

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: A5052/2010

In the matter between:

THE HOLLARD INSURANCE COMPANY LIMITED

Appellant

and

UNITRANS FUEL AND CHEMICAL (PTY) LIMITED

First Respondent

KLIPSTONE TRANSPORT (PTY) LIMITED

Second Respondent

Summary

Several issues are dealt with in this appeal. A third party may proceed against the insurer of an insolvent entity who has incurred liability. The sole benefit enacted by s156 of the Insolvency Act No. 24 of 1936 is to give a third party a direct right of action against the insurer. That is where the benefit ceases. The third party must still comply with any procedural requirements as set out in the policy of insurance. A further issue raised was res judicata in the form of issue estoppel being a more expansive form of the exceptio res judicata. The parties agreed on the question of vicarious liability of their respective drivers. Vicarious liability was thus not a triable issue. A party cannot raise issue estoppel on the question of vicarious liability which was not a justiciable issue in a subsequent trial on indemnification. A further issue raised was the contradiction between a denial in the plea and a subsequent admission on the same aspect in a reply to further particulars for trial. The parties are to determine the contradiction prior to the commencement of the trial by way of exception during the trial or during cross examination. A party cannot claim prejudice at the appeal stage when it had ample opportunity to deal with the matter before or during the trial.