

**Case C-923/19**

**Request for a preliminary ruling**

**Date lodged:**

17 December 2019

**Referring court:**

Tribunal Supremo (Supreme Court, Spain)

**Date of the decision to refer:**

28 November 2019

**Defendant and appellant on a point of law:**

Van Ameyde España, S. A.

**Applicant and respondent in the appeal on a point of law:**

GES Seguros y Reaseguros, S. A.

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[...]

**SUPREME COURT**

**Civil Division**

**PLENARY SESSION**

[...]

**BACKGROUND FACTS**

**ONE.**— *Proceedings in which the question referred for a preliminary ruling arises*

**1.**— On 3 April 2014 a road traffic accident occurred when an articulated vehicle comprising a truck tractor or tractor unit and a semi-trailer left the road and subsequently overturned. The accident was due to the driver of the tractor unit driving without due care.

**2.**— At that time, the semi-trailer was owned by Caixarenting, S. A. U. and was leased under a finance lease to Primafrío, S. L. ('Primafrío'), which had damage cover for the vehicle under a policy with Ges, Seguros y Reaseguros, S. A.

(‘GES’). Compulsory third party civil liability cover was provided by Seguros Bilbao (which is not a party to these proceedings).

The tractor unit belonged to the Portuguese company Doctrans Transportes Rodoviaros de Mercadería LDA (‘Doctrans’), and compulsory third party civil liability cover was provided by the Portuguese company Acoreana, represented in Spain by Van Ameyde España, S. A. (referred to in the power of attorney as Van Ameyde & Aficresa, S. A.; ‘Van Ameyde’).

Both the Spanish company that was leasing the semi-trailer (Primafrío) and the Portuguese company that owned the tractor unit (Doctrans) were wholly owned subsidiaries of a single shareholder, Krone-Mur Servifrío, S. L.

3.– GES paid Primafrío EUR 34 977.33 in compensation for the damage to the semi-trailer (the cost of the damage to the semi-trailer minus the excess).

4.– On 13 March 2015 the insurer of the semi-trailer (GES) filed a claim against the insurer of the tractor unit (Van Ameyde), thereby initiating these proceedings, in which it requested that Van Ameyde be ordered to pay GES the above sum of EUR 34 977.33 plus statutory interest. To summarise, it argued that, under the legislation in force at the time the events took place, the tractor unit and the semi-trailer were separate vehicles belonging to different owners, each with its own compulsory insurance, and therefore the semi-trailer could not be considered to be a load or an item being transported by the tractor unit.

5.– Van Ameyde contested the claim. It argued that the claim should be dismissed because the exclusions to cover established in Article 5(2) of the consolidated text of the Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Law on civil liability and insurance for the use of motor vehicles), approved by Royal Legislative Decree 8/2004 of 29 October (‘the LRCSCVM’) applied, since, under the second point of that provision, the tractor unit’s compulsory insurance did not cover damage to items being transported, and the semi-trailer should be regarded in this case as an item being transported by the tractor unit or as a load.

6.– The Juzgado de Primera Instancia No 1 de La Palma del Condado (Court of First Instance No 1, La Palma del Condado) rejected the claim in a judgment issued on 14 July 2016. It held that the circumstance fell within the second of the cover exclusions for compulsory motor vehicle insurance listed in Article 5(2) of the LRCSCVM, namely damage to items being transported by the tractor unit, since the semi-trailer should be deemed ‘a load or an item being transported’.

7.– The applicant, GES, lodged an appeal seeking to have its claim upheld, because it did not agree that the semi-trailer could be equated with items being transported. It insisted that the coverage exclusion in question — which, as with all exclusions, should be interpreted restrictively — referred only to damage suffered ‘by the items being transported in it [the insured vehicle]’ rather than to items being transported ‘by’ the insured vehicle, and that in this case the semi-

trailer was being transported ‘by’ the insured vehicle, since it was a separate vehicle from the tractor unit and had its own compulsory insurance, meaning that it was a third party for the purposes of the tractor unit’s compulsory civil liability insurance. The defendant contested the appeal, arguing that the semi-trailer was a load carried by the tractor unit because it was a vehicle that was coupled to the tractor unit so that a substantial part of its weight was transferred to it.

**8.**– On 22 December 2016 the Audiencia Provincial de Huelva, sección 2.<sup>a</sup> (Provincial Court, Huelva, Section 2) gave judgment allowing the appeal and thus upholding the claim in full. It held that the semi-trailer should not be considered to be a load carried by the tractor unit: first, because the second point in Article 5(2) of the LRCSCVM refers to damage suffered ‘by the items being transported in it [the insured vehicle]’ rather than to items being transported ‘by’ the insured vehicle; and secondly, because the argument cannot be accepted that the semi-trailer affects driving by impeding handling and contributing to the loss of control by the driver of the tractor unit, and thus plays a part in causing the accident, since it is also the case that with a passenger transport vehicle the passengers are a load and may affect driving, but that does not make them liable in the event of an accident.

**TWO.**– *Appeal in cassation and question referred for a preliminary ruling*

**1.**– Van Ameyde lodged an appeal in cassation against the judgment of the Provincial Court on grounds of breach of Article 5(2) of the LRCSCVM, seeking to have the claim dismissed on the grounds that damage to the semi-trailer was excluded from the tractor unit’s compulsory insurance cover. The appeal was declared admissible.

**2.**– After several discussions regarding the decision to be made on the appeal, consideration was given to whether it was appropriate to make a reference to the Court of Justice for a preliminary ruling, and it was therefore decided to hear the parties’ views on whether the matter should be referred. Both parties supported a reference, and Van Ameyde, in particular, requested that the question should make clear that the semi-trailer formed a functional unit with the tractor unit, whose driver was responsible for the accident.

**THREE.**– *Details of the parties*

**1.**– [...] [description of the parties; see the heading]

**POINTS OF LAW**

**ONE.**– *EU law*

**1.**– Article 1 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability includes the following definitions:

‘(1) “vehicle” means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

(2) “injured party” means any person entitled to compensation in respect of any loss or injury caused by vehicles.’

Article 3 (‘Compulsory insurance of vehicles’) provides as follows:

‘Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.

[...]

The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.’

2.– Pursuant to this legislation, the Court of Justice has held that any vehicle registered in the European Union (EU) that has a vehicle registration certificate and is therefore capable of being driven must be covered by civil liability insurance (judgment of 4 September 2018, C-80/17).

3.– Although the tractor unit and the semi-trailer are separate vehicles and, as such, are individually required to have compulsory insurance, the directive makes no express provision as to how liability is to be determined, either with respect to third parties or between the two vehicles, in the event of an accident involving this combination of vehicles.

**TWO.** — *National law*

1.– Paragraph 1 of Article 1 of the LRCSCVM<sup>1</sup> (‘Civil liability’) provides as follows:

‘In view of the risk posed by the use of motor vehicles, drivers of motor vehicles are liable for loss or injury to persons or damage to property by such use.

[...]

Where the owner is not the driver, he shall be liable for loss or injury to persons and damage to property caused by the driver if he is connected to the driver under any of the relationships referred to in Article 1903 of the Civil Code and Article 120(5) of the Criminal Code. The owner shall cease to have any such

<sup>1</sup> Consolidated text of the Law on civil liability and insurance for the use of motor vehicles, approved by Royal Legislative Decree 8/2004 of 29 October 2004, published in the Official State Gazette of 5 November 2004.

liability if he demonstrates that he exercised all the care expected of a prudent person to prevent the loss or injury.’

Paragraph 1 of Article 2 of the LRCSCVM (‘Requirement to have insurance’) provides as follows:

‘Owners of motor vehicles that are normally based in Spain shall be required to take out and maintain in force a contract of insurance for each vehicle they own. The contract must cover the civil liability referred to in Article 1 up to the limits established for compulsory insurance ...’

**2.**– Article 1(1) of the Reglamento del seguro obligatorio de responsabilidad civil en la circulación de vehículos a motor (Regulation on compulsory civil liability insurance for the use of motor vehicles), approved by Royal Decree 1507/2008 of 12 September 2008,<sup>2</sup> provides as follows:

‘For the purposes of civil liability for the use of motor vehicles and the requirement for insurance, “motor vehicle” means any vehicle intended for travel on land and powered by an engine, including mopeds, special-purpose vehicles, trailers and semi-trailers ...’.

In addition, the Reglamento General de Vehículos (General Vehicle Regulation), approved by Royal Decree 2822/1998 of 23 December 1998,<sup>3</sup> includes (in Annex II) a list of the classes and categories of vehicles and, in Article 5 of the regulation, classes tractor units and semi-trailers as independent vehicles, even though they can be combined to form an articulated vehicle.

**3.**– According to the case-law of the Tribunal Supremo (Supreme Court), the various elements of an articulated vehicle have joint and several liability to third parties, and Article 19(2) of the aforesaid regulation governing compulsory insurance (‘Multiple losses, injuries or damage and multiple persons responsible’) stipulates how liability is to be allocated between them:

‘Where the two vehicles involved are a tractor unit and the trailer or semi-trailer that is coupled to it, or two trailers or semi-trailers, and it is not possible to determine the extent of their respective liability, each insurer shall contribute to the said obligations in accordance with the provisions established in the agreements between insurance companies; failing that, the insurers’ contributions shall be proportional to the amount of the annual insurance premium for each vehicle listed in the insurance policy that has been taken out.’

However, this provision does not determine the liability of the insurers of the various vehicles forming the articulated vehicle vis-à-vis each other where, as in this case, the damage suffered by one of them (the semi-trailer) is solely the fault

<sup>2</sup> Published in the Official State Gazette of 13 September 2008.

<sup>3</sup> Published in the Official State Gazette of 26 January 1999.

of the other — in this case because it was caused by the negligent conduct of the driver of the tractor unit. In other words, it does not solve the problem of whether or not the damage to the semi-trailer should be covered by the tractor unit's compulsory insurance.

4.– Paragraph 2 of Article 5 of the LRCSCVM ('Scope and exclusions') provides as follows:

'The compulsory insurance shall not cover material damage to the insured vehicle, to the items being transported in it or to goods owned by the policy-holder, the insured, the owner or the driver [of the vehicle], or by the spouse or relatives of the aforesaid persons up to the third degree of consanguinity or affinity.'

**THREE.**– *Issues giving rise to the reference for a preliminary ruling*

1.– In the judgment under appeal, Article 5 of the LRCSCVM is interpreted to the effect that the semi-trailer is not classed as an item being transported or a load carried by the tractor unit, and therefore the exclusion from coverage is deemed not to apply and the damage to the semi-trailer is held to be covered by the tractor unit's compulsory insurance. The defendant, who is the appellant in the appeal on a point of law, argues that the semi-trailer is in fact a load and that damage to it is excluded from the cover provided by the compulsory insurance, especially when one considers that the accident occurred at a time when the tractor unit and the semi-trailer formed a functional unit.

2.– These two opposing interpretations of Article 5 of the LRCSCVM are also to be found in judgments of the Provincial Courts and the civil and commercial courts of appeal in Spain.

For example, in cases such as the present one, the damage to the semi-trailer was held to be excluded from the cover provided by the compulsory insurance for the truck tractor or tractor unit in [...] [reference to two judgments given by Provincial Courts]. Some judgments support their conclusion by reference to the judgment of this Civil Division of the Supreme Court of 1 April 1996 [...], which held that damage to the semi-trailer was excluded under a clause in the voluntary civil liability insurance policy for the truck tractor or tractor unit, which was worded in very similar terms to Article 5 of the LRCSCVM.

By contrast, the damage to the semi-trailer was held not to be excluded from the compulsory insurance for the truck tractor or tractor unit in [...] [reference to two judgments given by Provincial Courts].

3.– [...] [domestic regulations on the case-law of the Supreme Court and appeals in cassation]

4.– According to the case-law of the Court of Justice on the interpretation of Article 267 TFEU, where the national court considers that a case is subject to a rule of domestic law which it believes to be contrary to European law, it must

refer the question for a preliminary ruling if it is unable to resolve the issues itself and no ordinary appeal lies against the decision of the court (judgment of the Court of Justice of the European Union of 9 September 2015, C-160/14).

5.— The question raised facing this court, which has led it to make this request to the Court of Justice for a preliminary ruling, is whether an interpretation of Article 5 of the LRCSCVM which excludes damage to the semi-trailer from the cover provided by the compulsory insurance for the truck tractor or tractor unit in cases such as that in the main proceedings — on the grounds that the semi-trailer could be equated with the load or the ‘items being transported’, or even that the tractor unit and the semi-trailer are considered to form a single vehicle and their respective compulsory insurance policies will only cover damage to the property of third parties other than the owners of each vehicle — vitiates or reduces the cover for damage to property in the compulsory motor vehicle insurance established in the final paragraph of Article 3 of Directive 2009/103/EC, read in conjunction with Article 1 of that directive.

#### OPERATIVE PART

**BY ORDER OF THE COURT:** In view of the foregoing, the Civil Division of the Supreme Court of the Kingdom of Spain, sitting in plenary session, orders that the following question be referred to the Court of Justice of the European Union for a preliminary ruling:

Does the final paragraph of Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, read in conjunction with Article 1 of that directive, preclude an interpretation of national law (Article 5(2) of the Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Law on civil liability and insurance for the use of motor vehicles)) which, in cases such as that in the main proceedings, treats damage to the semi-trailer as being excluded from the cover provided by the compulsory insurance for the truck tractor or tractor unit, on the grounds that the semi-trailer is equated with items being transported in the truck tractor or tractor unit, or even that, for the purposes of damage to property, the semi-trailer forms a single vehicle with the truck tractor or tractor unit?

[...] [...] [procedural considerations of domestic law and signatures]