

KARIBA NORTH BANK COMPANY LIMITED v ZAMBIA STATE INSURANCE CORPORATION LIMITED (1980) Z.R. 94 (H.C.)

HIGH COURT
KAKAD,
22ND
1979/HP/706

FEBRUARY,

1980

J.

Flynote

Civil procedure - Pleadings - Particulars - Functions of.

Headnote

The plaintiff claimed K50,000 the amount payable by the defendant under an insurance policy in consequence of the plaintiff's death, alleged to have been accidental.

On receipt of the defence, the plaintiffs wrote to the defendant seeking further and better particulars on the exception clause in the policy, relating to the war-like situation. The defendants attempted to explain but it was not to the satisfaction of the plaintiffs.

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Further correspondence between the plaintiff and the defendant lead the plaintiff to apply to the court for an order for "further and better particulars." The Deputy Registrar gave judgment for the plaintiff and the defendants appealed.

The High Court Commissioner ruled that the time and circumstances in which the deceased met his death were more likely to be within the knowledge of the plaintiff than the defendant and that therefore the defendant in the circumstances could not be expected to provide further and better particulars than already provided.

Held:

The most vital functions of particulars are:

- (a) to inform the other side of the nature of the case they have to meet;
- (b) to prevent the other side from being taken by surprise;
- (c) to enable the other side to know what evidence they ought to be prepared with and to prepare trial;
- (d) to limit the generality of the pleadings or of the claim or the evidence;
- (e) to limit and define the issues to be tried and as to which discovery is required; and
- (f) to tie the hands of the party so that he cannot without leave go with any matter not fairly included in.

For the plaintiff:

Mr E. T. E. Martin, S. C. Martin and Company.

For the defendant:

Mr J. H. Jeary, Advocate, D.H. Kemp & Company.

Judgment

KAKAD (COMMISSIONER):

This is an appeal from the decision of the Deputy Registrar in which the defendant was ordered to deliver to the plaintiff further and better particulars requested by the plaintiff.

The plaintiff's claim is for K50,000.00 being the amount payable by the defendant under an Insurance policy in consequence of the plaintiff's death alleged to be accidental.

Paragraph 3 and 4 of the statement of claim reads:

- "3. The said Moses Muleya died on the 3rd day of April, 1979, in Siavonga District Hospital in the Southern Province of Zambia as the result of multiple bullet wounds and haemorrhagic shock suffered while he was travelling in a motor vehicle from Kariba Store to Siavonga in the Southern Province of Zambia,
4. At the time of the said death the said policy was in full force and although the plaintiff has requested payment of the moneys payable under the said policy the defendant has failed to pay the same".

The defendant in para. 3 of the defence pleaded: "As to paragraph 4 of the statement of claim the defendant admits that at the time

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the alleged death the said policy was in full force but will say that it was a term and/or condition of the said policy (to which the defendant will refer at the trial for its full terms and effect) that the said policy should not cover bodily injury whether fatal or non-fatal to any Employee directly or indirectly caused by arising or resulting from or traceable to . . . any injury from accident directly or indirectly attributable to war invasion act of foreign enemies' hostilities (whether war be declared or not) civil war rebellion mutiny revolution insurrection or military or usurped power riot or civil commotion and the alleged death of the said Moses Muleya (which is not admitted was so attributable".

The plaintiff on receipt of the defence wrote to the defendant seeking further and better particulars. The letter reads:

"We shall be obliged if you will let us have the following further and better particulars of the defence in this section.

Under paragraph 3: Particulars of the alleged war, invasion, act of foreign enemies' hostilities, civil war, rebellion, mutiny, revolution, insurrection or military or usurped power, riot or civil commotion to which the death of the said Moses Muleya is alleged to have been attributable stating in each case by and against whom and in what place or places and upon what date or dates any such act deed or thing was made done or took place."

The defendant on 12th October, 1979, replied stating:

"We thank you for your letter dated 9th instant.

The war, invasion, act of foreign enemies' hostilities, civil war, rebellion, mutiny, revolution, insurrection or military or usurped power, riot or civil commotion to which the alleged death of the said Moses Muleya was attributable was the fighting involving forces of the Patriotic Front Guerilla Movement, forces of the de facto Government of Rhodesia and forces of the Governments of Zambia and Mozambique amongst others which now and for some time past has been occurring within and outside the borders of Rhodesia.

We are not sure as to the full meaning of your request but we do not consider that you are entitled to any further particulars."

The Plaintiff's counsel on 15th October, 1979, replied; material part of the letter reads:

"Apart from formal denials your defence consists essentially of reliance upon the exception clause in the policy relating to war risks. Since the onus and proof that the exception clause applies rests upon the defendant you must particularise the facts upon which you intend to reply.

We regret that your general reference to fighting involving the forces of various movements and Governments cannot be accepted as particulars of any fact or facts having any connection with the death of Moses Muleya."

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The defendant's counsel on 17th October, replied stating:

"We thank you for your letter dated 15th instant and agree that the onus of proof that the alleged death fell within the exception rests on us. However, before such onus arises the burden will be upon you to prove the death of the said Moses Muleya and that it was accidental. In these circumstances it is enough for us to show that such accidental death, if proved, fell within the exception and it is not in our opinion incumbent on us to prove exactly how the deceased died or who killed him. "

The plaintiff's counsel on 18th October, 1979, replied stating:

"Although you are not entitled to any evidence at this stage of the action you have in point of fact already been provided with a death certificate and other documents which clearly show that the deceased died and that his death was not due to natural causes.

You yourselves have set up the defence of an exception under the policy and it is therefore incumbent upon you to give the required further and better particulars. We need hardly say that we are not asking for evidence thereof."

The defendant's counsel on 22nd October, 1979, replied stating:

"We thank you for your letter dated the 18th instant but regret that we do not agree with the

contents thereof.

If you feel that you are entitled to any further particulars then we suggest that you apply to the Court."

Consequently the plaintiff applied to the court for an order for further and better particulars. The application was heard by the Deputy Registrar who delivered ruling ordering the defendant to deliver the particulars requested by the plaintiff.

The defendant's counsel arguing the appeal submitted that it was in relation to para. 3 of the defence that the plaintiff sought further and better particulars. According to the learned counsel most of the particulars sought have been pleaded in the statement of claim and it was for the plaintiff to prove those facts. Dealing with the particulars requested as to who caused the death of Moses Muleya, the learned counsel submitted that it was for the plaintiff to prove that the death was accidental. He argued that for the exception clause to apply it was sufficient to state that the death arose in a war-like state at the time in that place. According to the learned counsel the other particulars sought were not warranted.

The learned counsel for the plaintiff in reply submitted that the defendant's counsel must particularise more exactly what state of war he was referring to. According to him para. 3 refers to various situations and the defendant should have particularised the state of war. He submitted that a state of war must be particularised. According to him fighting in any one of the three countries is too general an allegation. He said that the particulars he had asked for do not go beyond reasonable request with regard to the defence and what they required was particulars of hostilities

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which contributed to the cause or which brought about the circumstances leading to the death. According to him the defendant has to specify the particulars of the war situation as it affected the deceased's death and it must be connected with the particular occurrence.

In Bullen and Leake, *Precedents of Pleadings* (12th edn.) at p. 110 under the heading "Necessary particulars of pleadings" it is stated:

"The practice as to particulars demands in any pleading such as sufficiency of detail as will elucidate the issues to be tried and present 'surprise' at the trial. No hard and fast line can be laid down as to the degree of particularity which is required of the pleader and which an opponent may demand of him when formulating his claim or defence . . .

It is, however, essential that each party should give to his opponent a fair outline of the case which will be raised against him at the hearing and for this purpose he must set out on the body of his pleadings all particulars which are necessary to enable his opponent properly to prepare his case for trial."

Further on it is stated "The precise degree of particularity required in any particular case cannot of course be predicated, but as much contents and particulars must be insisted on as is reasonable having regard to the circumstances and nature of the acts alleged." As Cotton, L. J., stated in

Phillips v Phillips:

"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state these facts which put the defendants on their guard and tell them what they will have to assert when the case comes on for trial. Particulars of a pleading should therefore indicate to the opposite party the nature of the evidence required by him."

At p.112 of the same under the heading "Function of particulars" it is stated:

" The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to 'open up' the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial."

At p. 115 of the same it is stated:

"The rule relating to particulars is a rule of pleading only, and therefore if the only object of the application for particulars is to obtain particulars of the evidence of the other party or some other clue to such evidence, or to obtain the names of witnesses, it will be dismissed. But where the information asked for is clearly necessary to enable the applicant properly to prepare for trial, or where in other respects the application is a proper one, the information must be given, although it discloses some portion of the evidence on which the other party proposes to rely at the trial."

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The above passages outline in a nutshell, the objects as to the particulars. The most vital functions of particulars are (1) to inform the other side of the nature of the case they have to meet; (2) to prevent the other side being taken by surprise; (3) to enable the other side to know what evidence they ought to be prepared with and to prepare trial; (4) to limit the generality of the pleadings or of the claim or the evidence; (5) to limit and define the issues to be tried and as to which discovery is required and (6) to tie the hands of the party so that he cannot without leave go into any matter not fairly included therein.

At p. 115 in Bullen and Leake, *Precedents and Pleadings* (12th edn.), it is stated: "The Court will not make an order for particulars when it is satisfied that the party cannot give nor will particulars be executed where it would be oppressive or unreasonable to make such an order, as where the information is not in the possession of either party or could only be obtained with great difficulty or expense or laborious research or exhausted enquiry, though in such cases the Court may order a party to give the best particulars he can, with liberty to supplement them within specified time after the discovery of documents."

In the case before this court the plaintiff claims under an Insurance policy an account of the

deceased's death which the plaintiff alleges to be accidental. The defendant in its defence has pleaded that the alleged death occurred in a war-like situation and therefore not covered under the policy.

It is common knowledge that in the struggle by Patriotic Front for the liberation of Rhodesia, Zambia had been the target by Rhodesian forces from within and outside Zambia. In saying this I am by no means pre-judging the cause of death. However, on pleadings there is nothing to indicate that at the time the deceased was killed, anyone from the defendant company was with the deceased. In my opinion it is more than probable that the particulars of the circumstances in which the deceased met his death are more within the knowledge of the plaintiff than the defendant.

The plaintiff as I see it seeks further and better particulars in order to narrow down the alleged war-like situation and to enable them to know what evidence they should be prepared with. The learned counsel for the plaintiff argued that the defendant should have particularised in detail and precisely the war-like situation stated in the provided particulars. According to him, the fighting in any of the three countries as stated in the particulars provided was too general. There is no doubt that the deceased was killed on Zambian soil. Therefore, I fail to see how the war like situation as alleged by the defendant could be connected to any other country but Zambia. It is, to my mind, apparent that the particulars provided by the defendant related to different forces involved in fighting on Zambian soil. I, therefore, cannot see how much more the alleged war-like situation could have been particularised in the circumstances. As I have said before, the time and the circumstances in which the deceased met with his death are more likely to be within the

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knowledge of the plaintiff than of the defendant. In my considered view the defendant in the circumstances cannot be expected to provide any further and better particulars than already provided. The counsel for the defendant had in fact indicated to the counsel for the plaintiff that the defendant was in no position to give any more particulars than already given. I, therefore, find that it would be unreasonable to order the defendant to provide any further and better particulars in addition to those already provided by the defendant. In arriving at this conclusion I have had due regard to the decision of the learned Deputy Registrar and to the submissions by the learned counsels.

In the result the appeal is allowed. The order by the Deputy Registrar is set aside. Costs of this appeal to the defendant.
Appeal allowed

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