SUKHRAJI

v.

QUEENSLAND INSURANCE CO. LTD.

[SUPREME COURT, 1963 (Hammett P.J.), 9th November, 1962, 11th January, 1963]

Appellate Jurisdiction

Insurance—policy—evidence of value—condition precedent to claim.

Clause 5 of a motor vehicle insurance policy provided (*inter alia*) that the insured must give to the insurance company such evidence as might be reasonably required by the company of the truth of the claim and of any matters connected therewith. The insured took no step to comply with a requirement of the company that he should produce some evidence of the value of his car, which was destroyed by fire. The Magistrate held that clause 5 was a condition precedent to the insured's right to claim under the policy and dismissed his action.

Held.—The decision of the Magistrate was correct.

Case referred to:

Welch v. Royal Exchange Assurance [1938] 4 All E.R. 289; [1938] 1 K.B. 757.

Appeal from judgment of the Magistrate's Court.

Koya for the appellant.

Stuart for the respondent company.

HAMMETT P.J. [11th January, 1963]—

The plaintiff-appellant owned a motor car which she insured with the defendant-respondent insurance company against loss or damage, for the sum of £500, originally, but the sum insured was reduced to £300 when the policy was subsequently renewed.

In June, 1960, at a time when the sum insured under this policy had been reduced to £300, the car was destroyed by fire. The plaintiff-appellant claimed £500 under the policy of insurance from the defendant company, which took possession of the remains of the vehicle. The respondent company's representative offered to pay £90 in settlement of the claim. This offer was not accepted by the appellant.

On 5th December, 1960, the solicitors to the respondent company wrote to the appellant's solicitors that the respondent did not consider the market value of the car at the time it was destroyed by fire was anything like £500. They called on the insured to produce some evidence of the value of the car at the time of the fire. No evidence of value was ever produced by the appellant to the insurance company in spite of the respondent company's solicitors' specific warning, in the correspondence, that unless it was given the claim would be rejected. After correspondence extending from December, 1960, to March, 1962, the plaintiff-appellant issued a writ in the Magistrate's Court, Lautoka, claiming £300 under the policy.

On 31st August, 1962, the Court below gave judgment dismissing the claim, on the ground that on these facts the failure of the plaintiff-appellant to produce the evidence of value requested was fatal to the claim, in view of the express words of clause 5 of the policy.

The plaintiff has now appealed on the ground that the learned trial Magistrate erred in law in holding that the defendant company was entitled to rely on the provisions of clause 5 of the policy as a defence to the action.

The contract of insurance set out on the face of the policy is stated to be subject to the terms of the concluding proviso of which the following is the material part:—

> " Provided always that the above indemnities are granted subject to the due and proper observance and fulfilment by the insured of the . . . conditions hereto . . . which conditions shall be deemed to be of the essence of the contract and so far as they contain anything to be done by the insured, each of them shall be a condition precedent to the right to recover hereunder."

The material part of clause 5 of the conditions referred to reads—

> " . . .
>
> The insured shall within 15 days after the happening of any loss or damage . . . deliver to the company a claim in writing for the loss or damage containing as particular an account as is reasonably practicable and must at all times . . . produce and give to the company all such books, vouchers and other evidence as may be reasonably required by . . . the company together with a declaration on oath . . . of the truth of the claim and of any matters connected therewith."

The learned trial Magistrate held that the failure of the appellant to comply with the insurance company's request, on 5th December, 1960, to produce some evidence of the value of the car at the time it was destroyed by fire, was a failure to comply with a condition precedent to the appellant's right to claim under the policy, in view of the express provisions of clause 5 of the conditions on which the policy was issued. He relied upon the decision of the Court of Appeal in *Welch v. Royal Exchange Assurance* [1938] 4 All E.R. 289 in which a similar position arose and where it was held that the breach of an assured to comply with such a condition precedent was fatal to his claim under a policy of insurance.

I have considered all that has been urged on behalf of the appellant. In my view however, the words of McKinnon, L.J. in Welch's case, are equally applicable in this case when he said—

> " This means that the appellant . . . by reason of his stupid obstinacy over an immaterial matter . . . has enabled the respondents to refuse to pay anything."

In my view the judgment of the learned trial Magistrate was correct and this appeal must be dismissed with costs which are, by consent, assessed at £12 12s. 0d.

Appeal dismissed.

Solicitors for the appellant: *Koya and Co.*

Solicitors for the respondent company: *Stuart and Co.*