, are divided into, and defined by reference to, classes. Not, be it noted, by reference to their description. And not for the purposes of any particular part of the Law, but for the purposes of the whole Law, including the regulations. Secondly, motor cycles and invalid carriages are defined with particular reference to their unladen weight, a factor to which no reference is made in the definition of trucks. For the relevance of a definition of a class of motor vehicle by reference to its weight, see Keeble v. Miller (1950) 1 A.E.R. 261. It is equally important to note that by the words "Construction, Weight, and Equipment," which form part of the heading of Part II of the Regulations the legislature did not contemplate any identity of concept between the construction and weight of a vehicle. Indeed, an examination of this Part of the Regulations does not suggest any but the most incidental connection between the construction and the weight of a vehicle. See also Section 8 (2) (a).

Section 12 of Cap. 346, so far as is material, provides:

(1) "A person shall not drive a motor vehicle on a road unless he is the holder of a licence for the purpose (in this Law referred to as a "driver's licence") ...

(4) Driver's licences shall be of three classes, that is to say, -

(b) "A general driver's licence," which shall entitle the holder thereof to drive, ... <u>such class or classes</u> of motor vehicles as may be specified in the licence and which his examination test or tests prove him competent to drive.

(5) Drivers' Licences shall be in the prescribed form and where under the provisions of this Part of this Law the applicant is subject to any restriction with respect to the driving of any class of motor vehicle the extent of

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the restriction shall be specified in the prescribed manner on the licence."

Sub-section 5 of Section 12, read together with sub-section 4, clearly envisages the grant of a licence to drive most, if not all, of the classes set out in section 8 (1) but requires the relevant licence to specify therein "any restriction with respect to the driving of any class of motor vehicle." In my view it rather does violence to ordinary language to interpret this sub-section as importing a restriction within a class instead of a restriction to a particular class. It is true that Reg. 48 contemplates the limitation of a licence to the driving of a "particular class of motor vehicle or to the driving of a motor vehicle of a particular construction or design." This may very well pose a particular problem of interpretation if and when these courts are ever called upon to rule on the validity or otherwise of a limitation purporting to restrict the holder of a licence to driving a motor vehicle of a particular construction or design. As to this I express no opinion. What I am here concerned with is the validity of a limitation in a licence which seeks to restrict the holder to driving a class of vehicle not exceeding a stated weight. For such a limitation to be valid it must, in my view, find its sanction in the Law or the regulations. As already noted, Sec. 8 divides motor vehicles into classes and proceeds to a definition of each of the classes named. There is no definition of the classes catalogued by reference to description. There are, however, several references in other sections of the Law to motor vehicles by the use of the words "class or description." Mr. Williams argued that the frequent use of the word "description" in the phrase "class or description" makes it clear that a licence may legitimately be limited by reference to the description of the vehicle to which it relates. This argument appears to assume, quite wrongly in my view, that a licence limits the holder thereof to the driving of a particular vehicle. It is true that the form of general driver's licence prescribed in the schedule to the regulations by virtue of Sec. 12 (5) contemplates the insertion of the description of the vehicle which the holder is entitled to drive. There is, however, unlike the several classes mentioned in Sec. 8, no definition in the Law or the regulations of the term "description." Who then has the right to define this term by reference to the particular factor of laden weight, or, indeed any other particular factor? Certainly no Certifying Officer is given that right. Does the

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> descriptions of vehicles and there is nothing in the Act which, apparently, enables the Minister to prescribe the different descriptions. Section 2, as I have already said, deals with classes. That is the division of motor vehicles in the Act, but the Minister has, throughout apparently divided motor vehicles into different descriptions and one keeps on finding in the Act the expression 'class or description.' Somebody must be able to define 'description' or, at any rate, to say whether a vehicle is of a particular description or not, and, if the Minister can do it, I cannot see any reason why the justices cannot do it. The Minister, apparently, makes his own descriptions."

I would observe, with the greatest respect to the learned Chief Justice, that the last two sentences of the above quoted passage are singularly lacking in persuasive thought and afford little or no guidance in the approach to similar problems of interpretation.

I have come to the clear conclusion that the limitation as to weight imposed in the insured's licence is founded on no lawful authority and is therefore of no legal effect whatever. Mr. Williams argued, not too strongly as it seemed, that if I found the limitation to be unauthorised I would have to consider the further question whether in that event the insured could be said to be the holder of a valid licence within the meaning of Cap. 346. I have not the least doubt that the purported limitation cannot in any way effect the validity of the insured's licence. In the result I am compelled to the conclusion that the insured was, at the material time, an authorised driver within the meaning of the policy.

There will, therefore, be judgment for the plaintiff for J$1,658.13 with interest at the rate of 6% calculated from the 8th of May, 1967 as to $1,327.50, and from the 19th May, 1967 as to $330.63, to the date hereof respectively. She will also have her costs to be agreed or taxed.

Max McPherson J.

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(C.H. GRAHAM-PERKINS)

4th JUNE, 1970.

J.A.H. Duffus: Solicitor for the plaintiff

Lake Nunes & Scholefield: Solicitors for the defendant.

Minister have that right? Sec. 51 of Cap. 346 enables the Minister to "make regulations ... for prescribing anything which may be prescribed under" Part II of the Law. It may be that this section enables the Minister to prescribe or define the "description" of a motor vehicle. He has not done so. It is clear, it seems to me, that such a right does not exist in anyone for the simple and very good reason that the word "description" in the particular context of the phrase "class or description" adds precisely nothing to the word "class." In a quite different context the same thought must have been present to the mind of Lord Selbourne in Pearks v. Moseley 5 App. Ca. 723, when he said:

> "A gift is said to be to a "class" of persons when it is said to all those who shall come within a certain category or "description" defined by a general or collective formula ..."

It is fair to say that I have formed this view as to the interpretation of the phrase "class or description" notwithstanding that this particular problem was not canvassed by either Mr. Carberry or Mr. Williams, and notwithstanding the view expressed by Lord Coleridge C.J. in Hough v. Windus (1884) 12 Q.B.D. 224, at p. 229 that he could not "admit that there (was) any such presumption against fullness or even superfluity of expression, in statutes ... as to amount to a rule of interpretation controlling what might otherwise be their proper construction." As Stephens J. observed in Re Castioni (1891) 1 Q.B. 149, it is not enough to attain a degree of precision which a person reading in good faith can understand, it is necessary to obtain a degree of precision which a person reading in bad faith cannot misunderstand.

In Petherick v. Buckland (1955) 1 A.E.R. 151, Lord Goddard C.J. had to deal with a not dissimilar problem. The learned Chief Justice, however, did not find it necessary to attempt a solution. At page 153 he said:

> "At one time it seemed, at any rate to some members of the court, that the words "class or description" might be merely tautologous. We were told by counsel that such a construction terrified the Minister, because, he said, if that were so, a great many of the regulations would be completely ultra vires. They may be; I do not know. Some day we may have to decide that point, because the regulations deal with

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