ORDER OF THE COURT (First Chamber)
14 October 2002 *

In Case C-158/01,

REFERENCE to the Court under Article 234 EC by the Circuit Court, County of Cork (Ireland), for a preliminary ruling in the proceedings pending before that court between

Catherine Withers

and

Samantha Delaney,

Motor Insurers Bureau of Ireland (MIBI),

on the interpretation of Council Directive 72/166/EEC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II),

* Language of the case: English.

p. 360), and 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 COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and A. Rosas, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having informed the court of referral that the Court proposed to give its decision by reasoned order in accordance with Article 104(3) of the Rules of Procedure,

having invited the persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations which they might wish to make in that regard,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By judgment of 9 March 2001, received at the Court on 17 April 2001, the Circuit Court, County of Cork, referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Council Directive 72/166/EEC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360, 'the First Directive'), and 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').

2 Those questions were raised in proceedings brought by Mrs Withers against Mrs Delaney and the Motor Insurers Bureau of Ireland ('the MIBI') for damages following the death of Mrs Withers' son in a road accident.

Community legislation

3 Article 3(1) of the First Directive provides:

'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 It is apparent from the third recital in the preamble thereto that the Second Directive was adopted in order to reduce the major disparities between the laws of the different Member States concerning the extent of the obligation of insurance cover. For that purpose, Article 1(1) and (2) of the Second Directive provides that the insurance referred to in Article 3(1) of the First Directive is to cover compulsorily both damage to property and personal injuries up to specific amounts. Article 3 of the Second Directive states that the members of the family of the insured person, driver or any other person who is liable under civil law in the event of an accident and whose liability is covered by the insurance referred to in Article 1(1) of that directive is not to be excluded from insurance in respect of their personal injuries by virtue of that relationship.

5 As stated in the fifth recital in the preamble thereto, 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') was adopted with a view, in particular, to reducing the disparities in compulsory insurance cover of

passengers in motor vehicles in certain Member States. To that end, Article 1 of the Third Directive provides that the insurance referred to in Article 3(1) of the First Directive is to cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle. Under Article 6(2) of the Third Directive, Ireland had until 31 December 1995 to comply with Article 1 as regards vehicles other than motorcycles.

The Irish legislation

6 It is expressly stated in the judgment making the reference that the legislation to be taken into consideration is that in force on the date of the accident which gave rise to the main action, i.e. 23 July 1995.

7 At that time, section 56 of the Road Traffic Act 1961 laid down the principle that civil liability arising out of the use of motor vehicles must be covered by insurance.

8 Section 65 of that Act provided that such insurance was not required in respect of civil liability to passengers in motor vehicles.

9 Under Section 65, the competent Minister was authorised to make regulations under the Act specifying vehicles for which insurance in respect of civil liability to passengers was compulsory. However, the Minister was not permitted to extend such compulsory insurance to any part of a vehicle, other than a large public service vehicle, unless that part of the vehicle was designed and constructed with seating accommodation for passengers.

The main proceedings and the questions referred to the Court

10 On 23 July 1995, Mrs Withers' son, Thomas Sheehan, was killed in a road traffic accident when the vehicle in which he was travelling, which was being driven by Mrs Delaney, left the road and went into a ditch.

11 The vehicle was a Citroën C 15 D diesel van normally based in Ireland. It was a two-seater vehicle with seats for the driver and a front passenger. Thomas Sheehan was sitting behind the front seats, in a covered area with no seating.

12 Mrs Withers, acting on her own behalf and on behalf of all her son's dependants, brought an action for damages against Mrs Delaney and the MIBI. The MIBI is a body which, in certain circumstances, compensates victims of road traffic accidents caused by uninsured, inadequately insured or untraced drivers where insurance was compulsory under section 56 of the Road Traffic Act 1961.

13 Mrs Withers claimed that the Irish legislation in force at the time of the accident did not properly transpose the First and Second Directives. The Circuit Court, County of Cork, took the view that the outcome of the dispute thus raised an issue of Community law and decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'I. Whether on the true interpretation of the provisions of [the First Directive] and [the Second Directive], Ireland was entitled on 23 July 1995 to maintain legislation (Section 65 of the Road Traffic Act 1961 and the Road Traffic (Compulsory Insurance) Regulations 1962) which did not make compulsory insurance mandatory for passengers injured in a "part of a vehicle, other than a large public service vehicle, unless that part of the vehicle is designed and constructed with seating accommodation for passengers"?

II. If the answer to Question I is that Ireland was not so entitled and was in breach of its obligations in this regard, is Ireland liable in damages to the plaintiff if the plaintiff fails to get compensation from the MIBI, that is the body authorised by Ireland under Article 1(4) of [the Second Directive], in respect of the death of the deceased?

III. If the answer to Question I is that Ireland was in breach of its obligations, can the Cork Circuit Court proceed *directly* to an award of Frankovich damages against the State without applying the Directive against the defaulting emanation of State, or can this only be done *after* one has decided that the

Directive (because, for example, it fails the tests of justiciability necessary to generate direct effect) cannot be invoked against the defendant?'

The questions referred for a preliminary ruling

14 Since it considered that the answer to the first question could be clearly deduced from its existing case-law and rendered unnecessary any examination of the second and third question questions, the Court, in accordance with Article 104(3) of the Rules of Procedure, informed the national court that it intended to give its decision by reasoned order and invited the persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations which they might wish to make in that regard.

15 Mrs Withers, the MIBI, the Irish Government and the Commission submitted observations within the prescribed period. The MIBI, the Irish Government and the Commission agreed in principle with the Court's intention to give its decision by reasoned order. Mrs Withers expressed doubts as to whether that procedure was appropriate in the light of the second and third questions, which, in her submission, required an answer.

First question

16 By the first question, the national court is seeking in essence to ascertain whether the First and Second Directives leave to the Member States the power to determine the extent and the detailed provisions of passenger cover.

17 In that regard, the Court set out at paragraphs 26 to 32 of its judgment of 14 September 2000 in Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711 the obligations imposed on Member States by those directives.

18 It follows from the grounds of that judgment that, in the sphere defined by the First and Second Directives, Member States remain competent to determine the extent of passenger cover, on condition that passengers who are members of the family of the insured, the driver or any other person liable should be afforded protection equivalent to that of other third party passengers.

19 Thus, the Court held at paragraph 32 of *Mendes Ferreira and Delgado Correia Ferreira* that Article 3(1) of the First Directive, as amplified and supplemented by the Second Directive, and Article 3 of the Second Directive were to be interpreted as meaning that if a Member State's domestic law imposed compulsory insurance cover in respect of personal injuries to passengers who were not family members and who were carried free of charge, whether or not there was any fault on the part of the driver of the vehicle which caused the accident, it must impose the same cover in respect of personal injuries to passengers who were members of the family of the insured person or of the driver, but that, on the other hand, if that Member State's domestic law did not impose compulsory cover in respect of personal injuries to passengers who were not family members, Article 3 of the Second Directive did not require it to impose compulsory cover for personal injuries to passengers who were members of the family of the insured person or of the driver.

20 As the Court pointed out, Article 1 of the Third Directive had extended the compulsory insurance cover imposed by Article 3(1) of the First Directive, as amplified and supplemented by the Second Directive, to personal injuries to passengers other than the driver (*Mendes Ferreira and Delgado Correia Ferreira*,

paragraph 34). However, the accident which gave rise to the main proceedings occurred on 23 July 1995, before the date on which the period laid down by the Third Directive for transposition by Ireland expired, which was on 31 December 1995. That directive cannot therefore be relied on by individuals before the national court (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 33).

21 Accordingly, it may be clearly deduced from *Mendes Ferreira and Delgado Correia Ferreira* that the First and Second Directives do not require Member States to provide that compulsory insurance is to cover personal injuries to passengers carried in a part of a vehicle not adapted for the transport of seated passengers.

22 In those circumstances, the answer to the first question must be that the First and Second Directives are to be interpreted as meaning that they do not preclude a Member State from maintaining national legislation which does not require compulsory insurance against civil liability arising from the use of motor vehicles to cover personal injuries to passengers carried in a part of a vehicle other than a large public service vehicle, unless that part of the vehicle was designed and constructed with seating accommodation for passengers.

Second and third questions

23 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

24 The costs incurred by the Irish Government and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Circuit Court, County of Cork, by judgment of 9 March 2001, hereby orders:

Council Directive 72/166/EEC of 24 April 1972 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 to the enforcement of the obligation to insure against such liability, and 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 are to be interpreted as meaning that they do not preclude a Member State from maintaining national legislation which does not require compulsory insurance against civil liability arising from the use of motor vehicles to cover personal injuries to passengers carried in a part of the vehicle other than a large public service vehicle, unless that part of the vehicle was designed and constructed with seating accommodation for passengers.

Luxembourg, 14 October 2002.

R. Grass

Registrar

M. Wathelet

President of the First Chamber