

**IN THE COURT OF APPEAL BELIZE
A.D. 2000**

CIVIL APPEAL NO. 14 OF 2000

BETWEEN:

REGENT INSURANCE CO. LTD

APPELLANT

AND

**ANTONIO GOMEZ
VALENTINA REYES NEXT FRIEND
OF DARLENE REYES et al**

RESPONDENTS

BEFORE:

**The Honourable Mr. Justice Ira Rowe - President
The Honourable Mr. Justice Elliott Mottley - Justice of Appeal
The Honourable Mr. Justice Manuel Sosa - Justice of Appeal**

APPEARANCES:

**Mr. A. Edmund Marshalleck for the Appellant.
Mr. Michael Young, S.C. for the Respondents.**

2000: October 16 and 2001: March 8.

REASONS FOR DECISION

MOTTLEY, J.A.

On 7 June 1984 Antonio Reyes died after being involved in a road accident when the motorcycle which he was riding, collided with a vehicle the property of the embassy of the United States of America.

The motor cycle, which he was riding, was insured by Regent Insurance Company Limited (“Regent”). The embassy vehicle was insured by Belize International Insurance Company limited (“Belinsco”).

Antonio is survived by his wife Valentina Reyes and two children Antonio Gomez and Darlene Reyes.

On 25 November 1985 Antonio Gomez and Valentina Reyes, for herself, and as next friend of Darlene Reyes brought an action against Belinsco and Regent claiming from the defendant the sum of \$6,900.00 and interest thereon. This amount is being claimed pursuant to section 5 (4) and 5 (5) of the Motor Vehicle Insurance (Third Party Risk) Act Cap 195 (the Act). Both of the defendants refused to pay the claim.

In its defence, Belinsco alleged that the accident “was caused by and due exclusively to the negligence” of the deceased. Belinsco denied that its insured, the Government of the United States of America, was in any way responsible for the death of the deceased. The company also denied any liability under the provisions of section 5 (1) of the Act.

On 3 February 2000 Meerabux J ordered that all actions against Belinsco be stayed. Thus the claim before the judge proceeded only against Regent.

Regent in its defence claimed that the amount claim by the plaintiff constituted liabilities incurred by Antonio Reyes under the provision of the Act and which were required to be covered by the policy of insurance which was issued to him.

The appellant also denied that the deceased “was a third party within the meaning of the Act in respect of whose death any right against (the appellant) to indemnify for death or funeral expenses or to payment of death benefits under section 5 (4) of the Act or to pay supplemental death benefits under section 5(5).”

The relevant provisions of s. 5 of the Act read as follows: -

(1) Notwithstanding anything in any enactment, rule of law or the common law and without prejudice to any claim or action for damages made as a result of negligence, the insurer of a person who was using a motor vehicle at the time of an accident involving the said vehicle out of which any bodily injury arose shall, irrespective of whether such person be negligent or not, pay as benefits to the injured third party all reasonable expenses incurred as a result of that injury ...up to... five thousand dollars....

(4) Where such bodily injury caused by an accident as herein mentioned results in the death of the third party the insurer shall pay as indemnity burial and funeral expenses not exceeding \$400.00, and if the deceased third party is survived by a spouse or a dependent the insurer shall in addition pay death benefits based on the age and the status of the deceased third party as follows...

(5) In addition to the benefits mentioned herein, the insurer shall also pay a supplemental death benefit of one thousand dollars for each surviving dependant other than the first

where the deceased third party is survived by a spouse and one or more dependants or by more than two dependants.

(10) Where more than one motor vehicle is involved in any accident out of which any bodily injury ... was caused to a third party, the injured party shall be entitled to claim the benefits set out in this section from the insurer of either vehicle and such insurer shall be liable to pay the full benefits due to the claimant.

(11) Where more than one vehicle is involved in an accident out of which any injury ... was caused to a third party and the insurer against whom a claim is made by the injured third party is not the person liable to pay the said claim, such insurer shall nevertheless pay the said claim and shall himself be entitled to recover the said sum from whoever shall be liable therefor.

The sole ground of appeal is that “the learned trial judge erred in construing section 5 (10) of the Motor Vehicle (Third Party Risks) Act to impose an obligation on an insurer to pay benefits under section 5 of the Act to its insured.”

Counsel for the appellant submitted that the judge reached his decision by interpreting the words “third party” as used in section 5 (10) of the Act to include Antonio Reyes thereby allowing the plaintiff to recover benefits payable by Belinsco under section 5 (4) and 5 (5) of the Act in respect of the death of Antonio Reyes from Regent. In so doing, the learned trial judge erred since, as counsel was contending, the words “third party” could not include Regent’s own insured Antonio Reyes.

Section 5 (1) provides that without prejudice to any claim arising out of the negligent driving of a person, the injured third party is entitled to recover from the insurer of the driver as benefits all reasonable expenses incurred as a result of the injury. These expenses relate to the medical, surgical, dental, hospital and nursing services.

Section 5 (4) provides that, where the person dies as a result of the injury sustained in the accident, the insurer shall pay as an indemnity the burial and funeral expenses not exceeding four hundred dollars. If the deceased third party is survived by a spouse or dependant, the insurer is required, in addition, to pay death benefits based on the age and status of the deceased on a scheme set out in this subsection.

By section 5 (5) the insurer, in addition to the benefit, is required to pay a supplement death benefit of one thousand dollars for each of the surviving dependants other than the first. In such a case, the deceased third party must be survived by a spouse and one or more dependants or by more than two dependants.

Section 5 (10) deals with the situation where more than one motor vehicle is involved in an accident and bodily injury or damage to property is caused to a third party. In these circumstances the injured third party is entitled to claim the benefits set out in this section from the insurer of either vehicle. In such a case, the insurer is liable to pay the full benefit to the person claiming.

By section 5 (11) where more than one motor vehicle is involved in an accident and the bodily injury and damage to property arises out of the accident to a third party, the insurer against whom the claim is made shall,

nevertheless, pay the claim and shall recover the sum paid from whoever is liable to pay any damages.

Subsection 10 & 11 must be read in conjunction with each other.

Subsection 10 permits the injured third party to recover statutory benefits from any of the insurers where an accident involving more than one motor vehicle has occurred. This right to recover under the subsection has nothing to do with any liability at common law and is a statutory right.

The use of the words “from the insurer of either vehicle” clearly indicates that the Legislature intended that the insurers of any of the vehicles involved in the accident would be liable to pay these statutory benefits. This liability to pay is created by statute and does not depend on any liability in negligence at common law.

Section 5 (11) gives the insurer who has paid any of the benefits due under section 5 of this Act the right to recover from any other insurer who is liable to pay. This section places the ultimate liability to pay on the insurer of the person who is actually responsible for the accident.

Counsel for the appellant referred to the definition of “third party” as contained in section 2 of the Act where it is stated that it means “any person to or in respect of whom indemnity is payable if bodily injury is sustained by him or if he suffers loss of life or damage to property as a result of a motor accident for which coverage is provided under this Act.”

He also submitted that “third party” means any person to whom the insured may be liable for death or bodily injury or damage to property caused by or arising out of his use of a motor vehicle on a public road save and except those persons expressly excluded from coverage.

In addition, counsel in his written submissions stated that a third party must be identified in relation to an insured or insurer. He also stated there was no independent notion in concept of a “third party” and further submitted that a person cannot be a third party under a policy of insurance providing coverage as required by the Act in respect to himself since he cannot incur liability to himself. A person cannot be an insured and a third party in respect of the same policy.

These submissions do not taken into account that section 5 provides a statutory scheme of benefits in the circumstances set out in that section. It ignores the opening words of section 5 (1) “notwithstanding any enactment rule of law or the common law and without prejudice to any claim or action for damage made as a result of negligence.

The provision set out in section 5 makes it clear that they apply “notwithstanding anything in any enactment, rule of law or common law.”

Section 3(1) of the Interpretation Act Cap. 1 provides:

“3(1) In this and in any other Act, unless the contrary intention appears –

“Act” in relation to a legislative measure, means any Act and any subsidiary legislation made under that Act;

“enactment” means an Act or subsidiary legislation or any provision in an Act or subsidiary legislation.

The words “notwithstanding anything in any enactment” in section 5(1) of the Act must be construed in the light of the provisions of s. 3(1) of the Interpretation Act. The word “enactment” means an Act and “Act” means any enactment. The Motor Vehicle Insurance (Third Party) Risk Act is an Act within the meaning of section 3(1) of the Interpretation Act.

The provision of section 5(1) of the Act provides that “notwithstanding anything in any enactment” would mean notwithstanding anything in the Motor Vehicle Insurance (Third Party) Risk Act the provision of section 5 will apply. The effect of this is that even though there is a definition of “third party” under section 2 of The Motor Vehicle Insurance (Third Party) Act, nonetheless, the provision of section 5 of the Act will apply. The provision of section 5 of the Act would therefore exclude the definition of “third party” as set out in the Act.

It seems that by this section, the Legislature intended to provide a statutory scheme of benefits to persons who have been injured or died as a result of the injury sustained in an accident irrespective of any common law or statutory liability. Where more than one vehicle is involved in the accident, the scheme allows the injured third party to recover from any of the insurers of the vehicles involved in the accident. If an insurer pays, he is entitled to recover from the

other insurer who is liable to pay damages. When two vehicles are involved in an accident the person who is ultimately responsible for paying the claim is the person who is liable to pay damages at common law for the accident.

Common law liability in negligence becomes relevant, once the provisions of subsection 10 and 11 come into play – where the accident involves more than one vehicle and the statutory benefits are recoverable from the insurer of any vehicle, then that insurer is entitled to recover the statutory benefits it has paid from the insurers who are liable to pay damages e.g. at common law in negligence.

It was for these reasons that we dismissed this appeal, and ordered the appellant to pay costs to the respondent such costs to be taxed or agreed.

ROWE, P.

MOTTLEY, J.A.

SOSA, J.A.