

IN THE SUPREME COURT OF FIJI
[CIVIL APPELLATE JURISDICTION]

CIVIL PETITION No: CBV 0007.2016
(On Appeal From Court of Appeal No: ABU 0042.2014)

BETWEEN : **THE NEW INDIA ASSURANCE LIMITED**

Petitioner

AND : **JAI KUMAR SOLANKI**

Respondent

Coram : Hon. Mr. Justice Suresh Chandra, Judge of the Supreme Court
Hon. Mr. Justice Buwaneka Aluwihare, Judge of the Supreme Court
Hon. Mr. Justice Priyantha Jayawardena, Judge of the Supreme Court

Counsel : Mr. A. K. Narayan for the Petitioner
Ms. M. Rakai for the Respondent

Date of Hearing : 6 April 2017

Date of Judgment : 21 April 2017

JUDGMENT

Chandra, J

1. I agree with the reasons and conclusions of Jayawardena J.

Aluwihare, J

2. I have read the judgment of Jayawardena J in draft and I agree with the reasoning and the conclusions.

Priyantha Jayawardena, J

3. The instant appeal relates to a claim under a fire insurance policy. The Petitioner seeks special leave to appeal from the judgment of the Court of Appeal dated 3rd June, 2016.

FACTUAL MATRIX

4. The Respondent has obtained a fire insurance policy from the Petitioner to cover his commercial premises known as Solanki Fashion Center and the stock of his business for the sum of \$300,000.00.
5. The premises and the stock had been damaged or destroyed by fire on 2nd January, 1998 and the said insurance policy was in operation at that time. Thereafter, the Respondent had made a claim under the said fire policy on the 2nd of February, 1998.
6. The Respondent along with another person had been charged in the High Court for arson of the said business premises. After trial both of them were convicted of arson on 11th May, 2000 and sentenced to six and four year's imprisonment respectively.
7. The Petitioner has forfeited the said claim and informed its decision to the Respondent by its letter of 18th October, 2000.
8. In the meantime the Respondent and the other accused had appealed to the Court of Appeal against the said convictions and the Court of Appeal on the 9th of March, 2007 quashed the said convictions and acquitted the Respondent and the other accused.
9. After the Respondent's appeal was allowed and he was acquitted by the Court of Appeal, he made another request to the Petitioner to pay his claim under the fire insurance policy and the said request was also refused by the Petitioner.

DECISION OF THE MASTER OF ROLL OF THE HIGH COURT

10. Thereafter, the Respondent filed an application before the Master and applied for leave to extend time to file an action against the Petitioner in order to pursue his claim under the said fire policy.

11. In the supporting affidavit dated 27th of January, 2007 the Respondent has stated inter-alia;

“4. THAT on or about 2nd January 1998 my aforesaid shop caught fire and was destroyed completely as a result.

5. THAT I straightaway made a claim under my policy vide fire claim no. D/98/1111/0004.

6.

7.

8. THAT my appeal was heard and Judgement was delivered on 9th March 2007 by the Fiji Court of Appeal, where I was subsequently acquitted. Annexed and marked with the letter “A” is a copy of the said Judgement.

9. THAT the Defendant Company advice me on by letter dated 8th May 2007 that my claim was declined. Annexed and marked with the letter “B” is a copy of the said letter.

10. THAT I was in prison from May 2000 to March 2007 and was unable and under a disability to file this claim within the limitation period.

11. THAT I would suffer irreparable damages and prejudice if I am not able to file my claim.

12. THAT I did not deliberately failed to file the claim, but was restrained by acts which were beyond my control.

13.

14. THAT I therefore respectfully and humbly beseech the Honourable Court for leave to issue my claim under the policy out of the required time so that I am not statute barred."

[emphasis added]

12. After an inter-parte inquiry of the said application the Master held that;

- (i) the Petitioner was not obliged and under no legal duty to settle Solanki's claim whilst the conviction stood,
- (ii) the Petitioner became liable to settle the insurance claim upon the quashing of conviction of the Respondent,
- (iii) the Respondent did not have a cause of action whilst the conviction was operative,
- (iv) the Respondent's cause of action accrued on the 9th March, 2007 when his conviction was quashed.
- (v) the Respondent was within time to institute action against the Petitioner based on a breach of the fire insurance policy.

13. The Petitioner appealed against the said decision of the Master to the High Court. The Respondent also had filed a substantive action against the Petitioner claiming damages under the said fire insurance policy following the Ruling of the Master under the said insurance policy.

14. Filing the Statement of Defence the Petitioner pleaded that the Respondent's case was barred by statute under section 4 of the Limitation Act. Thereafter, the Petitioner made an application to consolidate his appeal filed against the decision of the Master and the case filed by the Petitioner for damages and moved the High Court to decide the said issue as a preliminary point. High Court allowed the said application for consolidation.

Decision of the High Court

15. After hearing the appeal filed by the Petitioner and the preliminary point in the action filed by the Respondent the High Court allowed the Petitioner's appeal and dismissed the Respondent's action on the ground that his alleged cause of action was barred by section 4 of the Limitation Act. The High Court held the Plaintiff's action was time barred under the Limitation Act.

Being aggrieved by the said judgement of the High Court the Respondent appealed to the Court of Appeal.

Decision of the Court of Appeal

16. The Court of Appeal set aside the judgment of the High Court dated 3rd June, 2016 and affirmed the Ruling of the Master. In the said judgement the Court of Appeal inter-alia held;

- (a) that the repudiation of the claim was based as per the Crime Office, Labasa letter dated 29th August, 2000 and that the repudiation was "unmistakably founded" upon that letter "Could not have meant anything other than the Appellant's conviction and sentence for arson on the subject matter of the insurance policy"
- (b) that the conviction for arson resulted in an automatic forfeiture and thus the Respondent had no legal right to make a claim under the Insurance policy the rights of "the parties were in a frozen state" pending the Appeal and "party was capable in law of suing and" and "no party liable to be sued for the limitation period to begin to run.
- (c) the cause of action only accrued after the conviction was quashed on 9th March 2007, and

- (d) the Respondent's action was not time barred under the Limitation Act as the case involved a claim based on contract for which the prescribed limitation period is 6 years under Section 4(1)(a) of the Limitation Act.

PETITION TO THE SUPREME COURT

Grounds of Appeal

17. The Petitioner in the instant Petition prayed for Special Leave to appeal to the Supreme Court from the Judgment of the Court of Appeal dated 3rd June, 2016 and to allow his appeal.
18. The grounds of appeal in this appeal are summarized as follows;
- (a) Did the cause of action arise when the loss or damage was caused or after the respondent was acquitted by the Court of Appeal?
 - (b) What is the date of the cause of action (if any)?
 - (c) Is the Respondent's case filed in the Civil High Court barred by the provisions of the Limitation Act?

CONSIDERATION OF GRANTING OF SPECIAL LEAVE TO APPEAL

Criteria for Granting of Special Leave

19. 3.1 The Petitioner is seeking leave in the instant application for Special Leave in terms and under section 98(4) of the Constitution of the Republic of Fiji read with Section 7(3) of the Supreme Court Act of 1998. Section 7(3) of the Supreme Court Act states;
- “In relation to a civil matter (including a matter involving a constitutional question) the Supreme Court must not grant special leave to appeal unless the case rises -

- a. A far reaching question of law;
 - b. A matter of great general or public importance;
 - c. A matter that is otherwise of substantial general interest to the administration of civil justice.”
20. In order to obtain special leave to appeal from this court, the Petitioner submitted that the instant appeal involves forfeiture clauses in life insurance policies and judgement of the Court of Appeal has an effect on other cases where claims have already been declined and also for future claims. Further, the grounds of appeal in this appeal contains far reaching questions of law and matters of significant legal importance on the application of Section 4 of the Limitation Act. Therefore, it was submitted that the decision in this appeal will have an impact on the public and is of general importance. Moreover, the subject matter of this appeal also raises issues of substantial general interest to the administration of civil justice as the judgement in this appeal is relevant to all claims for compensation under the insurance policies.
21. The Respondent submitted that the grounds of appeal set out in the petition does not satisfy the stringent criteria set out in Section 7(3) of the Supreme Court Act 1998. It was further submitted that the questions of law involved in this appeal does not affect the public or even a part of the public and the questions of law raised in the instant appeal are specific to the parties to this appeal.
22. Moreover, the Respondent submitted further that, the Master of the High Court and the Court of Appeal did not err in their findings when the said courts held with the Respondent and the instant appeal has no merit. Therefore, the Respondent submitted that special leave should not be granted in this appeal.
23. In this context it is essential to consider the said submissions in the first instance, as it is imperative to meet the threshold set out in section 7 (3) of the Supreme Court Act to entertain the present appeal.

24. The criteria laid down in section 7 (3) of the Supreme Court Act 1998 in order to obtain special leave shows that special leave to appeal to the Supreme Court cannot be obtained as a matter of course but after fulfilling the criteria set out by the Act.
25. In the case of **Bulu v. Housing Authority**[2005] FJSC 1, **Chand v. Fiji Times Ltd** [2011] FJSC 2 it has been held that appeal would not be admitted “save where the case is of gravity involving a matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character”.
- The instant appeal relates to claims for compensation under fire insurance policies. Further, in this appeal it is required to consider the application of sections 4 and 11 of the Limitation Act and it’s applicability to persons who are convicted and incarcerated.
26. On a careful consideration of the facts which are set out below and the law involved in this appeal, I am of the opinion that the issues involved in this appeal are not confined to matters between the parties of the instant appeal but would affect the general public in Fiji both directly and indirectly, the insurance industry and commercial matters in Fiji islands. Further, the questions of law that are required to be determined in the instant appeal contains law and facts that are worthy of consideration by this court.
27. I am also of the view that the said questions of law that are required to be determined in this appeal are far reaching questions of law, matters of great general and public importance and has substantial general interest to the administration of civil justice.
28. Thus, I hold that the Petitioner has satisfied the threshold contemplated in Section 7(3) of the Supreme Court Act 1998 to obtain special leave in respect of the aforementioned and therefore, the application for Special Leave is allowed

Submissions made at the Hearing before the Supreme Court

29. The Petitioner submitted;

- (a) that the Petitioner was relying on the breach of the policy condition both express and also implied by law,
- (b) that the Petitioner was not relying on the conviction *per se*. The conviction referred to in the letter from the Police was evidence of the breach. The letter stated that "claim has been repudiated due to breach of policy condition."
- (c) that the initial claim by the Respondent was made on 2nd February, 1998. This was declined on 18th October, 2000. This would have entitled the Respondent to sue the Petitioner for damages caused by the fire,
- (d) that a cause of action could only accrue from the date of forfeiture of the claim.
- (e) that if the cause of action did not accrue on 18th October 2000 then it would have been an earlier date than that which would not assist the Respondent.
- (f) that the Respondent was in a position to institute proceedings on the policy despite the conviction and incarceration.
- (g) that there was nothing to prevent the Respondent filing an action before the conviction. He had two years to do so.
- (h) the Court of Appeal erred in law in reaching the conclusions that the cause of action only accrued after the conviction was quashed on 9th March 2007 which ignores the legislative provisions in Section 11 of the Limitation Act, and
- (g) that the Court of Appeal erred in holding the above as the Respondent's action was not time barred under the Limitation Act as the case involved a claim based on contract for which the prescribed limitation period is 6 years under Section 4(1) (a) of the Limitation Act.

30. The Respondent submitted;

- (a) that the repudiation of the claim was based on the letter issued by the Crime Office, Labasa dated 29th August, 2000. The said letter could not have meant anything other than the Respondent's conviction and sentence for arson,

- (b) that a “cause of action arises when one has a right and there is a denial or violation of that right by another and for someone to have a right there must be a corresponding duty or obligation on another”,
- (c) that the conviction for arson resulted in an automatic forfeiture [paragraph 30] and thus the Respondent had no legal right to make a claim under the Insurance policy. The rights of the parties were in a frozen state pending the Appeal,
- (d) that the cause of action accrued only after the conviction was quashed by the Court of Appeal on the 9th March of 2007, and
- (e) that the Respondent’s action was not time barred under the Limitation Act as his claim was based on contract for which the prescribed limitation period is 6 years under section 4(1)(a) of the Limitation Act.

CONSIDERATION OF THE APPEAL

31. The substantive issue in this appeal is the identification of the date on which the alleged cause of action accrued to the Respondent and whether the cause of action was time barred under the Limitation Act.

Fire Insurance Policy

32. The fire insurance policy obtained by the Respondent is an indemnity policy where the claims shall be based on the actual loss of the goods or property at the time of the loss or damage. The said insurance policy states;

“ the Company will pay to the Insured the value of the Property at the time of the happening of its destruction or the amount of

such damage or at its option reinstate or replace such Property or any part thereof."

33. The said policy inter-alia contained the following clauses;

6. CLAIMS

"On the happening of any destruction or damage the insured shall forthwith give notice thereof in writing to the Company and shall within thirty days after such destruction or damage, or such further time as the Company may in writing allow, at his own expense deliver to the Company a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property destroyed or damaged and of the amount of destruction or damage thereto respectively having regard to their value at the time of the destruction or damage together with the details of any other insurances on any property hereby insured. The insured shall also give to the Company all such proofs and inform with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under the Policy shall be payable unless the terms of this condition have been complied with". [emphasis added]

7. FRAUD

"If the claim be in any respect fraudulent or if any fraudulent means or devices be used by the insured or anyone acting on his behalf to obtain any benefit under this Policy or if any destruction or damage be occasioned by willful act or with the connivance of the insured, all benefit under this Policy shall be forfeited." [emphasis added]

34. The premises and the stock had been damaged or destroyed by fire on 2nd January, 1998 whilst the said insurance policy was in operation.

Thereafter, the Respondent had made a claim under the said fire policy on the 2nd of February, 1998 on a printed form issued by the Respondent. The said form states –

“The insurance Policy is a Contract of INDEMNITY ONLY. Claims must be based upon the actual value of the goods or property at the time of the loss or damage, without including profit of any kind.”[Emphasis added]

35. A careful consideration of the relevant conditions of the fire insurance policy and the wording of the printed claim form issued by the Petitioner demonstrate that the fire insurance policy under consideration is an indemnity policy which is to indemnify the damages and losses caused to an Assured (in this instance the Respondent) and it is not a liability policy.

36. In the case of Callaghan and Another vs. Dominion Insurance Co. Ltd. and Others [1997] Vol. 2 page 541 at 544 it was held “It seems to me that best way to define an indemnity insurance is that it is an agreement by the insurer to confer on the insured a contractual right which, prima facie, comes into existence immediately when loss is suffered by happening of an event insured against, to be put by the insurer into the same position in which the insured would have been had the event not occurred, but in no better position.”

WHAT IS THE DATE OF THE CAUSE OF ACTION?

37. The Respondent was charged along with another person in the High Court for arson of the said business premises after the Respondent submitted his “claim” to the Petitioner Company. At the conclusion of the trial both of them were convicted of arson on the 11th May, 2000 and sentenced to six and four year’s imprisonment respectively.

38. The Petitioner had forfeited the said claim of the Respondent and informed its decision to him by its letter dated 18th October, 2000.
39. In the meantime the Respondent and the other accused had appealed to the Court of Appeal against the said convictions. The Court of Appeal allowed their appeals and quashed the convictions of the Respondent and the other accused on the 9th March, 2007.
40. In the said judgment the Court of Appeal inter-alia held;

“The defects in the summing-up on the first and third of those grounds are sufficient to allow the appeal against conviction.”

“The appeal against conviction is allowed. Normally such a decision would result in the case being returned to the lower court for a fresh trial. , the appellants have both completed the sentences passed on them. It would be unjust to send the case back and we consider the only order open to the court is to acquit them.”

41. Consequent to the said acquittal the Respondent had once again written to the Petitioner and claimed for the loss and damage caused to the stock and property which were destroyed by the said fire.
42. The Petitioner had replied the said letter by its letter of 8th May, 2007 and informed the Respondent that his claim was formally declined vide their letter dispatched on 18th October, 2000 and their position remains unaltered.
43. It is necessary to consider the law applicable to Indemnity Policies as the instant case involves a fire insurance policy which is an indemnity policy.
44. In the instant case the loss and the damage has taken place as a result of a fire which took place on the 2nd of January, 1998. Thereafter, the Respondent had submitted his claim to indemnify his damages on the 2nd of February, 1998. Having taken into consideration the

conditions in the fire insurance policy under reference which is an indemnity insurance policy, I am of the view that the Petitioner Company became liable to indemnify the Respondent from the date of the fire. A similar view was expressed in the case of **Carillion Construction Ltd v AIG Australia Ltd** [2016] NSWSC 495 (22 April 2016) it was held “For the purposes of determining the date at which an insured’s cause of action accrued, there is in general a distinction to be drawn between policies of liability insurance on the one hand and all other types of insurance on the other. The cause of action does not accrue under a liability policy until the liability of the insured is established by judgment, arbitration or binding settlement vide **Bradley v Eagle Star Insurance Co Ltd** [[1989] AC 957; [1989] 1 Lloyd’s Rep 465].

45. In respect of other types of insurance policy, including property, life, marine and other forms of insurance, the law has long been that, because an insurance policy is to be construed as insurance against the occurrence of an insured event, the occurrence of that event is treated as equivalent to a breach of contract by the insurer. Accordingly, in the absence of policy terms affecting the matter, the limitation period begins to run as soon as the insured event occurs, even though no claim has been made: *per* Potter LJ in **Virk v Gan Life Holding plc** [[2000] Lloyd’s Rep IR 159 at p 162]. In property insurance, the cause of action accrues on the occurrence of the peril: see **Callaghan v Dominion Insurance Co Ltd** [[1997] 2 Lloyd’s Rep 541].”
46. Therefore, the insured’s right to recover from his insurer in respect of loss and damage arose when the loss occurred and that; accordingly, the cause of action arose when the loss and damages were incurred. Thus, I hold that the Respondent’s right to recover the losses and damages from the Petitioner had arisen (if any) when the losses and damages occurred on the 2nd of January, 1998.
47. It is pertinent to note that the fire has taken place on the 2nd January, 1998 and the Petitioner Company has informed the Respondent that his claim had been repudiated on the 18th October, 2000. However, during this time the Respondent has not taken any steps to institute action against the Petitioner claiming damages.

48. A perusal of the Fire Insurance Policy under consideration shows that there is no time period to honour a claim. In those circumstances, the Petitioner is obliged to pay the damages within a reasonable time.

49. In the case of **Carillion Construction Ltd. v AIG Australia Ltd.** [2016] NSWSC 495 (22 April 2016) the Supreme Court of New South Wales held;

“170. Carillion made a claim under the Policy for the Tie Rods Damage on 26 March 2019.

171. There is no clause in the Policy that obliged AIG to deal with that claim in any particular time.

172. However, the law in Australia is that, in the absence of a stipulation in a policy of the time by which an insurer must perform its obligations, the insurer must do so within a reasonable time: for example, CIC Insurance Limited v Bankstown Football Club Limited (1997) 187 CLR 384 at 401-2 per Brennan CJ and Dawson, Toohey and Gummow JJ and TropicusOrchids Flowers and Foliage Pty Ltd v Territory Insurance Office [1998] NTSC 73; (1998) 10 ANZ Ins Cas 61-412 at 74,631-2 per Mildren J.

173. The authors of Sutton state that in Australia “there is a now accepted line of authority that an insurer is under a duty to pay a claim within a reasonable time of the occurrence of the insured peril, failing which there is breach of contract” (at [15.650]). “

IS THE CAUSE OF ACTION TIME BARRED?

50. After fire damaged the Respondent’s property he has lodged a claim with the insurer to indemnify his loss and damaged caused by the fire. However, the Petitioner had informed

the Respondent in writing on the 18th of October, 2000 declining to honour the claim. The said letter states –

“This has reference to your claim form dated 02.02.1998 regarding Fire Claim which took place on 02.01.1998.

As per Crimes Office, Labasa letter dated 29.08.2000; we regret to inform you that claim has been repudiated due to breach of policy condition.”

[Emphasis added]

51. Consequent to the aforementioned conviction (referred to in the above-mentioned letter) the Respondent was incarcerated. However, as a result of an appeal preferred to the Court of Appeal by the Respondent he was acquitted from the charges leveled against him.

52. Thereafter, the Respondent once again has written to the Petitioner and requested for the claim. In responding to the said letter the Petitioner had replied by its letter of 8th May, 2007. The said letter inter-alia stated that –

“Your claim was formally declined vide our registered letter dispatched on 18th October, 2000. Notwithstanding the Judgement of the Fiji Court of Appeal delivered on 9th March, 2007 which you forwarded to us with your aforesaid letter our position remains unaltered. New India Assurance will not pay any claim on your policy for the loss allegedly sustained by you in the fire on 2nd January, 1998. The claim lodged by you was fraudulent and in breach of the policy condition. Among other matters New India Assurance relies on the following:

- *The fire causing the loss on 2nd January, 1998 was deliberately initiated by you with the intention of obtaining a benefit under your policy of insurance.*
- *Your claim under Clause 12 of the policy is now barred as you failed to refer the matter to arbitration which should have been set in motion within one year of the alleged loss and any right of action is deemed abandoned and released..*
- *Your claim and any right of action is statute barred under the Limitation Act. In the circumstances we cannot be of any further assistance to you.”* [Emphasis is added]

53. The aforementioned letter show that there was a firm repudiation of the claim submitted by the Respondent on the 18th of October, 2000.

54. As stated above, the indemnity policies which protect the assured against loss and damage, the limitation period runs not from the date of the forfeiture of the claim but from the date of the peril (in this case the fire) itself unless the policy contains a condition precedent clause.
55. Further, in terms and under the aforementioned fire insurance policy a cause of action would arise when a loss or damage is incurred.
56. I am of the opinion that the alleged cause of action arose on the date of the fire. i. e. 2nd of January, 1998.

Applicability of the Limitation Act

57. The time frame that an action should be filed in the Limitation Act.

Sections 4 of the Limitation Act states;

“4.-(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

(a) actions founded on simple contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award, where the submission is not by an instrument under seal;

(d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that-

(i) in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries

to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and
(ii) nothing in this subsection shall be taken to refer to any action to which section 6 applies."[emphasis added]

58. A life insurance policy being a contract between the parties, the time period in which a case can be instituted is governed by section 4 (1) (a) of the Limitation Act. Therefore, I am of the opinion that the Respondent should have instituted a case against the Respondent under the fire insurance policy seeking to indemnify his damages prior to the six year period set out in the said section. However, the Respondent argues that as a result of him being incarcerated he was unable to institute a case to obtain redress.
59. This position is stated in the supporting affidavit dated 27th of January, 2007 filed before the Master of the High Court too. In the said affidavit the Respondent has stated inter-alia;

"10. THAT I was in prison from May 2000 to March 2007 and was unable and under a disability to file this claim within the limitation period.

12. THAT I did not deliberately fail to file the claim, but was restrained by acts which were beyond my control.

14. THAT I therefore respectfully and humbly beseech the Honourable Court for leave to issue my claim under the policy out of the required time so that I am not statute barred." [emphasis added]

60. This is an ample proof of the fact that the Respondent was aware of the applicability of the Limitation Act to his claim and the fact that his claim was barred by a positive rule of law. In this background it is necessary to consider whether a jail sentence would fall within section 11 of the Limitation Act. Section 11 of the Limitation Act deals with situations of extension of limitation period in case of disability. The said section states;

“11.-(1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom such right accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation had expired:

Provided that-

(a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;

(b) when a right of action which has accrued to a person under a disability accrued, on the death of that person while still under a disability, to another person under disability, no further extension of time shall be allowed by reason of the disability of the second person;

(c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims;

(d) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any Act, except where the action is brought by an aggrieved party.

(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person and in the case of actions to which section 6 applies-

(a) subsection (1) shall have effect as if for the words "six years" there were substituted-

(i) as regards any action to which section 6 applies, the words "two years";

(ii) as regards any other action to which this subsection refers, the words "three years"; and

(b) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action, or (as regards an action to which section 6 applies) the right to recover contribution, accrued to him, in the custody of a parent,

*(3) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of unsound mind, and, without prejudice to the generality of the foregoing provisions of this subsection, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any Act authorizing the **detention of persons** of unsound mind, **including persons convicted of offences or awaiting trial**, or while he is receiving treatment voluntarily under the provisions of the Mental Treatment Act.(Cap. 113)[emphasis added]*

61. This section enables a person who was under a disability to institute action when that person ceased to be under the disability notwithstanding that the period of limitation had expired.
62. In this context it is necessary to consider whether a person who is incarcerated could be considered as a person having a disability within the meaning of section 11 of the Limitation Act.
63. An analysis of section 11 of the Limitation Act shows that a period of which a person is in incarceration cannot be considered as a disability within the meaning of that section. In fact the Legislature in its own wisdom has not included a jail term to be considered as a disability period.
64. In the circumstances, I hold that the Respondent has failed to establish that the time began to run under the Limitation only after he was acquitted by the Court of Appeal and

his jail sentence was set aside. Further, the Respondent is bound by section 4 (1) (a) of the Limitation Act.

CONCLUSION

65. For the reasons stated above I hold that the Court of Appeal erred in law and fact when it held that;
- (a) that the conviction for arson resulted in an automatic forfeiture and thus the Respondent had no legal right to make a claim under the Insurance policy. The rights of the parties were in a frozen state pending the Appeal,
 - (b) the cause of action accrued only after the conviction was quashed by the Court of Appeal on the 9th March of 2007, and
 - (c) the Respondent's action was not time barred under the Limitation Act as his claim was based on contract for which the prescribed limitation period is 6 years under section 4(1)(a) of the Limitation Act.
66. I further hold that a cause of action did not arise when the Respondent was acquitted by the Court of Appeal and his jail sentence was set aside.
67. The Respondent failed to establish that under the said insurance policy, a cause of action arose when the Respondent was acquitted by the Court of Appeal.
68. As admitted in the aforementioned affidavit of the Respondent, he should have filed an action within the prescribed limitation period of 6 years under Section 4(1) (a) of the Limitation Act. i.e. six years from the 2nd of January, 1998 which is the date of the fire.
69. I am of the view that the Respondent's cause of action (if any) accrued on the date that the loss or damage took place and that the Respondent's alleged claim is barred by the Limitation Act.

70. For the reasons set out above the Judgment of the Court of Appeal is set aside and the appeal of the Petitioner is allowed.

The Orders of the Court are:

1. Application for Special leave to appeal is allowed,
2. The judgment of the Court of Appeal dated 3rd June 2016 is set aside,
3. The judgment of the High Court dated 25th April 2014 is affirmed.
4. The judgment of the Master of the High Court is set aside.
5. The Respondent shall pay a sum of \$3,000.00 as costs to the Appellant.



A handwritten signature in blue ink, appearing to read "Suresh Chandra", written over a dotted line.

Hon. Mr. Justice Suresh Chandra
Judge of the Supreme Court

A handwritten signature in blue ink, appearing to read "Buwaneka Aluwihare", written over a dotted line.

Hon. Mr. Justice Buwaneka Aluwihare
Judge of the Supreme Court

A handwritten signature in blue ink, appearing to read "Priyantha Jayawardena", written over a dotted line.

Hon. Mr. Justice Priyantha Jayawardena
Judge of the Supreme Court

Solicitors:

AK Lawyers for the Petitioner
Sherani & Company for the Respondent.