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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 82/97

MOTION

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.

BETWEEN	PETER WILLIAMS (SNR)	
AND	PETER WILLIAMS (JNR)	
AND	SHEREEN WILLIAMS	
AND	FLORENCE SAMUELS	APPLICANTS
AND	UNITED GENERAL INSURANCE COMPANY LIMITED	RESPONDENT

Dr. Lloyd Barnett and Andre Earle, instructed by
Rattray, Patterson, Rattray for the applicants

Dennis Morrison, Q.C. and David Johnson, instructed by
Piper & Samuda for the respondent

July 20 and November 30, 1998

DOWNER, J.A.:

The order of this court in *Peter Williams et al. v. United General Insurance Co.* S.C.C.A. 82/97 dated 11th June, 1998, granted liberty to apply to the Williams' family to ascertain the rate of interest, and the time from

which it ran for which United General Insurance Company was liable. The principal sum awarded was \$1M, in accordance with section 5(2)(b) of the Motor Vehicles Insurance (Third Party Risks) Act (the "Act").

**When did time begin to run
for the payment of interest?**

It is best to start by referring to section 18(1) of the Act, as it obliges the court to incorporate the payment of interest on the award. Section 18(1) reads:

"18.--(1) If after a certificate of insurance has been issued under subsection (9) of section 5 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 subsections (1), (2) and (3) of section 5 (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, or may have avoided or cancelled, 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." [Emphasis supplied]

The emphasised words "by virtue of any enactment relating to interest on judgments", make it necessary to refer to section 3 of the Law Reform (Miscellaneous Provisions) Act, which reads:

"3.--(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is

given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment..”

It seems that while the payment of interest under this Act is discretionary, the payment under the Act is mandatory. The position is similar to that pursuant to section 22 of the English Administration of Justice Act, 1969. See *Jefford v. Gee* [1970] 1 All E.R. 1202 at 1205. As for the date at which time would begin to run, there is useful guidance in the judgment of Lawton, J. (as he then was) in *Burts & Harvey Ltd. and Alchenny Ltd. v. Vulcan Boiler and General Insurance Co. Ltd.* [1966] 1 Lloyd’s Reports 354 at 354, he said:

“This is an action brought for the payment of an indemnity given by an insurance company, and I accept that for a period of some months after the happening of the contingency which gave rise to the claim, it was reasonable that the parties should negotiate to find out exactly how much was due.”

A later statement of the principle is to be found in *Jefford v. Gee* (supra).

There Lord Denning, M.R. said (at 1205):

“In 1893 in *London, Chatham and Dover Ry Co. v. South Eastern Ry Co*, Lord Herschell LC, stated the principle, which he thought should be applied, in these words:

‘...I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other

ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use. Therefore, if I could see my way to do so, I should certainly be disposed to give the appellants, or anybody in a similar position, interest upon the amount withheld from the time of action brought at all events'."

Continuing the historical analysis, Lord Denning said:

"(ii) The acceptance of the principle

The principle thus stated by Lord Herschell LC was set out in its entirety by the Law Reform Committee in its Second Interim Report which led to the 1934 Act. That very distinguished committee accepted the principle, and stated in para 8:

'In practically every case a judgment against the defendant means that he should have admitted the claim when it was made and have paid the appropriate sum for damages. There are of course some cases where it is reasonable that he should have a certain time for investigation, and in those cases the Court might well award interest only from the date when such reasonable time had expired...'

The committee went on to state in para 9 that this principle should apply not only to special damages for tort but also to general damages in running down cases or for pain and suffering in personal injury.

That committee reported in March 1934. The Law Reform (Miscellaneous Provisions) Act 1934, was passed on 25th July 1934. It contained s 3(1) which gave the courts power to award interest on debts and damages. The very purpose of that

section was to '...effect the reform which the Lord Chancellor thought that justice required' and to do 'what LORD HERSCHELL would fain have done': see *Riches v. Westminster Bank Ltd* [1947] 1 All ER 469 at 473, [1947] AC 390 at 402, per Lord Wright and per Lord Simonds [1947] 1 All ER at 476, [1947] AC at 406. It may, therefore, be regarded as giving statutory effect to Lord Herschell's principle."

In the instant case, the statement of claim was filed as far back as 6th December, 1990, while the accident, which gave rise to the claims, happened on 26th March, 1988. Be it noted, if time commences to run from the date of the statement of claim this would, in the exceptional circumstances of this case, be a fair date. One of the exceptional circumstances was that the applicants sought and obtained special leave of the Privy Council against the initial judgment of this court.

What rate of interest is appropriate?

In view of the above, time should run from 6th December, 1990, to 29th March, 1996, the date of the judgment. The rates exhibited by the appellants come from the affidavit of Warren Clark Cousins. The relevant part of his affidavit is as follows:

"1. That I reside at Waterworks Kingston 6 in the parish of Saint Andrew and I am an Attorney-at-law and a Partner of the legal firm Rattray, Patterson, Rattray Attorneys-at-law for the Plaintiffs/Appellants and am duly authorised to swear this Affidavit on behalf of the Appellants, the contents of which are true to the best of my knowledge, information and belief.

2. That I have examined the Statistical Digests published by the Bank of Jamaica for November 1994 and March 1998 and in particular the sections relating to interest rates charged by commercial banks and rates of interest paid by the Bank of Jamaica on its issue of treasury bills for the period 1988-1998; attached hereto are true copies of the said extracts marked 'A' for identity.

3. That the overall average annual rate of interest for the said period for the said loan and treasury bill rates of interest computed from the said extracts are as follows:

COMMERCIAL BANK LOAN RATES (%)

1988	25.13	
1989	25.47	
1990	30.75	
1991	31.79	}
1992	46.62	}
1993	44.34	}
1994	48.81	} $259.25 \div 6 = 43.20$
1995	43.51	
1996	44.18	
1997	<u>36.28</u>	
Average	37.68	

TREASURY BILL RATES (%)

1988	20.81	
1989	23.49	
1990	30.82	
1991	28.70	}
1992	37.04	}
1993	40.11	}
1994	40.94	} $211.36 \div 6 = 35.22$
1995	24.65	
1996	39.92	
1997	<u>21.77</u>	
Average	30.82."	

Striking a rough average, for the commercial bank rate and the treasury bill rate, the figure for the relevant period is 39.21% and the round figures are 40% on \$1,000,000 for 5¼ years which works out at \$2,100,000. That is the additional amount for interest which the respondent must pay the applicants. There shall be no order as to costs for this application.

FORTE, J.A.:

I concur.

HARRISON, J.A.:

I also concur.