

IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)

Case No: 9982/2006

Date: 11/08/2008

UNREPORTABLE

In the matter between:

GNJ AGRICULTURAL FINANCIAL ADVISORS CC

PLAINTIFF

And

THE HOLLARD INSURANCE COMPANY LTD

DEFENDANT

JUDGMENT

VORSTER,AJ

1. The Plaintiff claims from defendant damages caused to a truck of the Plaintiff, in terms of an insurance policy.
2. The claim is disputed by defendant. The quantum of the claim is agreed on R 97 540,35. The facts which gave rise to the causation of the damage is also common cause and are recorded in a statement of facts which have been handed in as Exhibit "A". The recorded facts are as follows:

"1. On 9 January 2006 the insured vehicle was being driven on the Potgietersrus-Marken road. The vehicle was fully laden.

2. The vehicle went down a steep inclination and the weight of the load pushed the vehicle forward. The vehicle was travelling in 4<sup>th</sup> gear at the time.
3. The brakes were insufficient to slow the vehicle down and in an attempt to avoid a disaster, the driver selected third gear and thereafter second gear. The momentum kept pushing the vehicle forward and because of that the driver forced the vehicle into 1<sup>st</sup> gear.
4. The driver then saw a huge rock on the right hand side of the road adjacent to the mountain-side. He crossed the road to the right and the truck came to a standstill against the rock.
5. The resultant over-revving caused the breakdown of the engine."

3. No evidence was led. The parties confined themselves to argument on the only dispute on the merits of the case. That dispute relates to the interpretation of the following clause in the insurance policy:

"The Insurer shall not be liable to pay for

- (a) Consequential loss as a result of any cause whatsoever

depreciation in value whether arising from repairs following a defined event or otherwise wear and tear mechanise or electircae breakdowns failures or breakages".

4. The Defendant repudiated the claim of Plaintiff and as a ground for repudiation relied on the above quoted provision .in the policy. That provision is explicitly stated in the policy to be an exception to liability.
5. It is trite law that the onus is on an insurer which relies on an exception to liability clause in a policy to prove that the exception is applicable to the facts which gave rise to the indemnification claimed.
6. In argument counsel for defendant submitted that the breakdown of the engine of the insured vehicle falls within the wording and meaning of "mechanical breakdown" in the exception clause.
7. Mr Stoop, who appeared on behalf of Plaintiff referred to the judgment in *Nell v Incorporated General Insurance Ltd*, 1976 (3) SA 776 WS. The facts and the exception clause in that case were very similar to the facts in the instant case. The exception clause provided as follows:

"The company shall not be liable to pay for

A Consequential loss arising in any way whatever

depreciated wear and tear mechanical or electrical breakdown failures or breakages."

The occurrences which gave rise to the claim in Nel's case was also the breakdown of a vehicle which was driven on a steep decline in the road and which gave the driver no other option but to change to lower gear in order to bring the vehicle to a standstill. The breakdown was caused by overheating which damaged the vehicle beyond repair.

8. In the interpretation of the exclusion clause in Nell's case the court came to the conclusion that the wording is ambiguous and that the ambiguity must be interpreted in favour of the insured. I respectfully agree with that conclusion. The same applies to the wording of the exclusion clause in this case. Mechanical breakdowns or failures do not fall out of the air. They are caused by something. Some causes of mechanical breakdown of a vehicle are attributable to the absence or inadequate maintenance of the working parts thereof. Some mechanical breakdowns can result from unforeseen causes such as metal fatigue or faulty workmanship in the servicing of a vehicle. An interpretation of the words "mechanical breakdown" *eiusdem generis* with the preceding words "wear and tear" would mean mechanical breakdown caused by unforeseen causes inherent in the vehicle itself. That interpretation appeals to me for the following reasons:

Exclusion of liability by insurers for damage which is caused by unforeseen circumstances inherent in the article insured is quite common. Such exclusions are also logical as the insurer would have no right of recourse against the perpetrator, as there is no perpetrator.

If, on the other hand, the words are interpreted literally according to their ordinary grammatical meaning, it means that the insured has no cover for mechanical breakdown irrespective of the cause thereof.

Considering the fact that it is a contract of insurance. I find that the words "mechanical breakdown" does not include mechanical breakdown caused by other means than unforeseen circumstances inherent in the insured vehicle.

9. It follows that I am of the view that the defendant did not discharge the onus of proving that the damage caused to the insured vehicle is excluded in the policy. The plaintiff is therefore entitled to judgment in its favour.
10. As far as costs is concerned, defendant urged me to award costs on Magistrates Court scale, as the agreed amount of quantum of R99 568-85 falls within the jurisdiction of the Magistrates Court. I am not persuaded that I should do that. This matter involved a difficult

question of legal interpretation of an insurance policy. I cannot say that it was unreasonable for the Plaintiff to pursue its claim in the High Court.

11. In the result I make the following order:

- (a) Judgment for Plaintiff in the amount of R 99 568-85.
- (b) Interest on the amount of R 99568-85 at 15,5 % per annum from date of service of summons until date of payment.
- (c) Costs of suit, including the qualifying fees of Mr Jenkinson.
- (d) The witness Godfrey Naser Johnstone is declared a necessary witness on behalf of Plaintiff.

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L I VORSTER  
ACTING JUDGE OF THE HIGH COURT