

JUDGMENT OF THE COURT (First Chamber)

30 June 2005*

In Case C-537/03,

Reference for a preliminary ruling under Article 234 EC from the Korkein Oikeus (Finland), made by decision of 19 December 2003, received at the Court on 22 December 2003, in the proceedings

Katja Candolin,

Jari-Antero Viljaniemi,

Veli-Matti Paananen,

v

Vahinkovakuutusosakeyhtiö Pohjola,

* Language of the case: Finnish.

Jarno Ruokoranta,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur), E. Juhász and M. Ilešič, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H. von Holstein, Deputy Registrar;

having regard to the written procedure and further to the hearing on 19 January 2005,

after considering the observations submitted on behalf of:

— Mr Paananen, by M. Hunnako, asianajaja,

- Vahinkovakuutusosakeyhtiö Pohjola, by M. Mäkelä, acting as Agent,

- the Finnish Government, by T. Pynnä, acting as Agent,

- the German Government, by M. Lumma, acting as Agent,

- the Austrian Government, by E. Riedl, acting as Agent,

- the Swedish Government, by K. Norman, acting as Agent,

- the Norwegian Government, by I. Djupvik, acting as Agent, and T. Nordby, advocate,

- the Commission of the European Communities, by E. Traversa and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2005,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17) ('the Second Directive') and Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33) ('the Third Directive').

- 2 The reference was made in the course of proceedings between Ms Candolin, Mr Viljaniemi and Mr Paananen and the insurance company Vahinkovakuutusosakeyhtiö Pohjola ('Pohjola') and Mr Ruokoranta, concerning damages to be paid to them as a result of a car accident.

Legal background

Community law

- 3 Pursuant to Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360) ('the First Directive'):

'Each Member State shall ... 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 extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.'

- 4 The seventh and ninth recitals in the preamble to the Second Directive are worded as follows:

'Whereas it is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident; ...

... the members of the family of the insured person, driver or any other person liable should be afforded protection comparable to that of other third parties, in any event in respect of their personal injuries’.

5 Article 2(1) of the Second Directive provides that:

‘Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

— persons who do not have express or implied authorisation thereto,

or

— persons who do not hold a licence permitting them to drive the vehicle concerned,

OR

- persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3(1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

...'

6 Article 1 of the Third Directive provides:

'Without prejudice to the second subparagraph of Article 2(1) of Directive 84/5/EEC, the insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

...'

National law

At the time the facts arose in the main proceedings, Paragraph 7(1) and (3) of the Law on motor vehicle insurance (Liikennevakuutuslaki (279/1959)) of 26 June 1959, as amended by Law 656/1994, was worded as follows:

'1. If a person who has met with road accident damage himself contributed to its occurrence, his compensation may, as regards damage incurred other than personal injury, be reduced or refused depending on what his fault was, how the vehicle was driven and what other circumstances influenced the damage. If a person has caused injury to his own person deliberately or by gross negligence, compensation for that is paid only in so far as the other circumstances have influenced the occurrence of the injury.

...

If a person has caused injury to his own person when driving a vehicle in a situation in which the alcohol content of his blood during the journey or after it was at least 1.2 per mille or he had at least 0.60 milligrams of alcohol per litre of air exhaled, or has caused injury when driving a vehicle otherwise under the influence of alcohol or/ and of an intoxicating substance other than alcohol or under the joint influence of alcohol and an intoxicating substance other than alcohol, so that his ability to act

correctly was considerably impaired, compensation is paid from the vehicle's insurance only in so far as there is a special reason for that. What is said above on the driver's right to compensation applies also to a passenger, if when he sustained the injury he was in the vehicle although he knew or should have known of the driver's condition referred to above.'

- 8 As a result of a reasoned opinion sent on 20 March 2002 by the Commission of the European Communities to the Republic of Finland, the second sentence of Paragraph 7(3) was amended by Law 548/2002. Pursuant to that new provision:

'A passenger's compensation may be reasonably reduced on the ground of his own contributory fault, if when he sustained the injury he was in the vehicle with a driver as described in this subparagraph.'

- 9 Since the entry into force on 1 February 2003 of Law 1144/2002, Paragraph 7(1) of the Law on motor vehicle insurance is worded as follows:

'If a person has intentionally caused personal injury to himself, compensation is paid only in so far as the other circumstances have influenced the occurrence of injury. If

a person has contributed by gross carelessness to the occurrence of the personal injury he has suffered, the compensation may be reduced or refused according to what is reasonable having regard to the circumstances.'

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

10 On 21 April 1997 Mrs Candolin, the mother of Ms Candolin, was travelling together with Mr Viljaniemi and Mr Paananen in Mr Paananen's car, which was driven on that occasion by Mr Ruokoranta. During the journey a road accident occurred, causing the death of Mrs Candolin as well as serious injuries to the other passengers.

11 It is apparent from the order for reference that the driver and all the other passengers were drunk.

12 The Porin Käräjäoikeus (District Court, Pori) sentenced Mr Ruokoranta to a term of imprisonment and ordered him to pay compensation to Ms Candolin, Mr Viljaniemi and Mr Paananen. As regards the question of the payment of compensation by Pohjola, the District Court, taking the view that the passengers should have noticed

the driver's drunken state, held that, in principle, none of them was entitled to receive compensation from Pohjola by reason of Paragraph 7(3) of the Law on motor vehicle insurance as amended by Law 656/1994. However, if there were a 'special reason', within the meaning of Paragraph 7(3,) for paying compensation then Pohjola could be ordered to pay it. Taking account of the serious injuries suffered by Mr Paananen and the fact that Mr Ruokoranta, given his financial circumstances, would probably be unable to compensate him, the Porin Käräjäoikeus held that Pohjola had to pay that compensation. On the other hand, it held that no 'special reason' could be relied on as regards Ms Candolin and Mr Viljaniemi.

- 13 An appeal was brought before Turun Hovioikeus (Court of Appeal, Turku) which held that Pohjola was no longer liable to pay the compensation which Mr Ruokoranta owed to Mr Paananen.

- 14 Ms Candolin, Mr Viljaniemi and Mr Paananen therefore brought an appeal against the judgment of the Turun Hovioikeus before the Korkein Oikeus (Supreme Court). They claim that their compensation should be covered by the insurance company on the basis of the motor vehicle insurance. Pohjola denies that it has any obligation to pay compensation on the ground that where a passenger enters a vehicle in the knowledge that he runs a higher than normal risk of being injured he must be liable for the consequences of his conduct.

15 Taking the view that the legal provisions in force at the time of the facts must be interpreted in accordance with Community law, the Korkein Oikeus decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Does the requirement in Article 1 of the Third Directive ..., under which all passengers other than the driver are to be compensated from insurance for personal injuries arising out of the use of a vehicle, or any other provision or principle of Community law lay down restrictions in assessing the significance of the passenger's own contributory fault under national law, in connection with his right to compensation payable from compulsory motor vehicle insurance?

2. Is it consistent with Community law, in any situation other than the cases mentioned in the second subparagraph of Article 2(1) of the Second Directive ..., to exclude or limit, on the basis of the conduct of a passenger in a vehicle, his right to obtain compensation from compulsory motor vehicle insurance for road accident damage? May that come into question, for example, when a person has entered a vehicle as a passenger although he could have seen that the danger of an accident and of his suffering injury was greater than normal?

3. Does Community law preclude the driver's intoxication, which influences his capability of driving the vehicle safely, from being regarded as such a factor to be taken into account?

4. Does Community law preclude the right of a car owner who is a passenger in the car to compensation for personal injury payable from compulsory motor vehicle insurance from being assessed more severely than that of other passengers on the ground that he permitted an intoxicated person to drive his car?

The questions referred for a preliminary ruling

- 16 By those questions, which it is appropriate to examine together, the national court asks essentially whether the second subparagraph of Article 2(1) of the Second Directive and Article 1 of the Third Directive preclude a national law according to which compensation paid under compulsory motor vehicle insurance may be refused or limited on the basis of the passenger's contribution to the injury he has suffered, and whether the answer is different where the passenger is the owner of the vehicle.
- 17 As a preliminary point it must be recalled that the First, Second and Third Directives are designed to ensure the free movement of vehicles normally based on Community territory and of persons travelling in those vehicles and to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the Community the accident has occurred (Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 13).

- 18 In view of the aim of protecting victims, the Court has held that Article 3(1) of the First Directive precludes an insurer from relying on statutory provisions or contractual clauses in order to refuse to compensate third-party victims of an accident caused by the insured vehicle (*Ruiz Bernáldez*, paragraph 20).
- 19 The Court has also held that the first subparagraph of Article 2(1) of the Second Directive simply repeats that obligation with respect to provisions or clauses in a policy excluding from insurance the use or driving of vehicles in particular cases (persons not authorised to drive the vehicle, persons not holding a driving licence, persons in breach of the statutory technical requirements concerning the condition and safety of the vehicle) (*Ruiz Bernáldez*, paragraph 21).
- 20 By way of derogation from that obligation, the second subparagraph of Article 2(1) provides that certain persons may be excluded from compensation by the insurer, having regard to the situation they have themselves brought about (persons entering a vehicle which they know to have been stolen) (*Ruiz Bernáldez*, paragraph 21).
- 21 However, as it is a provision which establishes a derogation from a general rule, the second subparagraph of Article 2(1) of the Second Directive must be interpreted strictly.

22 As the Advocate General rightly stated, in point 42 of his Opinion, any other interpretation would allow Member States to limit payment of compensation to third-party victims of a road accident to certain circumstances, which is precisely what the directives are intended to avoid.

23 It follows that the second subparagraph of Article 2(1) of the Second Directive must be interpreted as meaning that a statutory provision or a contractual clause in an insurance policy which excludes the use or driving of vehicles from the insurance may be relied on against third parties who are victims of a road accident only where the insurer can prove that the persons who voluntarily entered the vehicle which caused the injury knew that it was stolen.

24 As regards the refusal or limitation of the right to compensation paid by the compulsory motor vehicle insurance on account of the fact that the passenger who is a victim of an accident contributed to the injury, it is clear from the aim of the first, second and third directives, and from their wording, that they do not seek to harmonise the rules of the Member States governing civil liability and that, as Community law stands at present, the Member States are free to determine the rules of civil liability applicable to road accidents (Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraphs 23 and 29).

25 In that regard, Pohjola and the Finnish, German, Austrian and Norwegian Governments claim that Community law does not impose any limits on the

appraisal, under national law on civil liability, of the extent to which the passenger contributed to the occurrence of his injuries.

26 Such an argument cannot be accepted.

27 The Member States must exercise their powers in compliance with Community law and, in particular, with Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive, whose aim is to ensure that compulsory motor vehicle insurance allows all passengers who are victims of an accident caused by a motor vehicle to be compensated for the injury or loss they have suffered.

28 The national provisions which govern compensation for road accidents cannot, therefore, deprive those provisions of their effectiveness.

29 Such would be the case specifically where, solely on the basis of the passenger's contribution to the occurrence of his injuries, national rules, established on the basis

of general and abstract criteria, either denied the passenger the right to be compensated by the compulsory motor vehicle insurance or limited such a right in a disproportionate manner.

30 It is only in exceptional circumstances that the amount of the victim's compensation may be limited on the basis of an assessment of his particular case.

31 In the determination of whether those circumstances exist and whether the limit on the compensation is proportionate, which is a matter for the national court, the fact that the passenger concerned is the owner of the vehicle the driver of which caused the accident is irrelevant.

32 By providing that insurance for civil liability in respect of the use of motor vehicles covers liability for personal injuries to all passengers other than the driver, Article 1 of the Third Directive lays down only one distinction between the driver and the other passengers.

33 Furthermore, the protective aims recalled in paragraphs 18 to 20 of this judgment require that the legal position of the owner of the vehicle, present in the vehicle at the time of the accident as a passenger, be the same as that of any other passenger who is a victim of the accident.

- 34 That interpretation is supported by the way in which Community law has evolved. The seventh recital in the preamble to the Second Directive states that it is in the interest of victims that the effects of certain exclusion clauses should be limited to the relationship between the insurer and the person responsible for the accident. In order to give protection comparable to that of other third parties who are victims, as is clear from the ninth recital in the preamble to that directive, Article 3 has extended insurance cover for personal injuries to members of the family of the insured person and the driver or any other person who is liable. Article 1 of the Third Directive adopts an even broader formula, by providing for compensation for personal injuries for all passengers other than the driver. Therefore, the owner of the vehicle, who is a passenger, is not excluded from the benefit of compensation.
- 35 In light of the foregoing considerations, the answer to the questions referred must be that, in circumstances such as those in the main proceedings, Article 2(1) of the Second Directive and Article 1 of the Third Directive preclude a national rule which allows the compensation borne by the compulsory motor vehicle insurance to be refused or limited in a disproportionate manner on the basis of the passenger's contribution to the injury or loss he has suffered. The fact that the passenger concerned is the owner of the vehicle the driver of which caused the accident is irrelevant.

Costs

- 36 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 (First Chamber) rules as follows:

In circumstances such as those in the main proceedings, Article 2(1) of Second Council Directive 84/5/EEC of 30 December 1983 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 Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, preclude a national rule which allows the compensation borne by the compulsory motor vehicle insurance to be refused or limited in a disproportionate manner on the basis of the passenger's contribution to the injury or loss he has suffered. The fact that the passenger concerned is the owner of the vehicle the driver of which caused the accident is irrelevant.

[Signatures]