



2015 EWHC 1142(QB):

Case No: HQ14X03591

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23rd April 2015

Before:

MR JUSTICE GILBART

Between:

TIFFANY MORENO

Claimant

- and -

THE MOTOR INSURERS' BUREAU

Defendant

Daniel Beard QC and Sarah Crowther (instructed by **BL Claims, Eastleigh**) for the **Claimant**
Hugh Mercer QC and Marie Louise Kinsler (instructed by **Weightmans, Liverpool**) for the **Defendant**

Approved Judgment

MR JUSTICE GILBART :

- 1 On 17th April 2015, I handed down judgment ([2015] EWHC 1002 (QB)) on the preliminary issue in this action:

“Whether the scope of (the Defendant’s) liability to the Claimant is to be determined in accordance with the law of England or the law of Greece.”

- 2 I decided that issue in favour of the Claimant, who had argued that it was to be determined in accordance with the law of England. I was informed during the hearing that an application would be made for a certificate under s 12 of the *Administration of Justice Act 1969* if, as was always likely to happen, I regarded myself as bound by the decision in *Jacobs v MIB* [2010] EWCA Civ 1208 [2011] 1 All ER 844 on the effect of Rome II on the interpretation and application of Regulation 13(2) of the *Motor Vehicles (Compulsory Insurance)(Information Centre and Compensation Body Regulations) 2003* (SI 2003/37). I invited submissions on the point to be made in writing in the light of my judgment.

- 3 The Defendant MIB has now sought permission under section 12 of the *Administration of Justice Act 1969*. That Act has been amended by section 63 of the *Criminal Justice and Courts Act 2015*, which came into force on 13th April 2015. It now reads, insofar as is relevant to this application

“12 Grant of certificate by trial judge.

(1) Where on the application of any of the parties to any proceedings to which this section applies the judge is satisfied—

(a) that the relevant conditions are fulfilled in relation to his decision in those proceedings, or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings ” and

(b) that a sufficient case for an appeal to the House of Lords under this Part of this Act has been made out to justify an application for leave to bring such an appeal

the judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

(2) This section applies to any civil proceedings in the High Court which are either—

(a) proceedings before a single judge of the High Court
.....

(3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

(a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or

(b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the House of Lords in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the House of Lords (as the case may be) in those previous proceedings.

(3A) The alternative conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in the decision and that—

(a) the proceedings entail a decision relating to a matter of national importance or consideration of such a matter,

(b) the result of the proceedings is so significant (whether considered on its own or together with other proceedings or likely proceedings) that, in the opinion of the judge, a hearing by the Supreme Court is justified, or

(c) the judge is satisfied that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.

(4) Any application for a certificate under this section shall be made to the judge immediately after he gives judgment in the proceedings:

Provided that the judge may in any particular case entertain any such application made at any later time before the end of the period of fourteen days beginning with the date on which that judgment is given or such other period as may be prescribed by rules of court.

(5)-(8)

4 Section 15 of the Act reads, insofar as is relevant

“15 Cases excluded from s. 12.

(1)-(2).....”

(3) Where by virtue of any enactment, apart from the provisions of this Part of this Act, no appeal would lie to the Court of Appeal from the decision of the judge except with the leave of the judge or of the Court of Appeal, no certificate shall be granted under section 12 of this Act in respect of that decision unless it appears to the judge that apart from the provisions of this Part of this Act it would be a proper case for granting such leave.”

Submissions for the Defendant

5 The Defendant contends that the matter at issue is one of public importance. It argues that the issue of which law applies to determine the scope of MIB’s

liability under Regulation 13 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 (“the 2003 Regulations”) is of general public importance. If the Court of Appeal’s decision in *Jacobs v MIB* is wrong, it is important that it is put right for at least the following reasons, which were developed at the trial of the issue:

- (a) the Court of Appeal’s interpretation is inconsistent with Rome II and, as such, it puts the courts of England and Wales in breach of their obligations under EU law;
- (b) the Court of Appeal’s interpretation is also, at least arguably, inconsistent with the EU motor insurance directives and puts the UK in breach of its obligations to implement the Directives in full;
- (c) the Court of Appeal’s decision results in a number of significant anomalies, including the fact that, if correct, an English resident Claimant injured abroad will obtain a different level of compensation depending upon whether the claim is against an insurer or against the Compensation Body;
- (d) a significant (and increasing) number of claims are affected by the Court of Appeal’s decision. It has produced evidence that 484 claims have been made under the 2003 Regulations against the MIB;
- (e) as the cost of claims met by MIB is funded by UK motor insurers, the burden of any additional costs borne by MIB will be passed on to UK premium-paying motorists;
- (f) the fact that the Supreme Court granted permission to appeal in *Jacobs v MIB* demonstrates that the Supreme Court considered it was a point of general public importance. As is apparent from the number of claims affected, the importance of the point has not reduced since permission was granted in that case;
- (g) although it is a matter for the Court to determine, it should be noted that the Claimant in this case agrees that the point is one of general public importance;
- (h) the issues raised in the case are novel and free-standing. There is no Supreme Court authority. Had *Jacobs* been within the temporal scope of Rome II, the issues would have been resolved by now. It is appropriate that the issues are elucidated by the Supreme Court now to ensure that cases arising under Regulation 13 are dealt with consistently and correctly;
- (i) in addition, it is important to note that the fact that questions of EU law arise in this case will be relevant to the Defendant’s application for permission. There is no CJEU authority on the questions and it could not be suggested that the application of EU law is so obvious as to leave no scope for any reasonable doubt that the questions should be resolved in favour of the Claimant. In such circumstances, as there is no remedy under national law against a decision by the Supreme Court (including at the

permission stage), Article 267 of the Treaty on the Functioning of the EU would require the Supreme Court to refer questions to the CJEU before refusing an application for permission to appeal.

- 6 The MIB contends that the conditions in subsections 12 (3)(a),(b) and (3A) (c) of the Act are satisfied. As to the latter, it argues that that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.
- 7 It argues also that section 15 of the Act does not exclude an appeal in this case. It is a case where under CPR 52.3(6) permission would certainly be given by myself as trial judge to Appeal to the Court of Appeal. The second limb of the test in CPR 52.3(6) is satisfied. The case raises an important point of law which needs to be clarified. In this context, the fact that MIB has agreed to pay the Claimant's costs of the resolution of the preliminary issue and made an interim payment of £200,000 are relevant.
- 8 Finally the MIB drew my attention to recent authority where a certificate was granted: *Al-Waheed v Ministry of Defence* [2014] EWHC 2714 (QB) per Leggatt J.

Submissions for the Claimant

- 9 The Claimant does not oppose the application, and indeed supports it. She submits that
 - (a) the Claimant recognises the Court's conclusion in its Judgment that it is at least arguable that the decisions in *Jacobs* and *Bloy* in the Court of Appeal failed properly to apply Rome II. In the circumstances the Claimant supports the Defendant's application that any appeal in this case should be considered by the Supreme Court without the need for further consideration of the issues raised by this case in the Court of Appeal;
 - (b) the Claimant agrees that the issues arising in this case may be of wider public importance. She notes that there are several cases currently proceeding before the Courts whose outcome is likely to be significantly affected by the outcome of the present proceedings;
 - (c) having regard to the rulings in *Jacobs* and *Bloy* and the terms of the rule in *Young v Bristol Aeroplane* [1944] KB 718 the Claimant does not see an advantage in further consideration of these matters by the Court of Appeal, in particular given the terms of the Judgment and the exploration of the issues before me;
 - (d) on the other hand, an appeal to the Court of Appeal would result in additional cost and delay, which would be contrary to the overriding objective and would prejudice the Claimant and other claimants in the other currently proceeding cases;
 - (e) whilst the Claimant has the benefit of a modest interim payment (in comparison to the overall value of the claim), it is not possible to assess

the value of the claim until the applicable law is determined. She is therefore, kept out of the majority of her damages until this issue is resolved;

- (f) by extension, claimants in other claims which await the outcome in this claim will be similarly disadvantaged by delay which would be caused by appeal to the Court of Appeal;
- (g) having regard to the requirements of section 12 of the *Administration of Justice Act 1969* (as amended) and, in particular, section 12(1)(a) together with sections 12(3)(a) and/or (b), and/or section 12(3A)(c) the Claimant, therefore, supports the Defendant's application for a 'leapfrog' certificate pursuant to section 12 and the terms of paragraph 2 of the draft order;
- (h) for the avoidance of doubt, nothing in this submission should be taken to suggest that the Defendant is correct in its contentions as to the substance of the matter which are set out in its submissions of 21 April 2015.

Conclusions

- 10 I made it plain during the hearing of the submissions on the preliminary issue that I would only consider the grant of a certificate once I had been able to reflect on the submissions made to me about the preliminary issue, and I had handed down judgment. Having done so, and having received the parties' submissions I am entirely satisfied that this is a proper case for the grant of a certificate. The position of the Court of Appeal is known from the *Jacobs v MIB* decision. As I set out in paragraph 9 of the judgment it would have been considered by the Supreme Court (which had granted permission to appeal) had it not been for the decision of the Court of Justice of the European Union (CJEU) gave judgment in *Homawoo v GF Assurances* C-412/10 [2011] ECR I-11603. That held that Rome II was not in force at the relevant date in *Jacobs*, so that the appeal would have served no purpose and was not proceeded with.
- 11 I am satisfied that the conditions in section 12(3)(a), (b) and, in the light of the submissions of both parties, 3A(c) of the 1969 Act (as amended) are all met in this case. I consider that the arguments of both parties show that there is an important issue to be determined which will affect a substantial number of claims, and that if the appeal were made instead to the Court of Appeal, with what is likely to be a further appeal to the Supreme Court, delay would be caused to the resolution of those claims.
- 12 I have therefore granted a certificate.
- 13 I have also made an agreed order relating to costs, which does not call for description in this judgment.