19.1.95

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause 106/94

BETWEEN	GEORGE JACKSON	PLAINTIFF
AND	CAYMAN INSURANCE CO. LTD.	DEFENDANT

For the Plaintiff: Mr. Graham Ritchie
For the Defendant: Norman Hill Q.C. and Mr. Morris Garcia

HARRE C. J.

JUDGMENT

The 23rd of September 1988 was the 17th birthday of the plaintiff's friend, Franklin Blair Smith. On that day he obtained a provisional driving licence on the strength of which he hired a motor cycle owned and insured by Rexdon Trading Co. Ltd. the operators of Caribbean Motors, an enterprise engaged in renting motor cycles to members of the general public.

On 24th September 1988 there was a road traffic accident in Newlands, Grand Cayman between Mr. Smith, who was riding his hired motor cycle, and the plaintiff. The plaintiff sustained severe injuries and an action ensued. The plaintiff, like Mr. Smith had been 17 years old at the time of the accident. It is common ground that

notice of this action was given to the defendant in accordance with S 16 (2)(b) of the Motor Vehicle Insurance (Third Party) Risks Law 1964 and that judgment was entered in favour of the plaintiff in the sum of CI$124,106.69 and costs on the basis that Mr. Smith was 50% to blame for the accident.

The present action arises because the defendant, the insurance company, denies liability under the policy issued by it to the hirers the issues being whether Mr. Smith was at the time of the accident a "person insured under the policy." If he was, S 16 of the Motor Vehicle Insurance (Third Party) Risks Law 1964 applies. The section reads as follows to the extent that it applies in this case.

> "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, or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person 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 ..."

The relevant parts of the certificate read as follows:

> **"Persons or classes of persons entitled to drive.**
> Any person who is driving on the Policyholder's order or with their permission.
>
> Provided that the person driving holds a licence to drive the Motor Vehicle or has held and is not disqualified for holding or obtaining such a

licence. The term "licence" means a licence or other permit required by the licensing or other laws or regulations.

Limitations as to use

Use only for social domestic and pleasure purposes and for the Insured's business or profession.

The Policy does not cover use for hire or reward racing pacemaking ...".

The first ground on which the defendant denied liability is that the motor cycle was at the time of accident being used for racing or pacemaking contrary to the limitations as to use. In this connection I need to refer back to the judgment of Schofield J in the earlier case where the liability for negligence was determined. He said this -

"What really happened between these boys on the afternoon of the 24th September 1988? There is a strong suspicion that they were cutting a caper between themselves. That the plaintiff being ahead of the motor cycle was cutting across the road and the defendant was joining in a dangerous game with him. But a finding on that suspicion could not be supported by the evidence and is not open to me. That being so counsel agree that the defence of volenti non fit injuria falls by the wayside.".

That, it seems to me, applies equally to the defence based on the allegation that both parties were engaged in an illegal enterprise. Indeed, later in his judgment, the learned judge went on to say this -

"I find that both boys were larking about. They must, according to the evidence, have been larking independently and were not involved in a mutual game.".

It was not part of the learned judge's task to decide any issue relating to the insurance policy, and in particular, whether the limitation as to racing or pacemaking applied. But his view that no such activity was going on is implicit in his finding that the two boys were "larking independently". Mr. Hill sought to persuade me that the finding that the plaintiff was riding on his bicycle ahead of Smith on his motor cycle and looking round implied that some kind of race was going on. I do not make that inference and in my view there is no evidence at all in the record the earlier case to indicate that racing or pacemaking was taking place.

So I turn to what in my view is the real issue in the case. - Whether the proviso relating to the persons or classes of persons entitled to drive entitled the defendant to disclaim liability under the policy.

It is common ground that at the time of the accident Mr. Smith was riding the motor cycle without displaying L plates and was carrying an unauthorised passenger in contravention of the Traffic Law (R).

What in effect the defendant is saying is that because of those matters Mr. Smith was not a person who held a licence to drive a motor cycle or who had held and was not disqualified from holding or obtaining such a licence. The plaintiff says that the fact that he was in breach of the terms of his provisional licence does not have the effect of invalidating the licence itself or disqualifying Mr. Smith from holding or obtaining such a licence. The arguments on this issue are entirely a matter of law and it is that to which I now

turn.

The relevant part of Section 32 (1) of the Traffic Law (R) provides that no person is qualified to drive a vehicle unless he is the holder of a provisional licence to drive such vehicle under the conditions under which it is being driven.

Section 33 provides that no person is licensed or authorised to drive a mechanically propelled vehicle unless he -

> (a) is the holder of a current licence issued in the Islands authorising him to drive such a vehicle; or
>
> (b) is the holder of a provisional licence to drive such vehicle under the conditions under which he is driving it; or
>
> (c) is exempted ---".

S. 40, to the extent that is relevant, reads as follows -

> "40. A learner driver in respect of any class of mechanically propelled vehicle may drive any vehicle of that class on any road where vehicles may lawfully be driven:
> Provided that -
>
> (a) there is displayed on the front and rear of the vehicle being driven a white plate with the letter "L" in red in the prescribed manner and form;---
> (c) no holder of a provisional licence in respect of a motor cycle or moped may carry a passenger unless such passenger is the holder of a full licence to drive a vehicle of the type in question.".

It is common ground that the plaintiff was in breach of paragraph (a) and (c) of S. 40. Indeed he was charged and convicted in respect of

those breaches.

A reported English County Court case on which the plaintiff relies is Rendleshan v Dunne; Pennine Insurance Company Ltd (Third Party) (1964) Lloyds List Law Reports Vol 1 p 192. In that case His Honour Judge Herbert said -

> "I cannot think that it is possible to say that a man has not got a licence to drive a car on the road merely because he has failed to comply with a condition upon which he has been granted a licence.".

Be that as it may, I have to reach a conclusion based not only on the wording of the insurance certificate before me but also on the Cayman statutory provisions. That leads me, however, to follow the following view of Lord Goddard C.J. in Edwards v. Griffiths (1953) 2 ALL ER 874 when he said at p 876 -

> "Prima facie, the person who is driving with the permission of the policy holder is covered. It is further provided by the certificate that the person who is driving, whether he is the policy holder or a person driving with permission, must hold or must have held a licence to drive. The words "and is not disqualified for holding or obtaining such a licence" following immediately after the words "has held" seem to me to indicate clearly that the insurers are contemplating the case of a man who has held a licence, but has been disqualified for holding it, meaning disqualified for getting a new one or holding his current licence by reason of an order of the court. It is clear, as it seems to me, that as between the assured and the insurers we have to construe the certificate against the insurers, that is to say, if there is an ambiguity or a doubt as to its extent and the question were to arise as to the liability of the insurers, we should have to put the construction on the certificate most favourable to the assured.".

It is convenient at this point to refer to another judgment of Lord Goddard C.J. simply to distinguish the case in which it was delivered - Kerridge v Rush (1952) Lloyds List Law Reports Vol 2 305 from the present one. The policy in that case excluded, to use the words of Lord Goddard, "in language which cannot bear more than one meaning" cover in the very event which occurred. That is not this case.

I analyse the present case in the following simple way.

1. The motor cycle was rented to Mr. Smith as the holder of a provisional licence and therefore he had permission to drive it. He was, prima facie, a person entitled to drive.

2. The question is whether or not a condition affecting recovery once an insurance claim had arisen is applicable. That condition is to be found in the proviso to the designation of persons entitled to drive.

3. Mr. Smith was not "qualified to drive" the motor cycle in terms of S 32 (1) of the Traffic Law (R). Nor was he "licensed or authorised to drive" in terms of S 33. Moreover, he was not a learner driver permitted to drive under S.40

4. If Mr. Smith was not "licensed or authorised to drive" did he, nevertheless, "hold a licence to drive". I incline to the view that he did but I do not need to

decide this case on such a nice consideration. It is, in my view, beyond doubt that even if the view which I have just expressed is wrong Mr. Smith had, since the day before the accident, held a licence or other permit required by the licensing or other laws or regulations and was not disqualified for holding or obtaining such a licence. I adopt the view of Lord Goddard CJ in Edward v Griffiths (Supra) distinguishing the expression the expression "disqualified from holding or obtaining .. a licence" from "qualified to drive" in section 32 (1) and "licensed or authorised to drive" in S 33 of the Traffic law (R). Mr. Smith was indeed breaching the law when he acted as he did. But he was not insured against the consequences of that, but against the consequences of negligent driving. Lord Goddard expressed that proposition as follows in Leggate v Brown (1950) 2 All ER 564 and 565 -

> "There may be more than one insurance contained in a policy and if it were possible to imagine an insurance company insuring a person against the consequences of a breach of the Road Traffic Acts - which has nothing to do with injury to third persons - I daresay that that part of the policy would be void. This, however, is an insurancve against the consequences that may arise owing to the negligent driving of the vehicle, because a third party can only claim if there has been negligent driving".

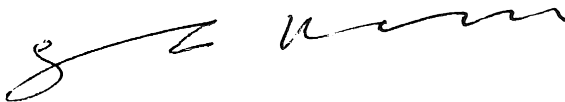
For these reasons judgment will be in favour of the

plaintiff, as follows -

(1) Judgment sum CI$124,106.69

(2) Costs of the action in Cause 381 of 1991 in the sum of CI$10,888.00

(3) Interest on sums due at the rate of 7 1/2% per annum from 9th December 1993 until date of payment.



G. E. Harre
Chief Justice.

19th January 1995.