**Pioneer General Assce Soc Ltd v Ziwa**

**Division:** Court of Appeal at Kampala

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**Date of judgment:** 17 April 1974

**Case Number:** 8/1974 (57/74)

**Before:** Sir William Duffus P, Law Ag V-P and Mustafa JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Uganda – Musoke, J

*[1] Insurance – Motor Insurance – Compulsory third party insurance – Owner of goods carried in*

*commercial vehicle – Carriage for hire or reward – Constitutes carriage for hire or reward.*

*[2] Statute – Repeal – Acquired rights – Statute repealed after traffic accident but before judgment –*

*Rights against insurer not affected – Interpretation Act* (*Cap.* 16), *s.* 15 (*T*)*.*

**JUDGMENT**

The following considered judgments were read.

**Mustafa JA:** The respondent (who I will call the plaintiff) had obtained judgment in the High Court of Uganda against the appellant (who I will call the defendant). The plaintiff had hired a Toyota pick-up, registration UQU 671, from one Kigundu (who I will call the insured) for the transportation of his goods. The said vehicle was insured with the defendant under a commercial motor vehicle policy. When the plaintiff’s goods were being transported the plaintiff was in the vehicle as a passenger. The vehicle was involved in an accident as a result of which the plaintiff was injured. The plaintiff sued the insured in the High Court, and obtained judgment in the sum of Shs. 40,000/- plus taxed costs and interest. The plaintiff failed to recover the decretal sum from the insured Kigundu. He then filed a suit against the defendant to recover the decretal awarded, and was successful. It is from that decision that the defendant has appealed. The plaintiff sued the defendant under s. 104 of the Traffic Act 1951 (Cap. 342), (hereinafter referred to as the Act). The accident took place on 23 November 1970. The plaintiff recovered judgment against the insured on 23 July 1971. He filed a suit against the defendant for recovery of the decretal sum on 10 January 1973. The Act was repealed and replaced by the Traffic and Road Safety Act 1970 on 1 January 1971. S. 104 (1) of the Act reads: “If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (*b*) of section 99 of this Act, being a liability covered by the terms of the policy, is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs or any sum payable in respect of interest on that sum by virtue of any enactment relating to interests on judgments.” S. 98 (1) of the Act reads: “Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or to permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such security in respect of third party risks as complies with the requirements of the Act.” S. 99 specifies the requirements of the Act in respect of insurance policies. The person or persons or classes of persons as may be specified in the policies have to be insured against liability: “which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on the road”. However proviso (ii) to s. 99 (*b*) reads: “Provided that a policy in terms of this section shall not be required to cover – except in the case of a vehicle in which passengers are carried for hire or reward, or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise.” In short, for the purpose of this appeal, risk to passengers does not have to be covered, except in the case of a vehicle in which passengers are carried for hire or reward. The trial judge considered, among other cases, the recent House of Lords decision in *Albert v. Motor Insurers’ Bureau*, [1971] 2 All E.R. 1345 where the phrase “a vehicle in which passengers are carried for hire or reward” used in English Traffic Acts, which have similar provisions to the Act, was exhaustively considered. He found that there was no evidence before him “to show that the insured, before the accident, was in the habit of carrying passengers in his motor vehicle so as to make it a vehicle in which passengers are carried for hire and reward, within the meaning of s. 99 (*b*) (ii) of the Act”. He however apparently adopted and followed the minority view expressed by Viscount Dilhorne who held that: “the use of a car even on one isolated occasion for that purpose makes the car a vehicle in which passengers are carried for hire or reward”. The trial judge held that it would be unrealistic to hold that the vehicle at the material time was outside the provisions of s. 99 (*b*) (ii) of the Act as it was a commercial vehicle and had been insured as such, and the plaintiff was travelling on it when it was engaged in business. He invoked the provisions of s. 102 of Act which reads: “Any condition in a policy of insurance providing that no liability shall arise under the policy or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, as respects such liabilities as are required to be covered by a policy under Section 99 of this Act, be of no effect”. There is a proviso which is not relevant. He held that the inclusion of exceptions in terms of s. 99 (*b*) (ii) and the exclusion of use for hire and reward in the policy were void under s. 102, and gave judgment for the plaintiff. Mr. Kateera for the defendant appeals on two main grounds: (1) The Act was repealed and replaced by the new Act of 1970 and could not be relied on by the plaintiff, (2) The plaintiff was not covered by the policy. I will first deal with the question of repeal. Unfortunately the trial judge failed to deal with this issue, although it was argued before him, and I will have to decide this point without the benefit of his opinion. The Act was repealed and replaced by the Road Safety Act 1970 on 1 January 1971. S. 104 of the Act was omitted from the repealing Act. The repealing Act does not contain provisions giving a third party a right of action against an insurer. Mr. Kateera submitted that in terms of s. 104 of the Act, a third party’s right of action only arises after he has obtained judgment against an insured. When the plaintiff obtained his judgment on 23 July 1973, the Act had already been repealed, and since the repealing Traffic and Road Safety Act 1970 does not contain any saving clause, the plaintiff could not sue the defendant. Mr. Kateera was referred to s. 15 (1) of the Interpretation Act (Cap. 16), but submitted its provisions would not help the plaintiff as his right to sue accrued only after the Act had already been repealed. I do not think so. S. 15 (1) of the Interpretation Act reads in part as follows: “(1) Where any Act of Parliament repeals any other enactment, the repeal shall not– ( *a*) . . . . . . . ( *b*) a ffect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or ( *c*) a ffect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or ( *d*) . . . . . . . . ( *e*) a ffect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.” When the accident took place the defendant incurred an obligation to the plaintiff, and the plaintiff had a right to his remedy in respect of the obligation so incurred, and was entitled to enforce such remedy. It is true that one of the conditions of the obligation of the defendant was that there must be a judgment, see Vol. 22, para. 769, Halsbury’s Laws of England, 3rd Edn. When the plaintiff obtained the judgment after the Act was repealed, the plaintiff had satisfied that condition. His right to enforce his remedy in respect of the obligation already incurred by the defendant was not affected. I think therefore that the trial judge was entitled to rely on the provisions of ss. 104 and 102 of the Act in coming to his decision. I will now deal with Mr. Kateera’s second submission. He stated that the plaintiff was not covered by the policy. He submitted that the plaintiff was not a third party and was not a passenger required to be covered in terms of Proviso (ii) to s. 99 (*b*) of the Act as at the material time he was not in a “vehicle in which passengers are carried for hire or reward”. He also submitted that in the policy it was provided expressly that passengers who were not carried in the course of a contract of employment were excluded from cover. In my view the only real issue which arises for decision is whether the plaintiff, at the material time, was or was not “in a vehicle in which passengers are carried for hire or reward”. If he was, he succeeds, as in that case the provisions of s. 102 of the Act can be invoked to render void any disabling conditions; if not, he fails. I believe that the plaintiff was a third party, as a passenger is a third party; the question was whether he was a third party who required to be covered in terms of the Act. As I have pointed out earlier, the phrase “in a vehicle in which passengers are carried for hire or reward” was the subject of judicial consideration in *Albert v. Motor Insurers’ Bureau* (*supra*). There was a divergence of opinion in the House of Lords; one view was that such a vehicle should be habitually or normally carrying passengers for money or money’s worth, another was that such carriage need not necessarily be habitual or normal, and yet a third was that the use of the vehicle even on one isolated occasion for that purpose would suffice. In the majority view the real test was whether the carriage of passengers was predominantly a “business or commercial” arrangement or a “social or gratuitous” one. Each case would depend on its own facts and contemporary circumstances. With respect I would adopt this test as correct. However, in my opinion, the plaintiff’s case can be distinguished from that of the *Albert* case on the facts. In the *Albert* case, the car was a private one; the owner used to carry his co-workers to the docks where they worked. He was paid a certain sum of money for the journey by some, none by some, and sometimes rewarded by a beer or some cigarettes by some passengers. It was held in that case that the owner was at the material time carrying passengers in his car for hire or reward. In the plaintiff’s case the pick-up was a commercial vehicle and was actually hired out to the plaintiff for the carriage of goods, and as a pick-up it had passenger seats in the driving cab. The plaintiff was being carried “pursuant to the contract between him and the insured”. In any event, since the vehicle was hired out to transport goods, it was perhaps implicit that the owner of the goods or his agent would probably accompany such goods. The transaction was clearly a business or commercial arrangement, not a social or gratuitous one. Adopting the test propounded by the majority opinion in the *Albert* case, I am of the view that the pick-up was “a vehicle in which passengers are carried for hire or reward”, and risk to passengers in it had to be covered in terms of the Act. I think that the trial judge came to the right conclusion. I would dismiss the appeal with costs.

**Sir William Duffus P:** I agree with the judgment of Mustafa, J. A. and as Law, Ag. V.-P. also agrees, the appeal is dismissed with costs.

**Law Ag V-P:** I have read in draft the judgment prepared by Mustafa, J. A. I agree with it, and concur in the order proposed therein. *Appeal dismissed.*

For the appellant:

*J Kateera* (Instructed by *Hunter & Greig*, Kampala)

For the respondent: