JUDGMENT OF THE COURT
16 MAY 1973 [1]

L'Étoile-Syndicat général v W. E. de Waal (preliminary ruling requested by Arrondissementsrechtbank Breda)

Case 78/72

1. *Social security for migrant workers — Payments due under the legislation of a Member State for damage suffered in the territory of another State — Subrogation of the institution liable — Direct right vis-à-vis the third party responsible — Content of the right*
   (Regulation of the Council No 3, Article 52)
2. *Social Security for migrant workers — Payments due under the legislation of a Member State for damage suffered in the territory of another State — Subrogation of the institution liable — Right to compensation governed by the rules in force in the State where the damage is suffered*
   (Regulation of the Council No 3, Article 52)

1. Since Article 52 is limited to the substitution of a fresh creditor for the previous one, the institution liable in invoking any rights under that Article, cannot claim from a third party responsible any payment other that which could be claimed by the victim of the damage or his dependants under the legislation of the State in whose territory the damage occurred.
2. Whilst Article 52 refers to the national legislation of the institution liable, to determine whether it can invoke, in the Member State in which the damage occurred, the benefit of subrogation to the rights of the victim or his dependants, or the exercise of the direct right referred to under letter (b), it in no way modifies the system of extra-contractual liability, which remains subject to the rules of the national law defining the source and limits of the right of compensation vested in the victim or his dependants vis-à-vis the third party responsible.

In Case 78/72

Reference to the Court under Article 177 of the EEC Treaty by the Arondissementsrechtbank (District Court) of Breda for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Dutch.

The Insurance Company known 'L'Étoile-Syndicat général', a mutual insurance fund against accidents at work, having its registered office at Brussels,

and

W. E. de Waal, resident at Bergen op Zoom (Netherlands),

on the interpretation of Article 52 of Regulation No 3 of the Council of the European Communities concerning social security for migrant workers,

THE COURT

composed of: R. Lecourt, President, R. Monaco (Rapporteur) and P. Pescatore, Presidents of Chambers, A. M. Donner, H. Kutscher, C. Ó Dálaigh and M. Sørensen, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. On 16 September 1965 Mr L. E. M. Melsen, a Dutch citizen resident in the Netherlands, was killed in a road accident occurring on Dutch territory by a car driven by Mr W. E. de Waal, resident in the Netherlands. When the accident occurred Mr Melsen was on his way to work in Belgium, and under Belgian social security law was insured by his employer with the Insurance Company known as 'L'Étoile-Syndicat général', a mutual insurance fund against accidents at work (hereafter called 'L'Étoile')

By Belgian Royal Decree dated 20 May 1941, L'Étoile was approved as an insurer for annuities and, by virtue of this, has the benefit of the combined provisions of Article 19 of the Law of 24 December 1903 and Article 3 of the Law of 16 March 1954, under which.

'A subrogated insurer who has paid the capital required to produce the annuity to an approved institution, or who has himself been approved to service his own annuities and retains the capital for this purpose in his own hands, may claim reimbursement of that capital from a

third party responsible to the extent of his legal rights against that third party.'

On the basis of these provisions L'Étoile asked the District Court of Breda, by a summons dated 28 August 1968, to order Mr W. E. de Waal, who was found wholly to blame, to refund the amounts already paid to the dependants of the assured and in addition the amounts still to be paid to them. In support of its plea it also invoked Article 52 of Regulation No 3 of the Council, which reads:

'If a person benefiting from payments under the legislation of a Member State for damage suffered in the territory of another State has the right, in the territoriy of that other State, to claim compensation from a third party for that damage, any rights which the institution liable to pay the benefits may have against the third party shall be governed as follows:

(a) where the institution liable is subrogated, under the legislation applicable to it, to the rights of the beneficiary in relation to a third party, each Member State shall recognize such subrogation;

(b) where the institution liable has a direct right against the third party, each Member State shall recognize that right. The application of these provisions shall be a matter for bi-lateral agreements.'

Mr de Waal contested the view that the applicant had an autonomous right of action, within the meaning of the abovementioned Article 52, and asked the Court to reject the application.

Guided by the decisions of the Court of Justice on Article 52 of Regulation No 3, the District Court of Breda ruled that:

— by virtue of Article 52 of Regulation No 3 of the Council, L'Étoile has, against the person causing the accident, the right of action provided by Article 19 of the abovementioned law of 24 December 1903;

— however, as Belgian legislation limits this right to the claims which the rules of common law allow dependants to make against the party responsible, the question arises whether the extent of the liability of the Belgian insurance company has to be determined according to Belgian law or according to the common law of the Netherlands.

Considering that there thus arose a problem concerning the interpretation of Article 52 (b) of the said Regulation, the District Court, by its judgment dated 28 November 1972, lodged with the Registry of the Court on 4 December 1972, decided to suspend the proceedings and, under Article 177 of the EEC Treaty, to refer the following question to the Court of Justice:

'Is the effect of the direct application of Article 52 of Regulation No 3 that, for the purpose of determining the right against the third party referred to at letter (b) of this Article, the rules of common law applicable in the country which has created the right must be taken into account?'

2. The Insurance Company known as L'Étoile-Syndicat général, represented by L. J. Den Hollander of Middelharnis, Mr W. E. de Waal, represented by J. H. Lely, advocate at The Hague, and the Commission of the European Communities, represented by its legal adviser Robert C. Fischer, acting as agent, made written observations under Article 20 of the Protocol on the Statute of the Court of Justice.

On the report of the Judge-Rapporteur, and upon hearing the Advocate-General, the Court decided to open oral proceedings without any preparatory inquiry.

The oral observations of the Insurance Company known as L'Étoile-Syndicat général, Mr W. E. de Waal and the Commission of the European Communities presented oral arguments at the hearing on 4 April 1973.

The Advocate-General presented his opinion at the hearing on 7 May 1973.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court

The observations submitted under Article 20 of the Protocol on the Statute of the Court may be summarised as follows:

A — Observations submitted by the Insurance Company known as L'Étoile-Syndicat général

According to the Insurance Company known as L'Étoile-Syndicat général, the fact that Article 52 (b) of Regulation No 3 is directly applicable does not imply that the content of the right of action for which it provides must be determined under Community law. The amount which in this case l'Étoile is liable to pay the party concerned and which it can recover from the third party responsible, is that determined by Belgian law on accidents at work.

In reliance of the decisions of the Court, l'Étoile submits that since the recognition of the direct right of action by 52 (b) is not subject to any restriction, there is no question that in this case it has the right to claim reimbursement directly of the amount paid to the party concerned as calculated by the Belgian judge (the judge of peace of the canton of Ekeren).

Accordingly l'Étoile submits that an affirmative answer should be given to the question raised.

B — Observations submitted by Mr W. E. de Waal

Mr de Waal observes that according to its aims and wording, Article 52 of Regulation No 3 only applies to the recognition either of the *subrogation* or of the direct right of *action* of the social security institution. The sole purpose of this Article is to prevent, in those cases where the national legislation of the social security insurer provides a subrogation or a direct right of action in his favour against the third party responsible, any impediment to the exercise of those rights in the other Member States whose national legislation does or does not recognize one or other of those two rights.

This being the purpose of Article 52, that provision in no way modifies the scope of the liability or responsibility of the third party responsible. It in no way implies that this liability or responsibility should be appraised by reference to national legislation other than that applicable apart from Article 52.

An admission that under Article 52, legal relations between the third party responsible and his victim are governed by the national legislation of the Member State to which the social security institution belongs would have unacceptable consequences, since this legislation would vary according to the nationality of the social security institution.

After also recalling the decisions of the Court in these matters, Mr de Waal submits that the question raised should be answered in the *negative.*

C — Observations submitted by the Commission of the European Communities

The *Commission of the European Communities* first observes that according to consistent decisions of the Belgian courts since 1937, the directors of companies or insurers no longer have a direct right of action against the third party responsible but the benefit of subrogation to the rights of the victim.

As Article 52 of Regulation No 3 covers, under letter (a), the case of this subrogation also, it suffices therefore to amend the wording of the question raised to read as follows:

'Is the content of the right, vested by the legislation of a Member State in an institution liable for payment of benefits, to bring an action against a third party

responsible, determined by the legislation establishing that right, where in application of Article 52 of Regulation No 3, the said institution is exercising that right in the territory of another Member State in which the damage occured?'

Having made this point, the Commission observes that Article 52 of Regulation No 3 sets out a rule in case of conflict allowing for a choice between the results obtained by applying differing national laws: it invokes, for the purpose of determining the rights against third parties of the institution liable, the legislation governing that institution.

It does not appear, from the letter or from the spirit of Article 52, that this Article sought to limit the application of this rule of conflict of laws only to the case where the existence or non-existence of a right of action of a social security institution is at issue, but that recourse must be had to the legislation of another Member State to determine the content of that right.

Had this been the position, it follows that in this case the content of the subrogation of which L'Étoile can take advantage under Belgian legislation is determined in accordance with the laws of the Netherlands. The Commission is of the opinion that such a solution is illogical. In support of this opinion it cites the decisions of the Court and the opinions of the Advocate General, from which it appears that Article 52 of Regulation No 3 in no way modifies the conditions governing the origin and limits of extra-contractual liability, which remain subject to one national law only.

The Commission submits that the following *affirmative* answer should be given to the question raised:

'The content of the right, vested by the legislation of a Member State in an institution liable for payment of benefits, to bring an action against a third party responsible, is determined by the legislation establishing that right, where in application of Article 52 of Regulation No 3, the said institution is exercising that right in the territory of another Member State in which the damage occurred.'

Grounds of judgment

1 By decision of 28 November 1972, lodged at the Registry of the Court on 4 December 1972, the District Court of Breda under Article 177 of the EEC Treaty raised the question whether, in order to determine the substantive content of the direct right against the third party responsible for damage, referred to in Article 52 of Regulation No 3 of the Council, it is correct to apply the rules of the Member State under which this right is invoked.

2 By Article 52 of Regulation No 3 of the Council:

'If a person benefiting from payment under the legislation of a Member State for damage suffered in the territory of another State, has the right, in the territory of that other State, to claim compensation from a third party for that damage, any rights which the institution liable to pay the benefits may have against the third party shall be governed as follows: . . .

(b) where the institution liable has a direct right against the third party, each Member State shall recognize that right.'

3 It appears from this provision that the direct right of the institution liable vis-à-vis the third party responsible derives from the fact that the person receiving the benefit of payments has a right, in the territory of the State in which the damage occurred, to claim compensation from that third party.

4 Since Article 52 is thus limited to the substitution of a fresh creditor for the previous one, the institution liable cannot claim from the third party responsible any payment other than that which could be claimed by the victim of the damage or his dependants.

5 Such a payment is defined by the rules of the national law governing the right of the victim to compensation.

6 Whilst Article 52 refers to the national legislation of the institution liable, to determine whether it can invoke in the Member State in which the damage occurred, the benefit of subrogation to the rights of the victim or his dependants, or the exercise of the direct rights referred to under letter (b), it in no way modifies the system of extra-contractual liability, which remains subject to the rules of national law alone.

7 A negative answer must therefore be given to the question raised, in the sense that the substantive content of the direct right referred to under letter (b) of Article 52 of Regulation No 3 of the Council is determined by the rule of the national law defining the source and limits of the right of compensation vested in the victim or his dependants vis-à-vis the third party responsible.

Costs

8 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before a national court, the decision on costs is a matter for that Court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur:
Upon hearing the oral observations of the parties to the main action and of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 3 of the Council concerning social security for migrant workers;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question referred to it by the District Court of Breda by order of that Court dated 28 November 1972 hereby rules:

The substantive content of the direct right referred to under letter (b) of Article 52 of a Regulation No 3 of the Council of the European Communities is determined by the rules of the national law defining the source and limits of the right of compensation vested in the victim or his dependants vis-à-vis the third party responsible.

Lecourt Monaco Pescatore

Donner Kutscher Ó Dálaigh Sørensen

Delivered in open court in Luxembourg on 16 May 1973.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 7 MAY 1973 [1]

Mr President,
Members of the Court,

It is necessary to know the following facts in connection with the reference for a preliminary ruling with which we are concerned today.

Mr Melsen, a Dutch citizen resident in the Netherlands, was employed in Belgium and was insured, inter alia, against accidents under Belgian social insurance law with the plaintiff in the main action. On 16 September 1965, in the Netherlands, while on his way to his

1 — Translated from the German.