Neutral Citation Number [2007] IEHC 105

THE HIGH COURT

1998 No. 3315 P

BETWEEN

JAMES POWER

PLAINTIFF

AND
GUARDIAN PMPA INSURANCE LIMITED

DEFENDANT

Judgment of Miss Justice Laffoy delivered on 2nd February, 2007

Factual background
1. These proceedings arise out of an accident which occurred on 6th October, 1991, when the plaintiff was 26 years of age. At the time of the accident, he was travelling as a front seat passenger in a Ford Fiesta motor vehicle owned, and at the time being driven, by his friend Mr. Richard Wheeler. The vehicle went out of control and crashed. The plaintiff suffered very severe personal injuries as a result of which he is a paraplegic and will be confined to a wheelchair for the remainder of his life.

2. Mr. Wheeler had a policy of insurance with the defendant in respect of the use of the Ford Fiesta vehicle. On the morning following the accident, his father contacted the defendant to report the accident, to be informed that no passenger cover was applicable under the policy. Mr. Wheeler subsequently completed an accident report form. He was informed by letter dated 27th November, 1991 from the defendant that no passenger cover was provided.

3. In due course, the plaintiff initiated a personal injuries action in this Court under Record No. 2674 P of 1994. Ultimately, apparently following an amendment of the proceedings, there were four defendants to that action: Mr. Wheeler; Henry Ford and Son Limited, the manufacturer of the vehicle; Dermot Kelly & Company Limited, the vendor of the vehicle to Mr. Wheeler; and the Motor Insurers' Bureau of Ireland. In the context of the plaintiff's claim against Mr. Wheeler, Mr. Wheeler's solicitors, Malone and Martin, wrote to the defendant on 26th February, 1993 requesting an indemnity in respect of that claim. By letter dated 9th March, 1993 the defendant informed Mr. Wheeler's solicitors that the policy did not cover passengers. While the response of his solicitors was that Mr. Wheeler was pursuing an indemnity, in fact, Mr. Wheeler did not take any action to challenge the defendant's assertion that there was no passenger cover at that point in time or, indeed, at any time thereafter. Although, apparently, Mr. Wheeler never delivered a defence to the plaintiff's plenary action, it was set down for trial, presumably, against the other three defendants and ultimately was listed for hearing on 25th November, 1997. On that day the plaintiff compromised the action as against the defendants other than Mr. Wheeler, and he received by way of settlement the sum of IR£150,000 together with IR£40,000 contribution towards his legal costs. It would seem that the proceedings against Mr. Wheeler were adjourned generally at the time.

4. In these proceedings, which were initiated by plenary summons which issued on 16th March, 1998, in broad terms, the plaintiff seeks a declaration that Mr. Wheeler was insured by the defendant to carry the plaintiff as a passenger at the time of the accident and that the defendant is bound to indemnify Mr. Wheeler in respect of any monies found due by Mr. Wheeler to the plaintiff in the personal injuries proceedings.

The claim as pleaded
5. On the third day of the hearing, by consent of the parties, I made an order giving the plaintiff liberty to deliver an amended statement of claim and giving the defendant liberty to deliver an amended defence in response to the amended statement of claim.

6. In his amended statement of claim the plaintiff seeks declarations in the following terms:

> (a) that the defendant is pursuant to the provisions of the relevant policy of insurance and pursuant to the provisions of s. 62 of the Civil Liability Act, 1961 (CLA 1961) "bound to indemnify the plaintiff in respect of any monies ultimately found due" by Mr. Wheeler to the plaintiff in the personal injuries proceedings;
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> (b) that Mr. Wheeler's Ford Fiesta was a vehicle constructed primarily for carriage of one or more passengers;
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> (c) that Mr. Wheeler was insured by the defendant to carry the plaintiff as a passenger in his vehicle on 6th October, 1991; and
>
> (d) that pursuant to s. 76 of the Road Traffic Act, 1961 (RTA 1961) the defendant is "bound to indemnify the plaintiff in respect of any monies found due" by Mr. Wheeler to the plaintiff in the personal injuries proceedings.

7. The reliefs at (b), (c) and (d) were first sought in the amended statement of claim.

8. In its defence as originally delivered the defendant objected in point of law that, as Mr. Wheeler was neither bankrupt nor deceased the plaintiff was not entitled to invoke s. 62 of CLA 1961 at all. The defendant further pleaded that the Ford Fiesta was a commercial vehicle which at all material times was not fitted with any seats in the area to the rear of the driver's seat. The defendant admitted that there was a motor insurance policy in force at the time of the accident, being a commercial vehicle policy. However, it was pleaded that the policy did not cover any liability of Mr. Wheeler in respect of personal injuries to passengers arising out of the use of the vehicle. It was pleaded that Mr. Wheeler, at the time of procuring the policy, expressly acknowledged that it did not cover liability for injury to passengers. On that basis the defendant denied the plaintiff's entitlement to the declaration sought or any declaration under s. 62 of CLA 1961. In the amended defence, the defendant denied that Mr. Wheeler's Ford Fiesta was a vehicle constructed primarily for carriage of one or more passengers. It denied the plaintiff's entitlement to the additional declarations pleaded in the amended statement of claim. Finally, it pleaded that the plaintiff had no entitlement to maintain any proceedings against it other than as provided by statute. On the basis of the defendant's written submissions of 12th July, 2006, I assume that the absence of privity of contract between the plaintiff and the defendant underlies that plea.

9. Before considering the statutory framework against which the plaintiff pursues the relief he seeks, it is necessary to record that on 26th October, 2005 the plaintiff obtained a consent judgment against Mr. Wheeler in the personal injuries proceedings. The defendant only became aware of that judgment four months later, shortly before the commencement of the hearing of this action. In the context of the consent by the defendant to the amendment of the plaintiff's statement of claim, an order was made on 10th March, 2006 vacating that judgment at the request of the plaintiff and with the consent of Mr. Wheeler. The position, accordingly, is that what the plaintiff has against Mr. Wheeler is his claim in the personal injuries proceedings which has not been adjudicated on.

Statutory framework

10. The starting point is s. 56 of RTA 1961, which is the substantive provision dealing with mandatory motor vehicle insurance. Sub-section (1) of s. 56, insofar as it is relevant for present purposes, provides as follows:

> "A person (… the user) shall not use in a public place a mechanically propelled vehicle unless … there is in force at that time either –
>
> > (a) an approved policy of insurance whereby the user … is insured against all sums without limit … which the user … shall become liable to pay to any person (exclusive of the excepted persons) by way of damages or costs on account of injury to person or property caused by the negligent use of the vehicle at that time by the user …"

11. Sub-section (3) of s. 56 creates criminal liability for contravention of sub-s. (1).

12. The definition of "excepted persons" liability to whom is excluded from the mandatory obligation to have insurance cover is to be found in s. 65 of RTA 1961. The category of "excepted persons" relevant for present purposes is that set out in para (a) of sub-s. (1) of s. 65, namely –

> "any person claiming in respect of injury to person to himself sustained while he was in or on a mechanically propelled vehicle to which the relevant document relates, other than a mechanically propelled vehicle of a class specified for the purposes of this paragraph by the Minister by regulations."

13. The scheme of that provision is to exclude every personal injury claimant who is either a driver or a passenger in or on a mechanically propelled vehicle, unless vehicle comes within a class specified by the relevant Minister by regulations.

14. The relevant Minister made regulations in relation to compulsory insurance in due course: Road Traffic (Compulsory Insurance) Regulations 1962 (S.I. 14 of 1962) (the 1962 Regulations). The material regulation, Regulation 6(1), specified three classes of vehicles for the purposes of s. 65(1)(a), the second class being –

> "vehicles constructed primarily for the carriage of one or more passengers." (para. (b))

15. The combined effect of s. 56(1), s. 65(1)(a) and para. (b) of Regulation 6(1) is that in 1991 insurance of passengers in "vehicles constructed primarily for the carriage of one or more passengers" was compulsory and to drive such a vehicle without having cover for passengers under an approved policy of insurance was an offence. The corollary of that was that passenger cover was not compulsory where the vehicle did not fall into that class or either of the other two classes specified in Regulation 6(1) (public service vehicles (para (a)); and "station wagons, estate cars and other similar vehicles which are constructed or adapted for alternative purposes (including the carriage of one or more passengers) and which are fitted with seats, whether rigid, collapsible or detachable, in the area to the rear of the driver's seat" (para. (c)).

16. RTA 1961 was concerned not only with the creation of criminal liability for driving without insurance cover where it was mandatory, but it was also concerned with regulating the liability of an insurer to the insured and to third parties. It is to be observed that s. 62 which, in sub-s. (1), sets out the conditions to be complied with for a policy of insurance to constitute an approved policy, stipulates that the policy is one in which the insurer binds himself by it to insure the insured against the type of liability referred to in s. 56(1). While no case has been made that the policy held by Mr. Wheeler on 6th October, 1991 was not an approved policy within the meaning of s. 62, the defendant's position was that it was an approved policy because cover for passengers was properly excluded as cover of "excepted persons" referred to in s. 56(1) and s. 62(1)(b). Aside from that, the significance of s. 62 for present purposes is that sub-s. (2) thereof provides that a policy of insurance which complies with the conditions specified in sub-s. (1) of the section shall not be prevented from being an approved policy of insurance merely by reason of its containing provisions additional to and not inconsistent with the provisions required by those conditions. In other words, subject to compatibility with the provisions of RTA 1961, as a matter of contract, the insurer and the insured can agree whatever terms they wish.

17. The interest of the third party is protected by the provision invoked by the plaintiff: s. 76. Sub-section (1) of s. 76 sets out a number of provisions which, where applicable, have effect in the various circumstances stipulated, which, insofar as are relevant for present purposes, may be paraphrased as follows:

> (i) where a person (the claimant) claims to be entitled to recover from the owner of a mechanically propelled vehicle a sum (whether liquidated or unliquidated) against the liability for which the owner is insured by an approved policy of insurance; and
>
> (ii) the claimant serves a notice by registered post on the vehicle insurer by whom the policy was issued.

18. Where the foregoing circumstances exist, that is to say, where the claimant has not recovered judgment for the sum claimed, paragraph (d) of s. 76(1) provides that –

> "… the claimant may apply to any court of competent jurisdiction in which he might institute proceedings for the recovery of the sum from the owner … for leave to institute and prosecute those proceedings against the insurer … in lieu of the owner …, and the court, if satisfied that the owner … is not in the State, or cannot be found or cannot be served with the process of the court, or that it is for any reason just and equitable that the application should be granted, may grant the application and thereupon the claimant shall be entitled to institute and prosecute those proceedings against the insurer … and to recover therein from the insurer … any sum which he would be entitled to recover from the owner … and the payment of which the insurer … has insured …"

19. In effect, what sub-s. (1) of s. 76 does is that it provides a mechanism whereby a third party may litigate directly against the insurer. The Rules of the Superior Courts, 1986 (the Rules), stipulate in O. 91 the procedure to be adopted for initiating an application to this Court under s. 76. An important feature of s. 76 is that sub-s. (3) provides that sub-s. (1) applies "only to claims against the liability for which an approved policy of insurance … is required by this Act to be effected".

20. On analysis, what s. 76 facilitates is litigation directly by a non-contracting party to the contract of insurance against the insurer in relation to liability for which the insured has cover under an approved policy being liability against which the insured is obliged to have cover by virtue of RTA 1961.

21. The provisions which are now contained in s. 62 of CLA 1961 were originally contained in sub-s. (4) of s. 76 of RTA 1961, which

was repealed by CLA 1961. Section 62, insofar as is relevant for present purposes, provides as follows:

> "Where a person (… the insured) who has effected a policy of insurance in respect of liability for a wrong, if an individual, becomes a bankrupt or dies … monies payable to the insured under the policy shall be applicable only to discharging in full all valid claims against the insured in respect of which those monies are payable, and no part of those monies shall be assets of the insured or applicable to the payment of the debts (other than those claims) of the insured in the bankruptcy or in the administration of the estate of the insured … and no such claim shall be provable in the bankruptcy, administration …"

22. What s. 62 does is that, where an insured, who is a natural person, against whom there is a claim in respect of which an indemnity exists dies or becomes bankrupt, the proceeds of the indemnity are "ring-fenced" for the claimant and do not form part of his estate which vests in his personal representative, in the case of death, or in the Official Assignee, in the case of bankruptcy. I have already recorded the fact that the defendant has pleaded an objection on the basis that s. 62 cannot be invoked because Mr. Wheeler is neither deceased nor bankrupt. In their submissions counsel for the plaintiff characterised that objection as a "technical objection" and questioned whether the defendant would wish to visit the grave consequences of bankruptcy on Mr. Wheeler, who is a young married man. They also advance an argument based on articles 6 and 13 of the European Convention on Human Rights, which I do not consider it necessary to comment on. The reality is that the invocation of s. 62 gets the plaintiff nowhere. The nub of the defendant's defence of these proceedings is that the insurance Mr. Wheeler had with the defendant on 6th October, 1991 did not cover any liability he incurred to the plaintiff as a result of the accident on that day and, therefore, no monies are payable to Mr. Wheeler under his policy with the defendant in respect of that liability. For the protection afforded by s. 62 to come into play monies must have become payable to the insured under the policy of insurance. In this case, the defendant says that, as a matter of contract, no monies are payable. Until the plaintiff can establish otherwise, s. 62 has no application.

23. Regulation 6 of the 1962 Regulations was amended by the Road Traffic (Compulsory Insurance) (Amendment) Regulations, 1992 (S.I. No. 346/1992), which substituted for Regulation 6 a regulation which, insofar as is relevant for present purposes, provided as follows:

> "The following vehicles are hereby specified for the purpose of paragraph (a) of the sub-section (1) of section 65 of the Act –
>
> (a) vehicles, other than cycles, designed and constructed with seating accommodation for passengers …"

24. It was provided that that provision would come into operation on 31st December, 1995.

25. It cannot be gainsaid that had the amendment of Regulation 6 been in force on 6th October, 1991 Mr. Wheeler would have been precluded from driving the Ford Fiesta vehicle if he did not have an approved policy which covered liability to passengers, because that vehicle was designed and constructed with seating accommodation for a front seat passenger. The reason the plaintiff has sought to rely on the 1992 Regulations is that they were made to give effect to the provisions of the Third EC Directive on motor insurance, in other words, Council Directive 90/232/EEC of 14th May, 1990 (the Third Directive). While the Third Directive predated the following events –

> (a) the initial procurement by Mr. Wheeler of insurance on the Ford Fiesta vehicle from the defendant, which occurred on 22nd June, 1990,
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> (b) the commencement of the policy in being at the date of the accident, which was the renewal date of the policy in 1991, 22nd June, 1991, and
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> (c) the date of the accident,

26. in my view, in determining whether as of any of those dates there was a statutory obligation on Mr. Wheeler to have insurance cover for passengers in the vehicle, the Third Directive is totally irrelevant. Article 6 of the Third Directive specifically gave the State a derogation until 31st December, 1995 in relation to compliance with the requirement in article 1 thereof that a Member State should take all appropriate measures to ensure that civil liability in respect of the use of vehicles covered liability for personal injuries to all passengers, other than the driver, arising out of the use of the vehicle. As regards Ireland, that requirement of the Third Directive, both as a matter of EU law and domestic law, did not become operative until 31st December, 1995.

The statutory interpretation argument

27. In making the case that the defendant is bound to indemnify Mr. Wheeler in respect of any monies found due by Mr. Wheeler to the plaintiff in the personal injuries proceedings, counsel for the plaintiff advanced an argument based on the provisions of RTA 1961 and their application to the Ford Fiesta vehicle without regard to the actual terms of the policy which Mr. Wheeler held on 6th November, 1991. The essence of the argument was that, on the proper construction of the relevant provisions, the Ford Fiesta vehicle came within the classification of "vehicles constructed primarily for the carriage of one or more passengers" and, on that basis, given that the defendant accepted that Mr. Wheeler held an "approved policy" of insurance, it must follow that the policy extended to passenger cover. Therefore, so the argument goes, the plaintiff has a remedy under s. 76(1)(d).

28. Stated in positive terms, the combined effect of sections 56(1) and 65(1)(a) of RTA 1961 and Regulation 6(1)(b) of the 1962 Regulations was that in 1991 insurance cover for passengers was compulsory in relation to a vehicle which came within the class of vehicles constructed primarily for the carriage of one or more passengers. The plaintiff's argument involves ascertaining –

> (i) the meaning of the phrase "vehicles constructed primarily for the carriage of one or more passengers" in the 1962 Regulations, which is a matter of construction, and
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> (ii) whether as a matter of fact the Ford Fiesta vehicle was within that class in accordance with that construction.

29. Even if the plaintiff is correct and the Ford Fiesta vehicle was at the material time, 6th November, 1991, within the class of vehicles constructed primarily for carriage of one or more passengers, the plaintiff's argument involves the proposition that, irrespective of the terms of the contract between Mr. Wheeler, as insured, and the defendant, as insurer, as reflected in the policy documents, passenger cover existed. The basis advanced for that proposition was that, as the defendant's position was that Mr. Wheeler was given an approved policy of insurance, the policy he had must have extended to passenger cover to constitute an approved policy. In a sense what the plaintiff contended was that, if Mr. Wheeler did not obtain from the defendant by express agreement a policy under which he complied with the mandatory requirements of RTA 1961, he obtained such a policy by default and

the defendant is liable to provide the indemnity.

30. What s. 76 enables a third party claimant to do in a case which comes within the criteria stipulated in that section is to litigate directly against the insurer in respect of a claim against the liability for which the insured has cover (s. 76(1)), provided it is a liability which is compulsorily insurable (s. 76(3)). The first requirement is illustrated by the decision of the Supreme Court in *Whelan v. Dixon* 97 I.L.T.R. 195. That case concerned the application of s. 78 of the Road Traffic Act, 1933, which was repealed by RTA 1961 and in the material respects re-enacted. In delivering the judgment of the Supreme Court, Lavery J. stated (at p. 199):

> "The judgment must be for a sum against the liability for which the owner or driver is insured …
>
> In my opinion, the claimant must establish this. The right given by the Act prescribes it as a necessary condition."

31. Whether an indemnity exists for a claim is a matter of contract between the insurer and the insured. In invoking s. 76 the onus is on the third party claimant to establish the existence of the indemnity.

32. Accordingly, in my view, it is not sufficient for the plaintiff merely to establish that the Ford Fiesta vehicle was compulsorily insurable for passenger cover on 6th October, 1991. To succeed against the defendant under s. 76, the plaintiff must show that an indemnity was in place in respect of that liability by virtue of the contract between the defendant and Mr. Wheeler.

33. The defendant's position, as I have already recorded, is that the policy issued to Mr. Wheeler was an approved policy because it lawfully excluded cover for "excepted persons", in this case passengers. However, the defendant accepted, at least implicitly, that the plaintiff could succeed under s. 76 if the court were to conclude that the Ford Fiesta van came within the class specified in Regulation 6(1)(b) of the 1962 Regulations.

34. It is on that basis that I will now consider the question of the construction of Regulation 6(1)(a) and its application to the Ford Fiesta vehicle.

Construction of Regulation 6(1)(a)

35. What Regulation 6 is concerned with is specifying classes of vehicles with a view to taking persons who sustain injury in or on them outside the exclusionary category of excepted persons who otherwise would not enjoy the benefit of the compulsory insurance provisions of s. 56(1). That is the legislative purpose to be divined from reading s. 65(1)(a) in conjunction with s. 56(1) which was to be fulfilled in Regulation 6(1).

36. Whether one adopts a literal approach or a teleological or purposive approach to the interpretation of the phrase "vehicles constructed primarily for the carriage of one or more passengers", in my view, the result is the same. Literally, the phrase refers to vehicles put together or assembled principally for transporting one or more persons other than the driver. None of the individual components of the phrase is susceptible of obscurity, confusion or ambiguity. A vehicle is constructed when it is ready to leave the factory capable of functioning as a mechanically propelled vehicle. It is by reference to that stage that the class is formed, irrespective of whether in design terms it has evolved from a prototype design for a different purpose or embellishments may be added later. While the adverb "primarily" may have a secondary meaning derived from the secondary meaning of the adjective "primary", which connotes the earliest point in time, that is not the meaning to be ascribed to it in the phrase under consideration. On a common sense reading of the phrase, the adverb qualifies the purpose for which the vehicles are constructed, rather than connotes the stage of construction. The meaning to be ascribed to the word "passengers" is clarified by Regulation 6(2), which expressly provides that "passenger" does not include a driver.

37. That interpretation is not inconsistent with paragraph (c) of Regulation 6(1), under which a class is formed by reference to vehicles of a particular type (station wagons, estate cars and other similar vehicles), which have a particular physical feature, that they are fitted with seats in the area to the rear of the driver's seat. That class is not defined exclusively by reference to the stage of construction but is open to definition by reference to subsequent adaptation. It is not confined exclusively by reference to one purpose, being expressly open to definition by reference to alternative purposes.

38. The literal interpretation suggested, in my view, also fulfils the legislative purpose outlined earlier. A class of vehicles is specified. If a person sustains an injury while in or on a vehicle of that class, he or she is not an excepted person.

39. The court has only been referred to one authority in which the proper construction of Regulation 6(1)(b) was considered: an unreported judgment of this Court delivered by Butler J. on 21st July, 1972 in *Cunningham v. Thornton*, National Employers' Mutual General Insurance Association Ltd. In that case, the plaintiff, who had obtained judgment, was seeking to execute against the insurer of the defendant. The plaintiff, who was eleven years of age, had been employed by the defendant as a helper in his business of vegetable roundsman. At the time of the accident the plaintiff had either knelt or sat into the back of the van after making a delivery and was arranging sacks of potatoes. The van started with a jerk, threw him out and, while he was on the road trying to get up, it reversed over him causing him a serious spinal fracture. The van was insured by the insurer but it contended that the policy did not cover liability to indemnify the defendant in respect of the plaintiff's claim, as the plaintiff was an "excepted person" under the terms of the policy. It would appear from the judgment that the classes of "excepted persons" under the policy were set out in seven clauses, lettered (a) to (g), which appear to have corresponded approximately to paragraphs (a) to (g) inclusive of s. 65(1) of RTA 1961. Clause (a) did not, however, replicate paragraph (a) of s. 65(1), in that it provided that any person claiming in respect of personal injury to himself sustained while he was in or on "any vehicle described in the schedule" was an excepted person. Butler J. held that that clause had to be read as if the exclusion ("other than a … vehicle of a class specified") contained in paragraph (a) had been added to it.

40. The issue, which was one of a number of issues in the case, which is relevant for present purposes was whether the van, a 15 cwt. Ford Thames van, which the defendant had purchased new in 1964, and which when purchased had two seats, a driver's seat and a passenger seat beside it in the driver's compartment, the passenger seat being capable of being removed to allow the carriage of goods in that space, came within the class specified in Regulation 6(1)(b). Dealing with this issue, Butler J. stated as follows:

> "[Counsel on behalf of the insurer] has submitted very forcibly that the van was not a vehicle constructed primarily for the carriage of one or more passengers but was constructed primarily for the carriage of goods. This clause in the policy being an exempting clause must be construed against the insurers. It should also be construed in so far as it is in conflict with the general policy and tenor of the Act which is to extend compulsory insurance cover to passengers in mechanically propelled vehicles. Consequently, if the term 'constructed primarily for' may properly have more than one meaning that construction should be adopted which would preserve the plaintiff's claim rather than defeat it. In my view the term 'constructed primarily for' besides the exclusive meaning for which [counsel for the insurer] contends may also mean 'that

> for which the vehicle was first constructed'. As first constructed this van was apt for the carriage of a driver, a passenger and goods. Accordingly it is a vehicle to which the regulations apply and the plaintiff is not an excepted person under the terms of the policy as restricted by the Act."

41. It was submitted on behalf of the defendant that the decision of Butler J. is neither binding upon this Court, nor a persuasive authority. It was also submitted that the fact that the vehicle may have been apt for the carriage of a driver and of a passenger as constructed, does not assist in any way in establishing what it was primarily constructed for. In my view, that submission is correct. It is also worth noting that Butler J. perceived his task as one of construction of a contract of insurance, not one of statutory construction where the *contra proferentem* rule has no application. Furthermore, and with respect, I cannot discern in RTA 1961 a general policy and tenor of extending compulsory cover for passengers generally. On the contrary, the policy is to exclude it, although the blanket exclusion can be cut down by ministerial regulation.

42. Another authority relied on by the plaintiff was *King v. Cornhill Insurance Company* [1993] 2 I.R. 43. That was a decision of this Court, Blayney J., which concerned the construction of a provision in the plaintiff's motor insurance policy with the defendant. The plaintiff, while driving his father's Mitsubishi Shogun was involved in an accident in which his niece, who was sitting in the passenger seat in the front, and two of his children, who were in the back of the vehicle, were injured. In the proceedings he was seeking a declaration that he was entitled to an indemnity under his own policy of insurance which, in a clause dealing with "driving other cars" stated that he would be given an indemnity while driving any motor car not belonging to him provided it was driven within the "limitations as to use" specified in the current certificate of insurance issued with the policy. The defendant contended that the Mitsubishi Shogun was not a motor car and refused to indemnify the plaintiff. The case made by the defendant was that the expression "motor car" in the policy should be defined by reference to Regulation 6(1)(b) of the 1962 Regulations as being a vehicle constructed primarily for the carriage of one or more passengers. The defendant's case was that, as the Shogun had no back seat, it was not constructed primarily for the carriage of passengers and so was not a motor car. The facts outlined in the judgment were that the vehicle looked like a large jeep which had straight sides with three doors, one at each side and one at the rear which contained a large glass window. When purchased it had only three windows but two additional windows were added by replacing metal panels which had been previously above each of the rear wheels. The vehicle had been imported from Northern Ireland and on importation it had been declared as a goods vehicle. It was bought as such, so that it attracted a lower rate of duty. It had no rear seat when purchased and that was the position at the date of the accident.

43. It was argued on behalf of the defendant that the issue was whether the Shogun was a private motor car or a commercial vehicle and it was contended that it was a commercial vehicle because, having no rear seat, an insurance company would not give passenger cover if insuring the vehicle. Blayney J. rejected that argument stating as follows (at p. 46):

> "The type of cover which an insurance company would be prepared to give is not the test. The test is whether the 'Shogun' is correctly described as a motor car and I accept the evidence of Mr. Devlin [an insurance broker and consultant with forty years' experience in insurance] on this point. He says that it is classified as such by the defendant company and four other insurance companies. It seems to me that that is strong evidence that the 'Shogun' should be taken to be a motor car. …
>
> … It was submitted that because passenger cover could not have been obtained for the 'Shogun' that it could not have been the intention of the defendant company that the 'Shogun' would come within the description of 'motor car' in the driving other cars clause in the plaintiff's policy. But what the defendant company's intention was cannot be looked at independently of the words used in the clause. What the court has to do is to ascertain the meaning of the clause by construing the words actually used in it. And I am satisfied on the evidence that the Mitsubishi Shogun does come within what the ordinary person would understand to be a motor car. I consider that the ordinary person would not be concerned with whether the vehicle had a back seat or not. If the vehicle looked like a motor car, it would be taken as a motor car. And the photograph shows that it does look like a motor car."

44. On that basis, Blayney J. held that the plaintiff was entitled to the declaration sought.

45. Counsel for the defendant submitted that the decision in *King v. Cornhill Insurance Company Limited* does not assist the court, because Blayney J. did not define "motor car" by reference to Regulation 6(1)(b), as had been proposed by counsel for the defendant. I consider that that submission is correct. In any event, Blayney J. was construing a contract, not a statute or a statutory instrument.

46. Neither Butler J. nor Blayney J. interpreted Regulation 6(1)(b) by the application of principles of statutory construction, which is the court's task in this case. Accordingly, neither authority referred to assists in that task. Nor do some of the other submissions made on behalf of the plaintiff, which I will address briefly.

47. First, it was argued that there was a European Union law dimension to ascertaining what the law was in relation to compulsory insurance cover for passengers on 6th November, 1991. This submission is broadly posited on the proposition that the court should be informed by the purposes of the Third Directive because of the positive obligations of the State and the national courts by virtue of EC article 10. I have already effectively answered this point by pointing to the State's derogation from the Third Directive, which was operative on 6th October, 1991. This Court has no obligation to interpret national law in the light of a provision of community law at a time when the State had a derogation from that provision.

48. Secondly, the plaintiff submitted that there is a constitutional dimension to the ascertainment of the law in relation to compulsory insurance against liability to passengers as of 6th October, 1991. It was suggested that the court should have regard to the unreported judgment of this court (Murphy J.) delivered on 18th March, 2005 in *Delargy v. the Minister for the Environment and Local Government & Ors.* [2005] I.E.H.C. 94. The plaintiff in that case, who had been a pillion passenger on a motor cycle, had been injured when the motor cycle was involved in an accident in 1987. In 1996 she was awarded damages in an action against the owner and driver of the motor cycle, but she failed to recover against him. In the proceedings against the Minister, Ireland, the Attorney General and the Motor Insurers' Bureau of Ireland, which were initiated in 2000, the plaintiff, *inter alia*, impugned the constitutionality of Regulation 6 of the 1962 Regulations and contended that the Minister was acting ultra vires the powers conferred on him by the Oireachtas in making those regulations. The manner in which Regulation 6 adversely impacted on the plaintiff in that case was that Regulation 6(2) provided that "passenger" did not include a person being conveyed by a cycle, whether in a side-car or otherwise. In his judgment, Murphy J. held that Regulation 6 of the 1962 Regulations was invalid having regard to the provisions of the Constitution.

49. In addition to taking a pleading point, counsel for the defendant submitted that the decision in the *Delargy* case is not relevant to any of the issues in this case, in that Murphy J. was dealing with the provision in relation to cycles in Regulation 6(2). The issue he was addressing concerned insurance of pillion passengers on motor cycles. It was submitted that it was unlikely that he intended to

strike down the entirety of Regulation 6. That analysis seems to me to be correct. But over and above that, I do not see how it would avail the plaintiff or advance his case if this Court were to regard Regulation 6(1)(b) as constitutionally infirm, because, as regards compulsory insurance cover for passengers, it is inclusive rather than exclusive.

50. In general, in my view, the reliance of the plaintiff on a constitutional dimension is misconceived. Further, the case made on his behalf that an insurance contract which failed to extend cover to a front seat passenger would offend against his constitutional right of bodily integrity, which was pleaded only in the plaintiff's original reply to the defendant's original defence, cannot be maintained.

51. Finally, counsel for the plaintiffs properly submitted that, in construing the relevant statutory provisions and the 1962 Regulations, the court must have regard to the provisions of the Interpretation Act, 2005 and, in particular, s. 5(2) and s. 6. As regards s. 5(2), I have already stated that I consider that a literal interpretation produces the same result as a purposive approach, although I see no necessity to call in aid the purposive approach permitted by s. 5(2), because the provision is neither obscure nor ambiguous, nor does a literal interpretation result in absurdity or a failure to reflect the plain intention of its maker. As regards s. 6, which permits the court, in construing the provision, to make allowances for changes which have occurred since the making of the 1962 Regulations, for example, in social conditions, the court can only do so insofar as the text, purpose and context of the provision permit. While I accept that the vehicle at issue here was of a type, a car derived van, which in the late 1980s and in the early 1990s was acquired by young men for private use rather than commercial use, the focus of Regulation 6(1)(b), in defining the excepted class, is on the principal purpose of the vehicles as is to be gleaned from the manner of construction, not from the use to which they were subsequently put. There is nothing in the text, purpose or context of the provision which would justify having regard to the phenomenon referred to by the plaintiff in the construction of the provision.

Mr. Wheeler's vehicle

52. It is common case that the chassis number of Mr. Wheeler's vehicle tells us where and when it was constructed and the model designation given to it by Ford. It was built in Dagenham in April, 1990 as a "Fiesta van".

53. The vehicle's designation as a van carried with it certain financial benefits for prospective purchasers. Lower rates of excise duty and VAT applied than applied to similar models designated as cars, resulting in significant saving to the purchaser. The vehicle could be taxed as a commercial vehicle, resulting in a saving on road tax. Mr. Wheeler availed of those benefits in relation to the Fiesta van. He also availed of the opportunity to seek insurance from the defendant under a commercial policy at a cost considerably lower than, perhaps even half the cost of, cover on a private car policy.

54. The model designation given by Ford to the vehicle is part of the overall picture, but it is not determinative of the issue with which the court is concerned, namely, whether the vehicle falls into the class specified in Regulation 6(1)(b). Nor is the fact, which was established, that the Fiesta van was generally regarded in the motor industry and in the motor insurance industry as a car derived van, having evolved from the Fiesta car, determinative. The crucial question is whether this model was constructed principally for the carriage of one or more persons other than the driver, and not for some other purpose, such as the carriage of goods.

55. On the exterior the three-door Fiesta van looked exactly the same as a three-door Fiesta car save that in the van the rear side window spaces were metalled over. The rear door opened up in the van in exactly the same way as it opened up in the car. There was also considerable similarity between the interior of the car and the interior of the van. Each had two front seats, one for a driver and the other for a passenger. Seat belts were provided for the front seats, which tilted forward to facilitate access to the rear. The major difference was that the van had no rear seat. In terms of carrying function, the van was dissimilar from the car in that the back seat was omitted, as were seat belts, although the anchor points for the seat belts were present. A metal plate, which was level with the floor of the boot compartment, extended from the rear of the front seat to the floor of the boot. The Fiesta car undoubtedly belongs to the class of vehicles constructed primarily for the carriage of passengers. Whether the Fiesta van comes within that class essentially turns on whether, because of its construction, omitting the rear seat and thereby reducing its passenger-carrying capacity and correspondingly increasing its goods-carrying capacity, it can nonetheless be regarded as constructed principally for the carriage of persons. In my view it cannot.

56. Mr. Wheeler's vehicle was not a standard Fiesta van. Its exterior had a "sportier" appearance than a standard Fiesta van in that it was embellished with spoilers, skirts, colour-coded bumpers, larger than usual hub caps and a decorative blue stripe all round and the word "Flair". These embellishments were added after importation by Ford in Cork. While I have no doubt that these features were added to attract young male customers who were looking for vehicles for private use, rather than customers who were looking for commercial vehicles for commercial use, in my view they are of no relevance in determining whether the vehicle was of the class specified in Regulation 6(1)(b). Such features, in my view, whether on a Fiesta Flair car or on a Fiesta Flair van, say nothing about the carriage function of such a vehicle as constructed, which is what the test posited for inclusion in the class thereby specified was directed to.

57. Accordingly, I have come to the conclusion that Mr. Wheeler's Fiesta Flair van did not come within the class of vehicles first specified in Regulation 6(1)(b), in that it was not constructed primarily for the carriage of one or more passengers. That conclusion accords with the treatment for insurance purposes of such vehicles by the defendant in 1990 and 1991, in that its practice was to give cover for such vehicles as follows:

> (a) where the proposer or insured was under the age of 25 years or holding a provisional licence, cover on a commercial policy which wholly excluded passenger cover, on the basis that liability to passengers was not compulsorily insurable;
>
> (b) where the proposer or insured was over the age of 25 years, cover on a commercial policy, with provision, on payment of an additional premium, for including passenger cover, which from 1991, under endorsement 27 of the defendant's Commercial Vehicle Protection Policy, was limited to a passenger seated on fixed seating in the front of the vehicle to the side of the driver, which, in effect, was an additional provision of the type envisaged in s. 62(2) of RTA 1961; and
>
> (c) in the case of a proposer or an insured aged 30 years or older holding a full driving licence, cover under a private car policy, subject to the proviso that use was confined to social, domestic and pleasure purposes only and excluded all business use, and subject to payment of the relevant premium in relation to such a policy, which was considerably higher than the premium for commercial cover.

58. On the evidence, I believe that the defendant had a coherent strategy, which accorded with the law, in relation to car derived vans in 1990 and 1991. In understanding that strategy and how it evolved, I found the evidence of Don McCormack, who is a superintendent in the commercial motor underwriting department of AXA Insurance Limited, which took over the defendant in 1998 when it took over Guardian Group, very helpful. While Mr. McCormack did not disagree with the proposition that was put to him in cross-examination that the discovered documentation suggested that at no stage in the defendant's organisation did anyone ever

consider the question whether the vehicle in issue was constructed primarily for the carriage of one or more passengers, his evidence was that the defendant understood that a vehicle described as a van with only two seats in the front and with no seats in the rear did not require passenger cover under the 1962 Regulations. In my view, that conclusion was correct, even if the pertinent question was not considered.

59. To summarise the position, in my view, Mr. Wheeler's Fiesta Flair van was not within the class of vehicles specified in s. 6(1)(b) of the 1962 Regulations so that, by virtue of the combined operation of s. 56(1) and s. 65(1)(a), he was not obliged to have insurance cover against passenger liability. Therefore, a commercial policy which wholly excluded passenger liability fulfilled his obligations under the law. In carrying passengers in his vehicle while insured under a commercial policy which wholly excluded passenger liability, Mr. Wheeler was not breaking the law but he was exposing himself to liability to the passenger without having any indemnity in respect of it.

Conclusion in relation to invocation of s. 76
60. As I have concluded that Mr. Wheeler was not required by RTA 1961 to insure against liability to passengers, sub-s. (1) of s. 76 has no application and statutory argument fails.

The contractual argument
61. Counsel for the plaintiff also argued that, as a matter of contract, even if Mr. Wheeler's policy documentation excluded passenger cover, what was agreed between Mr. Wheeler and the defendant, through its agents, was that passenger cover was excluded only in relation to the rear of the vehicle and not in relation to a front seat passenger.

62. The defendant has raised a host of objections, both procedural and substantive, to that argument. Before considering those objections, I propose outlining the facts as to Mr. Wheeler's dealings with the defendant's agents and setting out my findings on the facts.

63. The Fiesta Flair van was the first vehicle which Mr. Wheeler owned. He completed the purchase from Dermot Kelly & Company Limited in Kilcock on 22nd June, 1990. His father had been in touch with Mr. Patrick Bagnall, the manager of the defendant's branch in Kells, and, on the evidence, I am satisfied that it was understood that Mr. Wheeler would be able to get cover from the defendant. Mr. Wheeler needed cover and an insurance certificate before he could remove the Fiesta Flair van from the garage premises in Kilcock.

64. After completing the purchase, Mr. Wheeler went to the Kells branch of the defendant to obtain insurance. He met Mr. Bagnall. Mr. Wheeler signed a proposal form, which was headed in bold capitals "goods carrying vehicles proposal". The form was filled out by Mr. Bagnall on the basis of what Mr. Wheeler told him. It indicated that Mr. Wheeler required third party, fire and theft cover. The vehicle was described as a Fiesta van. A question whether there were any seats fitted to the rear of the driver's seat was answered in the negative. Under the heading "uses of vehicle", in relation to the precise nature of the goods to be carried, it was stated: "Private. Not for goods." The next question, whether the vehicle would be used for carriage of the proposer's own goods was answered positively. Mr. Wheeler's father, his mother, his sister and his brother-in-law were entered as named drivers.

65. When the proposal form was completed, the premium was calculated on the basis of the proposal based on the information given to Mr. Bagnall. The premium included the normal age loading, because Mr. Wheeler was only 24 years of age. The quotation was £1,050. Mr. Wheeler paid that sum and cover was granted on the basis of the proposal. The documentation Mr. Wheeler was given was: a receipt for the premium; the policy booklet; and a document which incorporated the certificate of motor insurance and the disc for the purposes of RTA 1961, and the policy schedule.

66. Mr. Wheeler signed a further document before leaving the Kells office, but he was not given a copy of it. This document was headed "Commercial vehicles", with a sub-heading: "Notice to Policyholders in respect of Passenger Risk Cover". The text of the notice (which was sometimes referred to in the evidence as a waiver form) was as follows:

> "It is not compulsory to have passenger risk cover on the vehicle proposed for insurance cover under the Road Traffic Act, 1961 and subsequent regulations.
>
> The policy does not include insurance cover for passenger risk, and accordingly in the event of passengers being carried in the vehicle, you will not be indemnified for claims in respect of injuries sustained by such passenger.
>
> Passenger risk cover for the vehicle may be available for an additional premium."

67. Below that text was included the following acknowledgement:

> "I have read this notice and accept I do not have passenger risk cover on the vehicle detailed below."

68. Particulars of the policy which had been issued to Mr. Wheeler and the chassis number of the Fiesta Flair van were then set out. Mr. Wheeler signed the document. His signature was witnessed by Patrick Gallagher, who at the time was a clerk in the employment of the defendant in the Kells office.

69. In relation to what he was told about passenger cover, Mr. Wheeler's evidence was that, when the "uses of vehicle" section of the proposal form was being completed, Mr. Bagnall told him that passengers were not covered in the back of the van. His response was that he understood that fully. After he had been furnished with the policy documentation, as he was leaving the defendant's branch, he was called back by Mr. Gallagher to sign the waiver form for passenger cover. Mr. Gallagher started to explain to him about passenger cover, but Mr. Wheeler told him that Mr. Bagnall had already told him about the passenger cover. Mr. Wheeler's evidence was that he signed the form and then left.

70. There was a conflict between Mr. Wheeler, on the one hand, and Mr. Bagnall and Mr. Gallagher, on the other hand, as to what Mr. Wheeler was told about passenger cover. Understandably, neither Mr. Bagnall nor Mr. Gallagher could recall the particular event. Mr. Bagnall's evidence was that he would have told the person to whom he was selling a commercial policy that passenger cover was excluded and that he would have to sign a declaration that he understood the ramifications of that. He said it was not standard practice to give the insured a copy of the notice in relation to passenger risk. Mr. Gallagher's belief, on the basis of what the file suggested, was that he took over dealing with the business when Mr. Bagnall had derived a premium quotation from the computer system. He believed that he had to get the policy number, capture the policy, receipt the money, issue the certificate and the policy to Mr. Wheeler and obtain a signature on the notice in relation to passenger cover. Mr. Gallagher was younger than Mr. Wheeler at the time, being only 21 years of age, and I am satisfied that he was very aware of the practice of young men buying car derived vans

with the view to getting a cheaper vehicle, cheaper road tax and more affordable commercial insurance cover. I am also satisfied that he was very aware of the negative aspects of a young man having only commercial cover, the biggest negative being the absence of passenger cover, which he testified was the first thing which would be talked about.

71. When Mr. Wheeler's policy came up for renewal in June, 1991 the renewal form was sent from the defendant's head office and provided for renewal on the terms of the then existing policy. Mr. Wheeler renewed on the existing terms, with the benefit of 20 per cent no claims bonus. The certificate of insurance was issued from the Kells branch on 21st June, 1999 and signed by Mr. Gallagher. Mr. Wheeler was not told about the option, being then over 25 years of age, of obtaining passenger cover on the payment of an additional premium.

72. The insurance cover which Mr. Wheeler had from the defendant at the date of the accident, 6th November, 1991, was documented by the certificate signed by Mr. Gallagher on 21st June, 1991 and the policy schedule which remained attached to it, read in conjunction with the policy which was in booklet form. Fortuitously all of the documentation was available and put before the court. A lot of court time was spent with the witnesses explaining what the policy documentation was telling the insured and, in the case of the certificate, the world at large about the cover provided on the policy, which was difficult to fathom. Indeed, when reading the authorities, I was not surprised when I came across the comment by Lavery J. in *Whelan v. Dixon* at p. 198 that anyone who approached the consideration of the construction of a policy without prior experience might think it a very curious document indeed.

73. What the certificate conveyed to the experienced or tutored reader was that, as regards use of the vehicle, Mr. Wheeler was covered while using it for social, domestic and pleasure purposes, for his business as last advised to the defendant, and as necessitated by overhaul, upkeep and repair of the vehicle for him. It also conveyed that cover was excluded in relation to certain uses: use for racing etc., use for hire or reward and certain towing operations. The policy schedule conveyed that the cover was in accordance with the definition of cover "C "of the policy, which in section 11 of the policy was stated to be third party, fire and theft cover. In order to ascertain the extent of the indemnity Mr. Wheeler was getting in relation to liability to third parties, the reader would have had to look at section 2 of the policy where he would have seen that, under the second exception to section 2, death of, or bodily injury to, any person whilst such person was in or on the vehicle was excepted. passenger cover was excluded. On the face of the certificate, directly above the policy number, the letters "EXPC" appeared. Those letters signified that the policy excluded passenger cover. I would not have expected Mr. Wheeler to have known that.

Findings of fact
74. I am satisfied that, as of 6th October, 1991, the contract between Mr. Wheeler and the defendant as evidenced by the policy documentation furnished to him wholly excluded cover for passengers.

75. The alternative contract contended for by the plaintiff, that the defendant agreed to cover the defendant for liability to front seat passengers, is premised on a finding by the court that Mr. Wheeler was not told that passenger cover was wholly excluded. I cannot so find. I find that Mr. Wheeler was informed before he signed the notice in relation to passenger cover that no passenger cover was being provided. The overall impression one gets from the evidence is that both Mr. Bagnall and Mr. Gallagher conducted the business with Mr. Wheeler in an efficient and proper manner on 22nd June, 1990. I consider that it is not insignificant that, when the defendant's claims department wrote to Mr. Wheeler on 27th November, 1991 advising him that he had no passenger cover, he did not take issue with that. Moreover, he did not at any time subsequently take action against the defendant to compel the defendant to indemnify him against the plaintiff's claim. While there is evidence to suggest that Mr. Wheeler may not have fully taken on board what he was told, in that he and the named drivers on the policy carried family members as passengers in the vehicle, I cannot find that that is attributable to any default on the part of the defendant's agents.

The defendant's objections to the contract argument
76. The defendant submitted that a case based on the contract argument has not been pleaded by the plaintiff. That is so. The plaintiff's case as pleaded is based on the policy issued by the defendant to Mr. Wheeler, not on an alleged agreement partly in writing and partly oral or on a written agreement varied by an oral representation. However, notwithstanding that procedural objection, counsel for the defendant dealt with the substance of the argument and advanced certain defences, which I will now consider for the sake of completeness notwithstanding that I have found no factual basis to support the argument.

The privity of contract defence
77. Having made the point with which I have already dealt, that s. 76(3) expressly provides that s. 76(1) can only be invoked in relation to claims against liability in respect of which compulsory insurance is statutorily mandated, so that the plaintiff was not entitled to invoke s. 76 to litigate directly against the defendant, the defendant also contended that, as a matter of contract law, the plaintiff cannot assert Mr. Wheeler's contractual rights. Counsel for the defendant referred the court to the useful overview on the doctrine of privity of contract contained in chapter 17 of Clarke on Contract Law in Ireland, 5th Edition.

78. The plaintiff's first response to the defendant's reliance on the doctrine of privity of contract was to invoke s. 76, which the plaintiff rightly asserted is an exception to the privity of contract rule. But the difficulty for the plaintiff is that the legislature has expressly stipulated that the exception applies only to an insurer's contractual liability to an insured for liability against which the insured has a statutory obligation to insure. On the basis of the finding I have made on the construction and application of Regulation 6(1)(b) that Mr. Wheeler was not obliged to have passenger cover for his vehicle, the case does not come within the statutory exception. If it had, the plaintiff, in pursuing his claim against the defendant would have been required to follow the procedure stipulated in Order 91 of the Rules. If that had been open to the plaintiff, the court could have directed an issue to be tried on oral evidence in relation to any dispute as to whether, in the factual circumstances which prevailed, the risk was covered, as was suggested by Lavery J. in *Whelan v. Dixon*. However, that is hypothetical, because the statutory exception does not apply.

79. The plaintiff's second response to the defendant's lack of privity defence addressed the position of the plaintiff at common law and in equity. The plaintiff asserted that he came within one of the exceptions to the doctrine of privity which have been recognised by the courts, which are referred to and summarised in McDermott on Contract Law at paras. 18.18 and 18.19. In particular, the plaintiff asserted that the application of the so-called "principled approach" exception referred to by McDermott in paras. 18.75 to 18.79 inclusive would entitle the plaintiff to enforce Mr. Wheeler's contractual rights against the defendant. As I understand the plaintiff's proposition, he is alleging that under the contract between the defendant and Mr. Wheeler it was agreed that the defendant would indemnify Mr. Wheeler against liability to front seat passengers in the insured vehicle and that, as front seat passenger to whom Mr. Wheeler has liability, the plaintiff can enforce the contract of insurance at common law. That proposition, if it were correct, would seriously dent the doctrine of privity of contract. It certainly goes way beyond the limited exception to the privity rule recognised by the Supreme Court of Canada in the two cases referred to by McDermott, the effect of which was to enable a defendant third party sued by one contracting party to rely on a contractual term, where the contracting parties had intended to extend the benefit of the term to the third party. Even if there was a sound factual basis to support the plaintiff's proposition, I am

not satisfied that it is sound in law.

The Statute of Limitations defence
80. The defendant further submitted that, even if the plaintiff could enforce Mr. Wheeler's contract against the defendant, he could be in no better position than Mr. Whelan. It was contended that, given that any claim which Mr. Wheeler had against the defendant was statute barred in October, 1997, any claim in contract which the plaintiff had would have been barred at the same time. In this connection, the defendant relied on the decision of the English High Court, Queen's Bench Division in *Lefevre v. White* [1990] 1 Lloyd's Reports 569. The plaintiff's response to that argument was that the Statute of Limitations was not pleaded by the defendant, which I consider to be a specious point in the context of the claim in contract not having been pleaded. The plaintiff also made the point that the decision of Popplewell J. in *Lefevre v. White* was authority for the proposition that, unless Mr. Wheeler had accepted the defendant's repudiation, the Statute of Limitations did not run from the time of the defendant's unilateral repudiation. However, the plaintiff did not develop that argument to the point of identifying when the Statute did run, or will run, against Mr. Wheeler.

81. The issue of the operation of the Statute of Limitations would only arise in the scenario that the plaintiff is not precluded by the doctrine of privity of contract from enforcing Mr. Wheeler's contract of insurance, a scenario which I have rejected. So the issue is wholly hypothetical. However, I would point out that, if the plaintiff could invoke s. 76(1)(d) of RTA 1961, and in my view he cannot, his action would be one for damages for personal injuries against the insurer in lieu of against the insured and he would have had to commence it within the limitation period pertinent at the time to personal injuries actions, within three years of 6th October, 1991. As regards Mr. Wheeler's contractual position vis-à-vis the defendant, even if there was a contractual obligation on the defendant to indemnify any liability of Mr. Wheeler to a front seat passenger, and in my view there was not, as things stand, such liability has not been established. This case is distinguishable from *Lefevre v. White* in a number of respects. First, Mr. Wheeler has not sued the defendant on the contract of insurance. Secondly, the plaintiff has not obtained judgment against Mr. Wheeler, the consent judgment having been vacated, and his action is still pending. Thirdly, that case was concerned with the application of a statutory provision dating from 1930 which had features of s. 76 of RTA 1961 and s. 62 of CLA 1961. By way of general observation, I do not consider it necessary or appropriate to say anything definitive about when Mr. Wheeler's right of action on the alleged contract would have accrued, save to say that I do not necessarily accept the defendant's argument that it would have accrued in October, 1991.

The *locus standi* defence
82. As I understand it, a further submission made by the defendant that the plaintiff has no locus standi was directed to submissions made by the plaintiff on the contractual claim asserting that the defendant owed to Mr. Wheeler, as a direct insurer in the Irish market, which the defendant was at the relevant time, certain duties of care, and certain fiduciary duties and was in breach of those duties. I regard the defendant's submission as another aspect of the lack of privity argument. I do not consider it necessary to comment further on it.

General observations
83. This case has shone a light on a phenomenon which occurred in the late 1980s and early 1990s because of the prohibitive cost of motor insurance for young males, which was a reaction to the high risk exposure which insurers considered was associated with young male drivers. Mr. McCormack's evidence was that at the time the defendant was innovative as an insurer in that it was writing certain types of risk which most other insurers would not take on. The strategy of the defendant was to quote a reasonable premium where it could limit exposure in relation to the policy cover. The exclusion of passenger cover where it was not compulsory was a device which the defendant adopted to limit its exposure to risk, thus enabling it to charge a lower premium which reflected that exclusion. As I have found, the defendant's understanding that passenger cover was not compulsory in the case of car derived vans, such as Mr. Wheeler's Fiesta Flair van, was correct.

84. While there was nothing unlawful about the defendant's business strategy, which no doubt generated profit for it, it did have unfortunate consequences for the plaintiff, who is left with life-long serious injury and impairment without what would be regarded as adequate compensation. The plaintiff's legal team spared no effort in endeavouring to find a basis on which those consequences could be redressed and are to be commended for doing so. However, while the plaintiff deserves our sympathy, unfortunately the law does not provide a remedy for him.

Order
85. There will be an order that the plaintiff's claim is dismissed.