

THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

SKBHCV2021/0111

BETWEEN:

FENARDO WILLIAMS

Claimant

and

NAGICO INSURANCE COMPANY LIMITED

Defendant

Appearances:

Mr. Damian Kelsick KC with him Ms. Hadya Dolphin for the Claimant
Mrs. Sherry-Ann Liburd-Charles for the Defendant

2024: January 29;

March 18.

JUDGMENT

- [1] **GILL, J.:** An insured seeks damages for the refusal of an insurance company to indemnify him under the insurance contract for losses suffered as a result of a motor vehicular accident. The insurance company asserts that the insured is not entitled to recover any sums under the exceptions in the insurance policy.
- [2] On 13th July 2021, the claimant Fenardo Williams (“Mr. Williams”) filed a claim against the defendant NAGICO Insurance Company Limited (“NAGICO”) for special damages in the sum of EC\$121,330.00 for breach of a private motor vehicle insurance policy (“the policy”) made between the parties. Mr. Williams is seeking indemnification for the loss suffered to his and a third party’s loss and damage sustained as a result of a motor vehicular accident which occurred on 4th January 2021. He was the driver of his vehicle when there was a collision with the third

party's vehicle. Both vehicles were damaged in the crash. Mr. Williams admitted liability for the accident. He claimed indemnification from NAGICO. NAGICO rejected his claim on the basis that at the time of the accident, he was speeding (which caused the accident) in breach of the provisions of the insurance policy and therefore, NAGICO is not obligated to indemnify him.

The claimant's evidence

- [3] On 7th July 2020, Mr. Williams and NAGICO entered into a contract in respect of his 2011 Mazda CX7 motor vehicle bearing registration number PA4460. The parties agreed that NAGICO would indemnify Mr. Williams for any loss or damage that occurred while he was driving the said vehicle, and that NAGICO would pay the amount of the loss or damage to repair, reinstate or replace the vehicle or any third party's vehicle damaged from a collision involving PA4460. Under the agreement, PA4460 was valued at EC\$45,000.00.
- [4] On 4th January 2021, Mr. Williams was driving PA4460 southbound on Montebello Road, Buckley's Housing Development, Basseterre, St. Kitts when his telephone rang and he became distracted from the road. He collided with a vehicle registration number PB858 driven by Waynebourne Bridgewater and owned by Gelmond Bridgewater. There were no personal injuries.
- [5] Mr. Williams was driving at about 60 kilometers per hour (about 37 miles per hour). He did not believe he was speeding. He was going no more than 40 miles per hour. Under cross-examination, Mr. Williams was referred to his motor claim form dated 5th January 2021 which he signed. The relevant portion of that form asks the question, "*Vehicle speed before the accident?*" The answer typed on the form is "*60 MPH*". Mr. Williams explained that he told "her" that he was going around 60, and that he did not say "miles per hour". In re-examination, he clarified that "her" referred to the NAGICO employee who typed in the information on the form, and that his gauge (speedometer) is in kilometers per hour. A photograph of the said speedometer is part of the filed bundle of documents.

- [6] On 5th January 2021, Mr. Williams went to NAGICO's offices and informed them of the collision.
- [7] On NAGICO's direction, he obtained an estimate of the damage to PA4460. The vehicle was given an estimated pre-accident value of EC\$45,000.00 and a post-accident value of EC\$4,000.00.
- [8] On 8th January 2021, to Mr. Williams' dismay, NAGICO informed him that they would not be indemnifying him under the policy as he had breached the policy by "failing to adhere to the legal speed limit".
- [9] Remaining un-indemnified under the policy caused him great expense because he had to rent a replacement vehicle from 10th January 2021 to 30th April 2021 at a cost of US\$5,400.00.

The defendant's evidence

- [10] Kenisher Dubuisson, the Deputy General Manager of NAGICO, at the material time, the Claims Supervisor, and Jason Hodge, NAGICO's Claims Adjuster gave evidence for the defence.

Evidence of Kenisher Dubuisson

- [11] Ms. Dubuisson received Mr. Williams' signed Motor Claim Form dated 5th January 2021. She highlighted the information in the form that Mr. Williams was travelling at a speed of 60 miles per hour just before the collision. She was able to confirm that the speed limit for the area where the collision occurred was 20 miles per hour.
- [12] NAGICO did its internal investigations in relation to the accident. On completion of its investigations, NAGICO concluded that Mr. Williams was not entitled to be indemnified under the policy for the following reasons:

- a) Mr. Williams was in breach of a condition of the policy that all rules, laws and regulations and requirements of the local government must be complied with;

- b) NAGICO was exempted from liability under the policy for use by Mr. Williams otherwise than in accordance with the limitations as to use outlined in the Insurance Schedule. Mr. Williams was at all material times speeding and/or driving his vehicle over the speed limit and/or at an excessive speed in all the circumstances, and this was in breach of the limitations as to use under the policy; and
- c) The loss and damage to the vehicles was caused by the admitted excessive speeding and reckless driving of Mr. Williams and/or the third party Gelmond Bridgewater. In cross-examination, Ms. Dubuisson's evidence is that she determined that Mr. Williams' driving was reckless on the basis that he was speeding.

[13] The denial of Mr. Williams' claim was communicated to him in writing by letter dated 8th January 2021. Mr. Williams was advised that the loss was not covered under his policy given the speed he was travelling at the time of the collision.

[14] The policy does not cover consequential loss. Under the exceptions to section 1 of the policy, consequential losses are expressly excluded.

[15] NAGICO's denial of Mr. Williams' claim was done because Mr. Williams is not entitled to an indemnification as he breached the policy. NAGICO is not liable for any loss of use as claimed. Mr. Williams is not entitled to be paid any sums from NAGICO.

[16] Even if Mr. Williams is entitled to be indemnified under the policy (which is denied), the loss of use claim is payable only for the days laid up for repairs to a maximum of EC\$1,500.00, as expressly stated in the policy.

[17] NAGICO is not responsible for any loss or damage sustained by the third party Gelmond Bridgewater. NAGICO has not consented to any promise of payment or compensation that may have been made by Mr. Williams to the third party. Even if Mr. Williams is entitled to be indemnified (which is denied), there has not been any determination by any court as to the party responsible for the collision. In these

circumstances, there is no basis for the claims being made against NAGICO by Mr. Bridgewater through Mr. Williams.

[18] If Mr. Williams is entitled to be indemnified (which is denied), indemnification will be subject to the post-accident value of the vehicle, the depreciation and total loss clauses in the policy and the policy deductible. If Mr. Williams is entitled to be indemnified (which is denied), NAGICO relies on the expert witness report provided by Alphonso Percival as a proper representation of the value of the loss sustained by Mr. Williams.

[19] During cross-examination, Ms. Dubuisson was questioned as to her familiarity with certain provisions of the Vehicles and Road Traffic Act¹ and the Basseterre Limits Act.² Several questions and answers revolved around the speed limit for the area in which the collision occurred, including ascertaining whether or not the collision took place in the town of Basseterre or in a village as set out in the Basseterre Limits Act.

Evidence of Jason Hodge

[20] Mr. Hodge is an Insurance Adjuster whose duties generally include investigating insurance claims to determine the extent of an insured's liability. He inspected the damage to Mr. Williams' vehicle. Mr. Hodge formed the preliminary view that the third party was responsible for the collision.

Issues

[21] The main issue for the court to determine is whether NAGICO breached its obligation under the policy to indemnify Mr. Williams for the losses suffered as a result of the accident. In resolving this issue, and considering what came out in evidence at the trial, the court must determine:

- i. whether NAGICO was entitled to reject Mr. Williams' claim on the basis that he was speeding at the time of the collision as a breach of a condition of the policy and the exclusion clauses contained in the policy;

¹ Cap. 15.06 of the Revised Laws of Saint Christopher and Nevis

² Cap. 23.02 of the Revised Laws of Saint Christopher and Nevis

- i. the meaning of “speeding” in the limitation clause in the Certificate of Insurance;
- ii. whether Mr. Williams was, in fact, speeding at the time of the collision;
- iv. if Mr. Williams is entitled to be indemnified by NAGICO, the quantum to be awarded to him; and
- v. whether NAGICO is liable to indemnify Mr. Williams for the loss and damage suffered by the third party.

Whether NAGICO was entitled to reject Mr. Williams’ claim on the basis of speeding

[22] The policy obligates NAGICO to indemnify Mr. Williams against loss or damage to his motor vehicle and its accessories and spare parts caused by accidental collision.³ Under the heading “GENERAL EXCEPTIONS” in the policy, it is stated that NAGICO shall not be liable in respect of any accident, loss, damage or liability caused, sustained or incurred whilst on the insured’s order or with his permission or to his knowledge where any motor vehicle in respect of which indemnity is provided is being used otherwise than in accordance with the limitations as to use.⁴

[23] In Mr. Williams’ Certificate of Insurance, the limitations as to use are stated in clause 6.2 which reads as follows:

*This policy does not cover use for hire & reward, racing, pacemaking, **speeding**, testing, competitions, rallies or trials; the carriage of goods other than samples in connection with any trade or business or use for any purpose in connection with the Motor Trade, or use while under the influence of alcohol and/or drugs, unless specifically endorsed. (Emphasis added)*

[24] This clause seemingly makes it clear that NAGICO is not liable to indemnify Mr. Williams in a situation where his vehicle was used for speeding. The uncertainty arises as to what amounts to use for speeding under the policy.

³ See Section 1, Clause 1(a) of the policy

⁴ See Clause 1(b) under GENERAL EXCEPTIONS

[25] NAGICO also relies on a fine-print term in its motor vehicle Renewal Schedule which states, *“It is also a condition of this policy that all rules, laws, regulations requirements of the local government must be complied with.”*

The meaning of “speeding” in the policy

[26] A resolution of the parties’ differing interpretations of “use for...speeding” in clause 6.2 in the Certificate of Insurance goes to the heart of this matter.

Claimant’s submissions on speeding

[27] Mr. Williams draws a distinction between (a) using a vehicle for speeding, and (b) driving over the speed limit. He points out that even the Vehicles and Road Traffic Act makes that distinction. Section 39 prohibits driving a motor vehicle at a speed greater than the maximum speed allowed. Section 51 addresses a completely different offence of promoting or taking part in a race or trial of speed.

[28] Mr. Williams contends that if the court finds that he was speeding, his offence would be characterized by section 39 of the Act, so that he would be guilty of driving at a greater speed than the speed limit, rather than promoting or taking part in a trial of speed. There is no evidence that Mr. Williams took part in a trial of speed as set out in section 51 and the only reasonable inference is that he drove over the speed limit.

[29] Mr. Williams argues that both the prohibition in section 51 and the provision in the Certificate of Insurance forbid using a motor vehicle for the sole and distinct purpose of speeding. He submits that there is no evidence that he was driving his vehicle at the time of the accident for the “purpose” of speeding in this context.

[30] In relation to the condition of the policy that all rules, laws and regulations requirements must be complied with, Mr. Williams, in effect, relies on NAGICO’s apparent inconsistency in the application of this provision. In cross-examination, Ms. Dubuisson was asked whether NAGICO indemnifies insured persons who were in contravention of section 49 of the Vehicles and Road Traffic Act which prohibits driving without due care and attention. Ms. Dubuisson admitted that such persons are indemnified. Therefore, Mr. Williams contends that NAGICO cannot apply this

clause at its own convenience and benefit. In any event, he posits that this condition is found in the section of the Renewal Schedule dealing with Authorized Drivers and it is likely, on orthodox principles of construction, that it is to be read as limited to that context.

[31] Mr. Williams submits that if it is found that he drove in excess of the speed limit, he must be categorised with other insured who are indemnified although they were found driving without due care and attention. He states that NAGICO is not at liberty to punish its insured for such a traffic violation, and urges the court to find that the policy included coverage for the loss and damage from the accident.

Defendant's submissions on speeding

[32] NAGICO contends that the word "speeding" in the exclusion clause should be given its natural and ordinary meaning.

[33] On the principles of interpretation, NAGICO explains that the general rule is that exclusion clauses are to be read narrowly. In fact, there is a presumption that words should be construed in their ordinary and popular sense, since the parties to a contract must be taken to have intended, as reasonable men, to use words and phrases in their commonly understood and accepted sense.⁵

[34] NAGICO relies on the Court of Appeal decision in **Kenneth Krys v New World Value Fund Limited**⁶ to support the position that the ordinary literal and natural meaning of words should be used when interpreting contracts. In that case, it was held that the court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is only concerned to discover what the instrument means.

[35] Therefore, NAGICO submits that the ordinary and natural meaning of speeding is driving over the speed limit, and includes a situation where someone is driving in

⁵ See MacGillivray on Insurance Law, Fifteenth Edition, para. 11-006

⁶ BVIHCMAP2013/0017, delivered May 26, 2014

excess of the legally stipulated speed limit. NAGICO avers that speeding in the exclusion clause should be interpreted as driving above the speed limit. The offence of speeding is laid out in section 39 of the Vehicles and Road Traffic Act and NAGICO contends that at the time of the collision, Mr. Williams was speeding in breach of the policy.

Court's analysis and determination on "use for...speeding" in the policy

[36] Mr. Williams' Certificate of Insurance issued by NAGICO states that the policy "does not cover use for hire & reward, racing, pacemaking, speeding, testing, competitions, rallies or trials...". The "uses" are separate and distinct.

[37] NAGICO provided definitions for some of the terms as follows⁷:

Racing – *the practice of engaging in contests of speed*

Pacemaking – *the act of setting a pace for race competitions*

Testing – *a process or system used to identify problems*

Competition – *a contest or match which a winner is selected from 2 or more entrants*

Rally – *an organized automobile run especially of sports cars on public roads designed to test skill*

Trial – *a sporting event testing skill*

[38] Section 39 of the Vehicles and Road Traffic Act, under the subhead "Speed", creates an offence where a person drives a motor vehicle at a speed greater than the speed specified for driving a specific class of vehicle on a particular class of road. Under the subhead "Racing speed trials", section 51 creates an offence where a person promotes or takes part in a race or trial of speed between motor vehicles on a road. To my mind, section 51 falls within the category of racing in the Certificate of Insurance. If racing is distinct from speeding, the question arises as to what would amount to a situation where one is speeding but not racing. **I take Mr. Williams' point, generally, that use or purpose for speeding is distinct from exceeding the speed limit.** In my respectful view, however, the only meaning that can be

⁷ No citations provided

ascribed to “use for speeding” in Mr. Williams’ particular Certificate of Insurance is driving in excess of the speed limit. If not, what other possibility, under this specific policy, where there is a separate activity of racing, would “use for speeding” entail? I can think of none, and none, apart from a situation amounting to racing, was advanced.

[39] I have come across similar limitation or exclusion clauses used by other insurance companies. One example reads:

THIS POLICY DOES NOT COVER:-

*Use for hire or reward, rentals, racing, pacemaking, reliability trial or **speed testing** or for use for any purpose in connection with the Motor Trade.*

[40] In this example, speeding, by itself, is not excluded from coverage. Policies usually exclude liability while the vehicle is used for racing, pacemaking or speed trials or is taking part in motor rallies.⁸ It may well be that NAGICO intends to exclude from indemnification all instances of motor claims revealing that the insured drove in excess of the speed limit. On the other hand, there may be an error in the separation of “speeding” and “testing” in the Certificate of Insurance. That is not a matter for this court. I adhere to the guidance of the Court of Appeal in **Kenneth Krys v New World Value Fund Limited**⁹ not to improve on the certificate or make it fairer or more reasonable. This court’s task is simply to discover what the certificate means.

[41] Therefore, I rule that “use for...speeding” in the Certificate of Insurance in this case takes on its natural and ordinary meaning, and as envisaged in the traffic laws of the Federation, exceeding the speed limit. Accordingly, failure to adhere to the legal speed limit, under Mr. William’s policy with NAGICO, is an action that breached the policy.

Whether the claimant was speeding at the time of the collision

[42] Mr. Williams maintained that at the time of the collision, he was driving at about 60 kilometers per hour, which is about 40 miles per hour. This is revealed in his

⁸ See MacGillivray on Insurance Law 15th Edition at paragraph 29-082

⁹ BVIHCMAP2013/0017

statement of claim, and borne out in the witness statement and his viva voce evidence at trial. NAGICO rejected his claim on the basis that he failed to adhere to the legal speed limit. His motor claim form indicated that he was travelling at 60 miles per hour.

[43] At trial, Mr. Williams' clarified that he told NAGICO's employee that he was "going around 60" and that he meant 60 kilometers per hour, and not miles per hour as the employee typed. His speedometer (a photograph of which is in evidence) shows measurement in kilometers. Considering this evidence, I agree with Mr. Williams' submission that the court should find that, on a balance of probabilities, he was travelling at 60 kilometers per hour and that the record of 60 "MPH" on the motor claim form was an error on NAGICO's part. I so find.

[44] In any event, this is of little moment as far as NAGICO is concerned. NAGICO contends that whether the court accepts that Mr. Williams was travelling at 60 miles per hour or 60 kilometers per hour, he was driving at least 2 times faster, or at maximum, 3 times faster than the speed limit. In fact, in cross-examination, Mr. Williams admitted that the force at which his vehicle collided caused both vehicles to be written off. This gives rise to a subject that learned King's Counsel for Mr. Williams purported to put in issue at the trial – did the collision occur in Basseterre for which the speed limit (for Mr. Williams' class of vehicle) is 20 miles per hour, or did it occur outside of Basseterre where the applicable speed limit is 40 miles per hour? In the latter case, Mr. Williams could not be said to have exceeded the speed limit at the time of the collision.

[45] Learned King's Counsel Mr. Kelsick insisted that he had a right, in cross-examination, to challenge Ms. Dubuisson on her evidence that the speed limit for the area where the collision occurred was 20 miles per hour, based on it being a developed area. King's Counsel referred Ms. Dubuisson to the Second Schedule of the Vehicles and Road Traffic Act¹⁰ and the Basseterre Limits Act¹¹ to make the

¹⁰ Cap. 15.06 of the Revised Laws of Saint Christopher and Nevis

¹¹ Cap. 23.02 of the Revised Laws of Saint Christopher and Nevis

point, as submitted, that NAGICO has failed to establish that Montebello Road was within the precincts of Basseterre or any village as set out in the legislation.

[46] Learned counsel for NAGICO, Mrs. Liburd-Charles was up in arms in objection to the raising of this new issue at the trial. Mrs. Liburd-Charles submits that it would be contrary to the principles of a fair trial for the court to allow the attempt by Mr. Williams, for the very first time (the claim having been filed 3 years ago), to put in issue the location of the accident and the applicable speed limit for the said location. In support of her argument, learned counsel highlighted the following:

- i.* The evidence of Mr. Williams at paragraph 5 of his witness statement is, “*On January 4, 2021, I was driving PA4460 southbound on Montebello Road, Buckley’s Housing Development, **Basseterre**, St. Kitts when my telephone rang and I became distracted from the road for a moment.*”
- ii.* Mr. Williams’ pleaded case at paragraph 4 of his statement of claim is, “*On January 4, 2021, during the currency of the Contract, the Claimant whilst driving the Claimant’s vehicle collided with another vehicle whilst driving at approximately 60 kilometers per hour in Buckley’s Housing Development, **Basseterre**, St. Kitts (hereinafter referred to as ‘the Collision’).*”
- iii.* The Police Report in this matter, which is an agreed document, stated the location of the accident to be “*Buckley’s Housing Development, **Basseterre**. St. Kitts*”.
- iv.* At paragraph 5 of NAGICO’s defence, paragraph 4 of the statement of claim is admitted. At paragraph 9(a) of the defence, NAGICO expressly pleaded that Mr. Williams was in breach of the Vehicles and Road Traffic Act which provides for speed limits of 20 mph on any road in a village. These allegations in the defence were never disputed, challenged or put in issue by Mr. Williams as no reply to defence was filed joining issue with these allegations or any pleadings in the defence.

[47] NAGICO draws the court's attention to the case of **East Caribbean Flour Mills Limited v Ormiston Ken Boyea**¹² for guidance on the effect and purpose of pleadings. In that appeal, Barrow JA, as he then was, cited approvingly the case of **McPhilemy v Times Newspapers Ltd**¹³ where Lord Woolf MR opined:

"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other party has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules."

[48] At paragraph 43 of **East Caribbean Flour Mills**, Barrow JA summed up the principles as follows:

"The position...is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The "pleadings should make clear the general nature of the case," in Lord Woolf's words, which I again emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose."

[49] During cross-examination of Ms. Dubuisson, in light of Mrs. Liburd-Charles' objection, learned King's Counsel Mr. Kelsick referred the court to paragraph 32 of the Privy Council judgment in **Bergan v Evans**,¹⁴ an appeal partially successfully argued by Mr. Kelsick himself before he took silk. At paragraph 32 of the judgment delivered by Lord Briggs, the Board ruled that "a claimant faced with a defective or even non-existent defence still has to prove her case, even though that may typically be achieved in a relatively summary way, and the court may in such circumstance prohibit the defendant, as a matter of discretion, from taking any active steps to

¹² Civil Appeal No. 12 of 2006 (Saint Vincent and the Grenadines), delivered July 16, 2007

¹³ [1999] 3 All ER 775 at 793

¹⁴ [2019] UKPC 33

resist that part of the claimant's case, whether by cross-examination or the deployment of evidence by way of challenge.”

[50] NAGICO distinguishes the state of affairs in **Bergan v Evans** from the case at bar. In **Bergan v Evans**, the defence was considered defective because it neither admitted nor denied allegations of personal injury, and in response to allegations of loss and injury suffered by the claimant, there were bare denials in breach of the rules. In this case, NAGICO points out that there is a formal admission on the pleadings as to the location of the accident – in Basseterre. Further, the pleading by NAGICO that a lower speed limit of 20 miles per hour would have applied was unchallenged by Mr. Williams. Therefore, NAGICO submits that Mr. Williams, on the **Bergan v Evans** principle, would be barred from challenging that evidence as King's Counsel sought to do in cross-examination. In these circumstances, NAGICO argues, the evidence of Ms. Dubuisson, that the speed limit where the collision occurred was 20 miles per hour, would stand.

Court's analysis and determination on the emerging issue of applicable speed limit in the location of the collision

[51] Mr. Williams' case, which I have already determined in his favour, is that he was driving at about 60 kilometers or 40 miles per hour at the time of the collision. Mr. Williams has not pleaded, and it is not in his evidence, the speed limit for the area where the collision occurred. Instead, he submits that NAGICO, the defendant, has failed to establish that Montebello Road was within the precincts of Basseterre or any village, that is, in an area where the speed limit is 20 miles per hour.

[52] By introducing the issue of the location of the accident through cross-examination, Mr. Williams is, in effect, asking the court to find that he was driving no more than 40 miles per hour in an area where the speed limit was 40 miles per hour, and therefore, he could not be said to have exceeded the speed limit, which was the basis for NAGICO rejecting his claim for indemnification. It is my considered view that, in the absence of an indication of the speed limit in the area, the court cannot make this finding on the claim as filed on 13th July 2021.

- [53] That Mr. Williams was driving no more than 40 miles per hour in an area where the speed limit was 40 miles per hour, would make his case that NAGICO breached the policy by refusing to indemnify him on the basis that he failed to adhere to the legal speed limit. Nowhere in Mr. Williams' statement of claim does he aver that the speed limit in the area he was driving was 40 miles per hour. His evidence in his witness statement is that he did not believe that he was speeding and that he was going at no more than 40 miles per hour.
- [54] Given that speeding by exceeding the speed limit was NAGICO's sole reason for not accepting liability for the loss occasioned by the collision, it was incumbent on Mr. Williams, in challenging this reason, to prove that he was, in fact, driving within the speed limit. NAGICO's pleaded defence shows that Mr. Williams' motor claim was refused using 20 miles per hour as the applicable speed limit. Even if Mr. Williams did not deem it necessary to plead in his statement of claim that the speed limit for the area he was driving was 40 miles per hour, the defence triggered the absolute need for him to do so by way of reply.
- [55] Moreover, as NAGICO strenuously submits, Mr. Williams' pleaded case, his witness statement and the agreed police report all state that the collision occurred in Basseterre.
- [56] The challenge to NAGICO's evidence of the speed limit of 20 miles per hour in the area where the collision occurred is a major part of Mr. Williams' case that he was not speeding. NAGICO was taken completely by surprise during cross-examination of Ms. Dubuisson about the location where the collision occurred. In my view, Mr. Williams ought not to be allowed to counter NAGICO's case (of the 20 miles per hour speed limit) by way of cross-examination to bring out evidence that the relevant speed limit was, in fact, 40 miles per hour. This ought to have been front and centre of Mr. Williams' pleadings so as to allow NAGICO to address it as a viable issue in the claim, that is, to let NAGICO know this aspect of the case it had to meet. It is for Mr. Williams to prove that NAGICO breached the policy by rejecting his claim on the basis that he was speeding.

[57] On the pleadings and the evidence before the court, I accept that the collision took place in Basseterre in an area where the speed limit was 20 miles per hour and in keeping with the fair trial doctrine, I will not consider as an issue in this case, raised for the first time at the trial, whether the collision took place outside of Basseterre, or in an area where the speed limit was 40 miles per hour.

Court's analysis and determination on whether the defendant is obligated to indemnify the claimant for the loss suffered as a result of the collision

[58] NAGICO relies on the clause in the policy that it is a condition of the policy that all rules, laws, regulations and requirements of the local government must be complied with. Ms. Dubuisson admitted that NAGICO indemnifies insured persons who contravene the Vehicles and Road Traffic Act by driving without due care and attention. It is therefore reasonable to conclude that in dealing with claims, NAGICO exercises a discretion based on the particular circumstances of each case, and does not apply the condition across the board. I take judicial notice of the fact that in the vast majority of motor vehicular accidents, a driver is in breach of the law. If insurance companies are entitled to reject all claims on the basis of driving without due care and attention, exceeding the speed limit and other offences under traffic legislation, then most claims would be refused. There is merit in Mr. Williams' submission that the condition in the section of the policy dealing with authorised drivers is limited to that context.

[59] On the issue of speeding in the Certificate of Insurance, I have determined that in Mr. Williams' policy, "use for speeding" means exceeding the speed limit. NAGICO rejected Mr. Williams' claim on the basis that he was driving at 60 miles per hour. There is no evidence, and Ms. Dubuisson was not asked, whether the claim may have been honoured if the motor claim form stated 60 kilometers or 40 miles per hour. To the contrary, NAGICO's stance in its submissions is that Mr. Williams was driving in excess of the speed limit whether he was driving at 60 miles per hour or 40 miles per hour, and that NAGICO was entitled to reject the claim either way. Given the court's finding that Mr. Williams was speeding at the time of the collision,

under Mr. Williams' policy, NAGICO was entitled to refuse Mr. Williams' claim for indemnification.

[60] In light of this ruling, it is not necessary to consider the issue of quantum.

[61] Notwithstanding the court's ruling, in light of the court's finding that it was NAGICO's error that Mr. Williams' speed was recorded on the motor claim form as 60 miles per hour instead of kilometers per hour, NAGICO may wish to reconsider its decision, or run the risk of its insured, and potential insured, questioning the value of NAGICO's coverage.

Whether the defendant is liable to cover the third party for his loss

[62] Mr. Williams pleaded that he is liable to pay the third party for the loss of value of the third party's vehicle, and the cost incurred by the third party to rent a motor vehicle. Mr. Williams pleaded that under the policy, NAGICO agreed to pay the amount of the loss or damage to repair, reinstate or replace a third party's motor vehicle damaged from a collision occurring whilst Mr. Williams' vehicle was being driven by him.

[63] Clause 1 of Section II of the policy (dealing with liability to third parties), provides that NAGICO will, subject to the limits of liability, indemnify the insured against all sums including costs and expenses which the insured shall become legally liable to pay. Although Mr. Williams asserts that he is liable for the accident on the basis that he was distracted by his phone and collided into the third party's vehicle, liability in this matter has not been determined. In this claim for damages for breach of the policy, it is not for this court to make such a finding.

[64] Further, as pointed out by NAGICO, as at the date of the trial, Mr. Williams had not received a demand letter from the third party claiming damages for any losses to his vehicle, and had not received a suit or claim in any court from the third party claiming any damages for losses suffered in relation to the collision. On the evidence before the court, I rule, as submitted by NAGICO, that no legal liability to pay the

third party's loss has arisen and therefore, the trigger under the policy is yet to take place.

Conclusion

[65] Mr. Williams has not proved on a balance of probabilities that NAGICO breached the policy. His Certificate of Insurance, unlike similar insurance policies, specifically excluded use of his vehicle for speeding, that is, in this case, exceeding the speed limit. NAGICO was entitled to refuse his claim for indemnity on the basis that at the time of the collision, he was exceeding the speed limit in a 20 miles per hour zone. This claim therefore fails.

Order

[66] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimant's claim is dismissed.

- 2) The claimant shall pay prescribed costs to the defendant in the sum of EC\$17,666.25.

Tamara Gill
High Court Judge

By the Court

Registrar