Case C-393/20

Request for a preliminary ruling

Date lodged:

18 August 2020

Referring court:

Sąd Rejonowy dla Krakowa-Śródmieścia w Krakowie (Poland)

Date of the decision to refer:

7 August 2020

Applicants:

T.B. and D. sp. z o.o.

Defendant:

G.I. A/S

Anonymised version

…

DECISION

On 7 August 2020,

the Sąd Rejonowy dla Krakowa-Śródmieścia w Krakowie (District Court for Kraków-Śródmieście, Kraków), 5th Commercial Chamber […] [composition of the chamber]

having examined … [procedural matter] on 7 August 2020 in Kraków

the joined cases

brought by T.B. and D. sp. z o.o., a limited liability company having its seat in J.,

against G.I. A/S, a company having its seat in K. (Kingdom of Denmark),

concerning payment

has decided:

I. to refer the following questions to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 [TFEU]:

(1) Must Article 13(2), in conjunction with Article 11(1)(b), of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning that it may be relied on by a person who, in return for services provided to a party directly injured in a road accident in connection with the damage caused, has acquired a claim for compensation, but does not carry out the professional activity of recovering insurance indemnity claims against insurance companies and who brought an action, in the court for the place where he is established, against the third-party liability insurer of the party responsible for that accident, which insurer has its seat in another Member State?

(2) Must Article 7(2) or Article 12 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning that it may be relied on by a person who acquired, under an assignment agreement, a claim from a party injured in a road accident in order to bring a civil-liability action before a court of the Member State in which the accident occurred against the insurer of the party responsible for that accident, which insurer has its seat in a Member State other than the Member State in which the accident occurred?

… [procedural matters]

[Or. 2]

Grounds

for the decision of 7 August 2020

I. Subject matter of the proceedings and relevant facts.

1. The subject matter of the proceedings in the joined cases concerns the claims of two commercial operators, T.B. and D. sp. z o.o., which has its seat in J., against the defendant G.I. A/S, which has its seat in K (Denmark). In each of these two joined cases, the applicant seeks compensation for the damage resulting from a road accident caused by persons who are insured by the defendant.

2. Case … [No 1].

2.1. In his action of 19 October 2018, T.B. sought to recover PLN 501 from the defendant. In the statement of claim, the applicant indicated that on 12 December 2017 a road accident occurred, as a result of which a vehicle owned by the injured party K.W. was damaged. The documents enclosed with the statement of claim indicate that the accident occurred in K. (Poland), the vehicles involved in the collision were registered in the territory of Poland, and the drivers of the vehicles are Polish citizens. The person at fault – P.P. – had a third-party liability insurance policy with the defendant insurance company. The defendant paid PLN 1 301.17 by way of compensation. In the applicant's opinion, the compensation was understated. The applicant, who engages professionally in risk assessment and loss assessment activities, acquired from the injured party a claim for further compensation under a claim assignment agreement.

2.2. In response, counsel for the defendant requested that the claim be rejected on the ground of lack of domestic jurisdiction. The defendant relied on the arguments contained in the judgment of the Court of Justice of the European Union of 31 January 2018 in Case C-106/17. Since the applicant is professionally involved in the acquisition of insurance indemnity claims, he cannot, it is argued, benefit from the special protection offered by the *forum actoris* principle and must bring an action against the insurer in the courts of the place where the insurer has its seat. The defendant cited a number of rulings by Polish courts of ordinary jurisdiction made in similar circumstances […] [references to national case-law].

2.3. By letter of 24 July 2019, the applicant submitted that the defendant acts through the limited liability company C.P. sp. z o.o. in the territory of Poland, and that domestic jurisdiction is thus justified. Furthermore, it was argued, it follows from Article 12 of Regulation No 1215/2012 that the insurer may be sued in the courts for the place where the harmful event occurred.

3. Case … [No 2].

3.1. In its action of 8 May 2019, D., a limited liability company having its seat in J., sought to recover PLN 1 626.95 from the defendant. In the statement of claim, the applicant indicated that on 7 July 2017 an accident had occurred, **[Or. 3]** as a result of which a vehicle owned by the injured parties M. and E.C. had been damaged. The party responsible for the accident had a third-party liability insurance policy with the defendant company The documents enclosed with the statement of claim indicate that the accident occurred in Ś. (Poland), the vehicles involved in the collision were registered in the territory of Poland, and the drivers of the vehicles are Polish citizens. For the duration of the works to repair the vehicle, the injured parties hired a replacement vehicle from the applicant. The defendant contested the amount of the costs of hiring the replacement vehicle, which came to PLN 2 558.40, and paid only PLN 931.45 on that account. On 4 March 2019, the injured parties concluded an agreement with the applicant, assigning to it the claim arising from the costs of hiring the replacement vehicle.

3.2. In response, counsel for the defendant requested that the claim be rejected on the ground of lack of domestic jurisdiction. The defendant invoked the arguments contained in the judgment of the Court of Justice of the European Union of 31 January 2018 in Case C-106/17. As the applicant is professionally involved in the acquisition of insurance indemnity claims, it was argued, it cannot take advantage of the possibility of bringing an action before a court in a Member State other than that of the seat of the insurer. In support of its position, the defendant cited a number of rulings by courts of ordinary jurisdiction made in similar circumstances.

3.3. In letters of 3 December 2019 and 4 March 2020, the applicant indicated that it cannot be regarded as equal to the defendant, since it is only a repair workshop offering vehicle repair services without payment and accepting claim assignment as settlement of repair costs. It does not purchase insurance indemnity claims in order to pursue them in court. Since the defendant provides its services in Poland, it should take into account the need to ensure that injured parties and entities acting on their behalf can pursue their claims before a national court. The applicant also pointed out that domestic jurisdiction is based on Article 12 of Regulation No 1215/2012.

3.4 At the hearing held on 31 July 2020, counsel for the applicant stressed that, if the claim were to be rejected, injured parties would find themselves in a difficult situation, since vehicle repair workshops would not provide non-cash services in return for claim assignment due to the difficulties in pursuing their claims outside Poland. It takes several months for a foreign insurer to pay compensation, and injured parties often do not have the means to have the vehicle repaired or to hire a replacement vehicle themselves.

II. Legal framework

EU law

4. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1; ‘the Regulation’).

4.1. Article 4(1):

[Or. 4] ‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

4.2. Article 5(1):

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

4.3. Article 7(2):

‘A person domiciled in a Member State may be sued in another Member State … in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur’.

4.4. Article 8(2):

‘A person domiciled in a Member State may also be sued … as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case’.

4.5. Article 11(1)(b):

‘An insurer domiciled in a Member State may be sued … in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled;’.

4.6. Article 11(2):

‘An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.’

4.7. Article 12:

‘In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.’

4.8 Article 13:

‘1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

…’

[Or. 5]

Polish law

5. Kodeks cywilny z dnia 23 kwietnia 1964 r. (Civil Code of 23 April 1964, *Journal of Laws* [Dz. U.] of 1964, No 16, item 93)

5.1. Article 509:

‘§ 1. A creditor may, without the consent of the debtor, assign a debt to a third party (transfer), save where this would be contrary to the law, a contractual stipulation or a characteristic of the obligation.

§ 2. All rights associated with the claim, in particular any claim to arrears of interest, shall be transferred together with the claim.’

5.2. Article 822(4) of the Civil Code:

‘A person entitled to compensation for a contingency covered by a civil-liability insurance policy may bring a claim directly against the insurer.’

III. Reasons for the questions referred

General observations

6. The common element of the joined cases is the fact that they concern road accidents which occurred in Poland and involved exclusively Polish citizens and vehicles registered in Poland. The applicants are entities which have acquired claims for compensation under debt assignment agreements.

7. In Poland, it is common practice that, where the cost of damage repair is met by the third-party liability insurance of the party at fault, the parties injured in road accidents use the services of vehicle repair workshops and rental firms offering replacement vehicles without cash payment, and the providers of these services seek compensation directly from the insurer of the party at fault.

8. A circumstance which raises doubts as to domestic jurisdiction is the fact that the parties at fault had third-party liability insurance policies with G.I. A/S, a company with its seat in Denmark. This insurer does not have a branch, agency or another establishment in Poland, and therefore Article 11(2) of Regulation No 1215/2012 does not constitute a basis for domestic jurisdiction. The defendant insurer offered insurance contracts to Polish citizens through P., a limited liability company with its seat in Ż.

Question 1

9. It follows from the case-law of the Court of Justice that the purpose of the reference in Article 13(2) of Regulation No 1215/2012 is to add injured parties to the list of claimants contained in Article 11(1)(b) of that regulation, without restricting the category of persons having suffered damage to those suffering it directly (judgment of 31 January 2018, *Hofsoe*, C-106/17 [EU:C:2018:50], paragraph 37 and the case-law cited therein).

10. The Court of Justice has also indicated that derogations from the principle of the jurisdiction of the defendant's domicile must be exceptional in nature **[Or. 6]** and must be interpreted strictly. It follows that no special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other (judgment of 31 January 2018, *Hofsoe*, C-106/17 [EU:C:2018:50], paragraphs 40 and 42 and the case-law cited therein).

11. In the case-law of the Court of Justice, there is no precise definition of an 'injured party' within the meaning of Article 13(2) of the Regulation. On the other hand, it is indicated that the protective function which Article 13(2) of the Regulation fulfils, read in the light of Article 11(1)(b) thereof, means that the application of the special rules of jurisdiction laid down in those provisions must not be extended to persons for whom that protection is not justified (see judgments of 13 July 2000, *Group Josi*, C-412/98, EU:C:2000:399, paragraphs 65 and 66; of 26 May 2005, *GIE Réunion européenne and Others*, C-77/04, EU:C:2005:327, paragraph 20; and of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 41).

12. Citing the judgment in Case C-106/17, the applicant, D., a limited liability company with its seat in J., points out that it is not a professional in the insurance sector and does not carry out the professional activity of recovering insurance indemnity claims against insurance companies, in its capacity as contractual assignee of such claims. The applicant's core business is the provision of services in the field of vehicle damage repair and replacement vehicle rental. However, in addition, within the framework of accepting claim assignment as a non-cash settlement of repair costs, the applicant seeks payment of the compensation due to it from insurers.

13. Pursuant to recital 15 of Regulation No 1215/2012, the rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile.

14. The referring court thus has doubts as to what criteria should be applied when assessing whether an entity is a 'weaker party' and thus can be regarded as an injured party within the meaning of Article 13(2) of the Regulation and invoke domestic jurisdiction under Article 11(1)(b) thereof. In particular, the referring court has doubts as to whether it should only be assessed whether an entity's professional activities in the insurance sector are of a primary rather than an incidental nature, or whether other factors such as the resources of the entity in question and the scale of its other business activities are relevant.

15. In the view of the referring court, given the differences in the case-law of courts of ordinary jurisdiction and the importance of the issue at hand for the question of jurisdiction, it would be reasonable to specify precisely which entities may be regarded as injured parties within the meaning of Article 13(2) of the Regulation. Such a criterion could, for example, form the basis on which a claim is acquired.

This would lead to the conclusion that entities which decide to acquire a claim by way of a consensual agreement cannot invoke domestic jurisdiction on the basis of Article 13(2), in conjunction with Article 11(1)(b), of Regulation No 1215/2012.

[Or. 7] Question 2

16. Whereas the first question referred for a preliminary ruling concerns only the applicant in one of the joined cases (D., a limited liability company with its seat in J.), the second question is general in nature and concerns both joined cases.

17. The referring court is unsure whether a person who has acquired, pursuant to an assignment agreement, a claim for compensation from the third-party liability insurer of the party at fault may rely on the aforementioned provisions of Articles 7(2) and 12 of the Regulation in order to pursue claims before the court of the place where the harmful event occurred.

18. Article 7(2) of the Regulation provides for the possibility of suing a person domiciled in a Member State in matters relating to tort or delict in the courts for the place where the harmful event occurred. It may therefore be assumed that this provision also applies to cases involving a legal successor of the directly injured party which have been brought against the entity liable in respect of the tort or delict (for instance, the insurer) […] [references to national case-law].

19. However, the doubt as to the applicability of the connecting factor indicated above arises from the fact that the insurer's liability is based on the insurance contract concluded with the party at fault. In addition, the question of jurisdiction in insurance matters is regulated in Articles 10 to 16 of the Regulation.

20. The applicants in the joined cases point out that the jurisdiction of the court of the place of the accident in the cases at issue is based on Article 12 of the Regulation, according to which, in respect of liability insurance, the insurer may be sued in the courts for the place where the harmful event occurred. This view has been reflected, in analogous circumstances, in the case-law of the Polish courts of ordinary jurisdiction … [references to national case-law]. On the other hand, it is pointed out that Article 12 of the Regulation should be read in conjunction with Article 13(2) thereof. Thus, only a person who is an injured party within the meaning of Article 13(2) of the Regulation would be able to invoke the jurisdiction arising from Article 12 […] [references to national case-law].

21. The adoption of one of the above solutions will have a major impact on all economic actors. If it is accepted that a party which acquires a claim and is a professional in the insurance sector cannot invoke domestic jurisdiction under Article 7(2) and Article 12 of the Regulation, the action will have to be brought before the courts of the Member State in which the third-party liability insurer of the party at fault is established **[Or. 8]**, even though the place of the event and the place in which the party at fault and the injured party are domiciled are in another Member State.

22. However, pursuant to Article 13(1) of the Regulation, in respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured party. A similar provision is contained in Article 8(2) of the Regulation, which allows a person domiciled in a Member State to be sued as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings. Pursuant to the aforementioned Article 822(4) of the Civil Code, Polish law allows a person entitled to compensation for a contingency covered by a civil-liability insurance policy to bring a claim directly against the insurer.

23. Thus, in order to be able to sue the third-party liability insurer of the party at fault, the party which has acquired the claim will have to sue the insured party, since this will enable the claim acquirer to invoke the jurisdiction arising from Article 13(1) of the Regulation (or possibly from Article 8(2) of the Regulation).

24. The foregoing interpretation would result in unfavourable consequences for the party at fault, who will be liable for certain costs, although in principle his participation as defendant in such cases is not necessary. This solution is also inconsistent with Polish law, which allows the injured party – as well as the claim acquirer – to sue the insurer of the party at fault without having to sue the party at fault.

25. Therefore, in the opinion of the referring court, it would be reasonable to interpret Articles 12 and 13(1) and (2) of Regulation No 1215/2012 in such a manner as to allow the third-party liability insurer of the party at fault to be sued in the court of the place where the harmful event occurred without an obligation to sue the insured party.

26. In conclusion, answers to both of the questions referred for a preliminary ruling are necessary in order to resolve the cases pending before the referring court. Referring these questions for a preliminary ruling is justified by the fact that from the case-law of Polish courts of ordinary jurisdiction available in the public domain and also known to the referring court *ex officio*, it follows that the aforementioned provisions of the Regulation are interpreted in different ways, which results – in analogous circumstances – in divergent rulings being delivered in respect of domestic jurisdiction.

27. […] [procedural matters]