Neutral Citation Number: [2007] IEHC 32

THE HIGH COURT

[No. 7205 P./2003]

BETWEEN

THERESA CORRIGAN

PLAINTIFF

AND

THOMAS CONWAY, JOSEPH DRUMGOOLE AND THE MOTOR INSURERS BUREAU OF IRELAND

DEFENDANTS

Judgment of Mr. Justice de Valera delivered on the 31st day of January, 2007.

1. In a previous ex tempore judgment I found that liability in the collision between the driver of the motorcar owned by Thomas Conway and Joseph Drumgoole (at the time driving the motor car the property of Theresa Corrigan) rested with Joseph Drumgoole.

2. I awarded damages of €54,160.57 made up as to:

General damages to date	€25,000.
General damages into the future	€25,000.
Agreed special damages	€4,160.57.
Total	€54,160.57.

3. This judgment concerns the obligation, if such obligation there is, for the Motor Insurers Bureau of Ireland (MIBI) to satisfy the judgment obtained by the plaintiff against the second defendant.

4. By a memorandum of agreement dated the 21st December, 1988, between the Minister for the Environment and the Motor Insurers Bureau of Ireland it was provided that in certain circumstances the MIBI would satisfy judgments in respect of uninsured drivers and the plaintiff claims that she comes within the provisions of s. 5(2) of the said agreement.

5. In the unreported Supreme Court judgment of *Kinsella v. The Motor Insurers Bureau of Ireland* (the Supreme Court [1992] No. 19) Finlay C.J. held:

> "I am satisfied that having regard to the terms of clause 3(2) that the question as to whether or not a claimant 'should reasonably have known' of the absence of insurance is essentially a subjective question. The issue is not: would a reasonable person have known?, but rather: should the particular individual, having regard to all relevant circumstances, have known? For example, obviously, a person with defective reasoning or mental powers, or a young child, could not possibly be defeated by this clause."

6. In applying this dictum to the circumstances of the instant case it is necessary to consider the events giving rise to the plaintiff's claim.

7. I am satisfied that on the 7th August, 2000, the plaintiff drove from her home to a restaurant in Rathmines accompanied by her now and sometime partner Joseph Drumgoole and their daughter.

8. Joseph Drumgoole had arrived at the plaintiff's home on foot and was a passenger in the car owned and driven by the plaintiff on the journey from her home to Rathmines.

9. The plaintiff's insurance only covered her driving of her car and at the time on the occasion in question Joseph Drumgoole was not insured to drive her car.

10. I am also satisfied that while in the restaurant the plaintiff who was at the time approximately five months pregnant became aware of bleeding which indicated that there might be a problem with her pregnancy and obeying the instructions she had received from the Coombe Hospital in the event of such an emergency decided together with Mr. Drumgoole and her daughter to immediately go to the Coombe Hospital for investigation.

11. It is quite reasonable to accept that in these circumstances there was a degree of anxiety to such an extent that it drove from her, and from her partners mind all other matters and on this occasion Joseph Drumgoole drove the plaintiff's motor car in which she was a passenger and set off for the Coombe.

12. On the way to the Coombe Hospital a collision occurred between the plaintiff's car (then been driven by Joseph Drumgoole) and a car belonging to Thomas Conway. This was a reasonably serious collision and as already indicated I have decided that it was the fault of Mr. Drumgoole.

13. The plaintiff was injured in this collision, seriously but not in anyway life threatening, and she was brought by ambulance to St. James's Hospital for orthopaedic attention.

14. In my view the threat of a miscarriage at five months could cause anxiety to such an extent that the plaintiff's mind could not be expected to address the question of insurance – this would be a "relevant circumstance" as envisaged by Finlay C.J. in the *Kinsella* decision.

15. It must be noted that although both the plaintiff and Joseph Drumgoole stated that there was a high degree of anxiety when the bleeding was noticed by the plaintiff in the restaurant, this matter does not appear to have been uppermost in their minds at the scene of the collision as I am satisfied that no direct reference was made by either of them to the Gardaí or the rescue personnel (or indeed the driver of Mr. Conway's car) at the scene. However as already noted this was a serious collision and it is not, in my view, unreasonable that the plaintiff's injuries as a result of this collision would have driven the other matter away from the forefront of her mind.

16. It should be noted that in St. James's Hospital the plaintiff clearly alerted the medical staff to her condition as the record shows that she was monitored for obstetrical reasons while a patient there.

17. I am therefore satisfied that the anxiety and worry suffered by the plaintiff when she discovered signs of bleeding in the restaurant in Rathmines was sufficient to drive other matters, such as the insurance situation, from her mind and that this was a "relevant circumstance" as envisaged by Finlay C.J. in the *Kinsella* judgment and that therefore the MIBI cannot rely on the provisions of para. 5(2) of the MIBI agreement of 1988 and must satisfy the judgment obtained by the plaintiff against Joseph Drumgoole.