Jurisprudence about the Consorcio de Compensación de Seguros

The concept of the "use of motor vehicle" in the Ruling of the Court of Justice of the European Union of 4 September 2014

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On 4 September 2014, the Court of Justice of the European Union handed down an interesting ruling analysing the concepts of “motor vehicle” and the “use of motor vehicle” which, as will be attempted to explain, may have considerable repercussion in our internal legal system. It must be remembered that both concepts, regulation notwithstanding, are the components which define the scope of application of the Motor Vehicle Traffic Liability and Insurance Act so that, if they do not occur simultaneously, this special provision will not be applicable, with all that implies in connection with the criteria for assignment of civil liability, appraisal of damage, according to the Annex to the Act, or the intervention of Consorcio de Compensación de Seguros (CCS) in the cases provided for in Article 11 of that Act.

Nor must it be forgotten that the case-law of the Court of Justice of the European Union forms part of the Community legal system, and so is binding on Spanish judges and public authorities, particularly lawmakers.

It is too soon to grasp the reach of this decision, but it may have significant effect on our legislation in the field and, in any case, in the future interpretation of certain traffic accidents, particularly those related to agricultural, industrial or business activities, although the case-law in this ruling may also be applied to other cases.

The Decision analyses the interpretation of what must be understood by “motor vehicle” which does not in principle appear to raise problems, and by “motor vehicle traffic” which may have repercussions in the interpretation of our definition of the “use of motor vehicles”.

The petition for a pre-trial decision targets interpretation of Article 3. 1 of Council Directive No. 72/166/EEC dated 24 April 1972, on the harmonisation 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.

The petition was filed in the context of the case between Mr. Vnuk and Zavarovalnica Triglav d.d. related to payment of an indemnification arising under compulsory civil liability insurance as a consequence of motor vehicle use.

The facts which raised this matter are the following: while hay bales were being placed in a barn, a tractor and trailer which was being reversed to place the trailer in the farm yard knocked down the ladder Mr. Vnuk was on and from which he fell. Mr. Vnuk filed a claim for indemnification for a payment of 15,944.10 euros' compensation for non-proprietary damage, plus interest in arrears, against Zavarovalnica Triglav, the insurer with which the tractor owner had concluded a compulsory insurance contract.

The Court of First Instance dismissed the claim and the second instance court rejected the appeal brought by Mr. Vnuk against that decision, pointing out that the compulsory insurance policy for vehicle traffic covered loss caused by using the tractor as a means of transport, but not by using a tractor as work machinery or for a trailer.

The aggrieved party brought appeal in cassation in the Slovenian Supreme Court, arguing that the notion of « use of a traffic vehicle » cannot be limited to traffic on public thoroughfares and in addition that at the moment of the damaging vehicle use in dispute in the main litigation, the unit formed by the tractor and its trailer were certainly a vehicle which was in use, at the end of its route. On the other hand, the insurer held that the main matter dealt with the use of a tractor not in its function as a vehicle intended for road traffic but in the context of a job in a hayloft in a barn.

The Slovenian high court doubted whether the facts described constituted use of a motor vehicle and so decided to suspend the proceeding and lodge a pre-trial question with the Court of Justice of the European Union asking essentially whether Article 3.1 of the First Directive must be interpreted to mean that the concept of «use

of motor vehicle» includes circumstances such as those argued in the main suit, namely the movement of a tractor in a barn to place the tractor's trailer in the yard of a farm.

The first point raised by the Court of Justice of the European Union was whether a tractor is deemed to be a vehicle in the terms of the Community Directives on this matter, and it did find that a tractor with a trailer is subject to the obligation established in Article 3. 1 of the First Directive when habitually located in the territory of a Member State which has not excluded such vehicles from the scope of application of that provision, as was the case in the Slovenian legislation.

Thus the concept of "motor vehicle" raised no difficulties for the Court of Justice of the European Union, as it depends on Member States' internal legal system and, in this case, the Slovenian legislation treats tractors as such.

However, and this is what we consider underlies the importance of this ruling, the question of whether manoeuvring a tractor in a barn to get its trailer into a farmyard is included in the concept of "use of motor vehicle" in the terms of Article 3.1 of the First Directive, so that it must in the first instance be indicated, as the ruling points out, that the concept cannot be left to the decision of each Member State.

In short, the debate revolves around deciding whether an activity, which might be said to be agricultural, other than driving on a public or private thoroughfare, comes within the concept of "use of motor vehicle". In other words, the ruling must clarify whether this concept refers just to motor vehicle use or also takes in "the use" or "the utilisation of the vehicle" for other than traffic purposes (1).

The ruling recalls that neither Article 1 nor Article 3.1 of the First Directive nor any other provision in that Directive or others concerning compulsory insurance refer in this question to Member State Law. In reiterated precedent, the Court of Justice of the European Union has found that the demands for both uniform application of European Union Law and for the principle of equality reveal that the wording of a provision in Union Law not expressly referring to Member State Law for the definition of its meaning and scope must normally be interpreted independently and uniformly throughout the European Union, and this must take account not just of the wording of the provision but also its context and the objectives pursued by the rules of which it is part.

The ruling then points out that there are differences in the notion of "use of motor vehicle" established in Article 3.1 of the First Directive in the various linguistic versions, following adaptation by EU Member States.

Thus in French, as in Spanish, Greek, Italian, Dutch, Polish and Portuguese, Article 3.1 refers to the obligation to cover civil liability deriving from the use of motor vehicles, suggesting that that obligation to insure refers solely to road traffic accidents.

However, the English, Bulgarian, Czech, Estonian, Latvian, Maltese, Slovak, Slovenian and Finnish versions of this same provision refer to the concept of "use" of vehicles, with no further specification; while the Danish, German, Lithuanian, Hungarian, Romanian and Swedish versions refer more generally to the obligation to take civil liability insurance for vehicles, and seem to impose a duty to secure the civil liability arising from the use or functioning of a vehicle, irrespective of whether or not such use or functioning takes place in the realm of road traffic.

Therefore, in determining the scope of the expression "use of motor vehicles", the Ruling adds that it is necessary to refer to the general structure and purpose of the Union's provision in the field of compulsory insurance, into which Article 3.1 of the First Directive fits and, as the Directives do not define the concept, it must be understood in the light of the twin aims of protecting victims of accidents caused by a motor vehicle and of the liberalisation of the movement of persons and goods and of markets in the perspective of the construction of the internal market that those Directives are aimed at.

The Court Ruling goes on to highlight the various advances which have been made in successive Directives in the field, designed to enhance the protection of traffic accident victims, for example the creation of compulsory insurance covering material and personal damages, or the establishment of bodies whose role is to redress damage caused by unidentified vehicles or for which the insurance obligation was not fulfilled, and establishing minimum quantities by way of guarantee.

It thus concludes that the Union's lawmakers cannot be considered to have wished to exclude the parties injured in an accident caused by a vehicle while being used from the protection provided by these Directives if this use was in accordance with said vehicle's habitual

function. In line with this it states: *"Article 3(1) 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 must be interpreted as meaning that the concept of 'use of vehicles' in that article covers any use of a vehicle that is consistent with the normal function of that vehicle. That concept may therefore cover the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn, as in the case in the main proceedings, which is a matter for the referring court to determine".*

It will be necessary to await any consequences of this decision in the internal Law of Member States. In the case of Spain, this activity would be excluded because Article 2 of the SOA (Administrative Organisation System) Regulation so provides specifically, this being a farming activity.

In any event, although the matter analysed is not considered to involve farming activity because it is the end of a trip, what is truly important in the ruling is the reference to the use according to the vehicle's habitual function. Here, a tractor's function is not just to drive but also to plough, sow, fertilise etc., genuine farming activities. The same may be said of other vehicles such as snowploughs, or excavators. So, if this machine is completing "its function" on a job and its scoop injures a worker, although this is clearly a business activity, it would come within the definition of "use of motor vehicle" in the terms of the precedent which can be drawn from this ruling.

In short, we can consider that, according to this decision, whenever dealing with a motor vehicle acknowledged as such in the domestic legislation of Member States, it will be considered for the purposes of Article 3.1 of the First Directive that this is a vehicle use if such vehicle is being "used" in traffic or otherwise, in line with its habitual function. This would be the case with a tractor which is ploughing, sowing or harvesting. On the other hand, if it was being repaired and the jack holding it up collapsed, injuring a third party, this would not be a "use of motor vehicle" as this is not its function.

The foregoing would make it necessary to amend our domestic legislation on this matter, specifically the Compulsory Motor Car Insurance Regulation, whose Article 2 defines what is understood by "use of motor vehicle" and which has been analysed in this study.

We do in any case believe that it will be necessary to wait to see how Spanish jurisprudence develops in interpreting this decision (2). Similarly, it would not be surprising to encounter other decisions from the Court of Justice of the European Union which would eventually clarify the reach of this case-law as, to our way of thinking, should this Court wish to include farming, business or industrial activities within the notion of "use of motor vehicle", it might have been more emphatic and precise, as the ruling records that the European Commission itself was in its pleas.

NOTAS

(1) It is recalled that, until 1995, the LRCSCVM (Motor Vehicle Traffic Civil Liability and Insurance Act) was called the "Motor Vehicle Use and Traffic Act" according to which, at least until that date, damage arising from any "vehicle use" was also covered, irrespective of whether or not travelling on a road.

(2) The 11 December 2014 Ruling No. 139 of the No. 3 First Instance and Investigating Court of Tomelloso applied this ruling, considering that the accident occurred as a "traffic fact". In this case this was, in the Court's words, a forklift tractor whose main function is to load and unload materials and heavy machinery, that is, it is essentially destined to do industrial work and is a vehicle especially destined to the purposes.

Comentary on the exemption to deposit appeal fees in legal procedures for recovery of insurer's outlay. Comments on the 27 November 2014 Ruling of the Civil Division

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1. Introduction

This ruling examines the scope the judicial bodies must assign to the requirement to pay a deposit in the terms of article 449.3 of the Civil Proceedings Act. Under the heading ***Right to appeal in special cases***, this point provides as follows:

"3. In proceedings where the aim is to obtain compensation for damages and losses arising from motor vehicle traffic by way of a sentence, the defendant shall not be entitled to remedy of appeal, extraordinary appeal for procedural breach or motion to vacate without prior proof that the amount due, interests and costs have been duly paid. Said payment does not prevent the provisional execution of the judgment where appropriate".

2. The fact

The fact dealt with in the ruling was a claim for recovery brought by Consorcio de Compensación de Seguros (CCS) against the owner and the driver of an uninsured vehicle which caused an accident in 2004 involving three vehicles and in which one person died, eight were seriously injured and seven suffered minor injuries, as well as diverse material damage, and for which CCS had to meet the value of the damage to the victims and those injured amounting in total to more than one million forty-seven thousand euros.

After paying the indemnification, action for recovery was initiated against those responsible for the accident, the driver and owner, in ordinary proceedings, the first instance ending with a decision by the Valencia Court of First Instance upholding the claim and ordering the defendants to pay the CCS's outlay plus legal interest and costs.

One of those convicted brought a remedy of appeal against that ruling on the basis that it was not adjusted to Law, and which Division Eight of the Provincial Court of Valencia dismissed *ex officio* and without reviewing the substance of the appeal because the appellant had not paid the deposit referred to above for the sum of the conviction plus the interest and surcharges demanded in the establishment destined for the purposes.

In disagreement with that VERDICT, the defendant who brought the appeal filed an extraordinary appeal for procedural breach and motion to vacate given appellate interest. The Supreme Court admitted only the procedural breach for hearing, upholding it and so striking down the ruling appealed, returning the file for the Provincial Court to issue a new ruling resolving the remedy of appeal.

3. Legal principle

The argument in the appeal before the Supreme Court was based fundamentally on Article 24.1 of the Spanish Constitution which contains the principle of "effective judicial protection" of rights and which was infringed by the Provincial Court's strict interpretation of Article 449.3 reproduced above.

The decision under discussion considers that, citing some Constitutional Court rulings, any form of limitation or procedural obstacle must always be interpreted restrictedly, solely in cases where claim is brought by the party which suffered the loss. Accordingly, the Consortium's appeals against the driver or owner in accidents caused by uninsured vehicles cannot be deemed to be included in this precept as, according to the Court, the Consorcio's action ***"… is not actually for indemnification of damages and losses arising from a traffic accident, but rather for a rehearing against the party responsible for the accident: the Consortium cannot be considered to have suffered direct loss from the accident …".***

4. A personal evaluation

In our opinion there is no doubt that the precept's rationale in the legislator's mind was exclusively to try to prevent insurers from appealing rulings handed down in these cases with the sole aim of delaying payment of an indemnification without justified cause, so that it is unquestionable that the case in this matter was not contemplated in the legislation. Indeed, this plea has never been brought by the Consorcio's defence.

With that said, and being in agreement on this point, we are unable to resist acting as devil's advocate in discussing the finding. It is in our judgment undeniable that this particular case comes fully within the literal meaning of the precept transcribed, precisely seeking "… ***sentence ordering indemnification of damages and losses arising from motor vehicle traffic …"*** and this literal meaning (the provision makes no distinction between actions brought by parties suffering direct loss or not) must be the very first criterion of interpretation any Court employs in a reading of the legal precepts analysed, pursuant to Article 3.1 of the Spanish Civil Code.

It is true that the Consorcio's action for recovery is included in the Law but is in short no more than a specific reflection of Article 1,158 of the Civil Code, (a party paying on behalf of another) or Article 43 of the Insurance Contract Act, under which the payor subrogates in the same rights as the injured party held, and so cannot be thought of as other than an action to secure a sentence to indemnify damage arising from motor vehicle traffic.

Finally, in discussing this ruling, I am unable to keep an old Spanish proverb from my head, according to which "God sometimes writes the law along crooked lines …"