

Compulsory Motor Insurance Considered by the Supreme Court

November 2024

The Supreme Court, in *Urban and Rural Recycling Limited and RSA Insurance Ireland DAC v Zurich Insurance plc [2024] IESC 43*, has considered questions of law regarding the scope of compulsory motor insurance in Ireland pursuant to the Road Traffic Act 1961, as amended.

Background

An employee (**Employee**) of the plaintiff company (**Company**) suffered serious injuries when a bin struck his head from a height while he was operating a lift to deposit its contents into a recycling truck owned by the Company, which had stopped

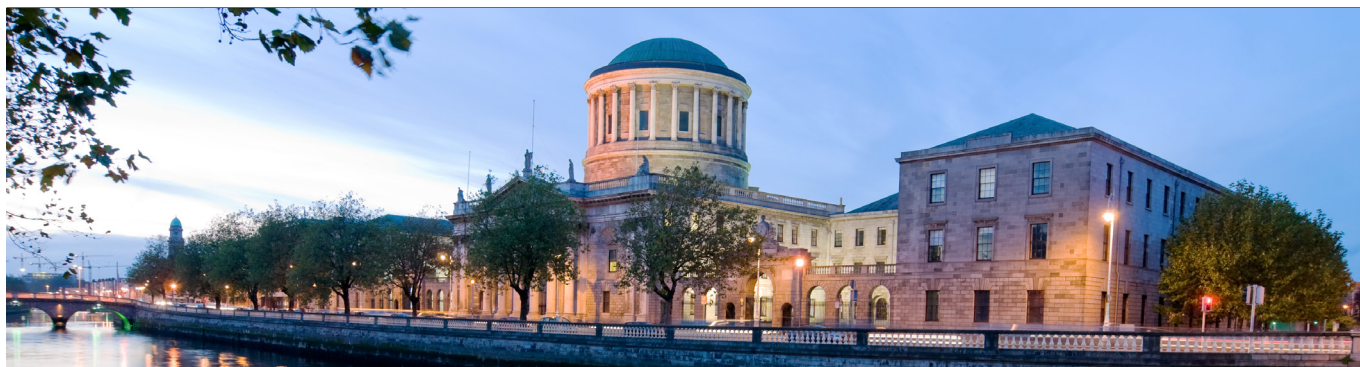
at the side of a public road.

The Employee issued personal injuries proceedings against the Company, which had employers' liability cover with the second plaintiff (**RSA**) and motor insurance cover with the defendant (**Zurich**). The personal injuries proceedings settled before trial and while the Company had valid and effective insurance in place to indemnify it, both RSA and Zurich contended that the claim was not covered by their respective insurance policies.

Section 56 Road Traffic Act 1961, as amended

RSA's employer liability insurance included an exclusion for





liability required to be covered by compulsory motor insurance pursuant to section 56 of the Road Traffic Act 1961, as amended (**s. 56**).

S.56 states that a person, referred to as a 'user', shall not use a vehicle in a public place unless *inter alia* a vehicle insurer would be liable for injury caused by the negligent use of the vehicle by the user or there is in force "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... by the user, is insured against all sums... which the user... shall become liable to pay... by way of damages... on account of injury to a person caused by the negligent use of the vehicle by the user".

If the liability of the Company (if any) to its Employee was the subject of the mandatory insurance obligation, it would fall outside the policy underwritten by RSA on account of the exclusion provision and instead, would be insurable by Zurich. However, Zurich contended that the claim by the Employee for negligence, breach of contract, breach of duty and breach of statutory duty relating to *inter alia* the provision of unsafe equipment and an unsafe workplace were that of an employer liability claim and not a motor insurance policy.

Key issues

As such, the central question before the Supreme Court was whether the compulsory insurance cover required pursuant to s. 56 covered the liability of the Company to its Employee (if any) given the circumstances of the accident.

The Supreme Court identified three key issues to be determined in considering this question;

- whether a liability to a 'user' of a motor vehicle falls within s. 56;
- whether a body corporate could be such a 'user'; and
- whether an employer could, through the actions of its

employee undertaken in the course of the employer's business, be a 'user'.

In considering these issues, the Supreme Court looked at the meaning of the word 'use' in the context of s.56, noting that legislation had previously only dealt with the driving of a vehicle but this had been expanded to 'use' by the intervention of Article 12 of Directive 2009/103/EC (**Directive**). Case law of the EU Court of Justice makes it clear that the obligations imposed by the Directive are broad, with 'use' of a vehicle taken to mean any use that is consistent with its normal function as a means of transport, for example, covering periods when the vehicle is static.

Whether a liability to a 'user' of a motor vehicle falls within s. 56

It was argued by Zurich that as the Employee was the 'user' of the vehicle, at the time of the accident, there was no requirement for compulsory motor insurance to extend to cover him. However, the Supreme Court held that a person being the user of a vehicle does not, in and of itself, mean that a liability to them arising from the use of the vehicle by another user is outside the scope of s. 56. While the Employee could not maintain an action for damages for injuries wholly caused by his own negligence, the court highlighted that the legislation did not exclude the possibility of two users of a vehicle and there is nothing in s. 56 to justify the conclusion that where one user is injured as a result of the negligence of another user, the resulting liability would fall outside the terms of the provision.

Whether a body corporate could be a 'user'

The Supreme Court held that the Company, as a body corporate, is capable of being a user of a vehicle. The court referred to the requirement for the term 'user' to be construed broadly. It includes not only driving but also any act of control, management or operation of a vehicle and as such, does not limit the term 'user' to a natural person.



Whether an employer could, through the actions of its employee undertaken in the course of the employer's business, be a 'user'

The court considered whether any person (legal or natural) can be a 'user' through the agency of another and it held that it is possible for an employer to use a vehicle through the actions of its employee. S. 56 does not refer to an 'actual user', which is a term appearing elsewhere in the legislation. If use involves management and control, where an employee is using a vehicle in the course of their employment for and on behalf of their employer, then the employer is using the vehicle.

However, as this came before the Supreme Court by way of the 'Special Case' procedure, the court could not resolve issues of disputed fact and it is now open to the parties to proceed with the underlying proceedings subject to the application of these findings of law.

Directive 2009/103/EC

The Supreme Court further commented on the implementation in Ireland of the Directive, which requires Member States to adopt measures to ensure that civil liability in respect of the use of vehicles is covered by insurance. S. 56 is one of the provisions relied upon by the State as implementing the Directive but the court observed that there are significant issues around the extent to which it faithfully implements these obligations. The court referenced difficulties that have arisen as the State has used statutory provisions to meet its obligations that did not have EU law in view when enacted, while "*continuous piecemeal changes*" to road traffic provisions increase the risk of further non-compliance. The court opined that a complete and coherent legislative overhaul of the compulsory motor insurance obligation "*is long overdue*".

Conclusion

The Supreme Court has held that, as a matter of law, the Company was a 'user' of the vehicle at the time of the accident and if the Employee's injuries were caused by the negligence of the Company so that the use of the vehicle at the time of the accident was negligent, its liability to its Employee is captured by s. 56.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022

New York

33 Irving Place
New York
NY 10003
United States
Tel: +1 646 770 6080

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006,
Japan
Tel: +813 6860 4885

CONTACT POINTS

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.



Elaine Healy
Partner | Dublin

E elaine.healy@dilloneustace.ie
T + 353 1 667 0022



Rachel Turner
Partner | Dublin

E rachel.turner@dilloneustace.ie
T + 353 1 667 0022

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2024 Dillon Eustace. All rights reserved.