

# Case C-356/05

**Elaine Farrell**

**v**

**Alan Whitty and Others**

(Reference for a preliminary ruling  
from the High Court (Ireland))

(Compulsory insurance for civil liability in respect of motor vehicles — Directives  
72/166/EEC, 84/5/EEC and 90/232/EEC — Injuries to the passengers of a vehicle —  
Part of a vehicle not adapted for the carriage of seated passengers)

Opinion of Advocate General Stix-Hackl delivered on 5 October 2006 . . . . I - 3070  
Judgment of the Court (First Chamber), 19 April 2007 . . . . . I - 3093

## Summary of the Judgment

1. *Approximation of laws — Insurance against civil liability in respect of motor vehicles —  
Directive 90/232*  
(Council Directive 90/232, Art. 1)

2. *Approximation of laws — Insurance against civil liability in respect of motor vehicles — Directives 72/166, 84/5 and 90/232*  
(Council Directives 72/166, 84/5 and 90/232, Art. 1)
3. *Acts of the institutions — Directives — Direct effect*  
(Art. 249, third para., EC; Council Directive, Art. 1)

1. Article 1 of Third Directive 90/232 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles is to be interpreted as precluding national legislation whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers.

the level of compulsory insurance cover to be accorded to passengers.

(see paras 29, 36, operative part 1)

Given that, first, the right to derogate from the obligation to protect accident victims is defined and circumscribed by Community law and, secondly, the realisation of the objectives of the Community rules requires a uniform approach to the insurance cover in respect of passengers at Community level, the Member States are not entitled to introduce additional restrictions to

2. Directive 72/166, 84/5 and 90/232 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles do not seek to harmonise the rules of the Member States governing civil liability and, as Community law stands at present, the Member States are free to determine the rules of civil liability applicable to road traffic accidents. However, the Member States must ensure that the civil liability arising under their domestic law is covered by insurance which complies with the provisions of the three aforementioned directives.

Furthermore, the Member States must exercise their powers in this field in compliance with Community law and, in particular, with Article 1 of the Third Directive, and national provisions which govern the payment of compensation for personal injuries resulting from road traffic accidents cannot deprive that article of its effectiveness.

use of motor vehicles satisfies all the conditions necessary for it to produce direct effect and accordingly confers rights upon which individuals may rely directly before the national courts. However, it is for the national court to determine whether that provision may be relied upon against a body such as the Motor Insurers' Bureau of Ireland.

Accordingly, national rules, formulated in terms of general and abstract criteria, cannot refuse or restrict to a disproportionate extent the compensation to be made available to a passenger solely on the basis of his contribution to the occurrence of the injuries which arise. It is only in exceptional circumstances that, on the basis of an individual assessment and in compliance with Community law, the amount of such compensation may be limited.

A directive cannot be relied on against individuals, whereas it may be relied on as against a State, regardless of the capacity in which the latter is acting, that is to say, whether as employer or as public authority. The entities against which the provisions of a directive that are capable of having direct effect may be relied upon include a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals.

(see paras 33-35)

3. Article 1 of Third Directive 90/232 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the

(see paras 40, 44, operative part 2)