20 February 2019

PRESS SUMMARY

Cameron (Respondent) v Liverpool Victoria Insurance Co Ltd (Appellant)
[2019] UKSC 6
On appeal from: [2017] EWCA Civ 366

JUSTICES: Lord Reed (Deputy President), Lord Sumption, Lord Carnwath, Lord Hodge, Lady Black

BACKGROUND TO THE APPEAL

On 26 May 2013, the respondent, Ms Bianca Cameron, was injured when her car collided with a Nissan Micra. It is not in dispute that the incident was due to the negligence of the driver of the Micra. The registration number of the Micra was recorded, but the driver made off without stopping or reporting the accident to the police and has not been heard of since. Mr Naveed Hussain, the registered keeper, was not the driver and has declined to identify the driver. He has been convicted of failing to disclose the driver's identity. The car was insured under a policy issued by the appellant, Liverpool Victoria Insurance Co Ltd, to a Mr Nissar Bahadur, whom the company believes to be a fictitious person. Neither Mr Hussain nor the driver was insured under the policy to drive the car.

Ms Cameron initially sued Mr Hussain for damages. The proceedings were amended to add a claim against Liverpool Victoria Insurance for a declaration that it would be liable to meet any judgment against him. The insurer served a defence, denying liability on the ground that there was no right to obtain a judgment against him as there was no evidence that he was the driver. Ms Cameron then applied to amend her claim form and particulars of claim. She sought to substitute for Mr Hussain, as defendant, "the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013."

District Judge Wright dismissed that application and entered summary judgment for the insurer. HHJ Parker dismissed Ms Cameron's appeal. On further appeal, the Court of Appeal allowed the appeal by a majority (Gloster and Lloyd Jones LJJ, Sir Ross Cranston dissenting). The majority considered that the court had a discretion to permit an unknown person to be sued whenever justice required it and that an alternative right of claim against the Motor Insurance Bureau ("MIB") was irrelevant. Sir Ross Cranston would have dismissed the appeal in light of the alternative right to an MIB claim.

Liverpool Victoria Insurance appealed to the Supreme Court in relation to two issues: (1) the power to issue or amend the claim form and (2) the compatibility of the Road Traffic Act 1988 ("the 1988 Act") with the Sixth Motor Insurance Directive (2009/103/EC).

JUDGMENT

The Supreme Court allows the appeal. The Court of Appeal's order is set aside and that of District Judge Wright is reinstated. Lord Sumption gives the lead judgment, with which all the Justices agree.

REASONS FOR THE JUDGMENT

Part VI of the Road Traffic Act 1988 applies in this appeal. Section 145 requires there to be an insurance policy against third party risks "in relation to the use of the vehicle" by the particular driver, while section 151(5) requires the insurer to satisfy any judgment falling within section 151(2), subject to

certain conditions. Under section 151(2)(b), an insurer who has issued a policy in relation to the use of a vehicle is liable on a judgment, even where it was obtained against an uninsured driver. **[3]**

The MIB has entered into agreements with the Secretary of State to compensate third party victims of road accidents not even covered by section 151(2)(b). This means victims suffering personal injury or property damage caused by (1) uninsured vehicles and (2) drivers who cannot be traced. Clause 4(d) of the 2003 Untraced Drivers Agreement ("the 2003 Agreement") is applicable in Ms Cameron's case. **[4]**

It is a fundamental feature of the statutory scheme of compulsory insurance in the UK that it does not confer on victims a direct right of recovery against an insurer for the underlying liability of the driver. The only direct right against the insurer is the right to require it to satisfy a judgment against the driver, under section 151, once the driver's liability has been established in legal proceedings. Consistent with this approach, the 2003 Agreement assumes that judgment cannot be obtained against the driver if he cannot be identified, and therefore the only recourse is against the MIB, not the insurer. **[5, 22]**

The general rule remains that proceedings may not be brought against unnamed parties, as is implicit in the limited exceptions contemplated by the Civil Procedure Rules ("CPR") **[9]**. The main exceptions are: (1) possession actions against trespassers, (2) actions and orders where some of the wrongdoers were known so they could be sued both personally and as representing their unidentified associates and (3) the wider jurisdiction recognised in *Bloomsbury Publishing Group Plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 (Ch) **[10]**.

The key distinction is between two classes of unnamed defendant cases: (1) anonymous defendants who are identifiable but whose names are unknown and (2) defendants, such as in most hit and run drivers, who are not only anonymous but cannot even be identified. In category (1), defendants are described in such a way that it is at least possible to locate or communicate with them, and to determine whether they are the person described in the claim form. In category (2), this is not possible. **[13]**

This appeal is not directly concerned with service – it is about the issue or amendment of the claim form – but the legitimacy of issuing or amending can be tested against the possibility of service **[14]**. An identifiable but anonymous defendant can be served, if necessary by CPR r.6.15 alternative service **[15]**. Interim injunction cases can fall in category (1), because the process of enforcing the injunction will sometimes be enough to bring the proceedings to the defendant's attention, as in *Bloomsbury* **[15]**. However, an unknown person is not identified simply by referring to past actions **[16]**. Proceedings against such a person (in category (2)) offend the fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable a fair hearing **[17-18]**. While CPR r.6.15 permits alternative service, the mode of service should be such as can reasonably be expected to bring the proceedings to the defendant's attention **[20-21]**.

Applying these principles to the present appeal, alternative service against an unidentifiable person referred to in the proceedings only by a pseudonym or description cannot be justified. In particular, ordinary service on the insurer would not constitute service on the driver, and alternative service could not be expected to reach the driver of the Micra. Nor would it be appropriate to dispense with service under CPR r.6.16 in a case where it could not be shown that the defendant knew of the proceedings. **[21-26]**

As to the EU law issue on the Sixth Motor Insurance Directive, the Supreme Court considers no point on the Directive arises because: (1) Ms Cameron is not trying to assert a direct right against the insurer for the underlying wrong (her claim is for damages from the driver) and (2) it is consistent with the Directive to require a claim against the MIB, not the insurer, in this class of case **[27-30]**.

References in square brackets are to paragraphs in the judgment.