IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 65/93

BETWEEN: NATIONAL PACIFIC INSURANCE LIMITED a duly incorporated company having its registered office at Apia

First Plaintiff

SIMON POTOI of Toomatagi, Cabinet Secretary

Second Plaintiff

A N D: CARDINAL PIO TAOFINUU, Bishop for the time being of the Roman Catholic Diocese in Western Samoa

First Defendant

A N D: ONOSAI FILIPO of Leauvaa, Driver

Second Defendant

Counsel: R. Drake for first and second plaintiffs
P.A. Fepuleai for first defendant
T. Malifa for second defendant

Date: 22 September 1994

ADDENDUM

On 5 September 1994 judgment was delivered in this case. The action by the first plaintiff against the first defendant was non suited and its action against the second defendant was struck out. Likewise the second plaintiff's action against the first defendant

was also non suited. That left only the second plaintiff's action in negligence against the second defendant.

Judgment was given for the second plaintiff on his claim for damages against the second defendant except on two items of that claim in respect of which the Court directed counsel to file proper legal submissions and then a judgment by way of an addendum would be added to the judgment delivered on 5 September 1994. Those submission have been filed, so the Court will now deal with the items of damages covered in the submissions.

The items of damages in question are the insurance premium and registration fees paid by the second plaintiff on his replacement vehicle. The real question is whether those items are too remote or not. The currently accepted test on the question of remoteness of damages is one of reasonable foreseeability : **Overseas Tankship (U.K) Ltd v Morts Dock and Engineering Co. Ltd [1961] A.C.388**, a decision of the Privy Council, more generally known under the name **The Wagon Mound**. As there were echoes of the directness test in this case, it must be pointed out that the directness test as the test for remoteness of damages which found favour with the Court in the English case of **Re Polemis [1921] 3 K.B.560**, was decisively rejected in favour of the reasonably foreseeable test in **The Wagon Mound** case.

It must also be said that in relation to the question of remoteness and the reasonably foreseeable test, questions of causation are material and relevant. I do not consider in this case the question of exceptions to the foreseeable test as none arises here.

Turning to the relevant facts now, I will first consider the issue of insurance premium paid by the second plaintiff on his replacement vehicle. I must say I cannot see a causal connection between the accident caused by the second defendant and the payment of the insurance premium on the second plaintiff's replacement vehicle. I do not think that it is because of the accident caused by the second defendant that led the second plaintiff to take out insurance cover on his replacement vehicle. In fact there is no evidence that the second plaintiff insured his replacement vehicle because of the accident that happened to his former vehicle which had been written off. If anything, it appears to me that the second plaintiff has insured his replacement vehicle out of prudence just as he did with his former vehicle damaged in the accident, but not as a result of that accident. In other words there is no causal connection between the second defendant's negligence which caused the accident to the former vehicle and the payment of the insurance premium on the replacement vehicle.

If, however, there is a causal connection between the second defendant's negligence and the payment of the insurance premium on the replacement vehicle, then in the circumstances of this case, such damages are too remote as not being reasonably foreseeable. In the first place, not every vehicle is insured. It is a matter of personal choice for personal reasons whether one takes out an insurance cover on one's vehicle; and many vehicles are not insured just as many lives, the most priceless insurable interest there is, are not insured. There is also no evidence that people whose vehicles are damaged as a result of road accidents, would thereafter generally resort to insurance cover for future protection.

There is another problem. If the claim for insurance premium is allowed as causally connected to the second defendant's negligence and as reasonably foreseeable in the circumstances of this case, it must necessarily follow that the second defendant should be liable not only for the first insurance premium but for every other insurance premium paid on the insurance cover for the replacement vehicle, so long as the second plaintiff keeps that vehicle and wants to keep it insured; because it was the second defendant's negligence that has caused the second plaintiff to take out insurance cover on his replacement vehicle. That would not be fair or reasonable. To put the matter in another way, if the second defendant is liable for the first insurance premium as being reasonably foreseeable, then there will be a strong basis for

argument that he should also be liable for every other insurance premium paid by the second plaintiff on his replacement vehicle. As I have said, that would not be fair or reasonable.

Counsel for the second plaintiff has submitted that the second defendant should be liable because the insurance premium paid on the former vehicle was for a period of one year; but because of the accident the second plaintiff now has to pay the insurance premium again on the replacement vehicle about six months before the expiry of the one year period covered by the insurance premium paid on the policy for the former vehicle. I see no substance in this submission. It seems to me that what counsel for the second plaintiff is really saying is that the second defendant, by whose negligence has brought forward by six months the due date for an expense that the second plaintiffwas going to pay anyway if he had wanted to continue paying insurance premiums on his former vehicle, therefore the second defendant should pay for that expense, on behalf of the second plaintiff, for the replacement vehicle. It must be pointed out here that the rate of the insurance premium payable on the replacement vehicle is the same as that payable on the former vehicle. However if one asks what pecuniary loss in the circumstances of this case has the second plaintiff sustained because the due date for him to pay another insurance premium has been brought forward by six months as a result of the accident to the former vehicle, the answer must be none. All that has happened

is that the due date for an expense which the second plaintiff, as a matter of prudence, would have paid anyway if by choice he wanted to do so, has been brought forward by six months. So what has happened is a change to the time for payment of the next insurance premium by the second plaintiff but not a pecuniary loss to the second plaintiff. As I have said, if one asks what pecuniary loss has the second plaintiff sustained because the due date for payment of the insurance premium has been brought forward, the answer is none.

For all the foregoing reasons, the claim for insurance premium as consequential loss, if there is indeed such loss, is dismissed as not being reasonably foreseeable and therefore too remote.

That brings me to the claim of $206 for registration fees. I do not regard this item of the claim for damages as too remote but an integral part of the costs for the replacement vehicle. I allow this part of the claim and give judgment for the second plaintiff in the amount of $206 as claimed.

T F Au Sohn

CHIEF JUSTICE