NINESTJOHNSTREET
PERSONAL INJURY

CASE UPDATE

Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6

Julie-Anne Luck

21 February 2019

www.9sjs.com
PI@9sjs.com
9 St John Street, Manchester, M3 4DN
DX Address: 14326 MANCHESTER 3
Tel: 0161 955 9000

Case Update – Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6

This long-awaited Supreme Court decision gives much needed clarity at last for victims of unidentified drivers. It provides very good news for insurers, but unfortunate news for such victims.

The Background

In May 2017, the Court of Appeal held that it was entirely permissible for a Claimant to bring proceedings against an unnamed Defendant, and so avoid bringing a less lucrative claim against the MIB, under the Untraced Driver's Agreement (the UtDA). *Cameron v Hussain & Liverpool Victoria Insurance [2017] EWCA Civ 366* explained:

i. Although the CPR generally required parties to proceedings to be named, in appropriate cases it was permissible for a Claimant to bring proceedings against an unnamed defendant, suitably identified by an appropriate description (for example the unknown person driving vehicle Y598 SPS who collided with vehicle KG03 ZJZ on 26th May 2013).

ii. Whether permission would be granted was a matter of discretion and would depend on whether this would further the overriding objective.

iii. That it was entirely consistent with the policy of Part VI of the RTA that an identified insurer's liability under S151 of that Act in relation to a policy of insurance, written in respect of a specific vehicle and a specific named insured, should not depend on whether, as at the date of issue of the proceedings, or thereafter, the claimant could identify the tortfeasor by name.

This decision was a significant one, for a number of reasons, not least:

- A claim against an insurer is significantly more cost effective than a claim against the MIB under the UtDA.
- It exposed insurers to claims they previously thought would fall to the MIB.
- It raised concerns for an increase in the scope for fraud – policies being opened for fictitious drivers with the purpose of claiming against an untraced driver

The Appeal before the Supreme Court

Judgment on the appeal brought in Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6 was handed down by the Supreme Court on 20th February 2019.

The appeal was primarily concerned with the issue or amendment of the claim form to include the unidentified driver as a Defendant. The court said that the legitimacy of issuing or amending a claim form so as to sue an unnamed defendant is to be properly be tested by asking whether it is conceptually (not just practically) possible to serve it. (paragraph 14).

In approaching this question, it is necessary to distinguish between two kinds of case in which the defendant cannot be named, to which different considerations apply. The first category comprises anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location, although they cannot be named. The second category comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction is that in the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the claim form, whereas in the second category it is not (paragraph 13).

An identifiable but anonymous defendant (such as a squatter) can be served by alternative service under CPR 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form.

As for the other category, the court noted that it is not possible to identify an unknown person simply by referring to something that he has done in the past. "The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013", does not identify anyone. The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but to the fact that it is not known who the defendant is (paragraph 16).

The need for notice of the proceedings

The court focused on it being a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard (paragraph 17). The court considered that this principle had not been treated consistently or satisfactorily by a number of authorities.

It was noted that the current position is set out in Part 6 of the Civil Procedure Rules and that CPR 6.15 makes provision for alternative service. However, the Court held that:

> *"subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as*

> *can reasonably be expected to bring the proceedings to the attention of the defendant.*" (paragraph 21).

According to the Supreme Court, this was where the Court of Appeal fell foul, because:

> *"ordinary service on the insurer would not constitute service on the driver, unless the insurer had contractual authority to accept service on the driver's behalf or to appoint solicitors to do so.*" (paragraph 23).

It was plain that alternative service on the insurer could not be expected to reach the driver of the Micra, and so was "*tantamount to no service at all, and should not therefore have been ordered unless the circumstances were such that it would be appropriate to dispense with service altogether*" (paragraph 24).

The power to dispense with service

As for the power under CPR 6.16 "to dispense with service of a claim form in exceptional circumstances", the Court said that no submissions had been made that they should treat this as a case of evasion of service, and there were no findings which would enable them to do so. Whilst the Court would not limit the discretion which CPR 6.16 confers, it said that it was hard to envisage any circumstances in which it could be right to dispense with service of the claim form in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought (paragraph 25).

Conclusions

In conclusion, the appeal succeeded, with the court holding that:

> *"A person, such as the driver of the Micra in the present case, who was not just anonymous, but could not be identified with any particular person, could not be sued under a pseudonym or description, unless the circumstances were such that the service of the claim form could be effected or properly dispensed with*" (paragraph 26).

In support of the result, it was noted:

> *"the Road Traffic Act scheme is expressly based on the principle that as a general rule there is no direct liability on the insurer, except for its liability to meet a judgment against the motorist once it has been obtained. To that*

> *extent, Parliament's intention that the victims of negligent motorists should be compensated by the insurer is qualified. No doubt Parliament assumed, when qualifying it in this way, that other arrangements would be made which would fill the compensation gap, as indeed they have been. But those arrangements involve the provision of compensation not by the insurer but by the Motor Insurers' Bureau. The availability of compensation from the Bureau makes it unnecessary to suppose that some way must be found of making the insurer liable for the underlying wrong when his liability is limited by statute to satisfying judgments"* (paragraph 22).

Finally, there was discussion of the "European Issue", namely whether the result was inconsistent with the Sixth Motor Insurance Directive 2009/103/EC. These technical points were not raised before the Court of Appeal and were quickly rejected by the Supreme Court.

The result is that a victim of the negligence of an unidentified driver must now return to pursuing his claim against the MIB (under the UtDA). It is no longer possible to simply name the unidentified driver as defendant by way of reference to the accident and serve the claim form on the insurers of the relevant vehicle. This is because service of the claim form on the insurer of the relevant vehicle does not constituent effective service on the unidentified driver himself.

JA Luck