Trinity Term

[2020] UKPC 20

Privy Council Appeal No 0020 of 2018

JUDGMENT

Presidential Insurance Company Ltd (Appellant) v Twitz and another (Respondents) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hodge

Lord Lloyd-Jones

Lord Briggs

Lord Hamblen

Lord Burrows

JUDGMENT GIVEN ON

20 July 2020

Heard on 1 July 2020

Appellant	1 st Respondent
Ravi Rajcoomar	Ronnie Vinda Persad
Shaun V Teekasingh	Shawn A Roopnarine
	Renaldo Paul
	Shanta A K Balgobin
(Instructed by Sperrin Law)	(Instructed by Roopnarine & Co)

Respondents:

(1) Emily Twitz (Representative Claimant of the Estate of Kerwin Tenia)

[(2) [Dexter Ramphal]

LORD HODGE:

1.
This appeal arises out of a road traffic accident which occurred on 2 February 2011 in which, sadly, a young man, Kerwin Tenia, suffered injuries from which he later died. When the accident happened,

the car was being driven by Anston Gaines. Mr Tenia's mother, Emily Twitz, as the representative of his estate raised legal proceedings seeking damages against (i) Dexter Ramphal as the owner of the car involved in the accident and (ii) the Presidential Insurance Company Ltd ("the insurance company"), which insured Mr Ramphal in relation to the vehicle. Her claim against the insurance company relied on section 10A(1) of the Motor Vehicles (Third-Party Risks) Act (Chapter 48:51) ("the Third Party Risks Act").

2.
The insurance company in its defence asserted that Mr Ramphal had sold the car to his aunt, Jennifer Gaines, on 18 September 2010 several months before the accident happened, and pleaded that it was not liable to meet the claim because (a) Mr Ramphal had no insurable interest in the car, and (b) it was entitled to avoid the policy on the ground of non-disclosure of a material fact.

3.
The parties agreed to have a preliminary trial to determine the two legal issues raised in that defence. Because the insurance company abandoned its non-disclosure defence in the Court of Appeal, the only issue which is properly the subject of this appeal is whether the learned judge and the Court of Appeal were entitled to conclude that Mr Ramphal had an insurable interest in the car at the date of the accident. The parties agreed that if he owned the car, he would have had an insurable interest in it. The question was whether Mr Ramphal was the owner of the car at the time of the accident.

4.
In a judgment dated 21 May 2013 Jones J, after hearing evidence, held that Mr Ramphal was at all material times the owner of the car and that at the time of the accident there was in existence a valid and enforceable policy of insurance in respect of the car. Those findings were upheld by the Court of Appeal which, in a judgment dated 26 April 2017, dismissed the appeal.

5.
Mr Rajcoomar, on behalf of the insurance company, bravely sought to persuade the Board that it should hear an appeal against the findings of fact, notwithstanding the Board's practice that it will decline to interfere with concurrent findings of pure fact, save in very limited circumstances: Devi v Roy [1946] AC 508. The Board has reiterated its practice in several appeals. See, for example, Central Bank of Ecuador v Conticorp SA [2015] UKPC 11; [2016] BCLC 26, paras 4-8; Desir v Alcide [2015] UKPC 24, paras 24-26, and Al Sadik v Investcorp Bank BSC [2018] UKPC 15, paras 43 and 45.

6.
The Board is satisfied that this is not a case in which it should review the findings of fact of the learned judge which the Court of Appeal upheld. It suffices to say that the Board is wholly satisfied that there was evidence which entitled her to reach the conclusion which she did. Mr Ramphal's evidence, which she accepted, was that he entered into an agreement to sell his car to his aunt on 18 September 2010 and that the purchase price of $75,000 would be paid by three instalments of $40,000, $30,000, and a final instalment of $5,000, which would be paid when he and his aunt met at the office of the Licensing Authority to register the transfer of ownership. When Mrs Gaines paid the first instalment, she was given possession of the car and kept it at her house, but Mr Ramphal used it occasionally when he visited her at Mayaro. On 21 December 2010, before the second instalment had been paid, Mr Ramphal renewed the motor insurance policy. After the second instalment was paid in January 2011, he arranged to meet his aunt at the office of the Licensing Authority to receive the final instalment and enable her to obtain a certificate of registration of ownership (under the Motor Vehicles and Road Traffic Act (Chapter 48:50) ("the RTA")) but she did not attend. Further meetings

were arranged to complete the transaction by registering the change of ownership but the meetings did not take place and the final instalment was not paid before the accident occurred. As the Court of Appeal observed, this account of events is consistent with an agreement that property in the car should pass only on the payment of the final instalment and section 19 of the Sale of Goods Act (Chapter 82:30) gives effect to such an agreement. There was therefore evidence, which the trial judge was entitled to accept, which established that Mr Ramphal had an insurable interest in the car at the date of the accident.

7.
In support of its argument that there was a completed sale, the insurance company founds on a receipt for $75,000 which Mr Ramphal had signed and also a statement which he made to the insurance company after the accident. But Mr Ramphal, who is not able to read, gave explanations of those documents which the judge must have accepted. Mr Rajcoomar also sought to introduce into the appeal evidence which suggested that Mr Ramphal was never the registered owner of the car. The Board declines to admit that evidence for two reasons. First, there is no good reason why such evidence was not produced at the trial. Secondly, as Mr Rajcoomar himself submitted, the fact that a person is registered as owner of a vehicle does not establish that he or she is owner of the vehicle as the definition of “owner” in section 2 of the RTA applies only to the Act itself. The evidence therefore would not contradict the conclusions on ownership reached by the judge and the Court of Appeal.

8.
Mr Rajcoomar also sought to address the Board on a submission that the insurance policy did not cover the accident because it had not been established that the driver of the car had had the permission or was the employee or agent of Mr Ramphal; he referred to sections 4(7) and 10 of the Third Party Risks Act. The Board declined to hear that submission for the following reasons. First, the appeal to the Board is from an order declaring that Mr Ramphal had a valid insurance policy in respect of the car at the date of the accident. The question which Mr Rajcoomar sought to raise was not part of that preliminary issue. Secondly, the insurance company did not plead and its witness, Mr Houlass, did not assert as its case that, if Mr Ramphal were owner of the car at the time of the accident, the policy did not cover Anston Gaines as a driver. As a result, the question of whether Mr Ramphal’s arrangement with his aunt allowed her son to drive the car was not explored in evidence. Thirdly, the Court of Appeal did not allow the insurance company to raise this point before it. Finally, it is unclear how the question can be of any consequence in this case as the insurance company has not appealed the final judgment of the High Court of Justice dated 15 November 2013 ordering the defendants to pay the claimant an agreed sum of $525,000.

Conclusion

9.
The Board dismisses the appeal.