27, 1971

IN THE PRIVY COUNCIL No. 30 of 1970

ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

RAMDHARRY INSURANCE COMPANY LIMITED, represented by the Chairman of its Board of Directors, Mr. Deokeenanun Ramdharry, of Port Louis — Appellant

- 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, being themselves represented in Mauritius by Messrs. Joseph Andre Robert and George Robert attorneys at law, of George Guibert Street, Port Louis, acting jointly or separately in virtue of a power of attorney drawn up on the 17th February 1967 by Notary Pierre Doger de Speville, Reg. A363 No. 1356. — Respondents

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
7 APR 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

CASE FOR THE APPELLANT — RECORD

1. This is an appeal from an Order of the Supreme Court of Mauritius (H. Garrioch, Acting Chief Justice M. Latour-Adrien, Acting Senior Puisne Judge) dated 24th April 1970 that the Defendant's (now Appellant) statement of Defence be struck out and that judgment be entered against the Appellant in Respondents' favour in the sum of Rs 727,618.36cs with costs. — P.39 L.45 P.40 L.1, 9 & 10

2. The principal questions arising in this appeal are:-

(a) Whether a defendant has a right to move to amend his statement of defence at any stage of the proceedings.

RECORD

(b) Whether when such a motion is made at a certain stage of the proceedings, the Court should pronounce on the said motion.

(c) Whether the Learned trial Judges were right in keeping silence in their judgment about the statement made by Learned Counsel for the Appellants on 3rd April, 1970 moving the Court for a postponement to be able to amend the Statement of Defence with a view to pleading that there was a breach of warranty between the Appellants and the insured.

(d) Whether Section 35 of the Supreme Court, 1903 of Mauritius is applicable in the circumstances:-

RULES 35

"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."

P.2 L.1-10 3. In their statement of claim dated 6th day of August, 1969 and served on 7th day of August, 1969 the Respondents averred that on 15th December 1965 an accident occurred, on the Public Road between Cannonniers Point and Grand Baie, between car No. H293 driven by Mrs. Mary Francis Josephine O'Shea, and in which Paul Simon O'Shea, Jeremy James Prince O'Shea and Desmond Francis O'Shea were also travelling, and car No. F616 driven by Veerapen Veerapa Pillay and insured by the Appellant.

P.2 L.11-18 4. As a result of the said accident, the Respondents entered a statement of claim before the Supreme Court of Mauritius against the said Veerapen Veerapa Pillay on 16th February, 1967.

P.2 L.19-22 5. Notice of the bringing of the proceedings was given to the Appellant on 22nd February, 1967 within the delay prescribed by law.

RECORD

6. On the 9th October 1968 the Mauritius Supreme Court delivered judgment against Veerapen Veerapa Pillay in the sum of Rs 706,782.58cs together with costs amounting to Rs 5,870.08cs. P.2 L.25-31

7. The signing of judgment amounted to Rs 14,965.70cs. P.2 L.33-34

8. The total sum amounted to Rs 727,618.36cs. P.3 L.16

9. Veerapen Veerapa Pillay was granted conditional leave to appeal. P.2 L.35-36

10. On 12th May, 1969, the Supreme Court of Mauritius rescinded the Order giving Leave to Appeal. P.2 L.40-41

11. The judgment of the Supreme Court became executory. P.3 L.1

12. In his statement of defence the Appellant averred that Veerapen Veerapa Pillay failed to comply with order of the Supreme Court of Mauritius because he suffered from a depressive illness. P.7 L.2

13. On 27th March, 1969 the said Veerapen Veerapa Pillay moved the Supreme Court of Mauritius for a further delay but the motion was rejected and conditional leave to appeal rescinded. P.7 L.8-15

14. The said Veerapen Veerapa Pillay applied for Special Leave to Appeal to the Judicial Committee of the Privy Council. P.7 L.20

15. The Appellants denied that the said judgment had become executory. P.7 L.39

16. The Appellant also averred that the present action was premature. P.8 L.3

17. On 17th October, 1969 the Respondents moved the Supreme Court of Mauritius to Order under Rule 20 of the Supreme Court, 1903, that the statement of Defence dated 8th October, 1969 be struck out and that judgment be entered against the Appellant. P.9 L.20 P.9 L.22

18. In an affidavit sworn by Mr. Georges Andre Robert, Attorney and Agent of the Respondents averred that the Statement of Defence showed no P.11 L.11

RECORD

defence and/or were frivolous and vexatious.

P.14 L.7 — 19. The case was fixed for argument on 21st January, 1970.

P.15 - 30 — 20. On the 21st January, 1970 Mr. Raffray Q.C. for the Respondents and Mr. Sewgobind for the Appellants argued the case.

P.30 L.10 — 21. Judgment was reserved.

P.31 L.14 — 22. On 11th day of March, 1970 case was argued and Court reserved judgment.

P.36 L.25 — 23. On 3rd April, 1970 the Appellants moved for a postponement of the case as the Appellant was going to move for an amendment of the defence in order to bring in a plea of breach of warranty as the Appellants had new facts which they wanted to bring before the Court. P.36 L.29 P.36 L.31

24. The Court stated that the object of having the case mentioned this day (3rd April, 1970) was to have confirmation that the application for special leave to appeal to the Privy Council had been dismissed. P.36 L.35 P.37 L.1-3

P.37 L.7 — 25. The Court reserved judgment.

P.49 L.34-36 — 26. Final Leave to Appeal to the Privy Council was granted to the Appellants by the Mauritius Supreme Court on the 8th day of June, 1970.

27. On 24th April, 1970 the Supreme Court of Mauritius delivered and ordered that judgment be entered against the Appellant in the sum of Rs 727,618.36cs with costs. P.37 L.11 P.40 L.10

28. In their judgment the Learned Judges stated that the petition had been dismissed by the Privy Council and that they should accede to the Respondent's application to have the statement of defence struck out and give judgment in Plaintiffs' favour. P.38 L.43 P.39 L.7

P.37 - 40 — 29. It is respectfully submitted that in their judgment the Learned Judges never pronounced on the motion for the amendment made by the learned Counsel for the Respondent.

30. It is further respectfully submitted that the Learned Judge (a) should have pronounced on the motion for amendment before entering judgment against the Appellant, the more so as the amendment prayed for was material to the issue raised.

(b) There was no means of telling to what conclusion the Learned Judges might have come if the amendment had been made.

31. In the alternative the Appellant submits that the Supreme Court of Mauritius erred in not pronouncing on the motion for the amendment and in entering judgment in favour of the Respondent.

32. The Appellant respectfully submits that this Appeal should be allowed with costs and the amendment should be allowed to be made for the following amongst other

R E A S O N S

Because the amendment was material to the issue and same should have been allowed.

O.K. RUMTUN

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Appellant

- and -

DESMOND O'SHEA AND OTHERS

Respondents

CASE FOR THE APPELLANT

BERNARD SOLLEY & CO.,
9 Cavendish Square,
London, W.1.
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