

**IN THE SUPREME COURT OF BELIZE A.D. 2016
(CIVIL)**

CLAIM NO. 247 of 2016

BETWEEN

GEON HANSON

Claimant

AND

HOME PROTECTOR INSURANCE CO. LTD

Defendant

Before: The Honourable Madame Justice Griffith
Dates of Hearing: 1/07/16; 13/07/16; and 19/07/2016 (oral judgment).
Appearances: Nicolas Dujon S.C. for the Claimant and Mr. Michael Peyrefitte for the Defendant.

Section 19(1) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap. 231 of the Laws of Belize – Limitation of insurance coverage to \$50,000 for damages for personal injury under Section 4 of Act – Damages awarded plus interest and costs in excess of limit of \$50,000 – Whether interests and costs recoverable in addition to or included in damages limited under section 4.

DECISION

Introduction

1. The Claimant Geon Hanson, was by virtue of Judgment in Supreme Court Claim No. 489 of 2015, awarded damages for personal injuries in excess of \$50,000, as well as interest on that sum and costs. The Defendant, Home Protector Insurance Co. Ltd. was the insurer of the Defendant sued in Claim 489 of 2015 and thereby liable under a policy of third party insurance for the damages awarded to the Claimant. The Insurance Company acknowledged its liability under the Judgment but only to the extent of the statutory limit of \$50,000. The Claimant also sought payment of the interest and legal costs which were awarded to him, alleging that section 19 of the Motor Vehicle Insurance (Third Party Risks) Act, Cap. 231 of the Laws of Belize ('the Act'), entitled him to recover the interest and costs over and above the sums awarded to him as damages. The only issue for decision in this case was one of law – that being the interpretation of section 19 of the Act – namely, whether the limit on liability applied inclusive of interest and costs.

An oral decision was rendered in favour of the Claimant on the 19th July, 2016 however the issue has once again arisen before this Court in another claim, thus the Court now reduces its reasons into writing.

The facts and the legal framework

2. Cap. 231 mandates insurance coverage for liability for third parties arising from injury or death sustained in a motor vehicle accident. The requirements of such third party insurance coverage are provided for in section 4 of the Act and by section 4(1)(c)(iv), an insurer's liability for injury or death in respect of a claim by any one person is limited to \$50,000. Liability for damage to property in respect of a claim by any one person is similarly limited in the sum of \$20,000 by section 4(1)(c)(vi). In the instant claim, the damages awarded to the Claimant in claim 489 of 2015 amounted to \$91,070 for personal injuries and \$8,930 for damage to property. Interest at the rate of 6% per annum was awarded on these sums until payment and costs in the amount of \$14,286. The Insurance Company undertook to pay the sum of \$44,600 being the sum remaining under the \$50,000 limit after deduction of the sum of \$5,400 already paid to the Claimant. The entire sum of \$8,930 was to be satisfied without issue. Payment of interest on the damages awarded and the prescribed costs were refused by the Defendant.
3. Section 19 of Cap. 231 provides (in part, as relevant) as follows (my emphasis):-

19.–(1) If, after a certificate of insurance has been issued under section 4(3) of this Act, 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 section 4(1)(b) or (c) of this Act (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 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,

Provided that the court shall not proceed to entertain or hear a claim or to issue any judgments to which this section applies until a notice in the form prescribed in the Second Schedule is filed at the Registry of the Supreme Court by the plaintiff and is served on the insurer, and the Registrar of the Supreme Court has issued his certificate that the proceedings are in order.

19.-(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

4. The operative words of section 19 are submitted by Counsel for the Defendant as *'the insurer shall, subject to 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...'*. In particular, that the word *'including'*, as it pertains to costs and interests, makes clear that those amounts fall within the liability set by section 4. More particularly, arising from section 19(4), the words *'in respect of a liability of a person insured by a policy'* also meant the liability of \$50,000 limited under section 4(1)(c)(iv)&(vi). Counsel for the Defendant relied on a number of authorities, most notably **Harker v Caledonian Insurance Co**¹, a decision of the Belize (then British Honduras) Supreme Court, later applied in **Eric Gillett et al v Motor & General Insurance Co**.² It was submitted that these cases make clear that an insurance company is not required to pay more than the amount covered in their policy. Further that **Gillett** made the interpretation of sections 19(1) and 19(4) clear by reference to a similar provision in Guyana³ which expressly excludes the limitations on liability of coverage of the insured from the amounts recoverable by a third party.
5. Senior Counsel for the Claimant however dismissed the cases relied upon by Counsel for the Defendant as dated and submitted to the Court instead several authorities of more recent vintage. In particular, reference was made to **Presidential Insurance Co. Ltd. v Stafford**⁴ and **Advantage General Insurance Co. Ltd v Doreen Wright**⁵. In **Stafford** the construction given by the Trinidadian Court of Appeal to their equivalent⁶ to section 19(1) was that the phrase *'including any amount payable in respect of costs and ...interest'* was

¹ BZ 1977 SC 7; [1977] 2 Lloyd's Rep. 556

² Supreme Court Action No. 141 of 1976.

³ Section 8(1) The Motor Vehicles Ordinance (Third Party Risks) Act, No. 22 of 1937.

⁴ (1997) 52 W IR 448

⁵ [2016] JMCA Civ 31

⁶ Section 10(1) Motor Vehicles Insurance (Third Party Risks) Act, Cap. 48:51, Trinidad & Tobago

held to mean ‘*as well as*’ any amount payable in respect of costs and interest. Support for this construction was buttressed by reference to **Matadeen v Caribbean Insurance Co. Ltd (Trinidad & Tobago)**⁷ where that phrase (*‘including any amount payable in respect of costs and...interest’*) was expressed by the Privy Council as ‘inherently ambiguous’. The ambiguity was said to be that the words could mean either that the statutory limit could be exhausted by the inclusion of costs and interest or that costs and interest were recoverable in addition to the statutory limit on damages to be covered by the policy. The Privy Council⁸ expressed that the latter construction (that ‘includes’ means ‘as well as’) was that to be preferred. The decision of **Advantage General**⁹ was submitted to illustrate the Jamaican Court of Appeal’s interpretation of the equivalent to section 19(1)¹⁰, directly on the issue of the obligation to pay legal costs being in addition to the statutory limit on damages. It is on these authorities that the Claimant has sought the order for payment of his legal costs and interest in addition to satisfaction of the balance of the judgment for damages.

The Court’s Consideration of the Law and Authorities.

6. Firstly, the Court considers Defendant’s authorities, which can be restricted to **Harker v Caledonian Insurance Co.** as **Gillett v Motor & General Insurance** followed **Harker**. Counsel for the Defendant referred to the 1st instance decision of **Harker**, which was subsequently upheld on final appeal, by the House of Lords. This authority is indeed conclusive, insofar as it held that the construction of then section 20(1) of the same Act, was such that the limitation of recovery of damages by a third party in any one claim, was that prescribed by statute, (then \$4000 now \$50,000). However, that decision did not address the issue of recovery of interest and costs separate and apart from an award of damages. It is in fact unclear from the 1st instance decision whether an order for costs and interest was made by the trial judge.

⁷ [2002] UKPC 69

⁸ *Ibid* @ para 13.

⁹ *supra*

¹⁰ Section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act, Jamaica.

On the other hand, the House of Lords' judgment of Lord Diplock¹¹ referred to the decision of Donaldson J. as an award of the statutory limit of \$4,000 - "together with any costs incurred by the deceased in the Belize action..." In any event however, the issue of whether recovery of costs and interest comprised the statutory limit was not part of the *ratio* of either Donaldson J's or the House of Lord's judgments. In the circumstances, this authority is not found applicable to the issue in the instant case, as at no point in time, was it the case for the Claimant that he was seeking recovery of damages over the statutory limit. **Harker** and by extension **Gillett**, in which the issue was also not raised, do not therefore assist the court on the current question of costs and interest.

7. The authorities submitted on behalf of the Claimant on the other hand, do provide a greater measure of assistance. The Trinidad & Tobago Court of Appeal, in **Presidential Insurance**¹² directly considered the phrase 'including costs and interest' arising in the same manner in the Trinidad equivalent of section 19(1). Sharma JA posed the issue to be determined in the following terms¹³:-

The question is really does the word 'including' in the section serve to emphasise that the amount payable by the insurer is limited to the sum which he is required to pay under the policy and no more, in other words is it restrictive in its meaning? Or is it a word of extension in that it operates to render the insurer liable to pay costs and interest in addition to the sum; in other words, to mean 'as well as'?

Sharma JA, as part of the majority decision of the Court of Appeal, went on to answer the question according to the latter meaning and dismissed the appeal therein against the trial judge's award of costs and interest in addition to the statutory limit on damages. Sharma JA found that the section was clear and unambiguous, albeit recognizing that the word 'including' could present difficulties in interpretation.

¹¹ **Harker**, supra per Diplock LJ @ 558; cf judgment of Hamel-Smith JA in *Presidential Insurance Co. v Stafford*, (1997) 52 WIR 448 @

¹² Supra para 5 herein.

¹³ *Presidential Insurance* supra @ pg 453.

Nonetheless, it was found that in the context of the statute and intention behind the statute, the only interpretation properly considered, was that interest and costs were to be awarded in addition to the statutory limit of damages. This decision was upheld on appeal to the Privy Council¹⁴

8. Senior Counsel for the Claimant also referred to the Belizean case of **Joel Clarke et anor v Home Protector Insurance Co. Ltd**¹⁵ which applied *Presidential Insurance* and a Barbadian authority cited therein ***Greaves v New India Assurance***¹⁶- as cases which were determined in favour of the insurer's liability to pay interest and costs in addition to the statutory limit of damages. Additionally cited, was the Jamaican Court of Appeal's decision in ***Advantage General Insurance Co. Ltd v Doreen Wright***,¹⁷ which also applied *Presidential Insurance* on the issue of the insurer's liability to pay costs and interests in addition to the statutory limit on damages. Given the in depth discussion of the issue in ***Advantage General***, the Court examines this decision in lieu of the two mentioned above. Morrison P, firstly examined the Jamaican law on third party coverage and limitation of liability for damages. Save for making clear that the amount payable under the policy is either the amount of judgment or statutory limit, whichever is lower, the Jamaican legislation is substantively the same as the Belize section 19(1). Additionally, the policy behind the requirement for third party insurance coverage was noted by Morrison P to be for the protection of third parties from negligent operators of motor vehicles on the road.
9. In applying ***Presidential Insurance***, Morrison P. adopted the dicta of Lord Hobson, which stated¹⁸ that as was the case with any judgment given in disputed litigation, the liability to pay the insured's costs was always in addition to the award of damages itself. Further, that any interpretation to the contrary would serve to frustrate the intention of the legislation, in protecting the third party by ensuring recovery of some measure of damages upon injury or loss of property as a result of a motor vehicle accident.

¹⁴ [1999] UKPC 14

¹⁵ Belize Supreme Court Claim No. 182 of 2010

¹⁶ (1975) 27 WIR 17

¹⁷ Supra para 5 herein.

¹⁸ Prudential Insurance UKPC supra @ paras 16-17.

As regards interest, the operative words of the equivalent to section 19(1) as found by Lord Hobson¹⁹ were ‘...*interest on that sum...*’ meaning that sum to which the insured became entitled upon judgment, so that interest thereon meant interest on the amount of judgment (or the statutory limit if the judgment exceeded the limit), at the judgment rate from the date of judgment. Morrison P. concluded by saying that (with emphasis):-

“Presidential and Matadeen²⁰ therefore provide direct authority for...treating the word ‘including’...as a word of extension [which] means ‘as well as’ or in addition to’ or simply ‘and.’”

And further:-

“In other words, in an action under that Act, interest and costs are clearly payable by the insurer to a third party beneficiary of a judgment against its insured, in addition to and irrespective of the statutory minimum.

Conclusion

10. The sole issue of this claim was whether there existed a liability upon an insurer to pay legal costs and interest, where the amount of the judgment was, or the additional sums of costs and interest resulted, in an excess of the statutory limit of recovery of \$50,000, as stipulated by section 4(1)(c)(iv) of the Motor Vehicles Insurance (Third Party Risk) Act, Cap. 231. ***Harker v Caledonia Insurance Co. Ltd.*** is distinguished on the basis that that decision did not address the issue of the liability for interest and costs over and above the statutory limit of \$50,000. However, the Trinidad and Jamaican authorities - ***Presidential Insurance Co. Ltd v Stafford*** (PC) and ***Advantage General Insurance Co. Ltd v Wright*** (CA)(respectively), directly decided the issue arising out of legislation substantively in the same terms as section 19(1) of the Belize Act, thus these authorities are considered highly persuasive and directly applicable to the case at bar. In applying these cases, it is therefore found that the Defendant, Home Protector Insurance Co. Ltd, herein is liable to pay interest at the judgment rate on the sum of \$50,000 from the date of the judgment giving rise to this claim. The Defendant is also liable to pay the legal costs of that judgment.

¹⁹ Ibid.

²⁰ Supra fn 8 herein.

Disposition

11. The claim herein is disposed of by the following orders:-

- (i) In addition to the maximum liability of \$50,000 as limited by paragraph (iv) of section 4(1)(c) of the Motor Vehicle Insurance (Third Party Risk) Act, Cap. 231 of the Laws of Belize, the Claimant is entitled to recover both interest on the judgment and legal costs;
- (ii) The sum of \$5,400 already paid by the Defendant to the Claimant is to be credited towards the payment of the said \$50,000;
- (iii) The Claimant is entitled to legal costs of Claim 489 of 2015 in the sum of \$14,286;
- (iv) Statutory interest of 6% is due on the sum of \$50,000 and the sum of \$14,286 both from 5th April, 2015 being the date of the consent judgment in claim no. 489 of 2015, to the date of payment; and
- (v) Costs in the sum of \$3,000 are awarded to the Claimant upon conclusion of this application for summary judgment.
- (vi) This judgment takes effect from the 19th day of July, 2016.

Dated this 18th day of January, 2017.

Shona O. Griffith
Supreme Court Judge.