Claim Number 2/19 PM

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 2nd March, 2020

Claim Number: 2/19PM

Richard Griffiths

vs.

Atlas Insurance PCC Limited

The Tribunal,

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure on 26th February, 2019 by which claimant is requesting payment of the sum of one thousand one hundred euros by way of excess damage charge retained by Goldcar rental firm as well as a further compensation of seven hundred and fifty euros "*for stress, inconvenience and loss of enjoyment of our holiday – both to my wife and myself – caused by the insured client of Atlas*", together with reimbursement of court fees and this after having premised that the claim relates to a motor accident which occurred on

Saturday March 24th 2018 in Marsalforn when a motorcyclist, Reuben Demanuele, insured by Atlas Insurance, lost control of his vehicle and collided with two parked cars causing extensive damage, including the one bearing registration number VQZ225 which was rented out by claimant from Goldcar Limited. The motorcyclist admitted his full liability but defendant insurance company has accepted to pay only for all damages incurred by the other vehicle and not the one bearing registration number VQZ225. Claimant states that "*Godcar, the rental company, have not made any claim on Atlas insurance for damage to the rental car VQZ225 and say that "claims work different with a car hire company*". Moreover, Goldcar, the rental company, has retained the sum of one thousand one hundred euros damage excess paid by claimant. The claimant argues that "*Atlas did not deny the liability of their client but repeatedly maintained that I should reclaim the 1,100 euros from Goldcar*". However, according to him, the Goldcar rental agreement entitles them to retain the excess charge of 1,100 euros.

The Tribunal also notes that defendant company was duly served with the acts of the case on 10th September, 2019 and no reply was filed.

The Tribunal:

Having seen the documents filed with the Notice of Claim, namely the statement subscribed to by claimant including the attachments thereto consisting of confirmation of payment of the excess damage in the sum of GBP965.55 (equivalent to Eur 1,100) and the car rental agreement signed and dated 21st March, 2018.

Having also considered that the lack of reply by defendant company does not in itself mean that claimant's claim is automatically proven;

Having therefore considered all evidence brought forward by claimant;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

In this action, claimant is suing defendant company for compensation for damages suffered by himself consisting of damage excess paid by him to the car rental company in connection with the damages caused to the vehicle rented out by claimant and bearing registration number VQZ225 in terms of the rental agreement dated 21st March 2018. It transpires from the same agreement that, upon its subscription by the claimant, he unconditionally agreed and authorized "*Goldcar to charge the full excess amount stated above in case I am involved in an accident with a third party vehicle or property, regardless of who is at fault and type of damage*". He contends that even though in this case he was not to be held liable for the accident and in fact the third party admitted liability, Goldcar failed to effect a claim with third party insurance and but charged nonetheless the excess in the amount of one thousand one hundred euros (€1,100) and continues to retain such excess from him even in the absence of a lodged claim.

The claimant's version that third party admitted his liability for the accident and that, on this basis, defendant company proceeded to settle damages suffered by another vehicle (but not the one in his possession) remained uncontested during these proceedings. Also uncontested is his version that although he effected payment of the excess as duty bound in terms of the rental agreement subscribed by him, no claim was lodged by the said rental company and no payment effected by defendant company, as the insurance company covering the motorcycle which caused the damage, either to him or to his rental company in connection with this accident. Hence the Tribunal has no reason to doubt the veracity of these declarations, more so considering the detailed manner in which claimant compiled his statement.

The legal issue which thus remains to be determined is whether claimant is legally entitled to be compensated for the excess paid to the rental company from defendant's insurance. In this regard art. 4 of **Motor Vehicles Insurance (Third-Party Risks) Ordinance** (Chapter 104 of the Laws of Malta) expressly provides that an insurance policy should provide coverage at least in connection with third party risks. The said article also provides that such insurance policy shall not be required to cover, amongst

other things, contractual liability. If this were not sufficiently clear, art. 9a of the same Ordinance allows for a direct right of action against the third-party insurance company "*in respect of any loss or injury resulting from an accident caused by the use of a motor vehicle which is insured by an authorized insurer*". It is amply clear that the damage excess paid by the claimant cannot and does not constitute damage suffered by him occasioned by the traffic accident but a contractual liability incurred by him in favour of the car rental company through the car rental agreement subscribed by him before the accident took place. It should be noted that the stated amount does not reflect in any way or does not seem to bear any direct relation to the entity of the damages suffered by the vehicle, so much so, that the amount stated in the car rental agreement and being claimed by these proceedings was determined before the date of the accident (precisely upon the signing of the rental agreement). No evidence was submitted as to the whether such damages suffered by the vehicle were more or less than the excess paid by the claimant or that the insurance policy issued by defendant company covers such contractual payments. On the other hand, it transpires clearly that the payment was effected by claimant in view of his contracted obligation incurred towards the car rental company before the accident took place and therefore cannot even serve for the purposes of subrogating the claimant in the rights of the rental company. It is the latter *qua* the injured party which retains, therefore, the right to sue for damages incurred by it in view of the accident and not claimant. The obligation to pay such pre-determined sum was occasioned by and contingent to the very fact of the accident but this does not suffice to render such sum paid a third-party risk or a tortuous liability covered by defendant company through the applicable insurance policy.

The Tribunal will not indulge further into the contractual relationship between the claimant and his car rental company given that the claimant opted not to raise any claim for refund against such company. Suffice it to say that, although the agreement for the payment of such excess was unconditionally agreed to by both parties, this should not be interpreted as automatically entitling the car rental company to retain such sum

(declaredly indicated as excess) whilst at the same time failing to lodge a claim and without any right of reimbursement in favour of the claimant should they be able to recover their damages.

With regards to the sum claimed for alleged stress and inconvenience, the Tribunal moreover notes that no evidence was adduced of any particular stress or inconvenience which the claimant had to suffer as a consequence of such accident, more so given that he had voluntarily subscribed to the rental agreement. The reporting of such an accident to the Executive Police and to the owner of the vehicle is the bare minimum that should be expected from any ordinary citizen fulfilling his civil duties.

Thus, for the aforementioned reasons, the Tribunal rejects claimant's claim with all costs to be borne by the same claimant.

Dr. Philip M. Magri
Adjudicator