

Short Notes on:

## **REPUDIATION OF CLAIMS BASED ON FALSE INFORMATION**

### ***Introduction***

When dealing with insurance matters, it is well-known that if there is any dishonesty or false information provided to the insurer, a claim for indemnification could be repudiated in its entirety. However, what would the position be if the dishonesty was on the part of an employee who submitted false information to the insurer and did so without the employer's instruction? Would the employer still be able to claim for cover? The Supreme Court of Appeal handed down judgment in a matter that provides us with the answer.

### ***The Facts***

In *King Price Insurance Company Ltd v Concise Consulting Services Pty Ltd*<sup>1</sup>, the Supreme Court of Appeal decided on a matter wherein the insurer's decision aggrieved the insured party. The insurer chose to repudiate a claim based on a contractually included provision relating to rejection in the case of the submission of fraudulent, dishonest, or inflated claims, information or documentation. In addition, the provision allowed the insurer to cancel the policy retrospectively.

The incident related to damages of a motor vehicle owned by the company and at the time of the incident in question was being driven by a driver included as the regular driver of the vehicle when the policy was taken out. The managing director of the insured party lodged a telephonic claim with the insurer and advised them to speak to the driver as he would be the only person who could provide details of the accident.<sup>2</sup>

Upon doing so, the story compiled by the insurer was that the driver was awoken by his brother to assist in taking his pregnant wife to the hospital as she was going into labour. After dropping them off at the hospital, at some point, the motor vehicle spun out of control and crashed into a wall as he was approaching a turn. The driver submitted that he had not been drinking and that he was alone in the motor vehicle at the time of the collision.<sup>3</sup>

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<sup>1</sup> 1067/2019) [2021] ZASCA 42.

<sup>2</sup> At para 4.

<sup>3</sup> At para 9.

However, the insurer investigated the matter; further, it confirmed that the driver had been seen driving around in the area before the incident and that he was not alone in the motor vehicle. It further uncovered that the driver's sister-in-law had not been treated at the hospital that morning and that the incident took place on a straight road.

As a result of the above being uncovered, the insurer repudiated the entire claim of the insured party based on false information provided and dishonesty.

### ***The Supreme Court of Appeal***

As stated above, the Supreme Court of Appeal heard the matter, meaning that a lower Court first decided on the matter. In the Magistrates Court, it was ruled that the submissions of the driver formed part of the telephonic claim that was lodged, and therefore the insurer was within its right to repudiate the claim.

This outcome was successfully appealed in the Magistrates Court to a full bench that ruled that the driver was not acting on behalf of the employer but only submitted information at the employer's request.

Therefore, the Supreme Court of Appeal ruled that the insurer was the one that initiated contact with the driver and that the managing director of the company only facilitated that to happen.<sup>4</sup>

### ***Conclusion***

Therefore, the appeal was dismissed, and the Supreme Court of Appeal ruled that by giving information relating to the claim, the driver was not acting on behalf of the company. Furthermore, he was only giving evidence as a witness, as the claim had already been lodged, and the process was in the validation stage.

It is, therefore, essential to remember that when having an insurance claim repudiated, the insurer is not always correct in its interpretation of evidence and submissions. Therefore, it would be advised

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<sup>4</sup> At para 20

to seek professional advice should you believe that your insurance claim has been unfairly repudiated. Contact us at SchoemanLaw Inc for assistance today!

