

THE HIGH COURT

CASE STATED

[2016 No. 286 SS]

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

-AND-

BRONISAW OPACH

APPLICANT

JUDGMENT of Mr. Justice Twomey delivered on the 25th day of October, 2016

Factual background

1. The following is an extract from the Case Stated signed by Judge John O'Neill on the 1st February, 2015:-

"INTRODUCTION

1. This is an appeal by way of case stated by me, Judge Geoffrey Browne, a Judge of the District Court assigned to District No. 4, pursuant to Section 2 of the Summary Jurisdiction Act, 1857, as extended by the Courts (Supplemental Provisions) Act, 1961, on a point of law for the opinion of the High Court.

2. On October 20, 2015 and January 5, 2016, Mr Bronisaw Opach (hereinafter 'the appellant') appeared before me at a sitting of Roscommon District Court, on foot of a summons in Case No. 2014/225933, in respect of the following offence:

"On the 30-May-2014 at LISNACROGHY OR GALLOWSTOWN ROSCOMMON ROSCOMMON a public place, IN SAID DISTRICT COURT AREA OF ROSCOMMON, being the owner of a mechanically propelled vehicle registered number 99WH4865 which was used by one PAWEL OPACH such vehicle being one for neither a vehicle insurer not an exempted person would be liable for injury caused by the negligent use of said vehicle at that time and for which there was not then in force at that time an approved policy of insurance as required by Part VI of the Road Traffic Act 1961, as amended by Part VI of the Road Traffic Act, 1968, as amended.

Contrary to Section 56(1) and (3) of the Road Traffic Act, 1961 (as amended by Section 18 of the Road Traffic Act, 2006)."

3. A copy of the said summons is appended to this case stated at **Appendix A**.

REPRESENTATION

4. Garda Superintendent Nicholson, represented the respondent. Mr Sean Mahon, Solicitor in the firm of Mahon Sweeney, represented the appellant.

EVIDENCE PROVED OR ADMITTED BEFORE ME

5. On October 20, 2015, the prosecution of the appellant came before me at a sitting of Roscommon District Court. On that date, Mr Mahon indicated to me that the appellant had a valid policy of insurance in being at the time of the offence and that he had already advised the prosecutor of this fact in advance of the trial. It was indicated by Mr Mahon that the matter would be fully defended on the basis of the existence of this policy.

6. On that date, I briefly heard the facts of the case from Garda Barron. He stated that on May 30, 2014, he detected mechanically propelled vehicle 99WH4865 being used by Pawel Opach (hereinafter "the user"). Although the user was a named driver on the insurance policy of the appellant, the user was at the material time using a forged driving licence. Evidence was also given that the user was subsequently convicted in the District Court in relation to the use of the forged driving licence and for not having insurance.

7. On behalf of the respondent, Superintendent Nicholson submitted that because the user was driving with an invalid driving licence, this invalidated the policy of insurance held by the appellant and the appellant was guilty of the offence being of the owner of an uninsured vehicle.

8. Mr Mahon submitted there was a valid policy of insurance in being and that the fact that the user did not have a valid driving licence did not void the policy of insurance. Mr. Mahon also submitted that he had invited the respondent to call a witness from Liberty Insurance, who had issued the policy, however, I indicated to him that I did not believe it was necessary for the respondent to call such a witness.

9. On October 20, 2015, in view of the submissions made by Mr Mahon, I directed the respondent to produce the forged driving licence to the court and I adjourned the matter to Roscommon District Court on January 5, 2016 in order to allow for this.

10. On January 5, 2016, the respondent called Garda Barron as a witness. He stated that on May 30, 2014, he detected mechanically propelled vehicle 99WH4865 being used by Pawel Opach ("the user"). A demand was made for the production of his driving licence and insurance. It was discovered that the user was did not hold a valid driving licence and was using a forged driving licence at the time, Therefore, this invalidated any policy of insurance held by the appellant then in force. Evidence was also given that the user was subsequently convicted in the District Court in relation to the use of a forged driving licence and for not having insurance. He was fined and not disqualified owing to the fact that he satisfied the court that there was a special reason for not doing so. Garda Barron produced to the court copies of the orders made in the District Court as against the user.

11. Garda Barron also gave evidence that the registered owner of 99WH4856 was the appellant. The garda produced a certificate of ownership to that effect. Garda Barron indicated that he was aware that there was a policy of insurance held by the appellant which stated that the user was a named driver, however, the Insurance was invalid because the user had a forged driving licence.

12. Under cross-examination, Garda Barron confirmed that he had seen the certificate of insurance – See **Appendix B**. Garda Barron also stated that he had been in contact with the insurance company who had issued the policy and he conformed that it was a valid certificate of insurance under the Road Traffic Act.

13. Following this, the prosecutor closed its case.

SUBMISSIONS OF THE PARTIES

14. On behalf of the appellant, Mr Mahon applied for the summons to be dismissed. Mr Mahon reiterated the submissions that he had previously made on October 20, 2015. It was submitted that the policy of insurance held by the appellant was valid and that the appellant had a full defence. It was submitted that the validity of the policy of insurance was unaffected by the conduct of the user.

15. In reply, Superintendent Nicholson submitted that the common sense approach was that if the user did not have a valid driving licence, then the policy of the insurance was, therefore, invalid and the appellant was guilty of the offence.

16. In reply to Superintendent Nicholson, Mr Mahon stated that a common sense approach did not come into consideration. The appellant had a valid policy of insurance and he had a full defence to the allegation.

MY DECISION

17. Having considered the submissions of the parties, I rejected the submissions of Mr Mahon on behalf of the appellant.

18. The appellant did not go into evidence and I, therefore, convicted the appellant of the offence contrary to Section 56(1) and (3) of the Road Traffic Act, 1961 (as amended by Section 18 of the Road Traffic Act, 2006).

PENALTY IMPOSED

19. Having heard a plea in mitigation on behalf of the appellant, I imposed a fine €500. I further imposed a period of disqualification of two years. I rejected the submissions of Mr Mahon that any special reason not to impose the presumptive disqualification arose. Recognisance for appeal was fixed in the appellant's own bond of €250, together with an independent surety of €250.

MISCELLANEOUS

20. Following my decision, Mr Mahon invited the court to state a consultative case to the High Court, however, I rejected that application and advised him that the appellant could appeal my decision.

QUESTION OF LAW

21. Being dissatisfied with my decision, the appellant requested that I state a case to the High Court on the following question of law:

- i. Was I correct in law to find that the certificate of insurance was invalid and that the appellant was guilty of an offence contrary to Section 56(1) and (3) of the Road Traffic Act, 1961 (as amended by Section 18 of the Road Traffic Act, 2006)?"

Analysis

Section 56(1) of the Road Traffic Act, 1961, as amended

2. To establish the prosecution's case, it was necessary for the prosecution to prove that there was breach of s. 56(1) of the Road Traffic Act, 1961 (the "1961 Act"), which, insofar as relevant, states:-

(1) A person (in this subsection referred to as the user) shall not use in a public place a mechanically propelled vehicle unless either a vehicle insurer, a vehicle guarantor or an exempted person would be liable for injury caused by the negligent use of the vehicle by him at that time or there is in force at that time either—

- (a) an approved policy of insurance whereby the user or some other person who would be liable for injury caused by

the negligent use of the vehicle at that time by the user, is insured against all sums without limit (save as is hereinafter otherwise provided) which the user or his personal representative or such other person or his personal representative 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, [...]

Section 56(3) of the 1961 Act, as amended

3. Section 56(3) states that:-

"(3) Where a person contravenes subsection (1) of this section, he and, if he is not the owner of the vehicle, such owner shall each be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and such imprisonment."

Absence of a valid licence

4. Before considering whether there was a breach of s. 56(1) of the 1961 Act, meriting a conviction under s. 56(3) of the 1961 Act, it is important to note that based on the Case Stated, evidence was provided in the District Court proceedings before Judge Browne that Mr. Pawel Opach did not have a valid licence for the motorcycle in question on the 30th May, 2014. The evidence produced to the court demonstrated that Mr. Pawel Opach had been convicted in separate District Court proceedings in relation to the use of a forged motorcycle licence and for riding the motorcycle in question, without having insurance on the 30th May, 2014.

Owner of the motorcycle

5. Evidence was also produced to Judge Browne that the registered owner of the motorcycle in question was Mr. Bronisaw Opach.

6. Against this background, it is necessary to consider whether Mr. Pawel Opach's father, Mr. Bronisaw Opach had an approved policy of insurance, as required by s. 56(1).

"approved policy of insurance"

7. This expression is defined in s. 62(1) of the 1961 Act, as amended, which, insofar as relevant, states:-

"62.—(1) A policy of insurance shall be an approved policy of insurance for the purposes of this Act if, but only if, it complies with the following conditions:

(a) it is issued by a vehicle insurer to a person (in this Act referred to as the insured) named therein;

(b) the insurer by whom it is issued binds himself by it to insure the insured against all sums without limit which the insured or his personal representative shall become liable to pay to any person (exclusive of the excepted persons) whether by way of damages or costs on account of injury to person or property caused by the negligent use, during the period (in this Act referred to as the period of cover) specified in that behalf in the policy, of a mechanically propelled vehicle to which the policy relates, by the insured or by any of such other persons (if any) as are mentioned or otherwise indicated in that behalf in the policy; [...]"

The Insurance Policy Schedule

8. It is next relevant to consider the Motorcycle Insurance Policy Schedule which was attached to the Case Stated by Judge Browne and which was referred to in evidence in the District Court case before Judge Browne. This Insurance Policy Schedule states, insofar as relevant, that Bronisaw Opach, is the insured (although his first name appears to be misspelt as "Bronislaw") and it provides as follows:-

"Drivers or classes of drivers whose driving is covered

Named Drivers Bronislaw Opach Pawel Opach

You must ensure that all riders have a valid licence to ride the motorcycle. Failure to hold a valid licence could result in a claim being declined and your policy cancelled."

9. It is this Court's view that under the express terms of this Insurance Policy Schedule, that the insurer of Mr. Bronisaw Opach, Liberty Insurance, was not bound to insure the insured as required by s. 62(1)(a) of the 1961 Act, since the plain and literal meaning of the term '*binds himself*' is that the insurer is legally obliged to do something. However, in this instance, it seems clear to this Court that, by virtue of the express wording of the Insurance Policy Schedule, the insurer was not, in fact, legally bound to indemnify the insured, as required by s. 62(1)(a) of the 1961 Act. On the plain meaning of the foregoing extract from the Insurance Policy Schedule, it was open to the insurer to decline to indemnify the insured where a rider did not have a valid licence.

Conclusion

10. As already noted, there was evidence before the Court that on the 30th May, 2014, Mr. Pawel Opach did not have a valid licence. For this reason and for the reasons aforesaid, this Court concludes that Mr. Bronisaw Opach did not have an approved policy of insurance on 30th May, 2014, in breach of s. 56(1) and s. 56(3) of the 1961 Act.

11. Since there was also evidence before the District Court that Mr. Bronisaw Opach was the owner of the motorcycle in question, it seems to this Court that all the elements required to be satisfied for an offence under s. 56(1) and (3) were satisfied, namely:

- The appellant was the owner of the motorcycle.
- The appellant did not have an approved policy of insurance for the riding of the motorcycle which took place on the 30th May, 2014, by virtue of the fact that Mr. Pawel Opach was using a forged licence.

12. On this basis, this Court would answer the question posed by Judge Browne in the affirmative. However, in the interests of clarity and in reliance on *National Authority for Occupational Safety & Health v. O'K Tools Hire & Sales Ltd* [1997] 1 IR 534, this Court would reformulate the question slightly by giving the following answer:-

The District Court was correct to find that the appellant was guilty of an offence contrary to s. 56(1) and (3) of the 1961 Act, because the appellant did not have an approved policy of insurance as required by s. 56(1).