

ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

BETWEEN

RAMDHARRY INSURANCE CO. LIMITED represented by  
the Chairman of its Board of Directors, Mr.  
Deckeenanun Ramdharry, of Port Louis Appellants

and

10 DESMOND O'SHEA, acting both for himself and as  
legally representing his minor sons John Desmond  
Fabian O'Shea, Paul Simon O'Shea, Jeremy James  
Prince O'Shea, Desmond Francis O'Shea and  
Stephen Anthony O'Shea

Respondent
INSTITUTIONAL FILED
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LONDON Record

CASE FOR THE RESPONDENT

pp. 37-40

20 1. This is an appeal from a judgment of the  
Supreme Court, Mauritius (H. Garrioch, Acting  
Chief Justice and M. Latour-Adrien, Acting  
Senior Puisne Judge) dated the 24th April, 1970,  
which had ordered that the Appellants' Statement  
of Defence be struck out and that judgment be  
entered against the Appellants in the sum of  
RS 727,618.36 cs with costs.

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30 2. The Respondent, in his Statement of Claim  
dated the 7th August, 1969, had alleged that  
on the 15th December, 1965, an accident had  
occurred on a public road between car No. H.  
293 driven by the Respondent's wife with three  
of their children as passengers and car No. F.  
616 driven by Veerapen Veerapa Pillay and  
insured by the Appellants; that the Respondent  
had instituted proceedings against the said  
Pillay claiming damages, giving due notice  
thereof to the Appellants; that on the 9th  
October, 1968, the Supreme Court awarded to the  
Respondent damages in the sum of RS 706,782.58  
and costs, taxed in the sum of RS 5,870.08;  
40 that the costs of causing the said judgment of  
the 9th October, 1968, to be signed and  
registered amounted to Rs 14,965.70. The above

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allegations were all admitted by the Defendants in their Statement of Defence. The Statement of Claim further alleged that the said Pillay was granted by the Supreme Court on the 25th November, 1968, conditional leave to appeal to the Privy Council against the said judgment dated the 9th October, 1968, and that on the 12th May, 1969, the said leave was withdrawn and the said order made on the 25th November, 1968, was rescinded. Further, it was alleged that the said judgment dated the 9th October, 1968, was then executory and that the Appellants were bound to pay to the Respondent the sum of Rs 727,618.36.

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pp.16-17

3. It was the Respondent's case that the Appellants were bound to pay the amount of the said judgment dated the 9th October, 1968, by reason of the provisions of section 61 of the Road Traffic Ordinance, 1962, which reads insofar as it is material as follows (in similar terms to those of the Road Traffic Act, section 207) :-

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Liability of insurers in respect of third party risks. "61. - (1) If, after a certificate of insurance has been issued to the person by whom a policy has been effected, judgment in respect of such liability as is required to be covered by a policy under this Ordinance (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 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.

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(2) No sum shall be payable by an insurer under the foregoing provisions of this section -

10 (a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings; or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; .....

20 4. The Statement of Defence, dated the 8th October, 1969, after explaining why the said order made on the 25th November, 1968, had been rescinded stated that the said Pillay had petitioned for special leave to appeal to the Privy Council against the said judgment dated the 9th October, 1968; and that until the Privy Council had given a final decision in respect of the said Petition, the Respondent had no right of action against the Appellants, and further, that the Respondent's present action was premature or, alternatively, it would not have been just and equitable for the Court to give judgment against the Appellants.

pp.6-8

40 5. By a Notice of Motion dated the 17th October, 1969, the Respondent sought to move the Supreme Court to strike out the Statement of Defence and to enter judgment in the Respondent's favour in the sum of RS 727,618.36 and costs, for the reasons set out in an affidavit annexed thereto, namely, that the Statement of Defence disclosed no reasonable defence and/or was frivolous and vexatious under Rule 20 of the Rules of the Supreme Court, 1903, which reads as follows:-

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pp.10-11

"Striking out pleadings. 20. The Court may order any pleading to be struck out on

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the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, on such terms as may be just."

- pp.15-30      6. On the 21st October, 1969, and on the 11th March, 1970, the Supreme Court heard Counsel for the Appellants and the Respondent on the Respondent's Motion. On the 3rd April, 1970, the Respondent put in a letter dated the 24th March, 1970, and the Appellants put in a letter dated the 23rd March, 1970, both letters showing that the said Pillay's Petition for special leave to appeal to the Privy Council against the said judgment dated the 9th October, 1968, had been dismissed with costs. 10
- pp.31-36
- Ex. D
- pp. 52-3
- Ex. E
- pp. 54-5
- pp.37-40      7. Judgment of the Supreme Court on the Respondent's Motion was given by Garrioch Ag. C.J., on the 24th April, 1970. He said that the gist of the Respondent's claim was that, after judgment had been given against the said Pillay in October, 1968, the said Pillay had applied for and been granted conditional leave to appeal against the judgment to the Privy Council, but that such leave was subsequently withdrawn; that judgment had become executory by law against the Appellants who, as insurers, had been duly notified of the proceedings against the said Pillay. The learned Judge said that the Appellants admitted the averments in the Statement of Claim but denied that the judgment had become executory. The Appellants' denial was based on the contention that the said Pillay had petitioned the Privy Council for special leave to appeal and that the judgment against the said Pillay would not become executory giving the Respondent a right of action against the Appellants until the Privy Council had given a final decision in respect of the said Pillay's Petition and that it would not be equitable for the Supreme Court to give judgment against the Appellants until a decision had been made by the Privy Council. 20 30 40

The learned judge then considered the powers of the Court under Rule 20 of the Rules of the Supreme Court, 1903, and said that the jurisdiction to strike out pleadings was only to be exercised in cases where it was evident that the defence put forward could not really succeed; he cited the words of Willmer, L.J., in Waters v. Sunday Pictorial Newspapers Ltd. (1961) 1 W.L.R. 967 at p. 970:

10 "It is well-established that the drastic remedy of striking out a pleading, or part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to disclosed no arguable case."

He found that the defence put forward by the Appellants did not disclose an arguable case; the Appellants had based their whole defence on the fact that the said Pillay had applied for special leave to appeal to the  
20 Privy Council and on the necessity to wait for the Privy Council's decision. As the said Pillay's Petition was acknowledged by both parties to have been dismissed by the Privy Council, the Appellants were left on their Statement of Defence without any arguable case. Accordingly, the Appellants' Statement of Defence was ordered to be struck out. Having regard to the facts set out in the Statement  
30 of Claim which were admitted by the Appellants, the learned judge held that the judgment given against the said Pillay had by virtue of section 61 of the Road Traffic Ordinance, 1962, become executory as against the Appellants. Judgment was ordered to be entered against the Appellants in the Respondent's favour in the sum of RS. 727,618.36 cs with costs.

8. The Respondent respectfully submits that the decision of the Supreme Court was correct and should be upheld. It is submitted that the  
40 Supreme Court was correct in holding that the Appellants' Defence was based solely upon the alleged necessity to Wait for the Privy Council's decision upon the said Pillay's Petition and that once that basis was removed

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by the Privy Council's dismissal of the said Petition so was any arguable defence by the Appellant.

9. It is therefore respectfully submitted that this appeal should be dismissed with costs and that the judgment and order of the Supreme Court of Mauritius should be affirmed for the following, among other

REASONS

- (1) BECAUSE the Appellants' Statement of Defence failed to disclose any reasonable defence or answer and/or was frivolous and vexatious. 10
- (2) BECAUSE the Respondent was entitled to enforce the Judgment dated the 9th October, 1968, against the Appellants.
- (3) BECAUSE of the other reasons given in the judgment of the Supreme Court.

Stuart N. McKinnon

No. 30 of 1970  
IN THE PRIVY COUNCIL

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ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

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RAMDHARRY INSURANCE CO. LIMITED  
represented by the Chairman of its  
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Ramdharry, of Port Louis Appellants

and

DESMOND O'SHEA, acting both for  
himself and as legally representing  
his minor sons John Desmond Fabian  
O'Shea, Paul Simon O'Shea, Jeremy  
James Prince O'Shea, Desmond Francis  
O'Shea and Stephen Anthony O'Shea.  
Respondent

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CASE FOR THE RESPONDENT

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London, W.C.2A 3UL.