Lo Lee Len v Grand Interior Renovation Works Pte Ltd and Others
[2004] SGHC 22

Case Number : MC Suit 13596/2002/S, RAS 21/2003/T

Decision Date : 10 February 2004

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Quentin Loh SC (Rajah and Tann), Savliwala Din and Gerald Martin Wee (Bogaars and Din) for appellants; Madan Assomull, Rathna Nathan and Andrew Goh (Assomull and Partners) for respondent

Parties : Lo Lee Len — Grand Interior Renovation Works Pte Ltd; Yim Khee Meng; A N S Plumbing and Sanitary Pte Ltd; Chew Kiat Keong

Tort – Negligence – Damages – Rule against double recovery – Gratuitous collateral benefits – Res inter alios acta principle – Whether gratuitous collateral benefits deductible

Tort – Negligence – Damages – Rule against double recovery – Whether award of damages offended rule

10 February 2004

Belinda Ang Saw Ean J:

1 The respondent's motor vehicle was damaged in a road accident as a result of the appellants' negligence. Judgment in default was entered against the four appellants. The deputy registrar assessed damages at $450 as being the policy excess and a further sum of $600 for loss of use of the respondent's car for the time the car was in the workshop for repairs. On appeal, the district judge on 5 June 2003 affirmed the decision of the deputy registrar.

2 On the back of the district judge's ruling that the two items of claim are personal claims as distinct from claims brought by NTUC Insurance Co-operative Limited ("NTUC Income") in exercise of subrogation rights, the appellants appealed against the award of damages on the ground that the respondent had suffered no recoverable loss. The appellants stress that damages are compensatory and a plaintiff who has suffered no loss cannot recover damages. It is argued that the respondent had received from his insurers collateral benefits which meet the same loss as the award of damages. Those collateral benefits are outside the two established exceptions to the rule against double recovery and they have to be taken into account to diminish any damages recoverable. A failure to account would offend the principle against double recovery.

3 The respondent and NTUC Income entered into a quality cover in respect of the respondent's motor vehicle, registration number SCE 5392Z. The contract was formed by the insurer's acceptance of a proposal form duly completed by the respondent on 12 August 2000. The contract is contained in the policy, the schedule thereto and endorsement M4. The policy was renewed and still on foot on 7 December 2001. On that date, the respondent's motor vehicle was involved in a road accident with two other vehicles. Zurich Insurance (S) Pte Ltd ("Zurich") is the insurer of vehicles GT 4787Z and YK 6829H owned by the first and third appellants respectively. The drivers of the two vehicles were the second and fourth appellants. Although the parties to the proceedings are the owners and drivers of the vehicles involved in the road accident, counsel on both sides informed the court that insurers are behind the respective parties named in the action.

4 The unchallenged evidence of the respondent is that he did not make a claim under his

policy. After the accident, the respondent had signed a form to make a claim against the third party and had left it to his insurers to handle the matter. I find the respondent's unchallenged evidence plausible. His car was damaged from behind and understandably he regarded himself as not being at fault and would not wish to compromise his No Claim Discount ("NCD"). A claim on the third party would leave his NCD intact. Section 3 of NTUC Income's Key Information for Motor Policyholders of 1 October 2001 reads as follows:

> 3. ADVICE ON THIRD PARTY CLAIMS
>
> If you are involved in an accident where the third party is at fault, there is no need for you to make your own claim against the third party for your loss.
>
> Send your car to any of our *Quality Workshops*, we will provide you with the use of a courtesy car from the 2nd working day or $50 daily transport allowance.
>
> Your No Claim Discount (NCD) will be protected if you are not at fault.

5 Section 2 of NTUC Income's Key Information relates to the policyholder's own damage claim. If a claim is made by the respondent on his own policy, the NCD would be reduced or withdrawn.

6 The respondent arranged for his damaged car to be repaired by a "Quality Workshop". In return, he was given, in lieu of a courtesy car, a taxi allowance of $50 daily on the terms of NTUC Income Agreement no A12451. The terms there were largely about the use of the courtesy car and the insured's responsibility for it. However, section B is relevant to the taxi allowance. Section B reads:

> Policyholder further agrees and undertakes … [to] account and pay to NTUC Income any sum or sums of money which Policyholder may receive … pursuant to any award or judgment in respect of any costs, expenses or fees including interest incurred or suffered by Policyholder for any loss of use including any administrative charges arising from the said tort.

7 The upshot of my analysis of the evidence is that I am not required to consider at any length the earlier arguments as to whether the policy was by its terms a non-excess policy. The payment of $600 came about pursuant to s 3 of the Key Information and NTUC Income Agreement no A12451. It was not made pursuant to a term contained in endorsement M4. I was mindful that the arguments canvassed below by both parties and before me on 6 November 2003 were premised upon a claim having been made under the NTUC Income policy. I therefore gave leave to the parties to tender their further written submissions, which they did, on 3 February 2004.

8 The position taken by counsel for the appellants, Mr Quentin Loh SC, in the further written submissions is that s 3 of the Key Information and the respondent's evidence that he was making a third party claim would not adversely affect the arguments counsel made on 6 November 2003. He maintains that the claims for excess and loss of use were personal claims. The payments of excess and loss of use by NTUC Income were voluntary, as they were not paid under the policy. The payment of $600 transport allowance was made under the NTUC Income Agreement no A12451. The payments also fell outside the two established exceptions to the rule against double recovery. Moreover, as they were not insurance payments, no right of subrogation accrued.

9 Counsel for the respondent, Mr Madan Assomull, maintains that the claims were made under the policy. Even if they were not, they are recoverable since the payments were *res inter alios acta*.

There was no danger of double recovery and, in any event, the payments come within the exceptions to the rule against double recovery.

10 Having considered the further written submissions, I remain of the view that the respondent's evidence is on the balance of probabilities the correct version. His affidavit evidence that he sent his damaged vehicle to NTUC Income's quality workshop pursuant to endorsement M4 cannot be right in the light of other countervailing evidence. The fact that the words "own damage" were indicated on the survey report is not conclusive one way or the other. Neither would the use of the word "excess" in the proceedings nor any misunderstanding on the part of NTUC Income in construing the respondent's instructions make a difference to his original instructions. The evidence is that the respondent had submitted a form to make a claim against the third party and his instruction had not changed. His intention all along was to claim against the third party. How NTUC Income handled the damage claim would be of no concern to him so long as the outcome was consistent with the respondent not being the driver at fault and his NCD was not affected.

11 What is in issue is the receipt by the respondent of benefits and money that apparently have the effect of compensating the pecuniary loss the respondent has sustained. The question that has to be decided in this case is this: Could the respondent recover from the appellants part of the repair cost in the sum of $450 even though he himself had not paid out that sum? Secondly, could the respondent recover the taxi allowance in the sum of $600 paid to him under NTUC Income Agreement no A12451?

12 The object of an award of damages is to place the injured party as nearly as possible in the same financial position as he would have been in but for the accident. The basic rule is that the respondent cannot recover more by way of damages than the amount of his actual loss. If a collateral benefit compensates for the same loss, it must be taken into account in determining the actual level of compensation required through an award of damages. The consideration here is about the deduction of compensating advantages or benefits which a plaintiff enjoyed as a result of the breach. It is not about mitigation which is to relieve the defendant from liability for those consequences which the plaintiff avoided or might reasonably have avoided. Beazley JA in *Anthanasopoulos v Moseley* (2001) 52 NSWLR 262 said at 269, [40]: "Mitigation, of its very nature, is not a matter which goes either to the question of entitlement to damages, which is the matter in issue here, or to extinguishment of loss." There are two well-established exceptions to this general rule of deduction. Insurance payments and charitable gifts are deemed non-deductible. I shall consider in this appeal whether on the facts of this case, the respondent would be overcompensated by an award of damages and whether the categories of exceptions to the principle against double recovery are closed.

13 It is common ground that NTUC Income paid the entire cost of the repairs in the sum of $1,792.20 and a sum of $600 to the respondent for the loss of use of his vehicle. From 8 to 19 December 2001, the respondent's vehicle was in the workshop and NTUC Income paid him a daily taxi allowance of $50. The respondent had demonstrated that he had incurred taxi fare for the days his vehicle was in the workshop. Each of the witnesses from Zurich and NTUC Income testified that $50 a day was a reasonable figure for taxi allowance. The respondent had testified to spending that amount on transport. In any event, the appellants here are not seriously disputing the finding of the district judge on quantum. The appeal is on whether having been paid $600, the respondent has suffered any loss.

14 It is of no relevance and consequence that NTUC Income, on behalf of the respondent, sued for $450 and not the entire repair cost. The explanation offered by Mr Loh is that under the knock-

for-knock agreement, each insurer bears its insured's repair cost except for the excess. In the present case, the knock-for-knock agreement between NTUC Income and Zurich was not pleaded as the parties considered it irrelevant to the determination of this case. Suffice it to say, the respondent's entitlement to pursue his legal remedies is unaffected by whatever the arrangement might have been between the respective insurers. See *Hobbs v Marlowe* [1977] 2 All ER 241which affirmed *Morley v Moore* [1936] 2 KB 359. The underlying basis of the claim would be the same even though the quantum of claim was limited to a lesser sum of $1,050. It is the respondent's own cause of action, not that of the insurer that he had sued on.

15 In this case, the respondent had authorised his insurer to take proceedings to recover damages from the appellants. The respondent has also acknowledged that he is obliged to reimburse NTUC Income to the extent of his successful recovery of the moneys from the appellants. The fact that the respondent did not pay for the repairs upfront is not determinative. There is no suggestion that the outlay by NTUC Income was unlawful. For the repair expenses advanced by NTUC Income, the respondent agreed that he is at least liable to repay NTUC Income $450 of the repair bill. There is also section B of the NTUC Income Agreement no A12451 which I have earlier set out in full. The fact remains that the respondent has to account to NTUC Income for the damages he receives under the judgment. In such a situation, an award of damages for loss of use and the excess would not represent a windfall or unjust benefit since the respondent is under a legal obligation to pay it over to NTUC Income. As there is no danger of overcompensating the respondent, the principle of double recovery is thus not offended. On the evidence, there is no question of the respondent recovering his loss twice over.

16 The rationale for that conclusion is succinctly explained by Diplock LJ in *Browning v The War Office* [1963] 1 QB 750 at 770:

> Cases where the plaintiff has been advanced moneys to meet expenses occasioned by the accident by a third party upon his undertaking to repay the sums advanced, either absolutely or conditionally upon his recovering them from the defendant, raise no problem. The loss he has sustained remains the same irrespective of whether he has actually paid the expenses from his own pocket or converted them into a liability to a third party.

17 In *Harlow & Jones, Ltd v Panex (International), Ltd* [1967] 2 Lloyd's Rep 509, Roskill J had to consider whether the seller could claim storage charges where there was an agreement between the sellers and suppliers that the suppliers would only claim against the sellers if the latter could reclaim against the buyers. Roskill J saw nothing legally wrong with such a commercial arrangement nor did he see that it gave rise to a defence to the buyer that it would not otherwise possess.

18 The *dicta* of Diplock LJ and Roskill J were adopted by Steyn J in *Cosemar SA v Marimarna Shipping Co Ltd* [1990] 2 Lloyd's Rep 323. In that case, shipowners agreed to repay voyage expenses paid by the cargo owners to the extent that they were recovered by the shipowners from the charterers in London arbitration. The shipowners there said that the agreement with cargo owners was *res inter alios acta* and charterers could not use that as an excuse not to pay the voyage expenses. Steyn J agreed with the shipowners. He held at 328 that:

> The third party's funding … of the [voyage] expenses is irrelevant in law ... to the recoverability by the owners of sums which the time charterers ought to have paid.

19 Mr Loh urged me not to follow these authorities which predated *Dimond v Lovell* [2002] 1 AC 384 and the narrower approach adopted by the House of Lords to the *res inter alios acta* principle. I am unable to agree with counsel that the authorities are no longer good law. In those cases, there

was no suggestion that the advance or arrangement was unlawful so much so that the third party would remain out of pocket with the attendant result that the claimant would recover twice for the same loss. Reimbursement was expected if certain agreed events occurred. *Dimond v Lovell* is distinguishable on the facts. When it transpired that the hire contract was unenforceable and that the plaintiff had no obligation to pay the cost of hire, this head of damages was refused. The loss complained of had been avoided. It was avoided because of the illegality of the hire agreement under which the alleged losses (hire charges) were incurred; not the application of the *res inter alios acta* rule. The narrow approach of the House to the *res inter alios acta* principle was the product of the illegality issue the Law Lords were confronted with. I shall say more about that later on.

20 In *Giles v Thompson* [1994] 1 AC 142, the plaintiff's car had been damaged and she obtained a replacement hire car. Under the hire agreement, the plaintiff was not required to pay the hire charges until such time as damages had been recovered from the party at fault. It was a term of the hiring agreement that the plaintiff would permit the hiring company's solicitors to conduct the litigation against the party at fault. The issue there was whether the hiring agreement was champertous and therefore unlawful. The hiring agreement was found not to be champertous. Lord Mustill, with whom the other Law Lords agreed, dealt with the question whether, given the terms of the hiring agreement, the plaintiff had suffered any loss for which she could recover. Lord Mustill held that there was a real loss to the motorist. There was a real liability for which the plaintiff was responsible under the hiring agreement, although suspended pending recovery from the party at fault.

21 The appellants say the payments for excess and loss of use were gratuitous. Moreover, they are collateral benefits that are outside the two recognised exceptions and therefore should be taken into account to deduct damages recoverable. The appellants relied on *Dimond v Lovell* for the proposition that the law only recognised two exceptions to the principle as to deductibility.

22 Having reached the conclusion that the respondent would not be overcompensated by the award of damages, the issue of gratuitous benefits does not arise for determination in the present case. However, in the event a different view is taken on the conclusion that I have reached, I shall say something about the appellants' submission on gratuitous payments in the light of the various authorities brought to my attention by Mr Loh. In the final analysis, even with this factual difference, the outcome is the same.

23 There are two cases where the benefits were provided gratuitously by a third party. In *Anthanasopoulos v Moseley*, the use of the substitute car was for free. In *Burdis v Livsey* [2003] QB 36, repairs were carried out free of charge. I would state that there is no relevant distinction between a financial benefit and a benefit in the form of a replacement vehicle.

24 The question of a free substitute car that was mentioned in passing by Lord Mustill in *Giles v Thompson* was the very matter in issue in *Anthanasopoulos v Moseley*. Lord Mustill, after coming to the conclusion reached by him, said at 166:

> I find it unnecessary to discuss the question, by no means easy, what the position would have been if the use of the substitute car really had been free; as for example, if it had been lent by a kindly friend. To so do would require a reconciliation of cases such as *Harlow & Jones Ltd v Panex (International) Ltd* …, *Donnelly v Joyce* …, *McAll v Brooks* … and *Cosemar SA v Marimarna Shipping Co Ltd* …

25 In *Anthanasopoulos v Moseley*, the New South Wales Court of Appeal held that injury to property, which deprives a party of the use of non-income earning chattel, is compensable following

the line of authority starting with *The Greta Holme* [1897] AC 596. It was irrelevant that a third party (in that case, Hertz Australia Pty Ltd) gratuitously provided a replacement car for the damaged vehicle, the principle *res inter alios acta* duly applying in those circumstances. That case was fought on the basis of free rental of a car where the insured was not at fault. Excluded from the insured's cover was the cost of hiring a vehicle whilst the insured's damaged vehicle was being repaired. Notwithstanding this exclusion, the insurer NRMA had in place a "Courtesy Car Programme". Under this scheme, an insured was entitled to a courtesy car either at no cost to the insured for up to 14 days if the insured was not at fault, or at a preferential rate if the insured was at fault. When the insured was not at fault, NRMA bore the cost of the hire for the 14-day "courtesy period". In either case, the scheme required the insured to have the damaged vehicle repaired by a "NRMA approved" repairer. The "courtesy car" was hired from Hertz. The insured entered into the Hertz rental agreement directly with Hertz but the NRMA was billed for the hire for the first 14-day period. Each respondent in that case was not the driver at fault and was therefore entitled to participate in the programme at no cost for the 14-day courtesy period. Each of the respondents had demonstrated a need for the replacement vehicle during the repair period.

26 In arriving at her decision, Beazley JA, with whom the other two judges agreed, sought to reconcile the cases mentioned by Lord Mustill. Her Honour pointed out that the factual difference in *Cosemar* was that third party funding was conditional upon the shipowners paying the voyage expenses if they recovered from the charterers whereas the cases before her involved gratuitous payments. In her view, the factual difference did not affect the application of the *res inter alios acta* principle, which goes towards the question of entitlement to damages or to the extinguishment of loss. I agree that if the principle applies, it does not matter whether the replacement vehicle is free or not. The finding in *Cosemar* and *Harlow & Jones v Panex* was that the arrangement under discussion was *res inter alios acta*.

27 As the common law recognises that damages are recoverable for damage to non-profit earning property, the fact that the substitute car is provided gratuitously does not affect the entitlement to the damages in question. In *The Mediana* [1900] AC 113, a lightship owned by Mersey Docks and Harbour Board was damaged by the steamship *Mediana*. During the period of repair, the Board used a stand-by lightship owned by it and maintained for the purpose of being a replacement ship in the case of any such emergency. The Board was not put to extra expense. The Lord Chancellor explained the operation of the principle at 117:

> [B]y a wrongful act of the defendants the plaintiffs were deprived of their vessel. When I say deprived of their vessel, I will not use the phrase "the use of the vessel." What right has a wrongdoer to consider what use you are going to make of your vessel? More than one case has been put to illustrate this: for example, the owner of a horse, or of a chair. Supposing a person took away a chair out of my room and kept it for twelve months, could anybody say you had a right to diminish the damages by [showing] that I did not usually sit in that chair, or that there were plenty of other chairs in the room? ... [A]s I say, the broad principle seems to me to be quite independent of the particular use the plaintiffs were going to make of the thing that was taken …

28 In *The Susquehanna* [1926] AC 655, Viscount Dunedin held that the owners were entitled to general damages for the loss of use of the vessel, notwithstanding they had suffered no pecuniary loss. The claim was for general, not special, damages. Lord Hobhouse in *Dimond v Lovell* ([19] *supra*) at 406 accepted that where the chattel is non-income earning (as was Mrs Dimond's car) "there may still be scope for awarding general damages for loss of use".

29 On the relevance of the fact that the replacement car by NRMA was gratuitous, Ipp A-JA agreed with Beazley JA that the provision of the replacement car was collateral and *res inter alios acta*. He reasoned that the advantages gained by the plaintiff were the result of benevolence and benefits of benevolence are not to be taken into account to reduce damages.

30 In *Dimond v Lovell*, the car hire company, 1st Automotive Ltd, argued that the fact the lessee had been fortunate enough to obtain a hire car for nothing was *res inter alios acta*, and hence not to be taken into account when determining the measure of damages. It had been said in *Parry v Cleaver* [1970] AC 1 that damages should not be reduced to take into account benefits received by a claimant "from the benevolence of his friends or relations or of the public at large"; and that benefits from insurance taken out and paid for by the claimant should also be disregarded (*per* Lord Reid at 14). Similarly, in *Donnelly v Joyce* [1974] QB 454 and *McAll v Brooks* [1984] RTR 99, a near universal theory was propounded to the effect that benefits provided by a third party were to be ignored when assessing the right measures of damages.

31 The House of Lords in *Hunt v Severs* [1994] 2 AC 350 had rejected the broad applicability of the *res inter alios acta* rule, and had treated the instances described by Lord Reid as exceptions to the rule against double recovery (at 358 *per* Lord Bridge of Harwich). In that case, the House had accepted that the gratuitous provision of services could be recovered by the claimant acting as trustee, but Lord Hoffmann in *Dimond v Lovell* said that any such device in the present case would be to undermine the provisions of the UK Consumer Credit Act 1974 which had rendered the agreement unenforceable.

32 As stated, the appellants relied on *Dimond v Lovell* for the proposition that the law only recognises two exceptions to the principle as to deductibility. I am not satisfied that *Dimond v Lovell* is persuasive authority that there are only two exceptions to the principle against double recovery. The facts of *Dimond v Lovell* are special. The policy of the Consumer Credit Act was to penalise 1st Automotive Ltd for not entering into a properly executed agreement, and there was no sound policy reason why the court should, in such a case, provide for another exception to the rule against double recovery. The House, having held that the agreement was unenforceable, was not prepared to allow Mrs Dimond a right to recover damages for the notional cost of hiring a car which she had actually used for free. That was also the reason why the House said it was not willing to create another exception to the rule against double recovery. The legal position in Singapore is different. The Court of Appeal in *The Mara* [2000] 4 SLR 156 said that the categories of exceptions to the rule against double recovery are not closed.

33 The Court of Appeal in *The Mara* followed Lord Reid in *Parry v Cleaver* and held that there was no universal principle as to deductibility of collateral benefits at common law. Whilst various benefits accruing to an injured victim have been taken into account, others have not, and it would seem that the common law has treated this matter as one depending on justice, reasonableness and public policy. This nebulous test has been admitted by the House of Lords in *Hussain v New Taplow Paper Mills Ltd* [1988] AC 514 and followed in *The Mara*. The Court of Appeal in *The Mara* held that it is possible to look at the arrangement between the plaintiff and the third party to see if by its true nature, it is one which is *res inter alios acta;* and if not, whether it is one which goes towards the mitigation of damages.

34 I would not consider the payments of the repair bill and taxi allowance, even if they were made gratuitously, something akin to the respondent receiving collateral compensation that meets the same loss as his award of damages, and which therefore results in double compensation. By its terms, the taxi allowance was not provided to relieve the liability of the appellants to compensate the

respondent. The intention may have been to encourage the respondent to use an approved workshop for the repairs. The courtesy car or taxi allowance are nothing more than incentives. I would adopt the reasoning of Ipp A-JA which I had mentioned earlier.

35 I now consider the situation where repairs are carried out for free. The existence of damage is an essential part of the cause of action in any claim for damages. The respondent's car was undeniably damaged and as a matter of principle, the appellants have to satisfy the respondent for this loss. In *Burdis v Livsey* ([23] *supra*), the loss suffered was damage to property. The fact that repairs were carried out free of charge did not avoid this underlying loss. Applying the reasoning of the English Court of Appeal in *Burdis v Livsey,* the respondent in my view should be able to recover the $450 paid in advance by NTUC Income.

36 In *Burdis v Livsey*, the English Court of Appeal upheld the plaintiff's claim for damages for repairs despite the fact that she did not pay for the repairs and was under no legal obligation to do so as the credit repair agreement was unenforceable. The plaintiff's car was damaged in a road accident caused by the defendant's negligence. Rather than pay for repairs and wait for recompense from the defendant's insurers, the plaintiff entered into a credit repair agreement with Accident Assistance Limited ("AAL"). Under this agreement, AAL paid for the repairs upfront and took responsibility for securing ultimate payment (plus interest) from the defendant's insurer. In the event that the defendant or his insurer failed to pay AAL's bill, the plaintiff would ultimately be liable, although in practice AAL would not enforce such payment. The repairs were effected and AAL presented the defendant's insurers with a bill for £2,981.19. The insurers refused to pay. The credit repair agreement was contrary to the UK Consumer Credit Act 1974 and the county court judge declared the agreement unenforceable so much so that the plaintiff need not pay AAL for the repairs. The defendant was nonetheless ordered to pay the plaintiff's damages.

37 On appeal, Gray J overturned the award of damages. The plaintiff's car had been repaired at no cost to herself. Therefore, her loss was avoided and no damages were payable. To award the plaintiff damages in respect of a loss that had been avoided would offend the principle against double recovery. The English Court of Appeal nonetheless restored the order of damages against the defendant and distinguished *Dimond v Lovell* as a case on consequential loss. The appellate court drew a distinction between direct loss on the one hand and potential future loss on the other. When the plaintiff's car was damaged, it immediately diminished in value. She suffered a direct loss. She was entitled to compensation in respect of this direct loss. The loss was the damage to the car. There is no magic to the repairs. The measure of loss is the estimated cost of restoring the car to its pre-accident condition and would remain so even if the repairs were never carried out. The plaintiff's entitlement to compensation was not altered when the car was subsequently repaired at no cost to her. The credit repair agreement was a collateral contract or *res inter alios acta.* It was said to be too remote from the original tort to affect the defendant's liability.

38 The appellate court held that *Jones v Stroud District Council* [1986] 1 WLR 1141 is still good law as it concerned direct losses. In that case, Neill LJ said at 1150–1151:

> It is true that as a general principle a plaintiff who seeks to recover damages must prove that he has suffered a loss, but if property belonging to him has been damaged to an extent which is proved and the court is satisfied that the property has been or will be repaired I do not consider that the court is further concerned with the question whether the owner has had to pay for the repairs out of his own pocket or whether the funds have come from some other source.

Jones v Stroud was followed in *The Shravan* [1999] 4 SLR 197.

39 For all these reasons, the appeal is dismissed with costs.