

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 049 OF 2011

BETWEEN : **THE NEW INDIA ASSURANCE COMPANY LIMITED** having its registered office at The New India Assurance Company Limited Building, 87 M. G Road, Fort Mumbai, 400 001, India and having its registered principal office in Fiji at the 1st Floor, Harbour Front Building, Roadwell Road, Suva.

Plaintiff

AND : **SASHI SANJAY CHETTY** of Votualevu, Nadi, Liquor Manager.

Defendant

Before : Hon. Mr. Justice Sunil Sharma

Counsel : Mr. K. Patel for the Plaintiff
Ms. U. Baleilevuka for the Defendant

Date of Judgment : 7 February, 2017

J U D G M E N T

[1] The Plaintiff pursuant to order granted on 15 October, 2015 by consent filed its amended Statement of Claim dated 28 October, 2015. I note that the amendment made by the Plaintiff was to include an additional prayer at paragraph 19.4 of the Amended Statement of Claim which reads as:

“That there be Judg[e]ment against the Defendant in the sum of \$44,799.68 with interest.”

[2] The Plaintiff in its Amended Statement of Claim states as follows:

- “1) THE Plaintiff is an approved insurance company with[in] the meaning of Section 2 (1) of the Motor Vehicle (Third Party Insurance) Act, Cap 177, Laws of Fiji.
- 2) BY a proposal form and declaration dated 24th March, 2007 (to which the Plaintiff will refer at the trial of this action for its full terms and effect) the Defendant requested the Plaintiff to issue to him a Compulsory Third Party Policy of Insurance in respect of a motor vehicle registration number EB 914 belonging to him and described in the proposal form.
- 3) IN pursuance of the proposed form and the declaration and in reliance upon the same and in consideration of the premium paid by the Defendant to the Plaintiff, the Plaintiff issued to the Defendant a Compulsory Third Party Insurance Policy with terms and conditions that the Defendant and Plaintiff require mandatory compliance, (to which the plaintiff will refer at trial of this action for its full terms and effect).
- 4) ON the 19th of December, 2007, during the currency of the policy and while the Compulsory Third Party Insurance Policy was in full force and effect. The Defendant was involved in an accident in which one Krishna Swamy aka Kistaswamy aka Krishna Sami (hereinafter referred to as Krishna Swamy) f/n Armogan aka Arumugon died as a result of an accident.
- 5) THAT the Sole Executrix and Trustee of the deceased, Krishna Swamy is claiming damages against the Defendant pursuant to High Court Civil Action No. HBC 198 of 2009L on the grounds that the death of

Krishna Swamy was caused by the negligent driving by the Defendant of the Motor Vehicle being a claim in respect of such a liability and Damages as is covered to subject the Terms and Conditions of the Compulsory Third Party Insurance Policy.

- 6) THAT the Defendant in its response and/or Defence in Civil Action No. HBC 198 of 2009L has denied the allegations of negligence. This action has not yet being tried.
- 7) THAT the Compulsory Third Party Insurance Policy contained amongst other mandatory Terms and Conditions the following terms and conditions:

1. Persons or Classes of Persons Entitled to Drive and Insured Under This Policy

- a) The owner, and
b) Any person who is driving on the Owner's order or with his permission:

Provided that the person driving holds a license permitting him to drive a motor vehicle for every purpose for which the use of the above motor vehicle is limited under paragraph 2 above or at any time within the period of thirty days immediately prior to the time of driving has held such a license and is not disqualified for holding or obtaining such a license.

2. Conditions

- i) The person insured shall not use the motor vehicle nor shall the owner permit or suffer any person to use such motor vehicle:
(a) Whilst such motor vehicle is in unsafe condition.

- (b) *To convey and load in excess of that for which it was constructed.*
- (c) *To carry passengers for the hire or reward or in the pursuance of a contract of employment in contravention of the license issued for the vehicle described herein.*
- (d) *Whilst any such person as aforesaid;*
 - i) *Is under the influence of intoxicating liquor, or*
 - ii) *Is a result of age or some physical or mental rendered condition rendered incapable of driving such vehicle with safety.*
 - iii) *The insurer may, at any time by giving 14 days written notice to the Owner to cancel this policy. Notice of cancellation may be delivered personally or posted to by the Owner at the address last notified to the insurer. After cancellation as aforesaid, the insurer will deliver on delivery of the Policy and Certificate to the insurer, refund to the Owner the amount of unearned premium, calculated on a pro rata basis.*

3. WHEREAS *the Owner named herein has made a proposal and paid to the above – named insurer for the issue of the Third Party to comply with the Motor Vehicle (Third Party Insurance) act in relation to the motor vehicle described herein the insurer agrees subject to the terms limitations exclusions and conditions contained herein or endorsed hereon and the provisions of the said Act to ensure the persons or class of persons insured under this policy as described under paragraph 3 above against all liability incurred by such persons or class of persons in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor vehicle on a road in Fiji during*

aforesaid or during any period for which the insurer may renew this insurance.

Note

Section 16 of the Act requires that where the death of or bodily injury to any person arises out of the use of the within mentioned motor vehicle the owner and/or the driver shall forthwith notify the insurer. Neither the owner nor any other person shall, without the consent in writing of the insurer, make any offer, settlement or admission of liability nor incur the expense of litigation. Where there is a sale or change of possession of the motor vehicle from one person to another, each such person must forthwith notify the insurer and this policy and the certificate should be forwarded to the insurer for endorsement or replacement.

- 8) *THAT the Defendant and/or his servant and agents and/or his Legal Counsel upon service of the Civil Action No. HBC 198 of 2009L by the Sole Executrix and a Trustee of Krishna Swamy intentionally and dishonestly failed to notify the Defendant of the Civil Action No. HBC 198 of 2009L.*
- 9) *THAT the Defendant instructed his own Counsel in breach of the Compulsory Third Party Insurance Policy and filed an Acknowledgment of Service of the Writ of Summons for Civil Action No. HBC 198 of 2009L.*
- 10) *UPON service of the Writ of Summons for Civil Action No. HBC 198 of 2009L on the Plaintiff by the Sole Executrix and Trustee of Krishna Swamy the Plaintiff instructed Counsel of their choice to take over proceedings in Civil Action No. HBC 198 of 2009L on or about the 31st December, 2009 for and on behalf of the Defendant.*

- 11) THAT the Defendant on several occasions with the intent to defraud advised the Plaintiff that his driving license at all material [times] was valid and the Plaintiff should pursuant to the Compulsory Third Party Insurance Policy defend and indemnify the Defendant.
- 12) THAT the circumstances and facts relied on by the Plaintiff is that at all material times the Defendant continuously failed to fill in the motor vehicle accident claim form of the Plaintiff and/or forward any documents in relation to the subject accident, despite reminders by the Plaintiff to the Defendant and the Defendant stating to the Plaintiff that he will come to the office of the Defendant but failed to attend.
- 13) THAT because of the fraudulent intention and dishonesty of the defendant and/or the oppressive and prejudicial actions and conducts of the Defendant on the grounds aforesaid and herein below the Plaintiff pursuant to section 11, sub-section 3 of the Motor Vehicle (Third Party Insurance) Act, Cap 177, Laws of Fiji could not comply with the same.
- 14) THAT during the cause of the Plaintiff's and/or its servant and agents, investigation of the claim in Civil Action No. HBC 198 of 2009L the Defendant fraudulently represented and advised the Plaintiff of a material fact that he held a valid driving license when the subject accident occurred on 19th December, 2007 in compliance with the mandatory terms and conditions of the Compulsory Third Party Insurance Policy with the intention to defeat the rights of the Plaintiff under the subject policy.
- 15) THAT upon the representation and conduct and action of the Defendant the Plaintiff through its servant and/or agents and/or their Counsel, defended the Plaintiff in Civil Action No. HBC 198 of 2009L

as per the terms and conditions of the Compulsory Third Party Insurance Policy.

- 16) *THAT upon further investigation by the Plaintiff and/or its servants and agents the Defendant committed fraud against the Plaintiff, in particular and the circumstances being by the misrepresentation of a material fact and did not disclose that material fact which was material to Plaintiff on that he did not hold a driving license at the material time and in breach of the terms and condition of the Compulsory Third Party Insurance Policy.*

- 17) *THAT upon confirmation of the fraud committed by the Defendant, the Plaintiff instructed its servants and agent and/or Counsel to withdraw defending the Defendant in Civil Action No. HBC 198 of 2009L.*

- 18) *THE Plaintiff's claim that apart from any provisions contained in the said policy, they at all material times were entitled to avoid the Compulsory Third Party Insurance Policy in the all grounds contained aforesaid.*

- 19) **WHEREFORE** *the Plaintiff's claim against the Defendant:*
 - 19.1) *A declaration that the Plaintiff are and have at all material times entitled to avoid the Compulsory Third Party Insurance Policy.*

 - 19.2) *A declaration that the Plaintiff is entitled not to indemnify the Defendant upon any judg[e]ment it may have against him.*

 - 19.3) *That the Defendant breached the Terms & Conditions of the Compulsory Third Party Insurance Policy.*

19.4) That there be Judgment against the Defendant in the sum of \$44,799.68 with Interest.

19.5) Costs on an indemnity basis.

19.6) Such other & further relief as this Honourable Court deems just & fair.”

[3] The Defendant filed his Statement of Defence denying the allegations of the Plaintiff and praying that the Plaintiff's claim be dismissed with costs.

[4] The Plaintiff called the following three witnesses to prove its claim against the Defendant:

a) Plaintiff's Witness No. 1 - Police Constable 2848 Filimoni Nale.

b) Plaintiff's Witness No. 2 - Susana Hazelman Team Leader, Registration and Licensing Department, Land Transport Authority, Lautoka.

c) Plaintiff's Witness No. 3 - Avinesh Chand Rai, Claims Officer, New India Assurance Company Limited, Lautoka.

[5] By consent the following documentary evidence were tendered during the hearing and marked as:

a) Plaintiff's Exhibit No. 1 - Record of Interview of Sashi

Sanjay Chetty dated 20 December, 2007;

- b) Plaintiff's Exhibit No. 2 - Fiji Police Force Report dated 18th January 2008;
- c) Plaintiff's Exhibit No. 3 - Land Transport Authority Letter dated 2nd June 2010 signed on 11 June, 2010;
- d) Plaintiff's Exhibit No. 4 - Writ of Summons and Statement of Claim in High Court Action No. HBC 198 of 2009;
- e) Plaintiff's Exhibit No. 5 - Compulsory Third Party Insurance Policy (4 pages);
- f) Plaintiff's Exhibit No. 6 - Copy of Cheque No. 513836 dated 11 April, 2012 in the sum of \$44,799-68 in favour of Messrs. Suresh Maharaj and Associates Trust Account.

EVIDENCE

- [6] The first witness called by the Plaintiff was Police Constable PC 2848 Filimoni Nale of Ba Police Station. On 20 December, 2007 the witness had under caution interviewed the Defendant Sashi Sanjay Chetty in respect of an accident that had occurred on 19 December, 2007 on the Kings Road at Wailailai, Ba. It was alleged that the Defendant was driving his motor vehicle registration number EB 914 in a dangerous

manner which collided with a pedestrian namely Krishna Sami and caused his death.

- [7] According to the witness he had interviewed the Defendant at the Ba Police Station. At page 3 of the Record of Interview the following question was asked by the witness and the answer given by the Defendant was recorded as follows:

“Q.23: Did you drink any liquor at the house of Harish?”

Ans: Six bottles between four of us.

Q.24: Can you tell me more about the six bottles you have mentioned it to me from above?

Ans: Six bottles of Fiji Bitter large.”

- [8] The witness also informed the court that the Defendant had signed the record of interview from page two to page eight. The record of interview of the Defendant Sashi Sanjay Chetty dated 20 December, 2007 was marked as Plaintiff's Exhibit No. 1. The witness also identified the Fiji Police Force Report dated 18 January, 2008 which mentions the details of the accident. This Police Report was marked as Plaintiff's Exhibit No. 2. This witness was not cross examined.
- [9] The second witness was Susana Hazelman, Team Leader, Registration and Licensing Department, Land Transport Authority, Lautoka.
- [10] This witness informed the court that the Land Transport Authority had a computerized system of record keeping which also included a data base and a manual filing system. According to the witness a request for a search on a Driver's Licence will show the date of issue of the Driver's Licence.

- [11] The witness confirmed that the Land Transport Authority had sent a letter dated 2 June 2010, signed by Sikeli Lagilagi on 11 June 2010 to Messrs. Krishna and Company since there was a request made for the Driver's Licence history of Sashi Sanjay Chetty being Licence no. 736269. This letter was marked as Plaintiff's Exhibit No. 3.
- [12] In the letter sent to Messrs. Krishna and Company the Land Transport Authority had provided the Licence Renewal Date and the Licence Expiry Date.
- [13] The witness confirmed that on 19 December, 2007 the Defendant did not have a Driver's Licence to drive a motor vehicle.
- [14] In cross examination the witness was shown another letter dated 2 June, 2010 written by the Land Transport Authority signed by Sikeli Lagilagi on the same date. This letter was marked as Defendant's Exhibit No. 1.
- [15] According to the witness from the information contained in the letter dated 2 June, 2010 (Defendant's Exhibit no. 1) the Defendant had a Driver's Licence on the date of the accident.
- [16] In re-examination the witness clarified that there were two letters written by the Land Transport Authority, the one signed on 2 June, 2010 was incorrect since there was an error in recording the Licence renewal date. The error was corrected in the second letter signed by Sikeli Lagilagi on 11 June, 2010. The correct renewal date was 20 December, 2007 and not 20 November, 2007 as mentioned in the first letter of the Land Transport Authority.
- [17] The final Plaintiff's witness was Avinesh Chand Rai, Claims Officer employed by New India Assurance Company Ltd, Lautoka.

- [18] The witness confirmed that Writ of Summons and Statement of Claim in Action No. 198 of 2009 was served on the Plaintiff Company since the Plaintiff had issued a Compulsory Third Party Insurance Policy in favour of motor vehicle EB 914 owned by the Defendant. The action was instituted by Muniamma as the sole Executrix and Trustee for the Estate of Krishna Swamy aka Kistaswamy aka Krishna Sami against Sashi Sanjay Chetty. The Writ of Summons and Statement of Claim in Action No. 198 of 2009 were marked as the Plaintiff's Exhibit No. 4.
- [19] According to the witness the Defendant had not informed the Plaintiff Company about the accident they became aware of the accident when the Writ of Summons and Statement of Claim were served on the Plaintiff Company.
- [20] Unbeknown to the Plaintiff Company and without its consent the Defendant engaged Messrs. Iqbal Khan and Associates to defend Action 198 of 2009. After the receipt of the Writ of Summons the Plaintiff instructed Messrs. Krishna and Company to defend the Defendant.
- [21] Furthermore the Plaintiff Company conducted its own investigation into the accident which revealed that the Defendant did not have a valid Driver's Licence at the time of the accident hence the Defendant had breached the terms and conditions of the Compulsory Third Party Insurance Policy issued. The Compulsory Third Party Insurance Policy was marked as Plaintiff's Exhibit No. 5.
- [22] After becoming aware that the Defendant did not have a valid Driver's Licence the Plaintiff instructed its solicitors to withdraw from acting for the Defendant.
- [23] When Plaintiff's Exhibit No. 3 letter from Land Transport Authority was shown to the witness he agreed that the letter provided details that the

driving Licence of the Defendant had expired on 8 November, 2007 but was renewed a day after the accident on 20 December, 2007.

- [24] According to the witness the Defendant had breached clause 1 (b) of the Compulsory Third Party Insurance Policy in that the Defendant's Driver's Licence had expired on 8 November 2007 and the renewal had exceeded the 30 days time limit within which the Driver's Licence was renewed.
- [25] After the Plaintiff Company instructed its solicitors to withdraw acting for the Defendant in Action No. 198 of 2009 a Judgement was entered against the Defendant and the Plaintiff Company paid out the judgement sum.
- [26] On 11 April, 2012 the Plaintiff paid the sum of \$44,799-68 to Messrs. Suresh Maharaj and Associates Trust Account, a copy of the cheque is marked as Plaintiff's Exhibit No. 6.
- [27] The witness stated that the purpose of this action against the Defendant was to recover the Judgement amount paid by the Plaintiff Company in action no. 198 of 2009.
- [28] In cross examination the witness reconfirmed that during the further investigation conducted by the Plaintiff Company it was revealed that the Defendant did not have a valid Driver's Licence accordingly their solicitors were instructed to withdraw acting as counsel for the Defendant.
- [29] After the close of the Plaintiff's case, counsel for the Defendant informed the court that the Defendant will not be giving evidence and will also not be calling any witness.

[30] Counsel for the Plaintiff filed helpful written submissions whilst the counsel for the Defendant opted not to file written submissions but rely on the cross examination advanced as part of the Defendant's case.

ANALYSIS AND DETERMINATION

[31] The Plaintiff contends that although they had issued a Compulsory Third Party Insurance Policy to the Defendant in respect of his motor vehicle registration number EB 914 the Defendant had breached the terms and conditions of the policy issued.

[32] As a result of the breach of the policy terms and conditions by the Defendant the Plaintiff submits that it is not liable to indemnify the Defendant against the Judgement obtained in tort action no. 198 of 2009 and is therefore entitled to recover the amount of money paid on behalf of the Defendant.

[33] After the Defendant was involved in a road accident on 19 December, 2007 caused by the vehicle driven by him, PW1 Filimoni Nale conducted the caution interview of the Defendant at the Ba Police Station on 20 December, 2007.

[34] In the caution interview the Defendant admitted he was under the influence of alcohol when he drove the motor vehicle registration number EB 914 on 19 December, 2007. The evidence of PW1 Police Constable Nale was not challenged by the Defendant.

[35] I accept that the Defendant was under the influence of alcohol when he drove the vehicle which caused the death of the pedestrian on 19 December, 2007.

- [36] Ms. Hazelman, Team Leader, Registration and Licensing Department Land Transport Authority confirmed that as per records kept by the Land Transport Authority the Defendant's Driver's Licence had expired on 8th November, 2007 which was renewed on 20th December, 2007.
- [37] I therefore accept that the Defendant on the date of the accident that is 19 December, 2007 was driving his motor vehicle registration EB 914 without a valid Driver's Licence.
- [38] The final witness for the Plaintiff was its Claims Officer Avinesh Chand Rai who informed the court that the Plaintiff had issued a Compulsory Third Party Insurance Policy for motor vehicle registration number EB 914 owned by the Defendant.
- [39] The Defendant was involved in a motor vehicle accident on 19 December 2007 whereby a pedestrian had died as a result of the injuries received from the collision.
- [40] The deceased's estate brought proceedings against the Defendant, the Plaintiff Company initially started defending the Defendant under the policy issued by the Plaintiff.
- [41] However, the Plaintiff later withdrew representing the Defendant since investigations conducted by the Plaintiff revealed that at the time of the accident the Defendant did not have a valid Driver's Licence. Thereafter a Judgement was entered against the Defendant.
- [42] The Plaintiff subsequently paid the Judgement sum in the tort action and is now seeking to recover the same from the Defendant for his breach of the terms and conditions of the policy issued by the Plaintiff.

[43] The Plaintiff paid the sum of \$44,799-68 in satisfaction of the judgement obtained against the Defendant.

[44] The following terms and conditions formed part of the Compulsory Third Party Insurance Policy issued by the Plaintiff:

“1. PERSONS OR CLASSES OF PERSONS ENTITLED TO DRIVE AND INSURED UNDER THIS POLICY

(a) The owner, and

(b) Any person who is driving on the Owner's order or with his permission:

Provided that the person driving holds a licence permitting him to drive a motor vehicle for every purpose for which the use of the above motor vehicle is limited under paragraph 2 above or at any time within the period of thirty days immediately prior to the time of driving has held such a licence and is not disqualified for holding or obtaining such a licence.

3. CONDITIONS

(i) The person insured shall not use the motor vehicle nor shall the owner permit or suffer any person to use such motor vehicle:

(a) whilst such motor vehicle is in unsafe condition.

(b) to convey and load in excess of that for which it was constructed.

(c) to carry passengers for the hire or reward or in the pursuance of a contract of employment in contravention of the licence issued for the vehicle described herein.

(d) whilst any such person as aforesaid

(i) is under the influence of intoxicating liquor, or

(ii) is as a result of age or some physical or mental condition rendered incapable of driving such vehicle with safety.

(ii)...

4. **WHEREAS** the Owner named herein has made a proposal and paid a premium to the above-named insurer for the issue of the Third Party to comply with the Motor Vehicles (Third Party Insurance) act in relation to the motor vehicle described herein the insurer agrees subject to the terms limitations exclusions and conditions contained herein or endorsed hereon and the provisions of the said Act to ensure the persons or class of persons insured under this policy as described under paragraph 3 above against all liability incurred by such persons or class of persons in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor vehicle on a road in Fiji during the period aforesaid or during any period for which the insurer may renew this insurance.

NOTE:

Section 16 of the Act requires that where the death of or bodily injury to any person arises out of the use of the within mentioned motor vehicle the owner and/or the driver shall forthwith notify the insurer. Neither the owner nor any other person shall, without the consent in writing of the insurer, make any offer, settlement or admission of liability nor incur the expense of litigation..."

SPECIFIC BREACHES BY THE DEFENDANT

[45] From the evidence adduced there is no doubt that the Defendant has breached some of the terms and conditions of the Compulsory Third Party Insurance Policy issued by the Plaintiff.

- [46] Firstly the Defendant breached clause 1 (b) of the policy since he did not have a valid Driver's Licence on 19 December, 2007 when he caused the vehicle he was driving to collide with the pedestrian at the time of the accident.
- [47] The Driver's Licence of the Defendant had expired on 8 November 2007 however, under the insurance policy a period of thirty days coverage is also provided for immediately prior to the time of driving at clause 1 (b) if the driver had a valid Driver's Licence. A perusal of the evidence suggests that the thirty days insurance coverage available to the Defendant would have expired on 19 November, 2007. This means the date of the accident falls outside the thirty days period as well. Evidence of Ms. Hazelman and Plaintiff's Exhibit No. 3 establishes this breach.
- [48] Secondly the Defendant breached clause 3 (d) (i) of the Compulsory Third Insurance Policy since he was under the influence of alcohol when he drove the vehicle which caused the accident. The Defendant did not challenge the evidence of Police Constable Nale and Plaintiff's Exhibit No. 1 (the caution interview of the Defendant dated 20 December, 2007) this breach by the Defendant is also established.
- [49] The final breach by the Defendant was of section 16 Motor Vehicles (Third Party Insurance) Act Cap. 177. The requirement of this section also forms part of the Compulsory Third Insurance Policy issued by the Plaintiff Company. Section 16 (1) and (3) Motor Vehicles (Third Party Insurance) Act Cap. 177 states:
- "(1) On the happening of any accident affecting a motor vehicle and resulting in the death of or personal injury to any person, it shall be the duty of the owner, forthwith after such accident,...to notify the insurance company of the fact of such accident...*
- (2)...*

(3) Neither the owner nor any other person shall, without the written consent of the insurance company, enter upon or incur the expense of litigation as to any matter or thing in respect of which he is indemnified by a contract of insurance under this Act...”

[50] There was a legal and a contractual obligation on the Defendant as the owner of the vehicle involved in an accident under section 16 of the Motor Vehicles (Third Party Insurance) Act Cap. 177 to forthwith notify the Plaintiff Company of the accident and not to engage his chosen legal representative without first obtaining the written consent of the Plaintiff Company. The Defendant did not notify the Plaintiff Company of the accident and also he engaged the services of his chosen legal representative without the written consent of the Plaintiff Company. This breach by the Defendant is also established.

LAW

[51] The law in respect of breach of the terms and conditions of a Compulsory Third Party Insurance Policy by an insured has been settled by the Supreme Court of Fiji in *Sun Insurance Company Limited vs. Mukesh Chandra* [2012] FJSC 8; CBV 0007 of 2011 (9 May 2012) that breach of conditions in an insurance policy provided those conditions are not prohibited or restricted under the Motor Vehicles (Third Party Insurance) Act Cap. 177 entitles an Insurance Company to avoid liability for indemnity under the policy. At paragraph 21 the Supreme Court made the following important comment about the consequences of a breach of a condition in an insurance policy:

“...An insurance policy is a contract between the Insurance Company and the Insured and therefore the parties could agree on terms and conditions when taking an insurance policy provided those conditions are not prohibited or restricted under the said Act. As in any contract any breach

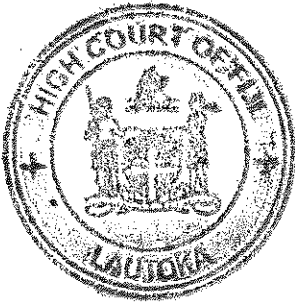
of condition would make the policy invalid. In this instance the policy is in relation to the use of the vehicle, therefore any breach of condition in the use of the vehicle would render the policy invalid as long as the breach continues. If a person using a vehicle breaches a condition of a third [party] insurance policy while using the vehicle, he is supposed to be using the vehicle without a third party insurance policy. By such conduct he is not only committing an offence under Section 4(2) of the said Act but he also becomes personally liable for any death or injuries caused to third parties.”

[52] Upon considering the evidence adduced by the Plaintiff and the law applicable I am satisfied that the Plaintiff has proven its claim on balance of probabilities against the Defendant. I also grant the declaratory orders sought by the Plaintiff.

[53] **FINAL ORDERS**

- a). It is declared that the Plaintiff was entitled to avoid liability for indemnity under the Third Party Insurance Policy issued to the Defendant in the circumstances of this case.
- b). It is declared that the Plaintiff was not obliged to indemnify the Defendant against any judgement entered against him due to the Defendant’s breach of the terms and conditions of the Compulsory Third Party Insurance Policy issued by the Plaintiff to the Defendant.
- c). The Defendant is to pay the Plaintiff the sum of \$44,799.68 together with interest at the rate of 9% per annum with effect from 15 April, 2012 till the date of this Judgement;

- d). The Statement of Defence dated 28 May, 2013 filed by the Defendant is hereby dismissed and struck out;
- e). Post judgement statutory interest rate applies until full payment is made by the Defendant;
- f). The Defendant is to pay costs to the Plaintiff summarily assessed at \$3,000.00.



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Sunil Sharma

JUDGE

At Lautoka

7 February, 2017

Solicitors

M/s. Krishna & Co. for the Plaintiff.

M/s. Iqbal Khan & Associates for the Defendant.