MSIG INSURANCE (MALAYSIA) BHD
v.
KESWAN R RAJANTHARAN & ORS

High Court Malaya, Kuala Lumpur
Akhtar Tahir J
[Civil Suit No: WA-12ANCvC-24-02/2024]
12 August 2024

Case(s) referred to:
Teo Song Ling lwn. Yang Chan Haw Dan Yang Lain [2019] PILRU 29 (refd)

Legislation referred to:
Rules Of Court 2012, O 15 r 6(2)(b)(ii), O 34

Counsel:
For the plaintiff: Geeta Jothilingam; M/s Matthew Thomas & Co
For the 1st defendant: Kohila Yanasekaran; M/s Kohi & Associates
For the 2nd defendant: Eshwinder Kaur Gill; M/s Lovelace & Hastings

[Dismissed the appellant's appeal.]

JUDGMENT

Akhtar Tahir J:

Introduction

[1] The Appellant MSIG Insurance (Malaysia) Bhd appealed against the decision of the learned Sessions Judge who had disallowed the application of the Appellant to intervene in a motor accident claim by the Plaintiff against the Defendants.

[2] Before the learned Sessions Judge the Appellant had applied for leave to intervene under O 15 r 6(2)(b)(ii) of the Rules of Court 2012 ('The Rules"). The said provision provides as follows:

> (2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:
>
> > (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
> >
> > (b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

ii) any person between whom and any party to the cause connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

The Application

[3] The main basis for the application as stated in the application is the contention of the Appellant that there was a collusion between the Plaintiff and the Defendants to claim that the 1st Defendant was involved in the accident when he was not so involved.

[4] On being made a party the Appellant would have a chance to cross examine the Plaintiff and the Defendant as to the accident the subject matter of the claim between the parties.

[5] The Appellant alleged that the accident did not take place in the manner it was reported. In the Plaintiff's report the Plaintiff claims that he was knocked from behind by the motor cycle ridden by the 1st Defendant. The Appellant questions as to why there were no signs of any damages to the 1st Defendant's motor cycle or any injuries suffered by the 1st Defendant if he had knocked the Plaintiff's motor cycle from behind.

[6] The Appellant further alleged that the Plaintiff did not make a police report within 24 hours and the 1st Defendant only made a report 4 months later.

The Learned Sessions Judge's Decision

[7] The crux of the learned Sessions Judge in disallowing the Appellant's application is that the application was *mala fide* as it was brought at the very last minute on the same day the trial was to begin. The Appellant had ample time to bring the application much earlier as they had all the documents from the beginning. The learned Judge felt that the application was a ploy to delay the trial.

[8] The learned Judge also stated that although the Appellant had allege fraud they had not put forward any facts in their affidavit to support their allegations. The allegations of the Appellant was at best a suspicion and remained speculative.

The Decision On Appeal

[9] In this case the Court noted that the learned Sessions Judge had absolute discretion whether to allow the Appellant's application or not. This is reflected from the provision of law relied upon by the Appellant where the term "may" is used.

[10] It is trite law that a Court hearing an appeal can only intervene if the learned Sessions Judge had used the discretion injudiciously. It is not for the Court hearing the appeal to replace the decision of the learned Sessions Judge with that of its own views.

[11] In this case the learned Judge had not summarily dismissed the Appellant's application but had carefully considered all the authorities submitted by the parties and where necessary had distinguished the facts in the case cited. For instance in the case for fraud the learned Judge had compared the facts of the case of *Teo Song Ling Iwn. Yang Chan Haw Dan Yang Lain* [2019] PILRU 29 with the present case. In this case the learned Judge concluded that the Appellant had not forwarded any facts to support the allegation of fraud but only stated the facts relating to their suspicions.

[12] On the delay in filing of the application the learned Judge had considered the chronology of event which included the date of the accident on 28 June 2019, the date 4 November 2019 when a notice was sent to the Appellant whereby the Appellant had confirmed their insurance coverage and finally the date from April 2022 until 22 November 2023 when the case was fixed for trial.

[13] The Appellant had sprung this application only in the afternoon when the matter was to commence for trial. It is clear that the Appellant had the opportunity to make this application from the date they received the notice of the accident yet without any explanation had not made this application earlier.

[14] The support for the learned Sessions Judge decision in dismissing the application is also in this Court's view derived from O 34 of the Rules where it is stipulated that here must be just, expeditious and economical disposal of proceedings in court.

[15] Order 34 states that all interlocutory matters must be disposed during pre-trial case management. The provision *inter alia* provides as follows:

> 1. Orders and directions for just, expeditious and economical disposal of proceedings (O 34 r 1)
>
> (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the proceedings to appear before the Court, in order that the Court may make such order or give such direction as it thinks fit so that:
>
> (a) all matters which must or can be dealt with on

> interlocutory applications and have not already been dealt with may so far as possible be dealt with; and
>
> (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof.
>
> (2) Where the Court makes orders or gives directions under paragraph (1), the Court may take into account whether or not a party has complied with any relevant pre-action protocol or practice direction for the time being issued.
>
> (3) Where any party fails to comply with any order made or direction given by the Court under paragraph (1), the Court may dismiss the action, strike out the defence or counterclaim or make such other order as it thinks fit.
>
> (4) The Court may, in exercising its powers under paragraph (1), make such order as to costs as it thinks fit.

[16] In view of the above factors the Court finds that the learned Judge had applied the discretion judiciously and there were no grounds to interfere with the learned Judge's decision.

Conclusion

[17] In the upshot the Court dismissed the Appellant's appeal against the decision of the learned Judge with a cost of RM3,000.