**T. A. ACHONU**

**v.**

**NATIONAL EMPLOYMENT MUTUAL INSURANCE COMPANY (NIG.) LTD.**

SUPREME COURT OF NIGERIA

17TH DECEMBER, 1976.

SUIT NO. SC 490/1975.

**LEX (1976) - SC 490/1975.**

OTHER CITATIONS

2PLR/1976/6 (SC)

[1976] NSCC 728

**BEFORE THEIR LORDSHIPS:**

GEORGE SODEINDE SOWEMIMO, J.S.C.

CHUKWUNWIKE IDIGBE, J.S.C.

ANDREWS OTUTU OBASEKI, Ag. J.S.C.

**ORIGINATING COURT**

HIGH COURT OF THE EAST CENTRAL STATE, HOLDEN AT ENUGU

**REPRESENTATION**

Mr. C. E. EKPE - for Appellant

Mr. A. N. ANYAMENE - for Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMMERCIAL LAW – CONTRACT - Comprehensive insurance on motor vehicle - Plaintiff claiming £700 but accepting £175 as full and final settlement - Action brought after collection of £775 – Defence of waiver of rights – How treated

INSURANCE AND REINSURANCE - Comprehensive insurance on motor vehicle - Plaintiff claiming £700 but accepting £175 as full and final settlement - Action brought after collection of £775 - Waiver of rights

TRANSPORTATION LAW - MOTOR VEHICLE:- Insurance of motor vehicle – Comprehensive motor insurance – Acceptance of a sum lower than actual claim – Whether deemed waiver of right to claim of full entitlement

TRANSPORTATION LAW:- Motor vehicle transport – Insurance of motor vehicle – Comprehensive insurance – Entitlement of insurance policy holder – Whether can be waived by payment and acceptance of a lower sum

**MAIN JUDGEMENT**

**SOWEMIMO, J.S.C. (Delivering the Judgment of the Court):**

The Plaintiff, who is the appellant before us, appealed against the judgment of J. A. Phil-Ebosie, J. (as he then was) delivered on 20th December 1973 in suit E/29/-1 at the High Court of the East Central State (now Anambra State) sitting at Enugu wherein the claim of the Plaintiff against the defendant now respondent, was dismissed with costs. The claim in the writ of summons reads:-

‘The Plaintiff’s claim against the defendant, a Co. incorporated in Nigeria, is for -

(i) the sum of N700 being the value for the plaintiff’s Volkswagen Saloon Car No. E.1921 insured with the defendant at Enugu in December 1966, but dam-aged in an accident within Enugu on 27th September 1967, which sum re-mains unpaid, despite plaintiff’s repeated demands.

(ii) or in the alternative, the sum of £400 being the balance of the cost of re-placement spare parts required for the said Volkswagen Saloon No. E.1921 insured with the defendant at Enugu in December 1966 but damaged in an accident within Enugu on 27th September 1967, which sum remains unpaid, despite plaintiff’s repeated demands.”

The Plaintiff insured his car E1921 with the defendant, an insurance company, for a comprehensive cover on a stated value of N700 and a Policy No. 118889 dated 29th December 1966 was issued to expire on 30th November 1967. On 27th September 1967 the Volkswagen car was involved in an accident. The car on the authorisation of the defendant was taken to the garage of the Mandillas AND Karaberis, Enugu, where an estimated cost for the repairs was obtained. Owing to the pending civil war nothing could be done until 1970. When the car was inspected in 1970 it has been tampered with and several parts removed. The risks of what happened during the civil war was not covered by the Policy. The Defendant then offered £175 (Plaintiff being responsible for the first £25) as the cost for the repairs. This offer as stated in Ex. 11 was made as a full and final settlement of their liability to the Plaintiff under the Insurance Policy. The Defendant accepted the cheque on the conditions contained in Ex. 11. As per Ex. 15 the Defendant still re-minded the Plaintiff that the offer in Ex. 11 is a full and final settlement of liability for the claim under the Insurance Policy. The Plaintiff never rejected the offer but converted the cheque. For reason which did not appear clear the Plaintiff instituted this action, without returning the cheque for £175 which was sent to him in ‘lull and final settlement” of his claim.

In the lower court, learned counsel for the Plaintiff submitted that the defendant company did not plead the defence of ‘accord and satisfaction’ and that therefore such a defence was not opened to it. The learned trial Judge examined this sub-mission, and after referring to paragraphs 8 and 10 of the Statement of Defence held that the defendant specifically pleaded the special defence, as provided by the relevant rule of court. The Judge then said:-

“Exhibits 11 and 15 show that the plaintiff did not return the cheque paid to him knowing that the offer was made on the condition that it was in full and final settlement of his claim. The defendant must therefore be presumed to have accepted the terms of the offer and so cannot claim again in respect of the same damage. I therefore dismiss the plaintiff’s claim with costs.”

The appellant has appealed to this court on the solitary ground that the “judgment is against the weight of evidence”.

The principle of law governing this case is set out thus in Volume 2 of MacGillvray on Insurance Page 1150 para 1150:-

“SETTLEMENT BY COMPROMISE. If a claim under a policy is disputed and afterwards compromised by payment to the claimant of a lesser sum, which sum is acknowledged by the claimant to be received in full discharge and satisfaction of all claims whatsoever against the office, the settlement is binding on the claimant if he understood or being a person of ordinary intelligence must be presumed to have understood the nature of the transaction, but ... any settlement of the kind should be scrutinised with care to see whether there has been any unfair pressure exercised on the part of the company’s agent or ignorance on the part of the claimant of relevant circumstances or any misunderstanding on his part of the nature of the transaction, and where such elements exist the settlement may be set aside and in a proper case the claim allowed in full notwithstanding that the receipt given may be in the form of a clear and un-ambiguous discharge.” (italics ours).

On appeal before us learned counsel for the appellant only submitted that al-though the offer of £175 was made to the appellant and which he did not reject as final settlement and discharge of his claim under the insurance Policy, he could still claim the balance of the total amount he previously claimed. There was no evidence on which this submission was made. There was no complaint that the appellant did not accept the cheque for £175 as a final settlement and full discharge of his claim - see Ex.11. When by Ex 15 the defendant company asked him to re-turn the cheque H he did not accept it on the condition stipulated, he refused to re-turn the cheque. It is therefore difficult to appreciate under what basis learned counsel made his submission. No argument of substance has been addressed to us on the ground of appeal canvassed, to justify this court to disturb the decision of the lower court. We did not call on learned counsel for the respondent to reply. The appeal was there and then dismissed.

The respondent will be entitled to the cost of this appeal which we assess at N160 (One hundred and sixty Naira).

Appeal dismissed.