Neutral Citation No: [2009] IEHC 582

THE HIGH COURT

JUDICIAL REVIEW

2009 1215 JR

BETWEEN

GILLIAN COONAN

APPLICANT

AND

JUDGE JOHN COUGHLAN

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Kearns, President of the High Court, delivered on the 1st day of December, 2009

This is an application for an order of mandamus directing the first named respondent to set a recognisance for the purpose of an appeal by the applicant by way of case stated following the conviction of the applicant for offences contrary to s. 56(1) and s. 56(3) of the Road Traffic Act, 1961 (as amended) on the 19th November, 2009. The case was heard by the first named respondent and prosecuted by the second named respondent at the suit of Garda Patrick Kirwan. The applicant had pleaded not guilty to an offence of being the owner of a mechanically propelled vehicle who allowed another person to use the vehicle in a public place when a vehicle insurer would not be liable for injury caused by the negligent use of the vehicle and while there was not in force at the time an approved policy of insurance contrary to the aforesaid provisions of the Road Traffic Act, 1961. Garda Patrick Kirwan gave evidence of having observed Mr. William Blake, a man whose driving was not covered by the policy of insurance held by the applicant, operate the mechanically propelled vehicle owned by the applicant. Garda Kirwan accepted that there was a valid insurance to cover the driving of the applicant.

A point arose in the case as to whether a European Directive, 84/5/EC, had fundamentally altered the position in respect of the liability of vehicle insurers for the negligent use of vehicles notwithstanding that the driver was not covered by a particular approved policy of insurance. Following successive adjournments of the case between April, 2009 and November, 2009 the matter was ultimately heard by the first named respondent on the 19th November, 2009. Detailed submissions were made by both sides and the attention of the first named respondent was drawn to the fact that a similar case had been stated by His Honour Judge Teehan sitting at Carlow Circuit Court for the opinion of the Supreme Court pursuant to s. 16 of the Courts of Justice Act, 1947. However, this case was somewhat different in that it related to the prosecution of a vehicle user rather than a vehicle owner.

Having heard the submissions, the first named respondent rejected the submissions advanced on behalf of the applicant. Thereafter the applicant gave evidence that she was the driver of the vehicle on the day in question and was crossed examined in relation to her evidence by the second named respondent. At the conclusion of the hearing the first named respondent found as a fact that the applicant was not the driver of the vehicle and convicted the applicant of the offence.

At that point an application was moved by the applicant's solicitor, Mr. Declan Fahy, and I quote from his affidavit in this regard:

> *"that the first named respondent fix a recognisance for the purpose of an appeal by way of case stated to the High Court. I say that the first named respondent refused to fix a recognisance for this purpose. I say and am advised that the first named respondent fixed a recognisance of €100 own bond and €1,000 independent surety in the event of an appeal to the Circuit Court."*

Mr. Fahy further deposes that the first named respondent was again asked to fix a recognisance for the purpose of an appeal by way of case stated to the High Court, but the first named respondent again refused to do so, and the application for an order of mandamus is brought in these circumstances.

An order granting leave to seek such relief was granted by the High Court (Ryan J.) on 23rd November, 2009.

The Statement of Opposition delivered on the 30th November, 2009 on behalf of the respondents asserts that the applicant is not entitled to relief by reason of the fact that the applicant first applied for a recognisance to be fixed in advance of first addressing the question as to whether there was going to be a case stated at all, and that the applicant had failed to follow the statutory provisions contained in the Summary Jurisdiction Act, 1857, the Courts (Supplemental Provisions) Act, 1961 and the provisions of Order 102 of the District Court Rules.

DECISION

As the mechanisms and procedures for setting a case for the opinion of the High Court are contained in the

Summary Jurisdiction Act, 1857, it is appropriate to recite the relevant provisions, which are as follows:-

> *"2. After the hearing and determination by a Justice … of any complaint, either party to the proceeding… may, if dissatisfied with the said determination as being erroneous in point of law apply in writing within three days … to the said Justice …, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of .. the Superior Courts.. and such party, shall, within three days after receiving such case, transmit the same to the Court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed to the other party to the proceedings in which the determination was given.*
>
> *3. The applicant, at the time of making such application and before a case shall be stated and delivered to him by the Justice … shall in every instance enter into a recognisance before such Justice … with or without a surety … in such sum as to the Justice shall deem meet, conditioned to prosecute without delay such appeal and to submit to the judgment of the Superior Court and pay such costs as may be awarded by the same.*
>
> *4. If the Justice… be of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal.*
>
> *5. Where the Justice shall refuse to state a case as aforesaid, it shall be lawful to the appellant to apply (to the High Court) upon an affidavit of the facts, for a rule calling upon such Justice to show cause why such case should not be stated and the said Court may make the same absolute or discharge it, with or without payment of costs, as to the Court shall seem meet."*

The provisions of the Summary Jurisdiction Act, 1857 were extended by s. 51 of the Courts (Supplemental Provisions) Act, 1961 which provides:-

> *"(1) Section 2 of the Summary Jurisdiction Act, 1857, is hereby extended so as to enable any party to any proceedings whatsoever heard and determined by a Justice of the District Court (other than proceedings relating to an indictable offence which was not dealt with summarily by the Court) if dissatisfied with such determination as being erroneous on a point of law to apply in writing within fourteen days after such determination to the said Justice to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the High Court."*

Rule 102 of the District Court Rules, 1997 provides:-

> *"8.(1) an application pursuant to s.2 of the Act of 1857 (as extended by s.51(1)of the Act of 1961) to state and sign a case for the opinion of the High Court shall be by notice in the form 102.3, Schedule D.*
>
> *(2) Such notice shall, when completed, be lodged by the appellant or by solicitor for the appellant with the clerk for the court area in which the proceedings were heard and determined within fourteen days after the determination.*
>
> *(3) A copy of the notice shall within the said fourteen days, be served by registered post upon every other party to the proceedings."*

The same rule then provides in relation to recognizances:-

> *"9. The appellant shall, subject to the provisions of O12, rule 20 of these rules, within fourteen days after the determination enter into a recognisance, in the form 102.4, Schedule D before a judge of the District Court, with or without a surety or sureties and in such sum or sums as the judge may determine."*

It is abundantly clear from the foregoing provisions that a "step by step" process providing for the order of events exists to ensure that the case stated procedure proceeds in the following manner:-

(i) Lodgment of notice requiring a case stated.

(ii) Entry into recognisance

(iii) Preparation of the case stated

(iv) Service of notice on respondent

(v) Transmission of case stated to the High Court

(vi) Hearing in High Court

That this sequence is not discretionary is abundantly clear from the decision of the Supreme Court in *Thompson v Curry* [1970] 1 I.R. 61 in which it was held that the observance of the sequence of events required by s. 2 of the Act of 1857 was a condition precedent to the exercise by the High Court of its jurisdiction. In *D.P.P. v O'Connor* (Unreported, High Court, 9th May, 1983) Finlay P. stated:-

> *"…the High Court has not got power to dispense an appellant from compliance with the sequence of events provided for by the section, no such statutory power being contained in the Act of 1857 nor in any amending Act and there being no such general inherent power in the Court"*

The applicant did not follow the statutory sequence in the instant case. What happened in the instant case was that the applicant applied for a recognisance to be fixed before requesting the Court to actually state a case under s. 2 of the 1857 Act. The whole purpose of the recognisance is to prosecute the case stated without delay and to submit to the judgment of the High Court and to pay such costs as may be awarded by it. There is no point in entering into a recognisance if there is not in existence an appeal by way of case stated.

As the applicant points out in his submissions, a District Judge is not obliged to state a case where it is requested by the defence and can refuse to do so if he is of the view that it is frivolous. It is not clear that anyone in the District Court addressed that particular issue and the applicant's judicial review appears to be premised on the proposition that all such matters could be dealt with by the applicant's advisor after he had had a recognisance

fixed.

However, if the applicant's contentions in the this judicial review are correct, the position would appear to be that an appeal by way of case stated is automatic and nondiscretionary in that a District Court judge would be obliged to fix a recognisance for a case stated in every case before he has even been asked to do so, let alone acceded to such an application.

Logically, the judge's decision to state a case and the entering of the recognisance should either occur together or in immediate succession. That would mean that the statutory certification process under the Summary Jurisdiction Act, 1857 could be followed.

I am fortified in the conclusion I have reached in this matter by consideration of what would happen if the applicant were to be granted the relief which she seeks. The matter would in such circumstances go back to the District Court with an order of mandamus requiring the court to set a recognisance and to allow the applicant to enter into it. The applicant would then have to apply to the District Court judge to state a case. If the District Court judge declined to do so, the whole exercise as regards the recognisance would have been entirely pointless. If the applicant wished the judge to certify the refusal and to request him to show cause in the High Court, then the matter would return to this Court for a second time by way of judicial review based on s.5 of the 1857 Act. There would thus have been two judicial reviews arising out of what should have been a single process, namely, the decision to state a case and the consequential fixing of the recognisance following upon such a decision.

In my view the applicant is not entitled to the relief sought. The appropriate course is for the applicant to return to the District Court to make an application to the District Court judge to state a case under s. 2 of the Summary Jurisdiction Act, 1857. The District Judge can then address the question as to whether there is to be a case stated. If the applicant is unhappy with the result of that application, in the event that it concludes with a refusal, the s. 5 procedure is then available to challenge such refusal.