JUDGMENT OF THE COURT (Third Chamber)

9 June 2011 *

In Case C-409/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Supremo Tribunal de Justiça (Portugal), made by decision of 2 October 2009, received at the Court on 27 October 2009, in the proceedings

José Maria Ambrósio Lavrador,

Maria Cândida Olival Ferreira Bonifácio

v

Companhia de Seguros Fidelidade-Mundial SA,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby (Rapporteur), G. Arestis, J. Malenovský and T. von Danwitz, Judges,

* Language of the case: Portuguese.

Advocate General: N. Jääskinen,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 January 2011,

after considering the observations submitted on behalf of:

— Mr Ambrósio Lavrador and Ms Olival Ferreira Bonifácio, by L. Saraiva, advogado,

— Companhia de Seguros Fidelidade-Mundial SA, by J.M. Fonseca, advogado,

— the Portuguese Government, by L. Inez Fernandes and D. Marinho Pires, acting as Agents,

— the German Government, by J. Möller and J. Kemper, acting as Agents,

— the Latvian Government, by K. Drēviņa and M. Borkoveca, acting as Agents,

— the European Commission, by N. Yerrell and M. Teles Romão, and by P. Guerra e Andrade, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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'), 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 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 (OJ 1990 L 129, p. 33; 'the Third Directive').

2 The reference has been made in proceedings between Mr Ambrósio Lavrador and Ms Olival Ferreira Bonifácio and Companhia de Seguros Fidelidade-Mundial SA ('Fidelidade-Mundial') regarding the compensation payable by the latter, on the basis of civil liability in respect of the use of motor vehicles, for the damage suffered by the applicants in the main proceedings, following a road-traffic accident that took place between their minor child, who was riding a bicycle, and a vehicle which was insured against civil liability by Fidelidade-Mundial.

Legal context

European Union law

3 Under Article 3(1) of 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 Article 2(1) of the Second Directive provides:

'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 [the First Directive], 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 [the First Directive], 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.

Member States shall have the option – in the case of accidents occurring on their territory – of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.'

5 Article 1 of the Third Directive provides:

'Without prejudice to the second subparagraph of Article 2(1) of [the Second Directive], the insurance referred to in Article 3(1) of [the First Directive] shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

...'

6 Article 4 of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14), headed 'Amendments to Directive 90/232/EEC', provides:

'...

(2) the following Article shall be inserted:

"*Article 1a*

The insurance referred to in Article 3(1) of [the First Directive] shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This Article shall be without prejudice either to civil liability or to the amount of damages."

...'

7 According to recital 16 in the preamble to Directive 2005/14:

'Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the road, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident

where they are entitled to compensation under national civil law. This provision does not prejudge the civil liability or the level of awards for damages in a specific accident, under national legislation.'

8 Article 12 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11), headed 'Special categories of victim', provides:

'1. Without prejudice to the second subparagraph of Article 13(1), the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

...

3. The insurance referred to in Article 3 shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law.

This Article shall be without prejudice either to civil liability or to the quantum of damages.'

National law

9 Article 503(1) of the Portuguese Civil Code ('the Código Civil') states:

'The person with effective control of any motor vehicle and who uses it in his own interests, even if acting through an agent, is liable for the damage resulting from the risks posed by the vehicle itself, even when the latter is not in use.'

10 Article 504(1) of that code provides:

'The liability for damage caused by vehicles shall benefit third parties in addition to those travelling in the vehicle.'

11 Article 505 of that code states:

'Without prejudice to Article 570, liability provided for in Article 503(1) shall not be excluded unless the accident is due to the injured person himself or to a third party or is the result of force majeure external to the operation of the vehicle.'

12 Article 570 of that code provides:

'1. When the injured person's fault has contributed to the occurrence or aggravation of the injury or loss, it shall be for the court to determine, on the basis of the seriousness of the fault of both parties and of the consequences resulting therefrom, whether compensation is to be awarded in full, or in part, or is even not to be awarded.

2. When liability is based on a mere presumption of fault, the injured person's fault shall, save as otherwise expressly provided, exclude the obligation to compensate.'

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

13 On 12 July 2002, the son of the applicants in the main proceedings, who was a child riding a bicycle, collided with a vehicle insured by Fidelidade-Mundial. That accident resulted in the death of the young boy.

14 The referring court states, in this regard, that it was established in the earlier proceedings that the accident took place at about 20.20 hrs, in a rural village, in a street surrounded by buildings, and that the child was travelling on the wrong side of the road, in breach of the priority rules.

15 The applicants in the main proceedings brought an action against Fidelidade-Mundial, insurer of the vehicle involved in the accident in which their son was the victim, on the basis of civil liability in respect of the use of motor vehicles. By that application,

the interested parties claim an award of EUR 207 080.78 together with the cost of medical expenses and any material damage suffered, in compensation for the material and non-material damage resulting from that accident.

16 As this action was dismissed at first instance and on appeal, the applicants in the main proceedings appealed to the Supremo Tribunal de Justiça.

17 With regard to the circumstances of the accident in which the son of the applicants in the main proceedings was the victim, the referring court, referring to the decisions made at first instance and on appeal, notes that the young child, who was travelling on the wrong side of the road, in breach of the priority rules, was solely and exclusively responsible, and that the driver of the vehicle did not breach any of his obligations under the traffic laws and that therefore he incurs no liability either for risk or on the basis of liability for fault.

18 In its decision, however, the referring court notes the submissions of the applicants in the main proceedings according to which the driver of the motor vehicle could have been expected to pay particular attention and act with extreme care, having regard to the fact that he was familiar with the area where the accident occurred, where children were always to be found. Such carelessness on the driver's part had, according to those submissions, a causal effect on the process that resulted in the loss causing event.

19 The referring court considers that, while acknowledging that civil liability is an area which remains within the competence of the Member States, the Court made clear, in Case C-537/03 *Candolin and Others* [2005] ECR I-5745, that they must exercise their powers in compliance with European Union law and cannot, therefore, deprive the provisions of the First, Second and Third Directives of their effectiveness. Those

provisions would be rendered ineffective if, in particular, a national law excluded or limited disproportionately the right to be compensated on the sole basis that the loss was caused by the victim himself.

20 In the light of that case-law of the Court, the referring court has doubts concerning the compatibility of the civil liability rules applicable in the main proceedings with the provisions of European Union law mentioned in paragraphs 3 to 5 of this judgment.

21 In those circumstances, the Supremo Tribunal de Justiça decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are the provisions of Article 1 of [the Third Directive] to be interpreted as meaning that, in the event of a road traffic accident such as that occurring in the time, manner and place of the present case, Portuguese civil law – and in particular Articles 503(1), 504, 505 and 570 of the Código Civil – may not exclude or limit the right to compensation of a child, himself a victim of the accident, on the sole ground that that child was partly, or even exclusively, responsible for the loss caused?'

The question referred for a preliminary ruling

22 At the outset, as the German Government has rightly pointed out, it should be noted that, whereas the question referred concerns only Article 1 of the Third Directive, it is apparent from the order for reference, considered as a whole, that, by its question, the referring court is asking, in essence, whether the First, Second and Third Directives

are to be interpreted as precluding national provisions that limit or exclude the right to compensation of the victim of an accident involving a motor vehicle on the ground that he was partly, or even exclusively, responsible for the damage caused.

23 In that regard, it should be noted, initially, that the preambles to the First and Second Directives show that their aim is, first, to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles and, second, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 13; Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraph 24; and Case C-484/09 *Carvalho Ferreira Santos* [2011] ECR I-1821, paragraph 24).

24 The First Directive, as amplified and supplemented by the Second and Third Directives, thus requires the Member States to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance, and specifies, inter alia, the types of damage and the third-party victims to be covered by that insurance (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 27, and *Carvalho Ferreira Santos*, paragraph 27).

25 However, it should be noted that the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is separate from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Whereas the former is defined and guaranteed by European Union legislation, the latter is, essentially, governed by national law (*Carvalho Ferreira Santos*, paragraph 31 and case-law cited).

26 Indeed, the Court has already held that it is apparent 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 European Union law now stands, the Member States are free to determine the rules of civil liability applicable to road accidents (*Carvalho Ferreira Santos*, paragraph 32 and case-law cited). That analysis is confirmed, with regard to damages suffered by non-motorised users of the road, by the provisions of Article 1(a) of the Third Directive, reproduced in Article 12(3) of Directive 2009/103.

27 However, Member States are obliged to ensure that the civil liability arising under their domestic law is covered by insurance compatible with the provisions of the three abovementioned directives (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 29; Case C-356/05 *Farrell* [2007] ECR I-3067, paragraph 33; and *Carvalho Ferreira Santos*, paragraph 34).

28 Secondly, it is apparent from the case-law that the Member States must exercise their powers in that field in compliance with European Union law and that the national provisions which govern compensation for road accidents may not deprive the First, Second and Third Directives of their effectiveness (*Ruiz Bernáldez*, paragraph 19; *Candolin and Others*, paragraphs 27 and 28; and *Farrell*, paragraph 34).

29 As the Court has stated, those directives would be deprived of their effectiveness if, solely on the basis of the victim's contribution to the occurrence of his injuries, national rules, established on the basis of general and abstract criteria, either denied the victim the right to be compensated by the compulsory motor vehicle insurance or limited such a right in a disproportionate manner (see, to that effect, *Candolin and Others*, paragraph 29). 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 (*Candolin and Others*, paragraph 30).

30 The Court accordingly held that Article 2(1) of the Second Directive and Article 1 of the Third Directive preclude a national rule that 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 (*Candolin and Others*, paragraph 35). That decision was confirmed in *Farrell* (paragraph 35).

31 It should be pointed out that, in the case in the main proceedings, in contrast to the facts which led to the judgments in *Candolin and Others*, and in *Farrell*, the right to compensation for the victims of the accident is affected not by a limitation of the cover against civil liability by the insurance provisions, but by a limitation of the insured driver's civil liability under the applicable civil liability rules.

32 In this regard, it is apparent from the order for reference that Articles 503 and 504 of the Código Civil provide for strict liability in the case of road traffic accidents but that, under Article 505 of that code, the liability for risk set out in Article 503(1) of that code is excluded if the accident is caused by the victim. Furthermore, when the victim's fault has contributed to the occurrence or aggravation of the injury or loss, Article 570 of the Código Civil provides that, according to the seriousness of that fault, that person is to be deprived of some or all of the compensation.

33 In other words, the national legislation applicable to the main proceedings is intended, in the present context, to exclude the risk liability of the driver of the vehicle involved in the accident only where the accident is caused exclusively by the victim. Furthermore, where the fault of the victim has contributed to the causation or aggravation of his loss, the compensation for this is, under that legislation, to be affected in proportion to the degree of seriousness of that fault.

34 Unlike the respective legal contexts which led to the judgments in *Candolin and Others* and in *Farrell*, that legislation does not have the effect, therefore, where the victim contributes to his own loss or injury, of automatically excluding or limiting disproportionately this right, in the present case that of the parents of a deceased child who collided with a motor vehicle while riding a bicycle, to compensation by means of compulsory insurance against the civil liability of the driver of the vehicle involved in the accident. Thus, it does not affect the obligation under European Union law to ensure that civil liability arising under national law is covered by insurance which complies with the provisions of the three abovementioned directives (*Carvalho Ferreira Santos*, paragraphs 43 and 44).

35 In the light of the above considerations, the answer to the question referred is that the First, Second and Third Directives must be interpreted as not precluding national provisions falling within civil liability law that allow exclusion or limitation of the right of the victim of an accident to claim compensation under the civil liability insurance of the motor vehicle involved in the accident, on the basis of an individual assessment of the exclusive or partial contribution of that victim to his own loss or injury.

Costs

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

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, 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 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, must be interpreted as not precluding national provisions falling within civil liability law that allow exclusion or limitation of the right of the victim of an accident to claim compensation under the civil liability insurance of the motor vehicle involved in the accident, on the basis of an individual assessment of the exclusive or partial contribution of that victim to his own loss or injury.

[Signatures]