THE HIGH COURT ON CIRCUIT
SOUTH-WESTERN CIRCUIR COUNTY OF CLARE

2005 113 CA

BETWEEN

TERENCE GALVIN

PLAINTIFF/RESPONDENT

AND
JOHN DENNEHY & KIERAN DENNEHY

DEFENDANTS

AND
THE MOTOR INSURERS BUREAU OF IRELAND

DEFENDANT / APPELLANT

Judgment of Mr Justice McCracken delivered the 18th day of March 2005

1. On 8th December 1996 the Plaintiff was driving his motor car on a road near Newmarket on Fergus in County Clare. He was struck from behind by another vehicle, lost control of his car and ended up almost on top of a wall at the side of the road. The vehicle which struck him did not stop but shortly afterwards another vehicle owned by the first named Defendant was found in a lay-by with damage to the front of it consistent with having struck the Plaintiff from behind, and it is now accepted by the Appellant that this was so.

2. The Plaintiff initially believed that he had been struck by the first Defendant's car and that it had been driven by the second defendant, who was the son of the first Defendant. He duly submitted a claim to the first named Defendant's insurers on this basis. The first named Defendant maintained from an early stage that this was not so, and that the car had in fact been stolen, but nevertheless the claim was investigated by his insurers and the Plaintiff's vehicle was duly inspected by an assessor on behalf of those insurers. On 29th January 1997 the insurers wrote giving a without prejudice valuation of the vehicle on the basis that it was a total loss. On 30th May 1997 the Plaintiff's solicitors wrote to the insurers, in the knowledge that the first named Defendant claimed the vehicle was stolen, and sought to ascertain whether the insurers were indemnifying the first Defendant and also whether they were accepting liability. This was apparently followed by several telephone calls to the insurer's Galway office but it was not until 18th May 1998 that the first Defendant's insurers repudiated liability on the basis that a driver had not been identified.

3. Immediately following this repudiation, on 21st May 1998, the Plaintiff's solicitors wrote to the third Defendants who are the Appellants in this appeal by registered post giving notice that they intend to issue proceedings against the Appellant. On 3rd December 1999 proceedings were issued in the Circuit Court against all three Defendants. For various reasons the matter proceeded with some considerable delay, but ultimately was heard before His Honour Judge Terence O'Sullivan in the Circuit Court and the proceedings were dismissed as against the first and second named Defendants and there was a decree for €34,645 against the Appellant. This sum was made of €30,000.00 in respect of general damages, €150.00 in special damages for medical treatment and for towing charges and €4,495.00 for damage to the Plaintiff's vehicle. At the hearing before me on 3rd March 2005 in Ennis I reduced the general damages to €20,000.00 and confirmed the figure of €150.00 but reserved judgment in relation to the damage to the vehicle. The sum of €4,495.00 was an agreed sum and is not in issue and the only issue before this Court was the liability of the Appellant under the terms of the Motor Insurers Bureau of Ireland agreement dated 21st December 1988 (herein called "the agreement") to compensate in respect of such damage.

4. The clause at issue in the agreement is clause 3(1) which reads as follows:-

> *"The following shall be conditions precedent to MIB of I's liability: that*
>
> > *(1) The claimant or the claimant's legal representative shall have given notice in writing, by registered post, of intention to seek compensation:-*
> >
> > > *(a) In respect of personal injuries or death not later than three years from the date of the accident giving rise to the personal injuries or death;*
> > >
> > > *(b) in respect of damage to property not later than one year from the date of the accident giving rise to the damage to property."*

5. The Plaintiff concedes that neither he nor he legal representative gave notice in writing by registered post to the Appellant of his intention to seek compensation in respect of the damage to the car within the one year period referred to at clause 3(1). However, he points out that the first Defendants' insurers had not repudiated until after the one year period had expired. He further points out that notice was given to the apparent insurers of the vehicle, and they are one of the insurers who entered into the original agreement which led to the formation of the Appellant, and is what is referred to as "the Principal Agreement" in the agreement. They argued that clause 3(1) does not specify to whom the requisite notice must be given. They also point to clause 3(6) which is a further condition precedent, and reads as follows:-

> *"Notice of proceedings shall be given by the claimant by registered post before commencement of such proceedings:-*
>
> > *(I) To the insurer in any case in which there was in force at the time the accident occurred an approved policy of insurance purporting to cover the use of the vehicle and the existence of which is known before the commencement of proceedings to the person bringing same;*
> >
> > *(II) To MIB of I in any other case."*

6. The Plaintiff maintains that the notice given to the original insurers would have been sufficient under this clause and say that it should be applied by analogy to the notice under clause 3(1). The Plaintiff further relies on the case of *White v. White* [2001] 1 WLR 481 as authority that there should be a purposive construction given to the agreement. That case was concerned with the United Kingdom equivalent of the agreement, both of which derive from Council Directive 84/5 EEC.

7. There is no doubt that that case is authority for the proposition that the agreement must be construed in such a way as to carry out and implement the provisions of the directive. However, the purpose of the directive is very general, and is simply to ensure, in the words of Article 3(1) of the original council directive, namely 72/166/EEC, that:-

"Each member state shall, subject to Article 4, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures."

8. Accordingly, the specifics as to how each member state will ensure that there is insurance, is a matter of each individual member state. Questions such as notification of claims or time limits are not dealt with at all in the directive. I am satisfied that it was perfectly lawful under the terms of the directive for the agreement to specify time limits within which claims should be made and time limits within which notification of proceedings should be given.

9. In any event, I think that there could be no ambiguity in the construction of the agreement. Certainly clause 3(1) does not specify to whom notice of intention to seek compensation should be given, but it does refer to the intention of "the claimant" to seek such compensation. Clause 2 of the agreement refers to "the claimant" as a person claiming compensation and provides that such person may seek to enforce the agreement by:-

"(1) making a claim to MIBI for compensation which may be settled with or without admission of liability, or

(2) citing as co-defendants MIB of I in any proceedings against the owner or user of the vehicle giving rise to the claim except where the owner and user of the vehicle remain unidentified or untraced, or

(3) ……."

10. While this apparently allows a claimant either to claim directly against the appellant and negotiate a settlement with it or issue proceedings citing the appellant as a co-defendant, nevertheless the preconditions in clause 3 seem to make it quite clear that there are two steps involved. Under clause 3(1) there must be a notice of intention to seek compensation and under clause 3(6) there must be a notice of proceedings if proceedings are going to be issued. It is clear that compensation may be awarded by the Appellant without any proceedings being issued, provided there has been the requisite notice of intention to seek compensation given. It seems to me that these two provisions coincide with clause 2(1) and (2), the provision of clause 3(1) coinciding with those of clause 2(1). Under clause 2(1) it is absolutely clear that the claim for compensation must be made to the Appellant, and I fail to see how it can be seriously argued that the notice of the similar claimed compensation provided for in clause 3(1) could be construed as being given to anybody other that the Appellant.

11. I accept that the Plaintiff in the present case was put in a very unfortunate position by the inaction of the first Defendant's insurers in determining whether they would repudiate or not, but it is a fact in this case that the Plaintiff was aware from a very early stage that the first Defendant strongly contended that the car was not driven by him or his son, but had been stolen. Under those circumstances it was clear that if that contention was correct the only claim that could be made would be against the Appellant, and it was always open to the Plaintiff to make such a claim within the 12 month period, notwithstanding that there was also an alternative claim being made against the first Defendant's insurer.

12. Accordingly, the only possible interpretation of clause 3(1) of the agreement is that, in relation to damage to property, a claimant must give the notice in writing referred to therein to the Appellant, and it is not sufficient to give such notice to any other insurer against whom there may possibly be a claim. Accordingly, as such notice was not given in the present case, the Appellant is not liable to the Plaintiff in respect of the damage to the motor vehicle itself.