Privy Council Appeal No. 30 of 1970

Ramdharry Insurance Company Ltd – – – – *Appellant*

v.

Desmond O'Shea – – – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
DATED THE 22ND JULY 1971

Present at the Hearing:
LORD GUEST
LORD WILBERFORCE
LORD SIMON OF GLAISDALE

[*Delivered by* LORD GUEST]

This appeal raises a very simple point of procedure for the Courts of Mauritius. But, in order to appreciate the point at issue, it is necessary to go into some details of the history of the matter.

The respondent raised an action of damages against Veerapen Veerapa Pillay in the Supreme Court of Mauritius in respect of an accident which occurred on 15th December 1965 in which the respondent and his minor children were injured. On 9th October 1968 the Supreme Court delivered judgment against Pillay for the sum of Rs706,782·58 together with costs amounting to Rs5,870·08. Pillay was given conditional leave to appeal to Her Majesty in Council, by the Supreme Court, on 25th November 1968. This leave was withdrawn on 12th May 1969 because of Pillay's failure to comply with the conditions. The judgment of the Supreme Court then became executory and Pillay was then bound to pay to the respondent the amount of the judgment.

Following upon the withdrawal of leave to appeal to Her Majesty in Council, Pillay on 4th August 1969 lodged a petition for special leave to appeal.

On 7th August 1969 the respondent lodged a statement of claim in the Supreme Court against the appellant, praying for an order that under the provisions of section 61 of the Road Traffic Ordinance, 1962 (notice having been duly given to the respondent under subsection (2) (*a*) of the section) that the appellant do pay the amount of the judgment obtained against Pillay. The Statement of Defence lodged by the appellant on 8th October 1969 narrated the history of the matter and averred that

a petition for special leave to appeal to the Privy Council had been lodged by Pillay and alleged that the respondent had no rights of action against the appellant until the Judicial Committee of the Privy Council had given a decision on the petition for special leave.

On 17th October 1969 the respondent lodged a notice of motion that the Statement of Defence should be struck out under Rule 20 of the Rules of the Supreme Court and that judgment should be entered against the appellant. This notice was supported by an appropriate affidavit. On 21st January 1970 and again on 11th March 1970 arguments took place before the Supreme Court on the motion to strike out. The Supreme Court very properly took the view that until the decision of the Privy Council was obtained no further steps could be taken in the proceedings. But on 23rd March 1970 the petition for special leave was dismissed by the Privy Council. On 3rd April 1970 the matter again came before the Supreme Court. The record minutes the procedure as follows:

(Raffray QC for plaintiff and Mohamed for defendant)

> "Mohamed states that his instructions are to move for a postponement of the case as the defendants are going to move for an amendment of the defence in order to bring in a plea of breach of warranty. He adds that defendants have new facts which they want to bring before the Court.
>
> Raffray states that on the present motion there cannot be any motion for amending the Statement of Defence.
>
> At this stage the Court states that the object of having the case mentioned this day is to have confirmation that the application for special leave to appeal to the Privy Council has been dismissed."

Judgment of the Court was delivered on 24th April 1970 when the Court ordered that the Statement of Defence should be struck out and that judgment should be entered against the appellant in the respondent's favour in the sum of Rs727,618·36 with costs.

It is against this judgment that the present appeal is taken. The appellant does not complain that the order to strike out was not justified. He could not very well do so as the basis of the Statement of Defence had disappeared when the petition for special leave had been dismissed. But the appellant complained that the Supreme Court had never in their judgment dealt with the matter of an amendment mentioned by appellant's counsel at the hearing on 3rd April 1970. He says that the hearing should have been postponed in order to allow an amendment to be lodged. Rule 35 of the Rules of the Supreme Court is in the following terms:

> "The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

It is true that no mention is made in the judgment of the Supreme Court of the amendment. This is perhaps not surprising when the content of the amendment proposed was "a plea of breach of warranty". Counsel for the appellant was not able to tell the Board what this breach was. But it is not an unfair assumption that it would have been without merit having regard to the terms of section 61 (3) of the Road Traffic Ordinance, 1962, which requires notice of repudiation by the insurer to be given within three months of the raising of the original action. Such a notice would clearly have been out of time in April 1970. Nor did Counsel for the appellant give any assistance on the nature of the new facts

which they "(the appellant) want to bring before the Court". If Mr. Mohamed's motion was as unspecific as it appears to have been the Court were well entitled to ignore it in their judgment. The granting of a postponement with a view to lodging an amendment is a matter in the discretion of the Court. In their Lordships' view there is nothing to suggest that the Supreme Court did not exercise its discretion perfectly properly, nor does their failure to mention the matter in their judgment invalidate their exercise of that discretion. No formal amendment was before them and for the reasons allegedly given any amendment on the lines suggested would have been of no avail. The Supreme Court were right in refusing any postponement.

Their Lordships have humbly advised Her Majesty that the appeal should be dismissed. The appellant must pay the costs.

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In the Privy Council

RAMDHARRY INSURANCE COMPANY LTD.

v.

DESMOND O'SHEA

DELIVERED BY

LORD GUEST

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