

JUDGMENT OF THE COURT (Second Chamber)

13 December 2007*

In Case C-463/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 26 September 2006, received at the Court on 20 November 2006, in the proceedings

FBTO Schadeverzekeringen NV

v

Jack Odenbreit,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, P. Kūris, J.-C. Bonichot and C. Toader (Rapporteur), Judges,

* Language of the case: German.

Advocate General: V. Trstenjak,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Odenbreit, by N. Meier-van Laak, Rechtsanwältin,
- the German Government, by A. Dittrich and M. Lumma, acting as Agents,
- the Italian Government, by I.M. Braguglia, acting as Agent, and by W. Ferrante, avvocato dello Stato,
- the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,
- the Commission of the European Communities, by W. Bogensberger and A.-M. Rouchaud-Joët, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 9(1)(b) and 11(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

- 2 The reference was made in the course of proceedings between Jack Odenbreit, domiciled in Germany, the injured party in a road traffic accident which occurred in the Netherlands, and the insurance company of the person responsible for that accident, the private limited liability company FBTO Schadeverzekeringen NV ('FBTO'), established in the Netherlands.

Legal context of the dispute

Regulation No 44/2001

- 3 Recital 13 in the preamble to Regulation No 44/2001 states, '[i]n relation to insurance ... contracts ..., the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for'.

4 The rules of jurisdiction in matters relating to insurance are established in Chapter II, Section 3, of Regulation No 44/2001, which comprises Articles 8 to 14 of that regulation.

5 Article 9(1)(a) and (b) of Regulation No 44/2001 provides:

‘1. An insurer domiciled in a Member State may be sued:

(a) in the courts of the Member State where he is domiciled, or

(b) 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 plaintiff is domiciled ...’

6 Article 11 of that regulation states:

‘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 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.'

Directive 2000/26/EC

- 7 Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (OJ 2000 L 181, p. 65), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14) ('Directive 2000/26'), provides in Article 3, entitled 'Direct right of action':

'Each Member State shall ensure that injured parties referred to in Article 1 in accidents within the meaning of that provision enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.'

- 8 In addition, Recital 16a in the preamble to Directive 2000/26 states as follows:

'Under Article 11(2) read in conjunction with Article 9(1)(b) of ... Regulation ... No 44/2001 ..., injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 9 On 28 December 2003 Mr Odenbreit was involved in a road traffic accident in the Netherlands with a person insured with FBTO. As the injured party he brought a direct action against the insurer before the Amtsgericht Aachen (Aachen Local Court), which is the court for the place where he is domiciled, on the basis of Articles 11(2) and 9(1)(b) of Regulation No 44/2001.
- 10 By judgment of 27 April 2005 that court dismissed the action as inadmissible on account of the lack of jurisdiction of the German courts. Mr Odenbreit brought an appeal against that judgment before the Oberlandesgericht Köln (Higher Regional Court, Cologne). By interlocutory judgment of 12 September 2005 that appeal court recognised the jurisdiction of German courts over an action to establish liability, on the basis of the same provisions of Regulation No 44/2001.
- 11 FBTO brought an appeal on a point of law ('Revision') against that interlocutory judgment before the Bundesgerichtshof (Federal Court of Justice).
- 12 As is clear from the order for reference, the interpretation of Articles 11(2) and 9(1)(b) of Regulation No 44/2001 relating to jurisdiction in actions brought by an injured party directly against the insurer is a controversial subject in German legal literature.
- 13 Thus, according to the prevailing view, such direct actions are not matters relating to insurance within the meaning of Article 8 et seq. of Regulation No 44/2001, since the right of action of the injured party in German private international law is

regarded as a right in tort and not as a right under an insurance contract. According to that interpretation, Article 9(1)(b) of the regulation covers only matters relating to the insurance policy, in the strict sense, and the concept of 'beneficiary' appearing in that provision does not include the injured party. The latter cannot become a main party to the proceedings under Article 11(2) of the regulation. Against that academic opinion it is argued that, on account of the reference to Article 9 of Regulation No 44/2001 in Article 11(2) of Regulation No 44/2001, the courts for the place where the injured party is domiciled has jurisdiction to hear an action brought by the injured party directly against a liability insurance provider.

14 The Bundesgerichtshof shares that latter interpretation. In its view, there are cogent grounds for allowing an injured party to bring an action directly against the insurer before the courts for the place where that injured party is domiciled.

15 However, taking into account the differences in academic interpretation of those provisions of Regulation No 44/2001, the Bundesgerichtshof decided to stay proceedings and to refer to the Court the following question for a preliminary ruling:

'Is the reference to Article 9(1)(b) in Article 11(2) of ... Regulation ... No 44/2001 ... to be understood as meaning that the injured party may bring an action directly against the insurer in the courts for the place in a Member State where the injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State?'

The question referred for a preliminary ruling*Observations submitted to the Court*

- ¹⁶ The defendant in the main proceedings, all the Member States which submitted observations to the Court and the Commission of the European Communities consider that the reference made in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation should be interpreted as meaning that an injured party can bring an action directly against an insurer in the courts for the place where he is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State.
- ¹⁷ On the basis of a literal interpretation of the provisions of Regulation No 44/2001, the German Government and the Commission submit that, in so far as the reference in Article 11(2) of Regulation No 44/2001 makes all the content of Article 9(1)(b) of that regulation applicable to actions brought by an injured party, it is not necessary for the latter to be mentioned in the article referred to, since otherwise the reference made by Article 11(2) would be superfluous. On the basis of the same interpretation, the Polish Government considers, by contrast, that the injured party must be classified as a 'beneficiary' within the meaning of Article 9(1)(b) of that regulation. When the contract of insurance is concluded, the potential injured party to whom compensation would be paid if the event for which the contract was entered into occurred is unknown. The injured party cannot therefore be named in it as a beneficiary.

- 18 The defendant in the main proceedings, all the Member States which submitted observations to the Court and the Commission maintain that the provisions of Regulation No 44/2001 on jurisdiction in matters relating to insurance reflect the need to protect the economically weaker party, a principle of interpretation which is set out in Recital 13 in the preamble to that regulation and established in the case-law of the Court (Case 201/82 *Gerling Konzern Speziale Kreditversicherung and Others* [1983] ECR 2503, Case C-412/98 *Group Josi* [2000] ECR I-5925, paragraph 64, and Case C-112/03 *Société financière et industrielle de Peloux* [2005] ECR I-3707, paragraph 30). The very aim of Article 11(2) is therefore to extend to the injured party the arrangements provided for the benefit of plaintiffs by Article 9(1)(b) of that regulation.
- 19 In that regard, the German Government and the Commission submit that the inclusion of Article 11(2) in Regulation No 44/2001 shows the intention of the Community legislature, in accordance with the Commission's proposal, to give greater protection than that provided for by the Convention, of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36) ('the Brussels Convention').
- 20 Finally, the defendant in the main proceedings, all the Member States which submitted observations to the Court and the Commission state that such an interpretation is confirmed by Directive 2000/26 and particularly by Recital 16a in the preamble to that directive. In inserting that recital, after Regulation No 44/2001 was adopted, the Community legislature did not prescribe a binding interpretation of the provisions of that regulation, but provided an argument of considerable force in favour of recognising the jurisdiction of the courts for the place where the injured party is domiciled.

Reply of the Court

- 21 It should be recalled, at the outset, that Section 3 of Chapter II of Regulation No 44/2001, containing Articles 8 to 14, provides rules of jurisdiction in matters relating to insurance, which are additional to the general rules contained in Section 1 of the same chapter of that regulation.
- 22 Section 3 lays down a number of rules of jurisdiction in relation to actions brought against an insurer. It provides, *inter alia*, that an insurer, domiciled in a Member State may be sued in the courts of the Member State where it is domiciled [Article 9(1)(a)], in the courts for the place where the plaintiff is domiciled if the action is brought by the policy holder, the insured or a beneficiary [Article 9(1)(b)] and, finally, in the courts for the place where the harmful event occurred, in respect of liability insurance or insurance of immovable property (Article 10).
- 23 As regards liability insurance, Article 11(2) of Regulation No 44/2001 refers back to those rules of jurisdiction in the case of actions brought by the injured party directly against the insurer.
- 24 Therefore, in order to reply to the question referred by the national court, it is necessary to define the scope of the reference made in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation. It is necessary, in particular, to establish whether that reference should be interpreted as recognising only those courts designated in the latter provision, that is, those of the place of domicile of the policy holder, of the insured or of a beneficiary, as having jurisdiction to hear a direct

action brought by the injured party against the insurer, or whether that reference allows the rule of jurisdiction of the courts for the place where the plaintiff is domiciled, set out in Article 9(1)(b) of Regulation No 44/2001, to be applied to that action.

25 It is necessary to point out, in that regard, that Article 9(1)(b) does not merely attribute jurisdiction to the courts for the place where the persons listed therein are domiciled, but, on the contrary, it lays down that the courts for the place where the plaintiff is domiciled have jurisdiction, thereby giving such persons the option of suing the insurer before the courts for the place of their own domicile.

26 Thus, to interpret the reference in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation as permitting the injured party to bring proceedings only before the courts having jurisdiction under that latter provision, that is to say, the courts for the place of domicile of the policy holder, the insured or the beneficiary, would run counter to the actual wording of Article 11(2). The reference leads to a widening of the scope of that rule to categories of plaintiff other than the policy holder, the insured or the beneficiary of the insurance contract who sue the insurer. Thus, the role of that reference is to add injured parties to the list of plaintiffs contained in Article 9(1)(b).

27 In that regard, the application of that rule of jurisdiction to a direct action brought by the injured party cannot depend upon the classification of that injured party as a 'beneficiary' within the meaning of Article 9(1)(b) of Regulation No 44/2001, since the reference to that provision in Article 11(2) thereof allows that rule of jurisdiction to be extended to such disputes without the plaintiff having to belong to one of categories in Article 9(1)(b).

- 28 That line of reasoning is also based on a teleological interpretation of the provisions at issue in the main proceedings. According to Recital 13 in the preamble to Regulation No 44/2001, the regulation aims to guarantee more favourable protection to the weaker party than the general rules of jurisdiction provide for (see, to that effect, *Group Josi*, paragraph 64, *Société financière et industrielle du Peloux*, paragraph 40, and Case C-77/04 *GIE Réunion européenne and Others* [2005] ECR I-4509, paragraph 17). To deny the injured party the right to bring an action before the courts for the place of his own domicile would deprive him of the same protection as that afforded by the regulation to other parties regarded as weak in disputes in matters relating to insurance and would thus be contrary to the spirit of the regulation. Moreover, as the Commission correctly observes, Regulation No 44/2001 strengthened such protection as compared with the protection resulting from application of the Brussels Convention.
- 29 Such an interpretation is supported by the wording of Directive 2000/26 on matters relating to insurance against civil liability in respect of the use of motor vehicles, as amended — after the entry into force of Regulation No 44/2001 — by Directive 2005/14. In Directive 2000/26 the Community legislature not only provided, in Article 3, that injured parties should have a direct right of action against the insurance undertaking in the legal systems of the Member States, but also referred expressly, in Recital 16a to Articles 9(1)(b) and 11(2) of Regulation No 44/2001 in mentioning the right of injured parties to bring proceedings against the insurer in the courts for the place where they are domiciled.
- 30 As regards the consequences of allowing an injured party to bring a direct action against the insurer which, as is clear from the order for reference, is a controversial subject in Germany, it is necessary to point out that the application of the rule of

jurisdiction provided for by Article 9(1)(b) of Regulation No 44/2001 to such an action is not precluded by the latter's classification, in national law, as an action in tort relating to a right extrinsic to legal relations of a contractual nature. The nature of that action in national law is of no relevance for the application of the provisions of the regulation, since those rules of jurisdiction are contained in a section (namely Section 3 of Chapter II of the regulation) which concerns, in general, matters relating to insurance and is distinct from those relating to special jurisdiction in matters relating to a contract or to tort or delict (namely Section 2 of that chapter). The only condition which Article 11(2) of Regulation No 44/2001 lays down for the application of that rule of jurisdiction is that such a direct action must be permitted under the national law.

- 31 In light of all the foregoing considerations the reply to the question referred for a preliminary ruling must be that the reference in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that a direct action is permitted and the insurer is domiciled in a Member State.

Costs

- 32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

The reference in Article 11(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State.

[Signatures]