

Judgment says accidents must be reported

By [Linda Ensor](#)

8 Apr 2013

Treasury is seeking an urgent meeting with the South African Insurance Association to ensure that insured motorists are not adversely affected by a court judgment which has been interpreted to mean that those who do not report every minor incident or scratch on their cars to their insurers risk having their later claims rejected.



The judgement was handed down by Justice Piet Koen on 20 March in the Pietermaritzburg High Court in the case of restaurant owner Sherwin Jerrier versus OUTsurance.

Jerrier claimed payment R608,772 plus interest and costs to cover accident damage incurred in January 2010 to his Audi. But the judge found that he had not complied with the terms of his policy.

OUTsurance denied liability saying that in terms of Jerrier's insurance policy he was obliged to inform the insurer immediately of any changes to his circumstances which could influence whether the cover was provided and on what terms.

But, it said Jerrier had failed to inform it of a collision which took place in Amanzimtoti in April 2009 which resulted in damage of about R200,000 to his vehicle and which was allegedly caused by his being under the influence of alcohol. He also did not inform the insurer about another accident he was involved in.

OUTsurance said the Amanzimtoti accident - even though it was not claimed for - materially affected the assessment of the risk profile of Jerrier and could have resulted in an increase in premiums if it had been reported.

Jerrier said he had originally estimated the accident damage to be about R20,000 and had not considered it worthwhile claiming against his policy because he accepted that he was the cause of it and that the amount would not exceed the excess payable.

Two weeks later he discovered that the damage in fact amounted to about R200,000.

OUTsurance argued that a claim of R200,000 on a vehicle insured for R850,000 would have raised alarm bells and probably initiated an investigation had it been reported.

Material change in risk

Justice Koen found that the two accidents constituted a change in Jerrier's circumstances as defined in the policy. They could have influenced OUTsurance's decision whether to grant cover and what premium to charge.

"The plaintiff (Jerrier) should have reported these previous incidents within the time frames required in terms of the policy, even if he did not want to claim. He failed to do so. This failure amounted to a material non-disclosure or breach of the terms of the policy, absolving the defendant (OUTsurance) from liability."

The judge found that Jerrier had acted with "gross negligence, if not reckless driving and behaviour" in causing the accident.

Treasury said the short-term insurance industry interpreted the judgement as shifting the onus onto customers away from the short-term insurers. However, it said short-term insurers needed to examine whether its disclosure practices were fair to consumers and "not out of proportion to the risk-based approach that is necessary for the insurance industry to function efficiently."

"While consumers are responsible for ensuring that they honestly disclose material information to their insurer, the Treasury believes that the industry needs to consider whether it has done enough to inform their customers of the importance of disclosing material risk-related information and to ensure that customers understand any limitation on the cover they are purchasing," it said in a statement.

It said it had previously raised the issue of poor market conduct practices within the industry and their treatment of clients.

Source: *Business Day* via I-Net Bridge

For more, visit: <https://www.bizcommunity.com>