

Litigation - Cyprus

Supreme Court clarifies meaning of 'third party' in compulsory insurance

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On July 13 2011 the Supreme Court issued its decision in *Stavroulla Photopoulou v Minerva Insurance Public Company Limited* (Civil Appeal 277/2008), in connection with the interpretation of the Automotive Third-Party Compulsory Insurance Law 2000.

Facts

The policyholder was a passenger in her car while it was being driven by another driver. The car was involved in a collision and the policyholder was fatally injured. The personal representatives and heirs of the deceased took legal action against the driver of the car for negligence and obtained a judgment against him. Subsequently, a claim was submitted to the insurance company to satisfy the judgment, but the company declined to meet it on the basis that the driver was not covered by the insurance policy and had not been allowed to drive the car in the first place.

Decision

The court ruled that although insurance companies are liable to cover a policyholder against damages to persons or to property of third parties that result from the policyholder's negligence, they are not liable to compensate the policyholder if he or she is not driving the vehicle and suffers injury as a result of the negligence of the driver.

Article 4 of the law requires insurers to provide coverage against liabilities resulting from the death or injury of "any person". In this case the court had to consider whether the insured whose death gave rise to a liability (which was established by a judicial decision) was also included in the category of 'any person' that is likely to be killed or sustain injuries.

The insurers argued that the policyholder was not included in the list of categories set out in Article 4(1)(b)(i) of the law. Although this list is not exhaustive, the court took the view that a policyholder cannot also be a 'third party'. The court stated that if the law had intended to include the policyholder in the classes of possible third parties, it would have explicitly done so, as it did with other groups of people (eg, members of the policyholder's family).

In reaching its decision the court referred to the English cases of *Digby v General Accident Fire and Life Corporation Ltd*⁽¹⁾ and *Cooper v Motor Insurer's Bureau*⁽²⁾ in which the English courts reached the same conclusion and decided that the term 'any person' should receive its natural interpretation - that is, any member of the public. The policyholder cannot come within this definition - not because he or she is not a person, but because the clause relates only to a claim by any person that the policyholder is legally liable to pay; this liability cannot exist on a supposed claim at the same time by and against him or her.

Comment

This decision makes clear that the rule under Article 4 of the law does not apply where the compensation liability arises in respect of death, injury or damage in the property of the insured, since such a person cannot be considered a 'third party' within the meaning of the law.

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Endnotes

⁽¹⁾ [1942] 2 All ER 319.

⁽²⁾ [1995] 1 All ER 449.

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