

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. MC-127 OF 1977

BETWEEN DONALD MCDONALD PLAINTIFF
A N D WILLIAMS AND WILLIAMS
(A Firm of Attorneys-at-Law) DEFENDANTS

D. Goffe for Plaintiff.

Horace Edwards Q.C. for Defendants.

Heard on: May 30, 31, 1983, February 20, 21, 22, 1984,
November 19, 1984 and January 30, 1985.

ORR, J:

The plaintiff was the owner of a motor car in respect of which there was a valid comprehensive policy of insurance with the Federal Life and General Insurance Company Limited.

The defendants are a firm of attorneys of which Mr. Richard Williams is a partner.

On the 2nd November 1972, the plaintiff was driving his car along the Brentford Road in the parish of St. Andrew when the car was involved in a collision with Mr. Derrick Watt who sustained injuries.

In accordance with the terms of the Insurance Policy, the plaintiff duly reported the accident to the Insurance Company.

A Writ was filed in Suit W.037/75 by Watt against McDonald for damages arising out of the accident.

On receipt of the summons, McDonald contacted the Insurance Company who in turn instructed the defendants by letter to "enter an appearance and negotiate a settlement of the matter herein." Thereafter Mr. Richard Williams acted on behalf of the defendants. He interviewed McDonald and although he, Mr. Williams was of the view that the matter should be settled, he sought the opinion of Miss Gloria Thompson of Counsel.

A conference was held between Miss Gloria Thompson, Mr. Williams and Mr. Ainsworth Campbell, attorney for Watt, and this resulted in a settlement of the suit. Miss Thompson formally advised

the defendants by letter of the 20th June 1975, as follows:

June 20, 1975

" Mr. Richard Williams,
c/o Messrs. Williams & Williams,
Attorneys-at-Law,
64 East Street,
KINGSTON.

Dear Sir,

RE: DERRICK WATT V. DONALD MCDONALD -
SUIT NO. C.L. W-037 OF 1975

A settlement at long last been reached in the above matter in which Mr. Ainsworth Campbell appears for the plaintiff.

The terms of the settlement are that the Defendant's Insurers should pay to the Plaintiff an amount of Sixteen Thousand Five Hundred Dollars (\$16,500) to cover General and Special Damage plus Attorney's costs agreed at Six Hundred Dollars (J\$600).

I think that the Insurance Company concerned has got off very lightly in view of the nature of the Medical Certificate issued by the Doctor who treated Watt.

Kindly take steps to hand over this cheque as soon as possible.

Yours very truly

(Sgd) GLORIA A. THOMPSON

Mr. Williams in turn advised the Insurance Company by letter of the 30th June, 1975, as follows:

" Suit Derrick Watt

30th June, 1975.

RAW/dw

Dear Sirs:

Re: Suit No. C.L. W 037/75
Derrick Watt vs. Donald McDonald

We wish to advise that we instructed Miss Gloria Thompson in the above matter, and an agreed sum arrived at in the amount of \$16,500.00 has been fixed to settle this Suit inclusive of Attorney's fees.

Please forward Release to Mr. Ainsworth Campbell, Attorney-at-Law, 53 Church Street Kingston, for his Client's signature.

Yours faithfully,

(Per) WILLIAMS & WILLIAMS

Subsequently he spoke with Mr. Dymally, an officer of the Company and filed a Consent Judgment on the 10th December, 1975. The judgment was not then signed by Mr. Ainsworth Campbell, attorney for the plaintiff, Watt, and was not perfected until the 11th February, 1977.

The amount was not paid by the Insurance Company and on the 19th February 1976, an Order was made by the Court winding up the Insurance Company.

The plaintiff McDonald eventually paid the amount of \$18,729.12 in respect of the judgment and interest due thereon.

This action is brought to recover the amount from the defendants.

At no time did Mr. Williams advise the plaintiff that he had entered the Consent Judgment.

Several particulars of negligence were alleged in the Statement of Claim but Mr. Goffe finally admitted that the real issue was whether or not the defendants had been negligent in entering the Consent Judgment in the circumstances.

Mr. Edwards relied on clause 5 of the conditions attached to the Insurance Policy which is as follows:

" No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give such information and assistance as the Company may require".

He cited the cases of Groom v. Crocker and others [1938] 2 All E.R. 394 and Beacon Insurance Company Limited v. Langdale [1939] 4 All E.R. 204.

He submitted further that the damage was remote. There was no evidence that Mr. Williams knew or suspected that the Insurance Company was in a precarious financial position and could not have foreseen the failure by the Insurance Company to pay the amount due under the terms of the settlement.

Mr. Goffe cited Ross v. Caunters (a firm) [1979] 3 All E.R. 580. He submitted that the entry of the Consent Judgment was gratuitous and did not benefit the Insurance Company nor the insured, the plaintiff.

I adopt the reasoning of Sir Robert Megarry in Ross v. Caunters supra, and hold that the defendants owed a duty of care to the plaintiff notwithstanding the terms of clause 5 of the Conditions of the policy. Was there a breach of this duty of care?

Mr. Goffe made the following observations which are relevant:

1. The plaintiff was never advised of the entry of the judgment and thus was unable to take any steps to safeguard his position;
2. The entry of the judgment was wholly gratuitous. It was not demanded as a part of the settlement and did not benefit either the Insurance Company nor McDonald.

In the circumstances I hold that there was no valid reason to expose the plaintiff to the legal consequences of the entry of a Consent Judgment and this action showed a lack of care on the part of Mr. Richard Williams. I hold that the defendants were negligent.

Accordingly there will be judgment for the plaintiff against the defendants for \$18,729.12 with costs to be agreed or taxed.