Mutual and Federal Insurance Company Ltd v SMD Telecommunications CC [2011] 2 All SA 34 (SCA)

On 1 October 2010 the Supreme Court of Appeal confirmed a decision of the Western Cape High Court dealing with the interpretation of an occurrence and an exception clause in an insurance contract.

In 2002 the appellant ("M&F") and the respondent ("SMD") concluded an insurance contract in favour of SMD's managerial staff. In terms of the occurrence clause, the managerial staff would be covered in the event of death or disability occurring as a result of "... bodily injury caused solely by violent, accidental, external and visible means, which injury shall independently of any other cause be the sole cause of the results."

When the chief executive officer of SMD, Mr Comptom, sustained orthopaedic injuries in a car accident, and died seven months later of a myocardial infarction, M&F rejected Mr Compton's claim. M&F argued that Mr Comptom's pre-existing health complications placed him at a high risk of a heart attack, and therefore his bodily injuries and death were not solely caused by the accident.

The court had to consider whether SMD had proven on a balance of probabilities that the injury sustained in the accident was the proximate cause of the deceased's death and that this pre-existing condition was not a contributory cause. Once the causal nexus between the accident and the death was established, the onus would then shift to M&F to show on a balance of probabilities that the proximate cause of the accident was excluded by an exception clause.

In light of the fact that Mr Crompton had been hospitalised a number of times since the accident, and had undergone several surgical procedures, expert medical evidence was submitted by both parties to determine what the proximate cause of death was. During cross examination M&F's expert was forced to concede that other events such as surgery and/or trauma had an effect on Mr Compton's health. This concession was in line with SMD's case that it was the cumulative effect of the progressive series of surgical interventions which caused the trauma that triggered myocardial infarction.

The court therefore found that SMD had shown that the accident was the proximate cause of Mr Compton's death, and the appeal was therefore dismissed. In considering the facts of the case, the court took account of the long line of cases relating to bodily injury, and recognised that even if the loss is not felt as the immediate result of the peril insured against, but occurs after a succession of other causes, the peril remains the proximate cause of the loss. This is of course subject to there not being a break in the chain of causation.

In laymen's terms the court found, on the expert evidence presented, that Mr Crompton was in a car accident which led him undergoing various medical procedures which led to his myocardial infarction. Therefore the car accident is the proximate cause of Mr Compton's death.

The court further noted that if the intention of the parties was to exclude pre-existing conditions, it should have been unequivocally stated in the insurance contract. In the present case the exception clause did in fact exclude pre-existing physical defects or infirmities, however M&F had not pleaded the exception clause in the court of first instance. The court held that an insurer, in a dispute about the repudiation of the claim of the insured, is not entitled to rely on an exception clause in a contract of insurance where the clause was not pleaded and relied on before or during the trial. This was clearly a most unfortunate oversight and I daresay the judgment could have been quite different if M&F had relied on the relevant exclusion clause.

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