The Court of Appeal has handed down a judgment addressing the obligations of the Motor Insurance Bureau to provide compensation where there is an unidentified or uninsured vehicle. "Colley v Motor Insurers' Bureau [2022] EWCA Civ 360"

In this instance, the Court of Appeal held that the obligation extends to an accident where there was a policy of insurance in force at the time of the relevant accident, but the policy has been avoided ab initio. Handing down the leading judgment, Lord Justice Stuart-Smith stated that "there can be and is no gap into which [the Claimant] may fall."

**Background**

In 2015, the Claimant was a passenger in a car driven by Mr Shuker. The Claimant sustained catastrophic injuries in an accident caused by Mr Shuker. Despite being the registered keeper of the vehicle, Mr Shuker was not a named driver on the policy of insurance. The Claimant was aware before he entered the vehicle that Mr Shuker was not insured to drive the vehicle, and that he did not have a valid driving licence.

Judgment was entered against Mr Shuker for damages to be assessed. However, it was accepted that his ability to pay those damages was remote. The Claimant pursued the insurer, Motor Insurers Bureau ("MIB") and the
At the relevant time, the insurer was permitted to avoid the policy ab initio per s152(2) of the Road Traffic Act ("RTA"), effectively releasing the insurer for any obligation they may have had under the RTA for any damages awarded to Mr Shuker. It should be noted that the RTA has since been amended so that an insurer can now only avoid liability under s151 if the declaration is obtained “before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability”.

The Claimant’s action against the insurer was struck out on the basis that the declaration provided a complete defence. The claim against the Secretary of State was stayed pending the action against the MIB.

The issue in dispute whether the MIB’s obligation to provide compensation, where there is an unidentified or uninsured vehicle per Articles 3, 10 and 12 of the Motor Insurance Directive, covered the circumstances of this claim. These Articles reflect the requirement for compulsory liability insurance for motor vehicles and those passengers within them (Articles 3 and 12), the need to establish a body responsible for compensating injured victims (Article 10(1)) and a restriction on the scope of the body’s responsibility if the injured party know that the vehicle was uninsured (Article 10(2)).

High Court decision

In the High Court, Mr Justice Freedman concluded that the MIB’s obligations covered a situation where a policy was in place at the time of the accident but was subsequently voided ab initio. As an emanation of the state, a concept discussed in detail in MIB v Lewis, the Claimant had a direct right of action against the MIB.

He concluded that the MIB was liable to the Claimant for damages.

Court of Appeal judgment

The MIB appealed. It submitted that the vehicle was not ‘uninsured’ within the meaning of the Directive. It submitted that as the policy had been in place at the time of the accident, the UK (as a Member State) had taken the measures need to provide the cover needed by Article 3. Therefore, as the emanation of the UK State, the MIB was not obliged to compensate the Claimant.

Giving the lead judgment in the Court of Appeal, Lord Justice Stuart-Smith agreed with the decision of Mr Justice Freedman. The UK law at the time of the accident allowed insurers to policies ab initio, thus leaving a gap in the compulsory insurance requirements required by Article 3 of the Directive. He concluded that “the national law of the United Kingdom has deviated from the system and scope of the obligation which should, as a matter of EU law, have been in place with the result that [the driver’s] civil liability is not covered.”

The MIB’s emphasis on the word ‘uninsured’ was misplaced. As stated in the High Court “whether a vehicle is “uninsured” is not the test for the scope of the Article 3 insurance obligation.” The word ‘uninsured’ in the Directive reflects an assumption in EU law that, if a policy is in existence, it will respond. Under EU law, the insurer would not have been entitled to avoid the policy. As UK law allowed for this action, then the MIB as emanation of the state would carry a directly enforceable obligation to remedy the failure of the UK to allow policies to be voided ab initio at that time.

Lord Justice Stuart-Smith LJ continued that “the directly enforceable obligation upon the MIB is to compensate [the Claimant] ‘at least up to the limits of the obligation’ provided for in Article 3. There can be and is no gap into which [the Claimant] may fall.”
The appeal was dismissed.

What can we learn?

- The Claimant did not have a claim against the MIB under the Uninsured Drivers Agreement 1999 as he was aware before he entered the vehicle that Mr Shuker was not insured to drive it. The MIB therefore had no obligation to compensate the Claimant under the Uninsured Drivers Agreement because he was voluntarily allowing himself to be carried in the vehicle.

- In terms of the impact of this decision, it should be noted that the particular circumstances of the claim can no longer be achieved as policies are no longer being capable of being voided ab initio as of 1 November 2019. Whilst this removed the capacity for insurers to reduce their status to Article 75 insurer by way of declaration, a reduction to Article 75 can still occur on grounds of use.