

RENTWAY RENTALS LIMITED v NATIONAL PACIFIC
INSURANCE LIMITED

Supreme Court Apia
Ryan CJ
25 October, 30 November 1988

CONTRACT LAW - car rental contract - whether insurance contract covered accident by intoxicated thief - onus of proof on Defendant to show hirer acquiesced to the car being driven by another.

CONTRACT LAW - accident - fraudulent claim to insurance company - responsibilities of insured.

The Plaintiff, a car rental firm, rented a car to L. Masaniai. L. Masaniai and P Masaniai were allowed to use the car. The car was involved in an accident and was driven by Pogi.

The Plaintiff was covered by the Defendant, an insurance company, but no copy of the policy had been issued by the Defendant. A standard form policy was used in the trial. The document covered accidental damage resulting from theft but did not cover accidental damage resulting from an intoxicated driver. The insurance claim was filled out with Pogi's name given as the person who hired the vehicle with L Masaniai as the alternative driver.

- HELD:
- (1) The insurance policy did cover an intoxicated thief.
 - (2) There was no evidence of authorised hirer L. Masaniai knowing the vehicle was being driven or that he had given permission for Pogi to drive. The onus is on the Defendant to show some form of permission given or acquiescence in the driving, by the hirer, to dispel the accusation of theft.
 - (3) An insured person is required to provide full and complete information as to the circumstances of the accident and to co-operate with the provision of essential data, such as the name of the driver at the time of the accident. A claim put forward by an assured which is false or which is supported by false evidence is clearly fraudulent.

T K Enari for Plaintiff
R Drake for Defendant

Cur adv vult

The Plaintiff sues the Defendant for \$15,000 damages in respect of loss of a motor vehicle which the Plaintiff had insured with the Defendant Insurance Company. The vehicle was damaged beyond repair in an accident on 2 April 1988.

The Plaintiff which operates a car hire firm had rented the vehicle to one Lafoaina Masaniai of California on 30 March for return on 2 April. An additional driver Pili Masaniai was also permitted to use the vehicle. It is common ground that the vehicle when it was involved in the accident was being driven by neither permitted drivers but by one Pogi who it seems was goaled for his efforts. Precisely what the charges against Pogi were is not clear but they appear to have included drunken driving causing death since at least 2 persons were killed in the accident.

The policy which covers the Plaintiff had never actually been issued by the Defendant although it is conceded that cover did exist. A standard form policy which seems singularly ill equipped to cover a rental car company for the sort of claims which such a company would be likely to make was produced as an exhibit by way of illustration.

The document produced covers accident damage resulting from theft. The policy excludes loss or damage while the vehicle is being driven by any person under the influence of intoxicating liquor (Exclusion 4(9)) but obviously that cannot include damage occasioned by an intoxicated thief. The accident happened in the early hours of Easter Sunday morning 2 April 1988. The Plaintiff became aware of the accident the same day and by 6th of April both parties knew that the driver of the vehicle at the time of the accident was the aforesaid Pogi. However after the claim form was completed and lodged after 6 April the driver's name was given as the person who had hired the vehicle and as an alternative the other permitted driver. Just why this occurred is a mystery since the person who completed the form although he was in Apia on the day of the hearing and able to come to the Court, did not for some inexplicable reason give evidence. There was no indication in the claim form that anyone else may have been driving or that the vehicle had been stolen.

Evidence was given that the hirer of the vehicle was involved in a family reunion on Good Friday. It is apparent that a good deal of beer was consumed throughout the day. Whether the hirer of the vehicle was involved in this drinking spree is not clear but the only evidence as to his whereabouts on the Friday evening was that he was asleep by 8pm. The vehicle was driven around for some time by various persons until about 5am. the following morning when it again proceeded in the direction of Apia over Cross Island Road. At the commencement of that road a stranger on his way to the new market was given a ride. Within a very short time the accident occurred on the road and the vehicle was wrecked. It is abundantly obvious that the driver at that stage, Pogi, was intoxicated. There is no evidence whatsoever that the hirer of the vehicle who was authorised by the owner knew that the vehicle was being driven or that he in any way acquiesced in the driving. The onus is clearly on the Defendant to show that there was some form of permission given or acquiescence in the driving by the hirer and that onus has not been discharged. That is not the end of the matter however since the Defendant says that the Plaintiff failed to provide information as requested by it and misrepresented the particulars of the accident.

On the 6th April the Defendants employee, a Mr Fatoa, went to the Plaintiffs place of business to request a copy of the hire agreement. This was refused he being merely shown a copy. No good reason was given to the Court for this refusal. The Plaintiff on the day in question knew, as did the Defendant, the name of the driver of the vehicle when the accident occurred but as I have earlier stated did not supply that person's name to the Defendant nor did it give any intimation to the Defendant that the vehicle had been stolen.

I have grave suspicions about the conduct of the Plaintiff company. Its principal officer, the person who filled in the claim form, whilst available in Apia on the day of the hearing, did not see fit to come to Court. As a substitute witness, his son was of little assistance to the Court and it seems to me that the Plaintiff is endeavouring to conceal something from the Defendant and the Court.

Be that as it may, it appears to me that the Plaintiffs claim based on theft of the vehicle whilst under hire is not in accordance with the claim made by it against the Defendant on 6 April 1988. That claim was purely for damage caused to the vehicle whilst driven by the hirer. That aspect was probably false and known to be false by the Plaintiff but at no stage apparently has an amended claim ever been filed other than the statement of claim filed in this Court.

A claim put forward by an assured which is false or which is supported by false evidence is clearly fraudulent. It is a breach of the duty of good faith. See paras. 510 and 511 Halsburys Laws of England 4th Edition Vol. 25.

The Plaintiff had clearly defined responsibilities after the accident occurred - it was required to provide full and complete information to the Defendant as to the circumstances of the accident and to cooperate with the provision of essential data, such as the name of the driver at the time of the accident. It has failed to do that and its explanation in court leaves a lot to be desired. As I have already indicated, the absence of the Plaintiffs principal coupled with the actions of the Plaintiff after the incident are highly suspicious if looked at in the best possible light.

The Plaintiffs claim must therefore fail. Costs payable to the Defendant are fixed at \$750.00.