IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 15 of 1984

Between:

CENTRAL MEAT COMPANY LIMITED Appellant

and

SHIU PRASAD Respondent
s/o Hari Prasad

Mr. A. Tikaram for the Appellant
Respondent in person

REASONS FOR JUDGMENT

On the 4th January, 1982 a motor van owned by the appellant was involved in an accident with another vehicle driven by the respondent. The appellant's vehicle was damaged in the collision. The cost of repairs amounted to $853.52.

On the 1st March, 1984 the appellant instituted proceedings in the Magistrate's Court against the respondent for the recovery of this amount. The respondent did not appear at the trial or offer any defence. In the course of the hearing it was disclosed to the magistrate, Mr. L.S. Perera, that $653.52 was paid by the Fiji Insurance Company Limited to the proprietor of the garage which carried out the repairs. The magistrate asked Mr. Tikaram, who appeared for the appellant, to make submissions as to the extent of the respondent's liability to pay damages to the appellant, in view of the fact that the appellant was insured to a certain extent.

In the course of his judgment the learned magistrate said :

> "In the submissions filed, counsel states that on the basis of 'Subrogation' the plaintiff in this case is entitled to the entirety of the amount claimed. But, as I see it, Subrogation is the right of the Insurer, to have himself awarded the amount expended by him on behalf of the insured. In the instant case, it is not the Insurer who has come to Court by himself or through the Insured claiming the sum expended. It is the insured and he claims not only the $200.00 paid by him, but claims for himself the amount spent by the Insurer too. If this application is allowed, the insured would be unjustly enriching himself - by having the Insurer indemnifying him and collecting a like amount from the defendant too. The plaintiff will therefore be entitled to claim from the defendant only the actual loss he has incurred and that is $200.00. "

On appeal to this Court I increased the amount of the damages awarded from $200 to $853.52. The respondent did attend the hearing of the appeal in person. His sole complaint was that he could not pay $200, not to speak of the greater amount sought to be recovered against him. When I gave judgment on 15th March, I indicated I would give my reasons at a later date.

The learned magistrate seemed to be under the impression that the appellant had brought the action against the respondent solely for his own benefit. He was not justified in making that assumption. It has long been the practice for insurers, who seek to recover amounts which they have paid out to insured persons, to bring the action in the name of the assured (Mason v. Sainsbury (1782) 3 Doug K.B. 61). In the absence of a formal assignment of the right of action the insurers cannot sue the third party in their own names (London Assurance Co. v. Sainsbury (1783) 3 Doug K.B. 245). Anything recovered by the appellant over and above the

amount for which he is not insured will be held by him on behalf of his insurers. He will not, therefore, be unjustly enriched.

The doctrine of subrogation applies to all contracts of non-marine insurance which are contracts of indemnity (North British and Mercantile Insurance Co. v. London and Globe Insurance Co.(1877) 5 Ch.D.). The insurer, on payment of the loss, is entitled to the advantage of every right of the assured, whether it consists in contract or in remedy for tort, or to anything he has received or is entitled to receive in diminution of the loss (West of England Fire Insurance Company v. Isaacs (1897) 1 Q.B. 226).

(F.X. Rooney)
JUDGE

Suva,

29th March, 1985