IN THE COURT OF APPEAL [1993] QCA 070

SUPREME COURT OF QUEENSLAND

Appeal No. 173 of 1992

Brisbane

[The Nominal Defendant v. Conlan]

BETWEEN:

KATHLEEN MAREE CONLAN
(Plaintiff)

Respondent

- and -

THE NOMINAL DEFENDANT
(Defendant)

Appellant

DAVIES J.A.
PINCUS J.A.
MCPHERSON J.A.

Judgment delivered 12/03/1993

REASONS FOR JUDGMENT - THE COURT

APPEAL ALLOWED. APPLICATION TO EXTEND TIME REFUSED. APPELLANT TO HAVE ITS COSTS HERE AND BELOW.

CATCHWORDS **INSURANCE - NOMINAL DEFENDANT - Uninsured motor vehicle - liability of Nominal Defendant - extension of time for claim or notice against Nominal Defendant - requirement that claimant give notice of intention to make claim - what constitutes notice of intention to make claim.**
MOTOR VEHICLES INSURANCE ACT 1936 (QLD.), s. 4F(4)(a)

Counsel: Mr D. Tait for the Appellant

Mr G. Diehm for the Respondent

Solicitors: Messrs Biggs & Biggs Francis & McGregor for the Appellant
Pat Flynn for the Respondent

Hearing Date(s): 11 February 1993

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Before Mr Justice Davies
Mr Justice Pincus
Mr Justice McPherson

[The Nominal Defendant v. Conlan]

BETWEEN:

KATHLEEN MAREE CONLAN
(Plaintiff)

Respondent

- and -

THE NOMINAL DEFENDANT (QUEENSLAND)
(Defendant)

Appellant

REASONS FOR JUDGMENT - THE COURT

Judgment delivered 12/03/1993

The appellant, The Nominal Defendant (Queensland), appeals by leave granted on 6 August 1992 against an order of an Acting District Court Judge extending until 13 February 1992 the time limited for the giving by the respondent, Kathleen Maree Conlan, of notice of her intention to claim against The Nominal Defendant.

On 14 February 1989 the respondent suffered injuries as a pillion passenger on a Honda motorcycle then being ridden by

Robert Norman Murray along Station Road, Woodridge. The motorcycle is said to have been owned by Michael Conlan, the respondent's husband, but it was unregistered and uninsured. Her injuries included a head injury. By a plaint filed on 13 February 1992 the respondent claimed that her injuries were caused by negligent riding by Murray and sued the appellant for damages on the ground that the motorcycle was uninsured.

The application which the learned judge granted was made pursuant to s. 4F(4)(a) of the Motor Vehicles Insurance Act ("the Act") which provides:-

> "The Nominal Defendant (Queensland) shall not be liable in respect of any claim made to it under this section unless, within three months from and including the date on which the injury in respect of which the claim is made was caused or such extension of such period, as may be granted under this sub-section, the claimant shall have made the claim or shall have given to The Nominal Defendant (Queensland) notice of intention to make it."

Sub-section (4)(b) then provides:-

> "Upon being satisfied that failure to make or to give notice of any such claim in compliance with paragraph (a) of this subsection has been caused by the death of any person or by any other cause which The Nominal Defendant (Queensland) or, as the case may be, the court is satisfied was not occasioned by any act or omission of the claimant or any person acting on his behalf -
>
> (i) The Nominal Defendant (Queensland) may extend the aforesaid period of three months but not in any case beyond the period of six months from and including the date on which the injury in respect of which the claim is made was caused; or
>
> (ii) Upon application made not later than three months after the claimant made or gave notice

> of the claim, any court in which an action referred to in this section may be brought may extend the aforesaid period of three months (or any extension thereof granted by The Nominal Defendant (Queensland)) but not in any case beyond the period of limitation which, except for this section, would apply for bringing an action in respect of the claim in question."

The respondent did not make the claim or give notice of intention to make it within three months from and including 14 February 1989. However, relying on her plaint as the making of a claim, she sought to extend that period to 13 February 1992, the date on which the plaint was served. This application, which the learned judge granted, was made on 12 May 1992 within three months of that date.

Had the facts which we have so far stated been the whole of the facts there is no doubt that the learned judge could have granted the application. However the appellant contended below and before this Court that a letter from the respondent's solicitor to The Nominal Defendant dated 15 June 1989, or alternatively a letter from the respondent's solicitor to The Nominal Defendant dated 17 January 1991, constituted a notice of intention to make the claim within the meaning of the above provision; and that, no application for extension having been made not later than three months after the giving of such notice, this application was out of time and there was no power in the Court to extend that time.

It was common ground that there is no power to extend the time for making such an application and that that time commences to run from the time when a claimant first makes or gives notice of any such claim. The sole question argued in this appeal was whether either of the above letters amounted to a notice of intention to make a claim within the meaning of paragraph (a) of sub-s. (4). If either was such a notice of intention his Honour's decision was wrong. If neither was, it was not argued that his Honour's decision was otherwise wrong.

The letter of 15 June 1989 was in the following terms:-

> "Dear Sir,
>
> Re: Cathleen Marree Conlan - Motor Cycle Accident - 14th February, 1989 - Station Road, Woodridge
>
> I wish to advise that I have received instructions to act on behalf of the abovenamed Cathleen Marree Conlan in relation to personal injuries she suffered as a pillion passenger on a motor cycle on or about the 14th of February, 1989.
>
> I am informed by my client that the motor cycle was unregistered. Accordingly I give you notice of a claim again the nominal defendant for personal injuries.
>
> Please note that my client has been in hospital suffering from head injuries from the date of the accident and was only released from the hospital on the 12th of May, 1989.
>
> Yours faithfully,
> GEORGE ANTHONY & ASSOCIATES"

The letter dated 17 January 1991 was in the following terms:-

"Dear Sirs

RE: KATHLEEN CONLAN: PERSONAL INJURIES

Please be advised that we are acting on behalf the above named in relation to seeking compensation for injuries which occured as a result of a motor mike [sic] accident on the 14th February, 1989 wherein she was hospitalised suffering major internal head injuries.

We are writing to notify you of our intention to claim against the Board in circumstances where, upon our instructions, the bike may have been unregistered and the driver at this point in time can not be found.

Yours faithfully
REVELL & CO."

The first of the above letters stated the name of the complainant, the nature of the accident and its date and place and the main injury which the respondent suffered. It omitted to state the names of either the rider of the motorcycle or its owner. The question is whether these omissions meant that the letter of 15 June 1989 was not a notice of intention to make the claim within the meaning of the statute. It was common ground that if that letter was not such a notice then the letter of 17 February 1991 could not be. In the present case the parties were in the unusual position that it was the claimant who was asserting that a purported notice was not a notice of intention to claim within sub-s. (4)(a) and it was The Nominal Defendant who was asserting that it was.

In the absence of any relevant definition, The Nominal Defendant could have asserted that a notice which simply

described the claim in terms of sub-s. (2) was sufficient; that is as a claim for damages for accidental bodily injury to the respondent caused in Queensland by, through or in connection with an uninsured motor vehicle for which the owner, if it were insured, would have been legally liable. However, Mr Tait of counsel, who appeared for The Nominal Defendant, conceded that a claim, and consequently a notice, must state facts. His submission was that facts sufficient to identify the claim and distinguish it from others, so far as those facts are known to the claimant, must be stated; and that those facts are no more than the claimant's name and the date and place of the injury. He also conceded that the purpose of sub-s. (4)(a) was that stated by Brereton J. in Dunne v. The Nominal Defendant (1954) 71 W.N. (N.S.W.) 87 at 88, where he said:-

> "The object of the section in my view is, firstly, to guard against sham claims being made relating to some date in the remote past, claims which could never be adequately investigated by a person in such circumstances as The Nominal Defendant; and, secondly, perhaps to guard against claims being made against a Nominal Defendant which could and should properly be made against the actual driver of the motor vehicle concerned. A third object, no doubt, is to enable The Nominal Defendant who, unlike an ordinary defendant, knows nothing of the accident to investigate fully before, as has been said, 'the scent is cold'."

See also Mitsios v. The Nominal Defendant (1968) 88 W.N. (Pt. 1) (N.S.W.) 517 at 519-520, 523. The statements in those cases were, of course, made with respect to the New South Wales analogue of sub-s. (4)(a) but it was not suggested that there was any material difference between the

two provisions.

Mr Tait also contrasted sub-s. (4)(a) with the proviso to s. 4A(1). That sub-section is in the following terms:-

> "Where an accidental bodily injury (fatal or non-fatal) to any person has been caused by, through, or in connection with a motor vehicle insured under this Act but the insured person against whom it is sought to establish liability is dead or cannot be served with process, any person who could have obtained a judgment in respect of such accidental bodily injury so caused against such insured person if he were alive or had been served with process may recover by action against the insurer (whether the Office or a licensed insurer) the amount of the judgment which he could have so recovered against such insured person:
>
> Provided that he cannot so recover unless he proves that he gave to the insurer notice of the claim and a short statement of the grounds thereof as soon as possible after he knew that such insured person was dead or could not be served with process, or that such notice was given within such time as would prevent the possibility of the insurer being prejudiced by want of such notice."

He submitted, in effect, that what is required to be stated in a notice required by s. 4F(4)(a) must be less than that required by the proviso to s. 4A(1) given that the objects of the two provisions are similar, because of the additional words in the latter: "and a short statement of the grounds thereof". We agree with that submission.

The requirement in the proviso to s. 4A(1) is similar to that in the provisions considered in Gardiner v. Motor Vehicle Insurance Trust (1955) 95 C.L.R. 120 and Bakaj v. Incorporated Nominal Defendant [1958] V.R. 612, two of the cases relied on by the respondent. The provisions

considered in those cases concerned notice of intention to claim against The Nominal Defendant in respect of an unidentified motor vehicle. In the first of those cases the court said at 127:-

> "If the notice tells the insurer that a claim is going to be made against it in respect of an unidentified vehicle, and states the time and place and nature of the wrongful act or omission alleged and the general nature of the damage suffered, we think, generally speaking, that it will be sufficient to comply with section 7(3)."

Given that the objects of the proviso to s. 4A(1) and s. 7(3) of the West Australian provision considered in Gardiner are similar, we think that this statement applies equally to the sufficiency of a notice under the proviso to s. 4A(1). It follows from what we have said that a notice pursuant to s. 4F(4)(a) must require less than that.

We would conclude that a notice which, as the letter of 15 June 1989 does, states the name of the claimant, the date and place of the accident and the general nature of the injuries suffered is generally sufficient and was sufficient in this case. It is unnecessary for the purpose of this appeal to consider whether, in some cases, something less than this may be sufficient.

We would therefore allow the appeal and refuse the application to extend time. The appellant should have its costs here and below.