

MOHD SARANI BIN RASMAN v PAN GLOBAL INSURANCE SDN. BHD. [2001] MLJU 204

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HIGH COURT (KUALA LUMPUR)

K. C. VOHRAH, J

RAYUAN SIVIL NO R1-11-131-1997

4 April 2001

Case Summary

Insurance — Motor insurance — Liability of insurers to satisfy judgment obtained against insured — Forgery of policy and insurance certificate — Whether insurer liable — Road Transport Act 1987, s 96(1)

H W Yip (M/s David Lingam & Co.), Bernard Lewis (M/s G. T. S. Amerik Sidhu)

DECISION

Mohd Sarani bin Rasman was involved in a road accident on 4.7.1983 with a lorry and on 28.12.1994 obtained judgment against the driver and owner of the lorry which had caused the accident. When it could not be enforced against the driver and owner of the lorry Mohd Sarani filed an action in the Magistrates' Court against Pan Global Insurance Sdn Bhd (Pan Global) under s 96 of the Road Transport Act 1987 (the Act) to recover the sum due and owing on the judgment. Mohd Sarani failed to recover the sum as Pan Global succeeded in its plea that it never issued or delivered a certificate of insurance to the owner of the said motor lorry.

Mohd Sarani has appealed against the Magistrate's decision on the ground she has erred in the evaluation of Pan Global's representation that it was not the insurance company for the lorry and that she also erred in accepting the evidence of DW1 that the Policy and Insurance Certificate issued had been forged.

In the Magistrates' Court Kuala Lumpur after a trial the Magistrate made several findings of fact - [*2]

- (1) that the evidence of PW2, the Manager and Secretary of the Insurance Bureau of West Malaysia, that Pan Global were insurers of the said vehicle was not conclusive as he had obtained the information from one Sergeant Asnawi.

Clearly the evidence is hearsay and the Magistrate's conclusion was right. Asnawi, she said, should have been called. I agree with that.

- (2) that on the evidence given by DW1, an officer in Pan Global in charge of issuing policies, that she was convinced that the alleged insurance details as stated by PW2 were in actual fact fake numbers and that the numbers used in Pan Global's Insurance Policy were different from those used in the certificate of insurance purportedly issued by Pan Global.

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This was a finding of fact which was perfectly and validly made.

[*3]

What is clear from the findings of the Magistrate is that Pan Global had not issued a policy of insurance in respect of the said motor vehicle which was involved in the accident with Mohd Sarani.

Mohd. Sarani's cause of action against Pan Global is founded under s 96(1) of the Act. Under that provision an Insurance Company is duly bound to satisfy any judgment obtained against any person insured in respect of third party risks. The liability to satisfy such judgment is conditional upon the insurer having delivered a policy of insurance under s 91(4) to the person by whom the policy had been effected. The trial has shown such a certificate was never issued. Pan Global is therefore not under any liability to satisfy the judgment obtained by him against the owner of the lorry.

Mohd Sarani has relied on s 96(3) which provides that "(no) sum shall be payable by an insurer if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void and unfavourable".

The proviso to s 97(3) is to the effect that if the insurer wishes to avoid liability under an insurance policy it is required to give written notice [*4]

before or within 7 days of the commencement of the action to the Plaintiff specifying the grounds upon which he proposes to rely.

Section 96(3) however does not apply because Pan Global was not the insurer of the vehicle.

As to the issue of estoppel it was not pleaded and it has not been shown how it can arise. Liability to pay by Pan Global arises from a statutory provision of the Act. One of the conditions of the provision before such liability arises is that a certificate of insurance had been delivered to the person by whom the policy of insurance was effected. That as we know has been established as not having been done. Statutorily there is no liability.

The appeal is dismissed with costs.