

THE HIGH COURT

[2000 No. 87 CA]

BETWEEN

MARY BYRNE

PLAINTIFF

AND

BUS ÁTHA CLIATH AND MOTOR INSURANCE BUREAU OF IRELAND

DEFENDANTS

Judgment perfected by the Honourable Mr Justice O'Leary on the 2 day of February, 2005

1. In this appeal against the decision of His Honour Judge Michael White of the Dublin Circuit Court very interesting issues of interpretation of Irish law and procedure against the background of European legislation, have been raised. Unfortunately, it appears to the Court that these issues are not relevant in this particular case, which falls to be decided more on first principles rather than on whether European legislation directly applied or not.
2. Much of the time in this Court was taken up in considering the correct interpretation of the MIBI agreement in the context of the applicable European directives. These arguments missed the central point of this application.
3. The background to the case was the following: the plaintiff initially sued both Bus Átha Cliath and the MIBI in a case where she was allegedly injured while on a bus owned by the first named defendant. The second named defendant was joined on the basis that it was alleged that an untraced motorist was wholly or partly responsible for the accident.
4. The second named defendant, acting on the terms of the agreement between the Minister and the insurance industry under which its status as the 'insurer of last resort' derives, sought to be removed from the proceedings by motion in the Dublin Circuit Court on the basis that it should not be joined in these proceedings. The Circuit Court acceded to the application and removed the second named defendant as a party to the proceedings.
5. The plaintiff responded by issuing separate proceeding against the MIBI but did not appeal the Circuit Court order. The first named defendant appealed.
6. The first named defendant submitted in this Court that insofar as the Irish agreement prevented an aggrieved party from suing both the alleged wrongdoer and the MIBI in the one set of proceedings that agreement was contrary to the European directives relating to redress for uninsured motorists. This is undoubtedly a complicated matter of interpretation which would inter alia depend on the direct applicability of European Directives and will no doubt arise in other cases in the future. It has no relevance to the issue this court must decide in this appeal.
7. It is accepted by all sides that the plaintiff, in a case such as this, retains the right to issue two separate sets of proceedings should she so wish. As the matter stands this is what the plaintiff has now done by not appealing the Circuit Court order (leaving this as standing against Bus Átha Cliath alone) and initiating new proceedings against the MIBI. The Plaintiff is therefore within her rights at the present time in having both sets of proceedings extant. As an alternative she could have appealed Judge White's order in which case this court would have had to adjudicate on the European law issue. The plaintiff has in effect accepted the decision of the Circuit Court.
8. The only residual matters is whether the first-named defendant has the right to maintain the appeal. In essence this defendant is seeking to insist that his co-defendant remains in the proceedings notwithstanding the acceptance of the Circuit Court decision by the plaintiff. This is not a case in which a notice of indemnity/contribution applies. No such notice has been served as the nature of the MIBI agreement makes such a notice worthless. In the absence of an issue between the defendants, one defendant cannot, in the view of this court resist an application by a fellow defendant to be dismissed from the proceedings when that application is supported by or at least accepted by the plaintiff. The plaintiff is the initiator of the proceedings and is the competent party to decide on who are the proper defendants.
9. The appeal by the first named defendant is dismissed.