

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA, FIJI

Civil Action HBC No. 101 of 2013

BETWEEN : **CHAMAN LAL t/a CHAMAN LAL TRANSPORT** of Ba Town,
Ba, Businessman.

PLAINTIFF

AND : **DOMINION INSURANCE LIMITED** having its registered
office at 1st Floor, 231 Waimanu Road, Suva.

DEFENDANT

Appearances : Mr N. Padarath for the plaintiff
Mr Roopesh Singh for the defendant

Date of Trial : 04 & 05 August 2016

Date of Judgment : 06 February 2017

J U D G M E N T

INTRODUCTION

[01] The Plaintiff's claim stems from an insurance policy he obtained from the defendant. The claim includes: (a) judgment for the sum of \$40,000.00, (b) General damages for breach of contract, (c) judgment for all loss of income and profit suffered as a result of the breach, (d) interest and (e) costs.

[02] At the trial, the plaintiff called four witnesses and the defendant two witnesses.

[03] Both parties opted to file written submissions. Accordingly, the defendant filed their written submission on 02 September 2016 and the plaintiff, having obtained a few adjournments for that purpose, on 02 February 2017.

THE FACTS

[04] Chaman Lal t/a Chaman Lal Transport (*the plaintiff*) purchased an insurance policy from Dominion Insurance Limited (*the Defendant*) for an indemnity value of \$40,000.00 over the omnibus registration number BD 097 (*the bus*). On 24 June 2007, the bus was involved in an accident when coming from its parking compound and sustained damages. Under the policy the Defendant was obliged to indemnify damages. The Plaintiff obtained two quotations one was from United Coach Builders Co. Ltd in the sum of \$23,760.00 and the other one from Ba Body Builders in the sum of \$25,043.00 and presented his claim. The defendant declined.

PLAINTIFF'S EVIDENCE

[05] At the trial, the plaintiff called four witnesses to give evidence namely (1) Prem Chand (**PW1**), (2) C Mandri (**PW2**), (3) A Sharma (**PW3**) and K Jimione, LTA Officer (**PW4**).

[06] PW 1 in his evidence states that:

- a) He is the Manager of Chaman Lal Transport. The owner Chaman Lal is his father and produced a Power of Attorney (P/Exhibit 1).
- b) Sometime in 2007, the Plaintiff had purchased an insurance policy over the bus and the indemnity value was in the sum of \$40,000.00.

- c) In June 2007, the bus was involved in an accident and that the said bus sustained damages and a claim was made for the indemnity under the policy.
- d) The Defendant requested the Plaintiff to provide quotations for the repairs.
- e) The plaintiff provided 2 quotations to the Defendant which was from United Coach Builders Co. Ltd in the sum of \$23,760.00 and Ba Body Builders in the sum of \$25,043.00 and claimed to be indemnified.
- f) The Defendant refused to repair the bus from any of the two garages and they asked the Plaintiff to repair from Marine Drive Service Ltd as the Defendant had obtained a quotation in the sum of \$6,887.58 which was very less compared to the other quotations.
- g) That the Plaintiff refused to repair the bus at Marine Drive Service Ltd as it was not a garage which could re-construct the bus after accident since the body of the bus was twisted and the floor was broken.
- h) The bus was extensively damaged in front, back and on the side.
- i) After the accident, officers of the Land Transport Authority visited and informed the plaintiff to repair all the defects in the bus.
- j) He confirmed that the assessor, one Gary J. Carter who was hired by the Defendant also inspected the said bus and he prepared a report on the damages of the bus and the repair of the same.

k) He wants the bus to be repaired with United Coach Builders Co. Ltd as they do coach building and not Marine Drive Motor Services Ltd which the Plaintiff never approved of.

[07] Under cross-examination PW1 states that:

- a) In July 2007, Plaintiff had 3 buses which provided services on between Tavua – Ba – Lautoka and Ba – Votua. The route to Ba and Votua was a feeder (gravel) road.
- b) The bus was purchased by the Plaintiff in 1980's and was constructed locally. Shreedhar Motors constructed the bus in 1980's and it was about 27 years old at the time of the accident.
- c) He confirmed that the photographs show that left hand side of the bus damaged, light of the bus damaged and the face of the bus was damaged and the seats of the bus was also damaged (Photos are D/Exhibit 4).
- d) He agreed that there were major damages to the bus, which damages were pre-accident damages. He also agreed to the damages such as rusting and deteriorating body parts on the bus.
- e) He confirmed that he was looking for the bus to be repaired to a brand new standard with brand new parts.
- f) He agreed that the Defendant had approved his claim for the bus to be repaired with Marine Drive Motor Services Ltd.

- g) He admitted that the Plaintiff refused to have the bus repaired and insisted to have it repaired at one of his nominated garages.
- h) He also confirmed that the two quotations, which the plaintiff provided, did not show the particulars of work. However, the quotations obtained by the Defendant provided the full scope of work with the particulars of repairs and the cost of repairs to each damaged portion in the bus.
- i) He further agreed that the pre-accident condition of the bus was not good and it required repairs and that there were rusted portions of the bus and identified in the photograph (D/Exhibit 4), a visible hole on the body of the bus, which hole he agreed was not caused by the accident.
- j) He confirmed that the quotations provided by him referred to repair of damages that were not caused by the accident, he said that this may have been a mistake.
- k) The Plaintiff wanted brand new parts to be used in the repair of the bus.

[08] PW2 in his evidence states that:

- a) He was required by the Plaintiff to give quotation for the rebuilding of the bus.
- b) The parts that he proposed to be used were brand new and the quotation was for repairs of full bus which included damage caused by the accident, other defects on the bus and general painting would be done over the bus.

- c) In cross-examination, PW2 confirmed that the repairs of other defects in the bus were included in the quote and that the full bus would be repaired.
- d) He also confirmed that the bus apart from accident had other defects such as rust which he said that the said bus was used in feeder road and in water. This might have caused rusty.
- e) He further confirmed that the quotation in the sum of \$25,043.00 is for the repair and rebuild the entire bus.

[09] PW3's evidence was that:

- a) His company did the quotation for the repair of the bus that was involved in an accident. The quotation for the repair is \$23,760.00. He was requested by the insurance company to provide quotation for the repair of the bus.
- b) The bus was an old one, but he could not remember whether there were other defects apart from the damages from the accident.

[10] In cross examination PW3 confirmed that the bus was an old bus, he could not recall other defects in the bus as it was a long time ago. He also confirmed that spare parts quoted were all new.

[11] PW4 in his evidence states that:

- a) He is from the Land Transport Authority (LTA).

- b) PA Lal, Ba Body Builders, Shreedhar Motors and Classic Buses are licensed to construct buses. After the bus is constructed it will be tested by LTA.
- c) Accident damages, if the damage would result in modification approval of the LTA would be required.
- d) In cross examination, PW4 confirmed that there was no requirement for only coach builders to repair buses where no extensive and major damage had occurred.
- e) He said repairs which would result in modification or major damage will require the bus to be passed by the LTA.
- f) He also said damage on a side of bus, replacing headlight, repairing bumper, replacing a windscreen, normal penal beating, changing wiper blades are not modifications.
- g) He indentified that anything to do with chassis, axel, wheel base/track exhaust system and increasing the number of seating as modification.

DEFENDANT'S EVIDENCE

[12] The defendant called two witnesses namely (1) Vijay Kumar, Business Development Manager (*DW1*) and (2) Vijay Kumar of Marine Drive (*DW2*).

[13] *DW1* in his evidence states that:

- a) Sometimes in 2004 the bus registration no. BD 097 was insured with the Defendant and the bus insurance was renewed thereafter till 2007.
- b) In June 2007, the bus was involved in the accident due to which it suffered damages. This was informed to the insurance company by the Plaintiff.
- c) He advised the Plaintiff to obtain quotations and provide the same with the claim form for the Defendant to consider.
- d) He himself went to inspect the bus and that apart from the accident the bus was also rusted on the side and it was an old bus.
- e) Upon receiving the quotation from the Plaintiff, the Defendant engaged an independent investigator Mr Gary J Carter who in his report gave analysis of the damages which occurred to the bus at the time of the accident and further he also assessed on the quotation provided to the Defendant and as per his report the quotation from Ba Body Builders and the United Coach are excessive in the extreme.
- f) He obtained a quotation from Marine Drive Motor Services Ltd as they were reasonable with the cost and repairs.
- g) The insurance company asked the plaintiff to repair the bus with Marine Drive Motor according to the assessor's report and quotation from Marine Drive Motor. The plaintiff refused to accept the offer saying they don't want to repair the bus at Marine Drive Motor and then the company has offered the plaintiff a sum of \$7,000.00 as cash settlement less excess of

\$2,000.00 as per the policy which the client (plaintiff) refused to accept.

- h) Under cross-examination, DW1 confirmed that the terms of the policy do not give the defendant any discretion as to where the insured interest should be repaired. He further stated that defendant had the option to choose between repairing the insured interest and giving the cost of repair to the plaintiff.

[14] DW2 in his evidence states that:

- a) He has been working for Marine Drive Motor Services for 30 years. He inspected the bus and gave a quotation. He made the particulars or repairs in the quotation. His quotation was in the sum of \$6887.58 (*D/Exhibit 5*).
- b) He has been repairing the buses for so many years as he started working from PA Lal, which is one of the companies engaged in coach building in Fiji. From his work experience he knows how buses are repaired. That his company is capable of doing the repairs for bus damages and he has been doing the same for the company he is employed at the moment.
- c) He confirmed that he himself went and inspected the bus and prepared the quotation and according to him there was no major damage to the bus.
- d) He confirmed that there was pre-existing damage on the bus.
- e) In cross examination, DW2 stated that as per him the bus was not twisted, the bus did not suffer an extensive damage and the

5-6 seats were only damaged which would have been repaired within the quotation.

THE ISSUE

[15] At the trial, the principle issue that arose for determination is whether the cost of repairs in the sum of \$6,887.58 tendered by the Marine Drive Motor Services Limited ('MDMSL') engaged by the defendant was the sum to be indemnified or whether the sum quoted by approved bus builders was the correct one.

DISCUSSION

[16] The court needs to determine the sum to be paid to the plaintiff by the defendant as indemnity under the policy. In other words, the court has to determine the cost of repairs of the damages on the insured interest after the accident.

[17] The plaintiff purchased an insurance policy from the defendant for an indemnity value of \$40,000.00 over the bus (BD 097). The bus was involved in an accident and sustained damages. The plaintiff obtained two quotations (one in the sum of \$23,760.00 and the other in the sum of \$25,043.00). The plaintiff made the claim based on those quotations. The defendant declined saying the claim was excessive.

[18] The defendant obtained a quotation for \$6,887.58. The defendant also got the damage assessed by an independent assessor. The defendant offered to settle the claim for \$7,000.00 less excess of \$2,000.00. The plaintiff refused and brought these proceedings.

[19] It was not disputed that: (i) there was a valid insurance; (ii) there was damage to the insured interest; (iii) the plaintiff suffered loss to the insured interest; and (iv) the defendant had to indemnify the plaintiff.

[20] The evidence led in court disclose that the loss to the bus as a result of the accident was partial loss and not total loss.

[21] In the case of partial loss, the defendant has two options to indemnify the same. The defendant either repairs the vehicle or makes payment of an amount equal to the cost of repairs. Cl. 1 (a) (i) of the policy states:

(a) Where the vehicle is not a total (or constructive total) loss.

At the Dominion's option you will be indemnified by either

(i) Repair of the vehicle to a condition substantially the same as (but not necessarily better than) its condition immediately before the loss. In arriving at the repair costs spurious and pre owned panel parts may be used and mechanical parts and tyres where replaced with new items may be depreciated or;

(ii) Payment of an amount equal to the cost of repairs as assessed under (i) above."

[22] In an indemnity claim such as this, the plaintiff must prove the actual loss to the insured interest.

[23] On the principle of indemnity, Halsbury's Laws of England (vol.25, 4th Ed) states:

“Most contracts of insurance belong to the general category of contracts of indemnity in the sense that the **insurer’s liability is limited to the actual loss** which is, in fact, proved. The happening of the event does not of itself entitle the assured to payment of the sum stipulated in the policy; the event must, in fact, result in a pecuniary loss to the assured, who then becomes entitled to be indemnified subject to the limitations of his contract. He cannot recover more than the sum insured for that sum is all that he has stipulated for by his premiums and it fixes the maximum liability of the insurers. Even within that limit, however, **he cannot recover more than what he establishes to be the actual amount of his loss. The contract being one of indemnity, and of indemnity only**, he can recover the actual amount of his loss and no more, whatever may have been his estimate of what his loss would be likely to be, and whatever the premiums he may have paid, calculated on the basis of that estimate.”(Emphasis provided)

[24] The above principle is also quoted in *Punja & Sons Ltd v New India Assurance Company Ltd* [2016] FJHC 224, HBC435.2005 (24 March 2016), where the High Court observed:

“Nand v Dominion Insurance Ltd [2000] FJHC 167; HBC57.1996 (decided on 30 June 2000) (unreported) Justice Pathik said that “the plaintiff has to prove the extent of his loss.” The burden of proof in a civil action is with the plaintiff and the assessment of loss needs to be proved by the plaintiff.”

[25] The defendant having opted to repair the bus, requested the plaintiff to provide actual costs of the repairs as assessed under the policy (Cl. 1(a) (i)). The plaintiff obtained two quotes. One from United Coach Builders Co. Ltd for \$23,760.00 and the other from Ba Body Builders

for \$25,043.00. The plaintiff was adamant that repairs to the bus should be done by LTA approved garages. That is why he was not agreeable to the quote obtained by the defendant. He said the quote obtained by the defendant is not from the LTA licensed garage.

[26] It will be noted that both the quotes obtained by the plaintiff do not provide a breakdown of the accident repair figures. They give total rough figures as the costs of the repairs mentioned therein. Most of the repairs mentioned in those two quotes are not actually caused due to the accident. They include damages sustained due to corrosion and usage of the bus on the feeder road. The bus is extremely old. It is 1980 model. The plaintiff purchased it for \$18,000.00. The photographs produced show the deteriorated condition of the bus.

[27] PW 4 (a witness from LTA) in evidence stated that minor repairs should not necessarily be done at licensed garage. He said only modifications or major damages such as damage to engine, chassis and radiator shifting need to be repaired at an LTA approved garage.

[28] The plaintiff was unbending that he needed to repair the bus at an approved garage when it was absolutely unnecessary as the damage to the bus by the accident were partial only. It appears that the plaintiff has obtained the quotes to fully repair and bring the bus to a brand new condition which he was not entitled to under the policy. According to the policy (Cl 1 (a) (i)) the plaintiff is entitled to repair of the vehicle to a condition substantially the same as (but not necessarily better than) its condition immediately before the loss. The plaintiff's quotes include the damages that were not cause due to the impact. The quotes obtained by the plaintiff do not reflect the actual costs of the repair of the damages sustained in the accident. Having rehearsed the evidence at some length, I find that the plaintiff's claim for indemnity, based on the quotes he obtained is grossly and dishonestly exaggerated.

[29] Let me now determine the indemnity sum to be paid to the plaintiff by the defendant.

[30] The plaintiff seeks judgment for the sum of \$40,000.00, being the full insured sum. There is no evidence before the court that he actually suffered loss to that extent. The plaintiff merely relied upon the exaggerated and unacceptable quotes. I therefore find the plaintiff is not entitled to judgment for the sum of \$40,000.00 as he claims.

[31] The defendant caused the assessor Gary J Carter to assess the damage occurred by the accident. He has made a preliminary report. In his report dated 9 July 2007 (*D/MF-3*), he states that the accident was reported to Ba Police Station but no action was taken as the accident occurred on private land. He also states that the repair quotations submitted by Ba Body Builders and United Coach Builders are excessive in the extreme and probably contrived so as to follow for a complete rebuild and a substantial bonus for whoever gets the job. Gary recommends Underwrites accept the quotation of Marine Drive Motor. Gary was not called by the defendant to give evidence as he has left the country. His report was made contemporaneously with the occurrence of the accident. I do not find he had any motive to conceal the matters. In the circumstances, I can give some weight to his report. Section 2 of the Civil Evidence Act permits me to do so.

[32] The defendant obtained a quote from Marine Drive Motor for the costs of damage caused by the accident. It was in the sum of \$6,887.58. DW2 of Marine Drive Motor confirmed that he himself inspected the bus and prepared the quotation. He also confirmed that he would have done the job within the quotation as there was no major damage to the bus. He said he has considerable number of years of experience in bus repairs. Taking into account the extent of damage occurred to the bus by the accident, I find the quotation given by Marine Drive Motor as

reasonable and acceptable. Based on that quotation, I assess the costs of repairs of the damage at \$7,500.00. That is the indemnity sum the plaintiff is entitled to claim under Cl.1 (a) (ii) of the policy. It is to be noted under the insurance policy the insured is not entitled to claim more than the actual loss. In my judgment, the estimate of \$7,500.00 would be likely to be the plaintiff's loss as a result of the accident.

[33] The plaintiff is entitled to interest on the indemnity sum from the date of refusal pursuant to section 34 (1) of the Insurance Law Reform Act 1996. That section provides:

“34.–(1) where an insurer is liable to pay to a person an amount under a contract of insurance or under this Act in relation to a contract of insurance, the insurer is also liable to pay interest on the amount to that person in accordance with this Section.

(2) the period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for the insurer to have withheld payment of the amount and ending on whichever is earlier of the following days:

(a) The day on which the payment is sent by post to the person to whom it is payable.

(b) The rate at which interest is payable in respect of a day included in the period referred to in sub-section (2) is the rate that is prescribed by regulation.”

2. The rate under s. 34(3) is prescribed by Insurance Law Reform (Interest Rates) Regulations 2004. That is 10% for each day Regulation 2.”

[34] I find there was no unreasonable refusal on the part of the defendant. The plaintiff submitted grossly and dishonestly exaggerated quotation and demanded payment. The defendant offered to settle the claim but the plaintiff refused. The plaintiff has wasted time on his unreasonably exaggerated claim. The court can reduce interest that might otherwise

have been awarded to a claimant if time has been wasted on an unreasonably exaggerated claim. I would, therefore, order interest on the judgment sum (indemnity sum) at the rate of 10% from the date of this judgment until the date of payment.

[35] I would decline to award general damages and loss of income and profits suffered as a result of breach of the contract as there was no breach of the contract established.

[36] In all the circumstances, I would order that each party to bear their own costs.

Final Outcome

1. There will be judgment for the plaintiff in the sum of \$7,500.00.
2. The defendant will pay interest on the judgment sum at the rate of 10% from the date of this judgment until the date of payment.
3. Each party will bear their own costs.

M. H. Mohamed Ajmer
6/2/17

M. H. Mohamed Ajmer

JUDGE

At Lautoka

06 February 2017

