Privy Council Appeal No. 60 of 1936

The United Motor Finance Company - - - - *Appellants*

v.

Messrs. Addison and Company, Limited - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH DECEMBER, 1936

Present at the Hearing:
LORD ROCHE.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

The plaintiff firm sues the defendants, who are a limited company trading in Madras, for damages for fraud in connection with the sale of motor vehicles. The parties had been dealing with each other since 1924, and until 1929 the dealings gave rise to no complaint, but in respect of 40 transactions of 1929 and 1930, the present action was brought on 7th August, 1933, on the Original Side of the High Court at Madras. It was tried by Stone J. in 1934 and by his decree dated 9th May, 1934, he found for the plaintiff firm in respect of 25 transactions, directing an inquiry as to damages. On appeal, a Division Bench (Varadachariar and Burn JJ.) varied his findings, with the result that the plaintiff firm succeeded as to 12 items, but in respect of some of these damages were directed to be assessed on a different basis from that adopted by Stone J.

On this appeal to His Majesty the decision of the Division Bench was complained of in respect of 35 out of the original 40 transactions; but, the appeal not having been pressed as to certain items and their Lordships not having called upon the respondents in respect of certain others, 19 transactions are all that need be canvassed in this judgment. The decree of the Division Bench will stand as regards the following items:—viz. 1, 2, 4, 6, 10, 18, 20, 21, 22, 23, 29, 32, 33, 34, 39, 40. In the case of items 3, 5, 8, 9 and 19 the decision of Stone J. in favour of the defendants has not been challenged.

The course of dealing between the parties was that the plaintiff firm acted as financiers to enable customers of the defendants to buy motor cars (or buses) on a system of hire purchase. The defendants being owners of a car would agree with their customer upon a price. The customer would pay immediately one-third of the price, the insurance premium for a year and the cost of the stamp for the agreement in writing. The plaintiff firm would become purchasers of the car from the defendants by paying to the defendants the remaining two-thirds of the price (less an agreed commission) and would enter into a hire-purchase agreement with the customer whereby the customer on getting delivery undertook to pay to the plaintiff firm the amount of such two-thirds plus certain further sums (" charges ") by instalments within a year.

Before May, 1929, the plaintiff firm had no representative or office in Madras; and the transactions were entered into by the plaintiff firm's Calcutta office receiving from the defendants proposal forms, invoices, letters, &c., by post, and answering the same by sending cheques, &c., in like manner. In May, 1929, however, the plaintiff firm appointed one Ponting to act for them. The exact extent of his authority is a matter of some dispute between the parties, but a main object of his appointment was to accelerate the carrying out of the transactions. Ponting would sign hire-purchase forms and authorise delivery to the defendants' customers; telegraphing to Calcutta the amount for which the plaintiff firm's cheque was required and posting the proposal forms, invoices, &c., to Calcutta.

In December, 1930, the plaintiff firm stopped doing business with the defendants because of the matters now complained of. From the beginning in 1924, when the arrangement between the parties for future business was made orally by Miss Thear (Mrs. Palmer) with the directors of the defendant company, it was expressly stipulated by the plaintiff firm that it would pay two-thirds of the actual price to the customer and no more, and that the customer should pay not less than one-third of that price as a condition of the transaction being entered into by the plaintiff firm at all. The fraud charged by the plaint, so far as their Lordships are now concerned with it, is that the defendants, by the documents forwarded to the plaintiff firm, throughout represented that these stipulations were being observed, the price being stated at a definite figure and the customer represented as having paid a deposit of a definite amount (not less than one-third of the price); whereas in certain cases the defendants :—

(*a*) had allowed a discount to the customer off the nominal price and allowed him to set it off against part of the initial deposit.

(*b*) Had effected the same result by buying from the customer a used car at a price which was greater than any estimate of its value could justify.

(*c*) Had forwarded the proposal form and other documents to the plaintiff firm after the customer had

been allowed to use the vehicle for such a period that the transaction did not relate to a new car but to a used car of depreciated value which afforded no security to the plaintiff firm in respect of the hirer's liability for the instalments.

In all the cases to which these complaints relate loss has resulted to the plaintiff firm by reason that the hirers have failed to pay the instalments which they undertook to pay. The plaintiff firm says that it would never have entered into any of these transactions had it been told the real facts at the time. In particular, and with reference to the initial deposit by the hirer of one-third of the price, its case is that for hire-purchase transactions such a stipulation was essential in view of the heavy depreciation immediately involved when a new car is taken into use: unless a sufficient part of the price is paid on delivery of the car, a time may come when the hirer by use of the car has caused more wear than he has paid for, and when the value of the car as a used car may seem no great bargain for the instalments which have still to be paid, and be no good security therefor.

The complaints above described under headings (*a*), (*b*) and (*c*) have reference to the transactions referred to in the plaintiff firm's particulars by numbers as follows :—

(*a*) 24, 25, 26.
(*b*) (i) 7, 15, 27, 36, 38.
(ii) 11, 12, 13, 14, 35, 37.
(*c*) 16, 17, 28, 30, 31.

(*a*) That the defendants gave to their customer, the "hirer," discounts in the three transactions mentioned under this head is not disputed. The price and the discount were :—

	Rs.	Rs.
Item 24	5,050	325
Item 25	4,450	302- 4-0
Item 26	4,175	177-12-0

In each case the discount being allowed against the initial payment resulted not only in the plaintiff firm paying more than two-thirds of the real price but also in the hirer paying less than one-third thereof. The trial Judge, being of opinion that the plaintiff firm would not have entered into the transactions but for the defendants' representations on these points, gave the plaintiff firm damages "on the basis of what the plaintiffs have lost by entering into the transactions." The Division Bench disallowed the plaintiffs' claim altogether, being of opinion that the practice of "taking trade-in cars and allowing large discounts" was known to and winked at by those in charge of the plaintiffs' Calcutta office and that the defendants must have honestly believed that the initial deposit was its own concern. In their Lordships' opinion the view taken by the trial Judge was correct. The evidence does not justify the opinion of

the Division Bench that the plaintiff firm's Calcutta office knew of these discounts and the evidence given on behalf of the plaintiff firm is sufficient to establish that the plaintiffs relied on the defendants' representations as to price and as to initial deposit. Ponting's knowledge of the practice complained of is not proved, but their Lordships are of opinion that the evidence as to Ponting's duties and authority makes it impossible to impute his knowledge to the plaintiff firm. The trial Judge in their Lordships' opinion correctly understood and applied the law as laid down in *Derry* v. *Peek* (1889) L.R. 14, App. Cas. 337, with reference to actions for deceit. The only director of the defendant company to be called was Mr. F. G. Luker, of whom the Division Bench said that " he seems to know very little and remembers even less of the suit transactions "; but as Stone J., who saw him in the witness box, was of opinion that he gave his evidence very fairly and frankly and was a man of integrity, their Lordships desire to make clear that the fraud practised on the plaintiff firm was not his work nor did he know of it at the time. The defendants' evidence does not enable the individual responsible therefor to be specified in each case, but it is to be noted, even as regards the salesman responsible for carrying out each transaction, that in the view of Stone J. and in their Lordships' view, the representations complained of were not made, so far as can be seen, with any intention to injure the plaintiff firm. The expectation was that each transaction would be carried out in due course, each hirer fulfilling his obligations. But as Stone J. rightly held, the intention to deceive is not necessarily an intention to injure or to cheat, and if the defendants made to the plaintiff firm a statement as to price and deposit which they knew to be untrue, and did so with a view to the plaintiff firm entering into a purchase, there is a sufficient basis for an action of deceit, provided always that the plaintiff firm relied upon the statement. No doubt if it could be said that the statement made by the defendants was untrue but that the person making it did not appreciate that it was not the truth, this would be consistent with honesty and would ground no charge of fraud. But their Lordships cannot accept the suggestion that salesmen of motor cars would have any difficulty in appreciating the elements of falsity in the representations complained of. Nor can they modify the resulting damages on the footing that though in the absence of misrepresentation the plaintiff firm would not have made the contract with the defendants or with the hirer which it did in fact make, nevertheless even if it had known the facts it would have entered into some other contract and thus lost money in any event. It is not known, for example, whether any of the hirers could or would have paid a deposit of one-third of the real price, or what effect such payment might have had upon his subsequent action. It cannot be assumed that the plaintiff firm would have been willing to depart from its well-considered terms—at all events without making special inquiry as to the hirer or asking for the defendants' guarantee.

(*b*) The cases in which complaint is made that by allowing an excessive price for a used car the defendants in effect gave to the hirer an allowance off the price, fall into two groups. In respect of the transactions numbered 7, 15, 27, 36 and 38 the Division Bench did not disagree with the trial Judge as regards the fact that the price allowed for the used car was such as to amount to the grant of a discount upon the price of the new car. In the cases numbered 11, 12, 13, 14, 35 and 37, however, the Division Bench were not satisfied that the price allowed for the used car was more than a fair price, at least in the opinion of the defendants.

Their Lordships having examined these items in detail accept the view of the Division Bench in the case of No. 13, but in each of the other cases have arrived at the same conclusion as the trial Judge. In respect therefore of 10 of the 11 cases coming under this heading the plaintiffs' claim succeeds and the measure of damages must be the same as under heading (*a*).

(*c*) The last group consists of five items. In the case of Nos. 16 and 17 Stone J. had found for the defendants, but as regards Nos. 28, 30, 31 he had given damages " on the basis of what the plaintiffs have lost by entering into the transactions." The complaint here is that the defendants put forward to the plaintiff firm cars which had been for a considerable time in use as though they were new cars. The Division Bench, finding this to be the fact, held that the plaintiff firm could only be allowed damages to the extent of two-thirds of the depreciation on the value of the car. Their Lordships are of opinion that the facts in each of these five cases entitle the plaintiff firm to recover as damages whatever it has lost by reason of its entering into the transaction.

The result is that as regards 18 out of the 19 cases comprised in groups (*a*), (*b*), (*c*) above the appeal succeeds. The plaintiff firm is entitled to damages and the measure of damages in each case is that described in the decree of Stone J. by the words " on the basis of what the plaintiffs have lost by entering into the transaction." Their Lordships will humbly advise His Majesty accordingly.

As regards costs of the trial Court the plaintiff firm should get its costs calculated on the amount ultimately to be decreed to it, but as against that should pay to the defendants one-half of the defendants' costs. The defendants, however, must pay the plaintiff firm's costs of the appeal to the Division Bench and of this appeal. There will be no order with reference to the costs of the examination of Mr. W. H. Luker on commission.

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In the Privy Council

THE UNITED MOTOR FINANCE COMPANY

v.

MESSRS. ADDISON AND COMPANY, LIMITED

DELIVERED BY SIR GEORGE RANKIN

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