



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 219 OF 2008

DEEPESH C. DHINGRA.....1ST PLAINTIFF

RAMESH C. DHINGRA.....2ND PLAINTIFF

VERSUS

KENINDIA ASSURANCE CO. LIMITED.....DEFENDANT

JUDGMENT

1. . The claim before this court arises from a contract of insurance. The defendant, **KENINDIA ASSURANCE COMPANY LIMITED**, is a company that provides Insurance Services to those who take out policies with it.
2. The plaintiffs, **DEEPESH C. DHINGRA and RAMESH C. DHINGRA**, took up a **TRAVEL (MEDICAL) INSURANCE COVER** with the defendant in August 2005. The reason for obtaining that policy of insurance was that the plaintiffs were travelling to the United States of America, where Deepesh was a student.
3. Deepesh is said to have suffered an eye infection, which necessitated medical intervention. The total cost of the medical treatment accorded to Deepesh was US Dollars 3,600, plus US Dollars 300 in respect to medicines.
4. Ramesh is the father of Deepesh. Ramesh had travelled with his family to the United States of America at the material time. And Deepesh fell ill whilst his family was still with him in USA.
5. During the period of time when Deepesh was in hospital, his father spent US Dollars 1,474,23 for accommodation near the University where Deepesh was receiving treatment.
6. It was the plaintiffs' case that they provided the defendant with all the requisite documents, for claiming a reimbursement of the expenses, as well as for the medical expenses.
7. However, the defendant is said to have failed to pay to the plaintiffs the sum of US Dollars 5,462.23.
8. Although the plaintiffs said that they had provided the defendant with all the relevant documents, the defendant did not settle the plaintiffs claim.
9. The failure by the insurance company to pay, resulted in the Hospital instructing a Debt Collection Agency, which proceeded to attach the Student Account of Deepesh.
- 10..The attachment of the student account is said to have led to the inability of Deepesh to pay his school fees in time.
- 11..That situation caused the 2nd plaintiff to suffer severe trauma. He is even said to have missed his exams, due to the said trauma. Consequently, Deepesh was alleged to have had to re-do a whole Academic Semester, at the cost of US Dollars 32,000.
- 12..When the plaintiffs sought payment from the defendant, they were told that the defendant has

- misplaced or lost the claim documents which the plaintiffs had previously made available.
- 13..That development compelled Ramesh to send his wife to the United States of America, where she obtained copies of the medical receipts, medical reports and invoices.
 - 14..The cost of the said trip to the USA was US Dollars 2,127. Meanwhile, the duplicates of the medical report cost US Dollars 18; and the cost of faxing those documents to the defendant, cost US Dollars 20.
 - 15..In its Defence, the Insurance Company confirmed the existence of the policy of insurance.

16. However, the company asserted that there was no proof that Deepesh was taken ill as alleged. The plaintiffs were therefore put to strict proof of the alleged illness and also of the costs of the medical treatment which Deepesh was allegedly given.

17. In the alternative, the insurance company said that if Deepesh suffered the alleged eye infection and then incurred medical expenses in having his condition treated, the plaintiffs did not meet the requirements of the policy, which could then have triggered payment by the defendant.

18. According to the insurance company, the Hospital was not notified that Deepesh had a policy cover, nor was the insurance company informed about the eye infection.

19. The insurance company also said that the plaintiffs did not remit to them, the original invoices which would have enabled the company to process payment, if any.

20. It was the contention of the defendant that the claims were bogus, false and misconceived.

21. When the case came up for trial the plaintiffs called only one witness, **RAMESH CHANDRA DHINGRA**, the 2nd plaintiff. He testified that before travelling to **USA**, he took out a Travel Insurance Cover from the defendant.

22. Ramesh said that immediately after arrival in New Jersey, Deepesh was taken ill.

23. Ramesh testified that he contacted the defendant soon after Deepesh fell sick, and the defendant referred him to their Corresponding Office in Philadelphia. After Ramesh reported the issue to that Corresponding Office, that office opened File No. 519912.

24. Thereafter, Ramesh received a call from the defendant's re-insurers, **SPECIALITY CLAIMS SERVICES**, who are based in London.

25. The Re-Insurers instructed Ramesh to tell the hospital where Deepesh was being treated, to fax to them all the medical reports.

26. During cross-examination by Mr. Musili, the learned advocate for the defendant, Ramesh said that he was sure that the hospital relayed all the requisite documents to the defendant's re-insurers. Ramesh was sure about the fact that the defendant did receive the documents because Ms. A.N. Solitei, the defendant's Senior Assistant General Manager informed him so.

27. I do find and hold that the defendant did receive all the requisite documents because by a letter dated 22nd April 2006, the said Ms. A.N. Solitei confirmed that fact. Indeed, the defendant indicated that they were forwarding the documents to their re-insurers;

“to enable them process the claim further”

28. Having notified the insurance company about the claim, Ramesh did not make payment to the hospital, save for the sum of US Dollars 345.

29. That prompted the hospital to engage a Certified Credit & Collection Bureau to take steps to recover the debt. The bureau wrote to Deepesh, demanding payment of the Bill. The demand letter

told Deepesh to either pay the bill or to seek eligibility for charity.

30. As the plaintiffs had provided the insurance company with all the requisite documents, they believed that the company would pay the hospital bills. Therefore, when Deepesh was required to either make payment or to seek eligibility for charity, there is no doubt that that development caused him and his father, severe trauma.

31. Ramesh had no alternative but to pay the hospital bills.

32. Thereafter, the insurance company asked the plaintiffs to provide other copies of the medical records and the receipts which supported the claims.

33. As Deepesh was a young man who was a student at the material time, he relied upon his father for payment of any financial needs.

34. Secondly, because he had just suffered the indignity of having his account frozen, due to the failure of the insurance company to settle the hospital bills, Deepesh was not in a condition in which he could leave the college to go and search for the documents which the insurance company wanted.

35. The fact that he had been unwell, meant that he had also lost crucial time which he ought to have used in his studies.

36. In those circumstances, it became necessary for Ramesh to make appropriate arrangements to get the necessary documents from the hospital.

37. The defendant suggested that there was no need for the mother of Deepesh to travel all the way to USA, to get the documents. However, as Ramesh explained, the documents in issue were no longer available readily. The documents had already been archived.

38. In the light of the fact that the documents had been archived, it became necessary to send somebody who could go through the long process which was needed in order to retrieve the same.

39. I find that the trip made by the mother of Deepesh was an essential one. Therefore, the plaintiff was entitled to recover the expenses of that trip. The said expenses include the cost of the air ticket and the cost of accommodation.

40. In the result, I now enter judgment in favour of the plaintiffs for Special Damages amounting to US Dollars 7589.23.

41. Meanwhile, on account of the trauma which the 1st plaintiff suffered, the plaintiffs did not make available any medical proof.

42. However, the court finds that, notwithstanding the absence of medical evidence, it can be presumed that the pressure and tension that was exerted upon Deepesh, when his account was frozen, and when he was then told that he had to either settle the bills or to seek eligibility for charity, was traumatic.

43. On the other hand, the court takes note of the fact that Deepesh was still able to perform very well academically, even in the face of the difficult circumstances he was facing. That must be deemed to imply that although he was traumatized, the effect upon him was not too drastic.

44. I therefore award to Deepesh the sum of Kshs. 500,000/- as General Damages for the trauma that he suffered due to failure of the insurance company to settle the hospital bills timeously.

45. The costs of the suit are awarded to the plaintiffs.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of December 2014.

FRED A. OCHIENG

JUDGE

Judgment read in open court in the presence of

Mr. K'opere for the Plaintiffs.

Mrs. Achieng for Musili for the Defendant.

Collins Odhiambo – Court clerk.