1966

*May 19
June 7

GILLES E. BÉDARD (*Plaintiff*) ..... APPELLANT;

AND

THE SASKATCHEWAN GOVERNMENT INSURANCE OFFICE (*Defendant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Insurance—Insured trucks damaged—Claims for consequential loss based on alleged breaches of statutory provisions—The Automobile Accident Insurance Act, 1963 (Sask.), c. 38, ss. 35(1), 36(8) and (13).

The appellant was the owner of two trucks with which he engaged in the transportation business in the Province of Saskatchewan and both of which were insured in accordance with the provisions of s. 35(1) of *The Automobile Accident Insurance Act,* 1963 (Sask.), c. 38. One of the trucks was damaged in an accident, and, in a later accident, the other was seriously damaged if not totally destroyed by fire. The appellant made no claim in this action in respect of the direct damage sustained by either of his vehicles but contended that the failure of the Government Insurance Office to comply with the terms of ss. 36(8)(2) and 36(13) of the Act resulted in delays which had the effect of putting him out of business altogether and in this regard he claimed in respect of each truck special damages in the amount of $50,000 and general damages of $100,000. The appellant's claims were dismissed by the trial judge and an appeal from his judgments was dismissed by the Court of Appeal.

Held: The appeal should be dismissed.

The appellant's contention that the failure by the insurer to give the notice for which provision is made in s. 36(8)(2) constituted a breach of the statute failed. The section only requires notice to be given in a case where the insurer intends to "repair, rebuild or replace the property damaged". In the present cases the insurer had no such intention and the provision for notice was accordingly inapplicable.

The provisions of s. 36(13), which provide that the insurer "shall pay any insurance money for which it is liable within sixty days after the proof of loss has been received by it, or, where an appraisal is had under statutory condition 9, within fifteen days after the award is rendered", could have no relevance to the claim for the fire loss as no award had yet been rendered in respect of that loss.

The Insurance Office had disputed certain items in the proof of loss filed in respect of the accident claim and no money was paid within sixty days after it had been received. However, the only insurance for which provision was made in the "owner's certificate" referred to in s. 35(1) was insurance "against direct and accidental loss of or damage to the vehicle designated therein . . .". The insurer under such a certificate was not responsible for consequential loss or damage such as that claimed by the appellant. Also, under s. 36(8)(1), it was provided that the insurer's liability "...shall in no event exceed what it would cost to repair or replace the vehicle. . .".

* PRESENT: Fauteux, Martland, Judson, Ritchie and Hall JJ.

APPEAL from a judgment of the Court of Appeal for Saskatchewan, dismissing an appeal from two judgments of Davis J. Appeal dismissed.

Gilles E. Bédard, in person, for the plaintiff, appellant.

W. Bellesberger, for the defendant, respondent.

THE COURT:—This is an appeal from a judgment of the Court of Appeal for Saskatchewan dismissing an appeal from two judgments of Mr. Justice C. S. Davis whereby he dismissed two claims of the appellant for damages arising out of alleged breaches by the Saskatchewan Government Insurance Office of the provisions of s. 36 subss. 8 and 13 of *The Automobile Accident Insurance Act,* 1963 (Sask.), c. 38 (hereinafter referred to as "the Act").

At all times material hereto the appellant was the owner of two power unit trucks of identical make and model with which he engaged in the transportation business in the Province of Saskatchewan and both of which were insured in accordance with the provisions of s. 35(1) of the said Act. On March 14, 1964, one of these trucks was damaged in an accident and on April 4 in the same year the other was seriously damaged if not totally destroyed by fire.

The appellant filed proofs of loss with the Saskatchewan Government Insurance Office in due form and time and the respondent stands ready and willing to pay for the damage to each vehicle (less the statutory deductible sum of $150) when the amount payable is finally determined. In respect of the accident claim, the Insurance Office disputes certain items contained in the proof of loss as not constituting "direct and accidental loss" within the meaning of s. 35(1) of the Act, and the appraisal in respect of the fire loss for which provision is made under s. 36(9) has not been completed.

The appellant, however, makes no claim in this action in respect of the direct damage sustained by either of his vehicles but contends that the failure of the Insurance office to comply with the terms of ss. 36(8)(2) and 36(13) of the Act has resulted in delays which have had the effect of putting him out of business altogether and in this regard he claims in respect of each truck special damages in the amount of $50,000 and general damages of $100,000.

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The provisions of s. 36(8)(2) read as follows:

> Except where an appraisal has been had, the insurer, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention so to do within seven days after receipt of the proofs of loss; but there can be no abandonment of the vehicle to the insurer without its consent. In the event of the insurer exercising such option, the salvage, if any, shall revert to it.

The appellant, who appeared in person before this Court, strongly argued that failure by the insurer to give the notice for which provision is made in this section constituted a breach of the statute. This contention is based on a misconstruction of the meaning of the language used in the section which only requires notice to be given in a case where the insurer intends to "repair, rebuild or replace the property damaged". In the present cases the insurer had no such intention and the provision for notice is accordingly inapplicable. It follows that in so far as the appellant's claims are based on a breach of this section they must fail.

Section 36(13) upon the breach of which the appellant's claims are also based, reads as follows:

> The insurer shall pay any insurance money for which it is liable within sixty days after the proof of loss has been received by it, or, where an appraisal is had under statutory condition 9, within fifteen days after the award is rendered.

As no award had yet been rendered in respect of the fire loss, the provisions of this section can have no relevance to that claim.

As has been indicated, the Insurance Office disputed certain items in the proof of loss filed in respect of the accident claim and no money was paid within sixty days after it had been received, but the liability of the Insurance Office is limited and controlled by the provisions of the Act and the only insurance for which provision is made in the "owner's certificate" referred to in s. 35(1) is insurance "against direct and accidental loss of or damage to the vehicle designated therein...". It is thus apparent that the insurer under such a certificate is not responsible for consequential loss or damage such as that claimed by the appellant in the present case. It is to be observed also that under the provisions of s. 36(8)(1) of the Act, it is provided

that the insurer's liability "... shall in no event exceed what it would cost to repair or replace the vehicle...".

This appeal is accordingly dismissed.

Appeal dismissed.

Solicitor for the defendant, respondent: J. Green, Regina.