IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1975/R003

BETWEEN THELMA ROBERTSON PLAINTIFF

AND CENTRAL FIRE & GENERAL INS. CO. LTD. DEFENDANTS

W. B. Frankson and Miss Pamela Frankson for plaintiff.

Allan Rae for defendants.

1978: September 25, 26; November 24

J U D G M E N T

Carey, J. :

Miss Thelma Robertson, the plaintiff in this action, has a judgment of this court in her favour against one Clovis Mighty, the owner of the vehicle, a mini-bus, in which she had been a passenger at the time it was involved in an accident. She now seeks to recover from the defendants, who were the insurers of Mr. Mighty's vehicle, the subject matter of that judgment, which was never satisfied. This is a course which she may properly pursue by virtue of Sec. 18(1) of the Motor Vehicles Insurance /Third Party Risks/ Act.

The defendants, for their part, deny the validity of this claim for reasons set out in their pleading which, so far as is material, are as follows:

Paragraphs " 9. The defendants say that inter alia the terms of the policy of insurance referred to in paragraph 2 hereof are that:

(ii) The defendants were exempted from liability arising from the use of the said motor vehicle FG 695 for the carriage of passengers for hire or reward.

(iii) The defendants were exempted from liability inter alia in respect of bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment with a person insured under the policy) being carried in or upon the said motor vehicle at the time of the occurrence of the event out of which any claim arises.

" 10. At the time of the occurrence giving rise to the cause of action in this suit No. C. L. R023 of 1974 the said motor vehicle FG-695 was being used for the carriage of passengers for hire or reward.

11. Further and in the alternative by virtue of Proviso (ii) of Section 4(i) of the Motor Vehicle (Third Party Risks) Act the defendants were not required to indemnify the said CLOVIS MIGHTY against liability for injury to or loss by any person being carried in or upon the said Motor Vehicle FG-695 (other than a person so carried by reason of a contract of employment) with the said Clovis Mighty and the aforesaid Policy of Insurance issued by the Defendants to the said CLOVIS MIGHTY did not so indemnify the said CLOVIS MIGHTY. At the material time the Plaintiff was carried in or upon the aforesaid Motor Vehicle and was not a person carried therein by virtue of a contract of employment with the said CLOVIS MIGHTY. Accordingly the plaintiff's judgment against the said CLOVIS MIGHTY is not enforceable against the Defendants. "

In reply to paragraphs 9 and 10 of the defence, the plaintiff averred that "at the time of the occurrence of the event out of which her claim against Clovis Mighty arose, she was not being carried in or upon his said motor vehicle for hire or reward."

In the event, the solitary issue of fact to be resolved was whether the plaintiff had been conveyed "for hire or reward". A finding that she had not been carried for hire or reward was not decisive for the success of the plaintiff's claim, but a contrary finding would effectively destroy her case. In her evidence she explained the circumstances under which she came to be in Mr. Mighty's vehicle. She had attended a church convention in Clarendon and for the return journey, had obtained Mr. Mighty's permission to travel with him. The mother of Mr. Mighty was also a passenger on the vehicle, as were other persons all of whom were brethren of the church and had all attended this event. She was minded to offer Mr. Mighty "satisfaction" at the end of the journey but in the event, she had not, the accident having supervened. There had never been any prior arrangement

between Mr. Mighty and herself regarding payment. She acknowledged in cross-examination that she had earlier given a statement to a private investigator on this matter. She was recorded as stating therein (which in the event she denied) that "she was to pay Mr. Mighty a fee for transportation" and that "money would not be collected until I reached my destination". This statement was later tendered in evidence and a deal of cross-examination took place regarding its authenticity and the like. There was a suggestion that the investigator, Mr. Dudley Brown, had "doctored" the statement. It is wholly unnecessary to resolve the question of any fraudulent conduct on the part of the defendants' investigator. The onus was on the defendants to show that the plaintiff had been carried for hire or reward. The previous statement, whatever its authenticity, did not amount to any admission of payment or of any agreement to pay for the journey and went no further than the plaintiff's oral testimony in court which has already been sufficiently indicated.

There was therefore no basis for finding that any arrangement that any sum of money should be paid for the journey had been made between Miss Robertson and Mr. Mighty. I hold that she was not carried for hire or reward. It was not without significance that Mr. Rae felt moved to observe that he would mount no argument on this aspect of the case.

The substantial issue, in my view, is the true construction of the policy and both counsel sedulously addressed themselves to this task. Their assistance was invaluable and I record my indebtedness to them.

The policy which I must now construe is described as a Commercial Vehicle Policy: Public C.M.C. The proposal, which is incorporated explicitly into the policy, shows that Mr. Mighty desired a comprehensive C.M.C. policy. Attached to the policy and forming part of it, is a schedule. This is

the certificate which under Sec. 5(4) of the Motor Vehicles Insurance /Third Party Risks/ Act is required to be issued to the assured before the policy can become effective.

The policy, like Caesar's Gaul, is divided into three main parts, each of which is followed by an exception section. In Clause I of Section II - Liability to Third Parties - the material words are as follows:

> " The Company will indemnify the Insured in the event of an accident caused by or arising out of the use of the motor vehicle ..... against all users ..... which the Insured shall become legally liable to pay in respect of
>
> (a) ..... bodily injury to any person. "

Then, in the exception section, there appears the following clause, the wording of which I have rearranged, the easier to appreciate their purport -

> " The Company shall not be liable in respect of -
>
> (ii) ... bodily injury to any person in the employment of the insured, in the course of employment.
>
> (iii) ..... bodily injury to any person carried on the motor vehicle, (other than a passenger carried by reason of or in pursuance of a contract of employment with the assured .....)"

Under the section entitled "General Exceptions", the following clause is included (the material words only being set out);

> " The Company shall not be liable in respect of any accident, loss, damage or liability caused, sustained or incurred
>
> (b) whilst the Motor Vehicle is
>
> (i) being used otherwise than in accordance with the Limitations as to Use. "

The Schedule to the policy which is to be read with the policy, includes a section Limitations as to Use.

> " Use in connection with the policy holder's business.
>
> " Use for the carriage of passangers (other than for
>
> " hire or reward) in connection with the policy
>
> holder's business.

" Use for social domestic andpleasure purposes. "
In bold type are the words: THE POLICY DOES NOT COVER (inter alia).

3. Use for the conveyance of passengers for hire or reward.

In construing this policy, I take my task to be to ascertain the intention of the parties, as gathered from the wording of the policy, the proposal and the schedule, bearing in mind that the "true construction of a document means no more than that the court puts on it the true meaning, and the true meaning is the meaning which the party to whom the document was handed or who is relying on it would put on it as an ordinary intelligent person construing the words in the proper way in the light of the relevant circumstances." Per Greene, M.R. in Hutton v. Watling [1948] Ch. 398 at p. 403.

It is plain when one looks at clauses (ii) and (iii) of the Exception to Section II of the policy, that Miss Robertson would be caught by their terms and would not be able successfully, to invoke the provisions of section 18(1) of the Act. The relevant circumstances are that she admitted that she had not been carried "by reason of or in pursuance of a contract of employment with the assured"; she was not an employee of the assured. Mr. Rae, in the arguments which he developed with pertinacity and candour, maintained that the defendants were not liable for these reasons. Indeed, there was no obligation imposed by statute to indemnify an assured in the circumstances of the instant case because of the provisions of paragraph (ii) of the proviso to Section 5(1) of the Motor Vehicles [Third Party Risks] Act.

> " Provided that such a policy shall not be required to cover -
>
> (ii) except in the case of a motor vehicle duly licensed for the purpose in which passengers are carried for hire or reward, and except in the case of a motor vehicle in which passengers are carried by reason of, or in pursuance of a contract of employment with a

" person insured by the policy, liability in respect of the death of, or bodily injury to, persons being carried in or upon, or entering or getting onto or alighting from, the vehicle at the time of the occurrence of the event out of which the claims arise; "

Mr. Frankson ingeniously sought to show the existence of an ambiguity in the policy. He pointed to the limitations as to user appearing in the schedule to the policy. The policy limited the user of the vehicle in the three ways already outlined. At the material time, he said, the vehicle was being used for social, domestic or pleasure purposes. Miss Robertson was injured while the vehicle was being so used, an eventuality which attracted the company's cover because it was a permissible user. The insurers by an exception clause in the policy (Paragraph iii of Exception to Section II) were denigrating from the protection purportedly conferred in the schedule. There was an ambiguity which should be resolved in favour of the assured by construing the policy "contra proferentem".

This argument is, with respect, misconceived. An ambiguity, is defined as "an expression capable of more than one meaning". Mr. Frankson, did not attempt to show any clause in the policy which was capable of more than one meaning. Secondly, the document which would have been given to Mr. Mighty as his certificate, contrary to learned counsel's contention regarding a conflict between the terms of the schedule and the policy, is in my view in harmony with the policy and accurately reflects its tenor. The schedule shows that the assured could properly use his vehicle for three purposes, and in respect of such use, he would be covered by the policy. This is the effect of that section of the policy headed General Exceptions:

" The Company shall not be liable in respect of

1. any accident loss damage or liability caused sustained or incurred

(b) whilst the Motor Vehicle is

(i) being used otherwise than in accordance with the Limitations to Use "

The policy, however, specifically dealt with passengers and showed that cover would extend only to passengers conveyed pursuant to a contract of employment with the assured, into which category Miss Robertson, beyond a peradventure of a doubt, did not fall. In so far as the schedule summarised the terms of the policy, this was reflected in the clause -

> " Use for the carriage of passengers in connection with the policy holder's business. "

The rule of interpretation applicable in the circumstances is to be found in the Latin maxim "expressio unius est exclusio alterius". The fact that the policy and the schedule expressly confer protection for passengers carried pursuant to a contract of employment, implies the exclusion of all other passengers.

It is pertinent to bear in mind what the proposal form showed, namely, that Mr. Mighty desired a comprehensive C.M.C. public policy in respect of a vehicle which by law was not permitted to carry passengers for reward, that to the question in the proposal form - "6(c) Is the vehicle used for carrying passengers for Hire or Reward, at any time?" - no reply was made and that a line was drawn in the space provided for the answer to the question: How many passengers is the vehicle licensed to carry?" It would not appear that any cover was being sought in respect of persons carried aboard that vehicle. This proposal was expressly incorporated into the policy.

The term "use for social domestic and pleasure purposes" does not assist the plaintiff. I would agree that the use by Mr. Mighty of this motor vehicle to give a lift to Miss Robertson, would amount to a permitted user. But that cannot be construed as meaning that if Miss Robertson was injured, those words were apt to show that the policy covered her case. See the case of Egan v. Dower [1939]

63 Ll.L.R. 266. The policy provided protection for one category of passengers, namely, passengers carried pursuant to a contract of employment with the assured, or as stated in the schedule, "passengers carried in connection with the policy holder's business." Expressio unius est exclusio alterius". The Latin tongue may be dead but some expressions still rule us beyond the grave. That clause protected the assured if his vehicle, while being used for social, domestic or pleasure purposes, caused damage or injury to third parties for which liability attached to him, and in respect of which the exception clauses did not apply.

I have come to the clear conclusion that Miss Robertson is by virtue of the exception to Section II of the policy, not within the ambit of the policy and she cannot therefore claim against the Insurers. There must be judgment for the defendants with costs to be taxed or agreed.
