[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

GENERAL INSURANCE COMPANY OF CYPRUS LTD.,

Appellants-Plaintiffs,

v.

1. MAROULLA GEORGHIOU,

2. ANTONIS IOANNOU KOUTSOFTAS,

Respondents-Defendants.

(*Civil Appeal No.* 4407).

Practice—Joinder of parties—Co-defendants—Grounds for adding an intervener as co-defendant—The Civil Procedure Rules, Order 9, *r.* 10.

Insurance—Motor Vehicles—Third Party Insurance—The Motor Vehicles (Third Party Insurance) Law, Cap. 333—**A** *claiming against* **B** *damages for personal injuries sustained in a motor car accident is a proper person to be added as co-defendant in an earlier action brought by the Insurers of* **B** *against the latter whereby the Insurers claim against the said insured that the third-party policy of insurance issued to him is void for non disclosure of material facts—Regard being had to the whole scheme of Cap.* 333 (supra) *the intervener* **A** *has an interest in the policy in question as well as in the outcome of the litigation—He is, therefore, a proper party to be added as co-defendant along with the insured* **B** *in the aforesaid action by the Insurers—The Civil Procedure Rules, Order* 9, *r.* 10, *corresponding to the English rule in R.S.C. Order* 16, *r.* 11:

By Order 9, rule 10 of the Civil Procedure Rules it is provided that : " The Court . . . may . . . order . . . that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

The intervener in this case sustained personal injuries in a road accident where the motor vehicle of one Maroulla Georghiou was involved. Eventually he brought an action in the District Court of Limassol (Action No. 721/62) claiming damages for negligence against her for the personal injuries sustained by him in the said road-accident. The defendant

Maroulla was covered by a third party policy of insurance under the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and the plaintiff took all steps required by section 10 (2) of the statute enabling him to enforce against the insurers the judgment which might be given in his favour in that action against the said insured, Maroulla Georghiou. On the other hand the Insurers (appellants) had instituted earlier in the District Court of Limassol action No. 2526/61 against the said insured, Maroulla, claiming a declaration of the Court that the aforesaid policy of insurance was void for non disclosure of material facts. The intervener applied to the District Court of Limassol in the latter action to be added as co-defendant therein along with Maroulla Georghiou, the insured-defendant, under Order 9, rule 9 of the Civil Procedure Rules. The District Court granting this application ordered that the intervener be added as co-defendant and that the writ of summons, etc., be amended accordingly. The insurers appealed against this order of the District Court of Limassol and the High Court dismissing the appeal :—

Held, (1) it is beyond question that regard being had to the whole scheme of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, the intervener has an interest in the policy subject matter of the action instituted by the Insurers (appellants) against their insured, as well as in the outcome of the litigation in question.

(2) Therefore, the District Court has rightly exercised its jurisdiction under Order 9, rule 10, of the Civil Procedure Rules, corresponding to the English rule, *i.e.* R.S.C., Order 16, rule 11.

Principles laid down

in Amon v. *Raphael Tuck and Sons Ltd.* (1956) 1 All E.R. 273, at page 290, *per* Devlin, J. adopting *Dollfus Mieg et Compagnie S.A.* v. *Bank of England* (1950) 2 All E.R. 605, at page 611, *per* Wynn-Parry, J., *applied.*

Appeal dismissed with costs.

Cases referred to :

Amon *v.* Raphael Tuck & Sons, Ltd. (1956) 1 All E.R. 273 at 290 : *per* Devlin J. *applied* ;

Dollfus Mieg et Compagnie S.A. v. *Bank of England* (1950) 2 All E.R. 605 at p. 611 ; *per* Wynn-Parry J., *applied.*

Appeal.

Appeal against the judgment of the District Court of Limassol (Michaelides P.D.C. and Malachtos D.J.) dated the 25.11.62 (Action No. 2526/61) whereby it was ordered that Antonis Ioannou Koutsoftas, plaintiff in Action No. 721/62, District Court of Limassol, be joined as defendant 2 and that the writ of summons be amended accordingly, in an action for a declaration that a Motor Vehicle Insurance Policy may be avoided on the ground that it was obtained by the reason of non-disclosure of a material fact or by representation of fact which was false in a material particular.

Chr. Demetriades for the appellant.

G. Cacoyannis for the respondents.

The facts sufficiently appear in the judgment delivered by :

WILSON, P. : This is an appeal by the plaintiff from an order made by the District Court of Limassol on November 25th, 1962, ordering that the applicant, Antonis Ioannou Koutsoftas, be joined as defendant No. 2 in the present action and the writ of summons be amended accordingly. The Court also awarded the applicant £6 costs of the hearing.

The plaintiffs' action is for a declaration that a motor Vehicle Insurance Policy issued to one Maroulla Georgiou of Limassol may be avoided on the ground that it was obtained by her by the reason of non-disclosure of a material fact or by representation of fact which was false in a material particular.

The statement of claim was drawn up and filed on March 6th, 1962. On May 23rd, 1962, the applicant applied to be added as a co-defendant in the action.

The co-defendant was injured in a motor-vehicle accident and as a result became a plaintiff in Action No. 721/62 in the District Court of Limassol against the defendant in the present action. When it was commenced the applicant gave notice to the plaintiff (hereinafter called the Insurance Company) by a letter setting forth his claim. At that time the Insurance Company had issued a policy and there was outstanding a certificate of insurance which complied with the Third Party Insurance provisions. The plaintiff had commenced the present action well before the applicant commenced his action on April 18th, 1962.

The contention on behalf of the Insurance Company is that the applicant has no interest in the present action and that his presence is not necessary to determine the matters in issue between the Insurance Company and its insured.

Briefly, the contention on behalf of the applicant is that he has an interest in the outcome of the Insurance Company's action ; if the Insurance Company succeeds he will not be able to recover from it in the event of success in his action against the insured.

Many authorities have been cited by counsel in the course of the very able arguments which have been presented to us. My view is that the Court must approach this problem within the framework of Order 9, rule 10, which gives the Court power at any stage of the proceedings either upon or without application of either party and on such terms as may appear to the Court or Judge to be just, to order that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter be added.

The question, therefore, is whether or not the applicant in this case comes within this general purpose of the section. Then we have to refer to the provisions of the Motor Vehicles Third Party Insurance Act itself.

I think it is clear from the general purpose of the Act which protects claimants against the insured once a certificate of insurance has been issued that the Insurance Company shall not be able to escape payment of the judgment obtained against the insured, unless it can bring itself against the exceptions provided by that statute. In subsection (2) of section 10 there are laid down the steps which a claimant against an insured must take, if he is subsequently able to claim against the insurer. Then subsection (3) of that section provides that the Insurance Company may escape liability under the policy under the conditions therein stated. The proviso, however, does in my opinion recognize that the claimant against an insured has an interest in the policy itself.

The Statute recognizes this because if the claimant has already commenced his action against the insured before the Insurance Company brings its action, the Insurance Company can only escape liability if it notifies the plaintiff

of the action against the insured, and gives him an opportunity to appear and become a party. This right is conferred by statute. In my view this in itself recognizes that the claimant against the insured has an interest in the Insurance which is in force, and having gone that far, I think it is within the power and it is the duty of the Court to bring into the litigation between the Insurance Company and its insured persons who have a right and an interest in the outcome of the litigation upon the proper steps being taken to bring this about. This may be done in the principles which were enunciated by Devlin J. in *Amon* v. *Raphael Tuck & Sons, Ltd.* (1956) 1 All E.R., 273, at page 290, where after reviewing relevant authorities, he concluded by citing from Wynn-Parry, J., in *Dollfus Mieg et Compagnie S.A.* v. *Bank of England* (1950) 2 All E.R. 605 (at p. 611), he said :

> " It seems to me that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established.
>
> I respectfully agree with that. I think that the test is : May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights? "

I think it is beyond question now that the Motor Vehicles Third Party Insurance Law has recognized a claimant against the insured has an interest which may be affected by the judgment in the Insurance Company's action against its policy-holder. This justifies the order made and requires the Court under the provisions of Order 9, rule 10, to add the second defendant as a party in that action.

For these reasons it is my view that the appeal should be dismissed with costs.

ZEKIA, J. : I agree with the dismissal of the appeal.

VASSILIADES, J. : I agree with the result indicated in the judgment of the learned President of the Court.

The appellant in this case seeks to attack the order for a joinder made by the District Court on the application of an intervener under Order 9, rule 10.

The arguments put forward in support of the appeal were summarized in the judgment just delivered by the President, and I have nothing to add.

I agree that on the test formulated in the last part of the judgment in *Amon's* case which has been extensively referred to in the appeal, the present case comes within rule 10 of Order 9. And the District Court, exercising their jurisdiction in the matter, have rightly made the order. No reason has been shown to the effect that the Court in making the order have wrongly exercised their jurisdiction. It has only been submitted that the provisions of section 10 (3) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, if strictly applied, take the case out of the provisions of Order 9, rule 10.

For the reasons given by the President, I am inclined to think that far from taking the case out of rule 10, the provisions of section 10 of the statute read in the context of that enactment, point in the opposite direction. They make it all the more desirable that the intervener added in the case, should remain in the proceedings to defend his rights and to be heard by the Court in determining the questions raised by the claim in the present action.

JOSEPHIDES, J. : I also agree and I wish to add a few words only.

The respondent in this appeal applied to the District Court of Limassol to be added as a co-defendant in the Insurers' (appellant's) action for a declaration against the insured avoiding the policy. The District Court made an order adding the present respondent as a co-defendant. The application was based on section 10 (3) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, and the Civil Procedure Rules, Order 9, rule 10.

Now, as regards section 10 (3) of Cap. 333, I am of the view that as the Third Party did not institute his action before the institution of this action by the insurers, that sub-section is not applicable to the circumstances of the present case. We have, therefore, to consider whether Order 9, rule 10, applies. The material part of rule 10, with which we are concerned reads as follows :—

> " The Court . . . . . may . . . . . order . . . . . that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order

to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

The corresponding English rule is R.S.C. Order 16, rule 11. Devlin, J., as he then was, considered this rule exhaustively in the case of *Amon* v. *Raphael Tuck & Sons Ltd.* (1956) 1 Q.B. 357, to which both learned counsel referred in the course of their argument.

I humbly agree with Devlin J. who, in interpreting those words, held that the appropriate test to determine whether the intervener was a party " who ought to have been joined, or whose presence before the Court may be necessary " to enable the Court completely and effectually to adjudicate upon and settle all the questions involved in the cause or matter within that rule was : " Would the order for which the plaintiff was asking directly affect the intervener in the enjoyment of his legal rights? "

Applying that test, I have no hesitation in holding that the intervener (respondent) was within that rule, for having regard to the whole scheme of Cap. 333, he, as the third party, under that statute, has a legal right and that legal right is that when he obtains judgment, he has a right to have it satisfied by the insurers ; and if the insurers' action for a declaration avoiding the policy succeeds then his legal rights will be directly affected.

In these circumstances the trial Court rightly exercised its discretion in ordering that the intervener should be added as a co-defendant in the insurers' action. I, therefore, agree that the appeal should be dismissed with costs.

Appeal dismissed with costs.