Neutral Citation Number: [2016] EWCA Civ 454

Case No: A2/2014/3408

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**QUEENS BENCH DIVISION**
**BIRMINGHAM DISTRICT REGISTRY (HHJ SIMON BROWN QC)**
**3BM90173**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2016

**Before:**
**LADY JUSTICE GLOSTER**
**LORD JUSTICE DAVID RICHARDS**
and
**SIR ROBIN JACOB**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

| | |
|---|---|
| **JADE WIGLEY-FOSTER** | **Claimant/ Appellant** |
| **- and -** | |
| **(1) NATASHA WILSON** | **1st Defendant** |
| **(2) THE MOTOR INSURERS BUREAU (MIB)** | **2nd Defendant/ Respondent** |

- - - - - - - - - - - - - - - - - - - - -

**Robert Weir QC and Matthew Chapman**
(instructed by **Irwin Mitchell LLP**) for the **Appellant**
**Hugh Mercer QC** and **Marie Louise Kinsler**
(instructed by **Weightmans LLP**) for the **Respondent**

Hearing dates: 24 and 25 February 2016

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

## LORD JUSTICE DAVID RICHARDS:

1. This appeal concerns the construction and application of the Fourth Motor Insurance Directive, and the Regulations giving effect to it in the United Kingdom, in circumstances where an insurer has become insolvent.

2. Over many years the EU has introduced measures to enable parties resident in one member state who are injured in road traffic accidents in another member state to obtain compensation.

3. A full description of these measures is given by Moore-Bick LJ in *Jacobs v Motor Insurers' Bureau* [2010] EWCA Civ 1208, [2011] 1 WLR 2609. For present purposes they may be summarised as follows. The First Motor Insurance Directive (Council Directive (EEC) 72/166) required each member state to have in place a system of compulsory insurance in respect of civil liability arising from the use of vehicles normally based in their territory. Such insurance had to extend to any loss or injury caused in the territory of other member states. It also required member states to ensure that the national insurers' bureaux should obtain and communicate information concerning the relevant insurance policy where an accident was caused in one member state by a vehicle normally based in another member state. The Second Motor Insurance Directive (Council Directive (EEC) 84/5) provided, among other things, for the establishment of guarantee bodies to provide compensation in cases where the vehicle responsible for the injury was uninsured or unidentified. The Third Motor Insurance Directive (Council Directive (EEC) 1990/232) prohibited member states from allowing the guarantee bodies to make the payment of compensation by them conditional on the victim establishing that the tortfeasor was unable or refused to pay.

4. The Fourth Motor Insurance Directive (Directive 2000/26/EC of the European Parliament and of the Council) (the Fourth Directive) introduced significant enhancements to the rights of victims of road traffic accidents. The scope of the Directive is stated in article 1(1):

> "The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State."

5. Article 3 requires member states to ensure that injured parties enjoy a direct right of action against the insurance undertaking covering the liability of the person responsible for the accident (the insurer).

6. Article 4 requires member states to ensure that all insurance undertakings covering motor insurance should appoint a claims representative in each member state other than the state in which they are officially authorised. The claims representative must be resident or established in the member state in which he is appointed and he "shall be responsible for handling and settling claims arising from an accident in the cases

referred to in Article 1." Claims representatives must possess sufficient powers to represent the insurer in relation to injured parties and to meet their claims in full. Article 4(6) provides:

> "The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative.
>
> (a) the insurance undertaking of the person who caused the accident or his claims representative is required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified, or
>
> (b) the insurance undertaking to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.
>
> Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party."

7. Article 6 requires member states to establish or approve a compensation body responsible for providing compensation to injured parties in certain defined circumstances. The particular significance of this provision is that it enables a resident of one member state who has been injured in a road traffic accident in another member state to claim compensation, in the relevant specified circumstances, from the compensation body in his or her own member state, rather than having to make a claim against the compensation body in the member state in which the accident occurred. Article 6(1) provides:

> "1. Each Member State shall establish or approve a compensation body responsible for providing compensation to injured parties in the cases referred to in Article 1.
>
> Such injured parties may present a claim to the compensation body in their Member State of residence:
>
> (a) if, within three months of the date when the injured party presented his claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative has

not provided a reasoned reply to the points made in the claim; or

(b) if the insurance undertaking has failed to appoint a claims representative in the State of residence of the injured party in accordance with Article 4(1). In this case, injured parties may not present a claim to the compensation body if they have presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months of presenting the claim.

Injured parties may not however present a claim to the compensation body if they have taken legal action directly against the insurance undertaking.

The compensation body shall take action within two months of the date when the injured party presents a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim.

The compensation body shall immediately inform:

(a) the insurance undertaking of the vehicle the use of which caused the accident or the claims representative;

(b) the compensation body in the Member State of the insurance undertaking's establishment which issued the policy;

(c) if known, the person who caused the accident,

that it has received a claim from the injured party and that it will respond to that claim within two months of the presentation of that claim.

This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons who caused the accident and other insurance undertakings or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation subject to any conditions other than those laid down in this Directive, in particular the injured party's establishing in any way that the person liable is unable or refuses to pay."

8. Of particular importance to the facts of the present case is that article 6(1) entitles an injured party to present a claim to the compensation body in his or her member state of residence if, within three months of the date when the injured party presented his claim for compensation to the insurer or its claims representative, the insurer or claims representative has not provided a reasoned reply to the points made in the claim. The compensation body is then required to take action within two months of the date when the claim for compensation is presented to it. If the insurer or its claims representative subsequently makes a reasoned reply to the claim, the compensation body shall then terminate its action.

9. The obligation of the compensation body under article 6(1) to inform the insurer, and the compensation body in the insurer's member state, is designed to prompt the insurer into dealing with the claim. The incentive for the insurer and the relevant compensation body to take action is provided by article 6(2):

> "2. The compensation body which has compensated the injured party in his Member State of residence shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the Member State of the insurance undertaking's establishment which issued the policy.
>
> The latter body shall then be subrogated to the injured party in his rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the Member State of residence of the injured party has provided compensation for the loss or injury suffered. Each Member State is obliged to acknowledge this subrogation as provided for by any other Member State."

10. A similar right to claim against the compensation body in the member state in which the injured party is resident is provided by article 7 in those cases where it is impossible to identify the vehicle or where, within two months after the accident, it is impossible to identify the relevant insurer.

11. The various Motor Insurance Directives have been consolidated into a single directive (Directive 2009/103/EC of the European Parliament and of the Council). The relevant events in this case pre-date that Directive and the submissions were made by reference to the provisions of the earlier Directives.

12. The Fourth Directive is implemented in the UK by the Motor Vehicles (Compulsory Insurance and Compensation Body) Regulations 2003 (the Regulations) in terms which follow closely the provisions of the Directive. By Regulation 10, the Motor Insurers' Bureau (the MIB) is approved as the compensation body for the UK. Regulations 11 and 12 are those which are directly in point and they are set out in the schedule to this judgment. It is not suggested by either party that differences arise between the construction of regulations 11 and 12 and the corresponding provisions of the Directive.

13. The circumstances of the present case are as follows. In June 2013, the appellant issued proceedings in the High Court for damages for personal injury and associated

losses and expenses. The defendants are Natasha Wilson and the MIB. The appellant's pleaded case is that at around 1 am on 30 August 2008 she was a passenger in a Greek-registered jeep which the first defendant, who is resident in England, had rented. The first defendant had consumed excessive alcohol and drove into a head-on collision with a taxi coming from the opposite direction causing the claimant serious physical and psychiatric injuries. She was aged 16 at the date of the accident. The MIB makes no admission of these matters and denies causation.

14. The jeep was insured by Commercial Value Ins. Co. SA (the Greek insurer), a large motor insurance company incorporated in Greece. In accordance with the Directive, the Greek insurer had appointed a claims representative in the UK. On or about 27 May 2009 the claimant made a claim for compensation against the Greek insurer to its UK claims representative. No reply, reasoned or otherwise, was received from the claims representative within the period of three months after the claim was made. On 16 September 2009, after the expiry of the three month period, the claims representative telephoned the claimant's solicitors to say that they had been advised by the Greek insurer that the car rental company had brought proceedings in Greece and, according to an attendance note of the call prepared by the solicitors:

> "They therefore cannot comment on the personal injury case at this time and she therefore advised that this case will need to be put on hold until the court case in Greece has been determined. She advised that they are expecting to hear something back in or around December but she will contact me with updates to advise what is happening."

In fact there was no further contact from the claims representative until 1 March 2010.

15. On 25 February 2010 the licence of the Greek insurer was revoked by the Board of the Supervisory Committee of Private Insurance, the insurance regulator in Greece, and the insolvency of the Greek insurer was reported in the Official Gazette of 26 February 2010. It appears that at about this time the Greek insurer entered into a formal insolvency process. By reason of the insolvency of the Greek insurer, its policy holders are entitled to compensation under Greek law from the Greek Auxiliary Fund for the Insurance of Liability (GAF). These arrangements are similar to those provided by the Financial Services Compensation Scheme in the case of an insolvent English insurer.

16. By a letter dated 1 March 2010, the claims representative informed the claimant's solicitors that the Greek insurer had had its licence withdrawn and, therefore, "we have no further mandate to act on their behalf and your claim will need to be addressed to the Greek Guarantee Fund as the accident occurred in Greece".

17. By an email dated 19 October 2010, the claimant's solicitors notified the MIB of the above events and requested assistance. The MIB replied on 3 November 2010 that, as the case involved an insurer that was no longer licensed, the MIB were not able to intervene in the matter and that a claim should be addressed to the Greek Auxiliary Fund.

18. In its defence, the MIB denied that it had any liability under the Regulations or at all:

> "….. in circumstances where the relevant motor insurer, established in an EEA state other than the United Kingdom, has ceased trading and had its licence withdrawn by reason of insolvency or otherwise. Neither the Fourth Directive nor the 2003 Regulations, which implement the Fourth Directive into national law, apply to a situation where the insurer has ceased trading and had its licence withdrawn by reason of insolvency or otherwise."

19. The trial of the following preliminary issue was ordered:

> "Subject to the liability of the driver of the jeep, registration number POK 6204, being established under Greek Law for the accident, and on the agreed basis that Commercial Value Insurance SA, an undertaking established in Greece which provided motor liability insurance which covered the Jeep at the date of the accident, has ceased trading and had its licence withdrawn by reason of insolvency.
>
> Whether MIB is liable to compensate the Claimant under the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003?"

20. The preliminary issue was heard by HHJ Simon Brown QC, sitting as a Deputy High Court Judge. He determined the issue in the MIB's favour and set out his reasons in an *ex tempore* judgment. Having reviewed the terms of the Fourth Directive, a decision of the Court of Justice of the European Union to which I refer below, and the judgment of Moore-Bick LJ in *Jacobs v MIB*, the judge concluded that the Fourth Directive and the Regulations were not intended to provide, and did not have the effect of providing, protection or compensation to an injured party in circumstances where, as in this case, the insurer had become insolvent. He further held that the right to claim against the MIB was a purely procedural facility that did not add a substantive claim in circumstances where the insurer had become insolvent. The appeal is brought with permission granted on the papers by Moore-Bick LJ.

21. In the course of the hearing of the appeal, this court formed the view that the preliminary issue as determined below did not adequately set out the issue to be determined in the circumstances which had in fact occurred. The court invited the parties to re-consider the terms of the preliminary issue and they have provided an agreed revised preliminary issue as follows:

> "Subject to the liability of the driver of the jeep, registration number POK 6204, being established under Greek law for the accident, whether the MIB is liable to compensate the Claimant under regulations 11 and 12 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 following the failure by the insurer of the jeep or its UK claims representative to provide a reasoned reply in time in the following circumstances:

(a) where a claim for compensation is made by the injured person to the insurer of the jeep/its UK claims representative by letter dated 27 May 2009 and the said insurer's licence is revoked on 25 February 2010 and the insolvency of the same is reported in the Greek Official Gazette on 26 February 2010 and the claim is subsequently presented to the MIB; and, whether additionally or alternatively,

(b) where a claim for compensation is made by the injured party to the insurer of the jeep/its UK claims representative and the said insurer has been declared insolvent at the time that a claim is presented to the MIB."

22. It cannot be in doubt that, because the Greek insurer's claims representative had not provided a reasoned reply to the claim within three months, the claimant was entitled to notify a claim for compensation to the MIB from the beginning of September 2009 and that the MIB was obliged to respond to the claim within two months of receiving it. No question of the Greek insurer's insolvency arose until February 2010. No claim was in fact made against the MIB until October 2010 and it is the MIB's submission that, as a result of the intervening insolvency of the Greek insurer, the claimant's accrued right to notify and make a claim against it had by then ceased to exist.

23. Mr Mercer QC, on behalf of the MIB, emphasised that the arrangements established by the Regulations and the Fourth Directive are not, and are not intended to be, guarantee or compensation arrangements protecting policy holders and others against the insolvency of an insurer. This is clearly correct and was not contested by Mr Weir QC appearing for the appellant. The Fourth Directive makes no mention of insolvency. If it had been intended to provide protection against an insurer's insolvency, it is inconceivable that its recitals and operative parts would not have so provided. The EU has taken measures to promote the solvency of insurers but has so far rejected taking measures to deal with claims in the insolvency of an insurer. This has been left entirely to domestic legislation. Some protection against an insurer's insolvency is provided in the UK by the Financial Services Compensation Scheme and in Greece by the Greek Auxiliary Fund.

24. Mr Mercer laid considerable stress on the decision of the CJEU in Case-409/11 *Csonka v Magyar Allam* (11.07.13). The applicants had insured their motor vehicles with an Hungarian insurance company (MAV) against civil liability arising out of the use of their vehicles. In the two years to July 2008, the applicants caused damage by the use of their vehicles. In August 2008, MAV's insurance licence was withdrawn and it was declared insolvent. It was therefore unable to discharge its obligations to the applicants who themselves had to pay the compensation for the damage covered by their policies. The applicants brought proceedings for damages against Hungary for an alleged failure to implement fully the First Directive. The applicants argued that the obligation under article 3(1) to ensure that civil liability in respect of the use of vehicles is covered by insurance was breached by a failure to establish a body to ensure that compensation was provided to victims of road accidents in situations where the insurer had become insolvent.

25. The court held that the purpose of article 3(1) was to impose a requirement for compulsory insurance, not to provide a system of compensation or guarantee in circumstances where such insurance has been taken out but the insurer becomes insolvent. Likewise, the obligation imposed by the Second Directive was to ensure that there was a body to provide compensation where the compulsory insurance had not been effected, not where insurance had been effected but the insurer had become insolvent. Having reviewed the development of the First to Third Directives and their purposes, the Advocate General said in his Opinion at [43]:

> "Taken as a whole, the foregoing analysis shows that there is nothing explicit in the wording of the relevant legislation to support the assertion that the compensatory body has an obligation to pay compensation where the insurer of the person responsible is insolvent. While it is true that the analysis of the legislative texts and their development over time reveals a constant concern to protect victims, it also makes apparent the fact that that concern was duly offset against the financial burden represented by the payment of compensation by a body such as that provided for in the first paragraph of Article 1(4) of Directive 84/5, with the result that, even today, that body is required to pay compensation in only two specific situations and the Member States are still able to limit such payments."

26. There was no discussion of the Fourth Directive in *Csonka* but there is no reason to doubt that its reasoning applies to it. Like the earlier Directives, it is entirely silent on the question of the insolvency of the insurer. The obligation of the compensation body in the member state of the injured party arises only in the particular events specified in article 6(1).

27. Equally, however, it does not follow that, where the obligation of the compensation body is triggered by the occurrence of one of the specified events, it later ceases by reason of the subsequent insolvency of the insurer. There being no expressed provision to this effect, the MIB must argue for its implication, having regard to the overall purposes and context of the Fourth Directive. Nor indeed is there anything in the Fourth Directive that suggests that where one of the specified triggering events occurs, it is not to have effect because the insurer is already insolvent, but that is not an issue which arises on the facts of this case.

28. Mr Mercer traced through the *travaux préparatoires* and the recitals to the Directives to show the purposes of the limited provisions contained in the Fourth Directive. The genesis of the Fourth Directive was a resolution by the European Parliament calling on the Commission to submit a proposal for a Directive and it is clear that the focus of the proposal was on providing easier access to foreign insurers for victims of road traffic accidents in the EU. In response, the Commission proposal included a requirement for the establishment or recognition of compensation bodies "responsible for settling claims arising out of accidents suffered by [victims of accidents abroad] if there is no claims representative [appointed by the insurer] or, *if the insurer proves dilatory"* (my emphasis). In its first report on the proposal, the European Parliament approved the introduction of compensation bodies "to intervene as a backstop … as they will be a way of exerting pressure on the insurers concerned".

29. These purposes are reflected in the Recitals to the Fourth Directive. Recital 25 provides:

> "It is necessary to make provision for a compensation body to which the injured party may apply where the insurance undertaking has failed to appoint a representative or is manifestly dilatory in settling a claim or where the insurance undertaking cannot be identified to guarantee that the injured party will not remain without the compensation to which he is entitled; the intervention of the compensation body should be limited to rare individual cases where the insurance undertaking has failed to comply with its duties in spite of the dissuasive effect of the potential imposition of penalties."

30. Recital 26 makes clear the limited function of the compensation body:

> "The role played by the compensation body is that of settling the claim in respect of any loss or injury suffered by the injured party only in cases which are capable of objective determination and therefore the compensation body must limit its activity to verifying that an offer of compensation has been made in accordance with the time-limits and procedures laid down, without any assessment of the merits."

31. Having examined the provisions of the Directives, Moore-Bick LJ said in *Jacobs v MIB* at [21]:

> "In essence, the compensation bodies are intended to provide a safety net which will be called upon only in rare cases where the tortfeasor is unidentified or uninsured or where for some reason the insurer fails to respond to a claim within the prescribed time. Even then, however, the compensation bodies do not ultimately bear the burden of the claim, because the body that has paid compensation to an injured party has the right to obtain reimbursement from the corresponding body in the state where the insurer is established (that body in turn being subrogated to the driver's rights against the insurer) or has a claim against one of the guarantee funds: see arts 6(2) and (7)."

32. In their skeleton argument counsel for the MIB emphasised that the Fourth Directive is limited in scope, providing recourse to the compensation body only in the case of the particular "breakdown" which the Directive specifies. It does not extend, they submitted, to imposing liability on a compensation body in respect of claims which would have been met by foreign insurers had they not been declared insolvent. They submitted that the appellant's argument was that the Directive silently imposed an obligation on compensation bodies in respect of the insolvency of foreign motor insurers. Article 6, the critical provision, provides a back-stop role for the compensation bodies in restricted and specific circumstances, that is, where a reasoned reply has not been received to a claim presented within the relevant time limits or where a claims representative has not been appointed. This very limited role

is emphasised by the further provision in article 6 that the compensation body ceases to be under any obligation if the foreign insurer or its claims representative subsequently makes a reasoned reply to the claim.

33. In my judgment none of these submissions meet the fundamental point arising on the facts of the present case, that a right to notify and subsequently pursue a claim against the MIB accrued in favour of the appellant from the beginning of September 2009. That right arose precisely because the circumstance specified in article 6(1)(a) had occurred, namely there had been no reasoned reply to the claim made against the Greek insurer's claims representative within three months. The accrual of that right arose not because of any insolvency on the part of the Greek insurer. Indeed, it had not yet occurred. The MIB must look for something more if it is to sustain its case that the subsequent insolvency of the Greek insurer deprives the appellant of her right against the MIB.

34. In the course of his oral submissions, Mr Mercer QC developed further submissions in support of the MIB's position that the obligation of compensation bodies under article 6 ceases in the event of an intervening insolvency of the insurer. He relied on two uncontroversial aspects of the scheme established by the Fourth Directive. First, the obligation of the compensation body to inform the foreign insurance undertaking and its compensation body of the claim, combined with the right to claim reimbursement conferred by article 6(2), demonstrates that a purpose is to encourage insurers to deal with claims, as shown by the provision in article 6(1) that if the insurance undertaking or its claims representative does make a reasoned reply to the claim, albeit out of time, the compensation body shall thereupon terminate its action. Secondly, the scheme is not intended to provide protection or compensation for policy holders or those with claims against policy holders against the insurer's insolvency.

35. Against this background, Mr Mercer submitted that the obligation of the compensation body under article 6(1) should be read as subject to a proviso to the effect that the insurer has not entered into a formal insolvency process at the date that a claim is intimated to the compensation body. In the present case, that was October 2010. Mr Mercer cited the decision of the CJEU (Fourth Chamber) in C-541/11 *Grilc v Slovensko zavarovalno zdruzenje* GIZ (17 January 2013). The court held that a claimant must, by reason of the express terms of article 6, first lodge a claim with the compensation body and may initiate court proceedings against the compensation body only after the expiry of two months from the date of making its claim, if the compensation body has not taken action in respect of the claim within that period. There is an accrued right therefore only at the expiry of the period of two months, which in this case was in December 2010.

36. Mr Mercer further relied on the definition of "insurance undertaking" in the Fourth Directive as meaning, he submitted, a functioning insurer. He pointed to the definition of "insurance undertaking" in article 2(a) as meaning "an undertaking which has received its official authorisation in accordance with Article 6 or Article 23(2) of Directive 73/239/EEC." The critical issue was whether the insurer was an "insurance undertaking" at the date on which a claim was presented to the MIB. He agreed that, in the light of the definition contained in article 2(a), the essential characteristic was whether, as at that date, the insurer was still officially authorised, not whether it had entered an insolvency process.

37. I am unable to accept these submissions.

38. First, it appears clear from the Fourth Directive as a whole that the time at which an undertaking must have official authorisation is the time of the accident giving rise to the claim. Article 1(1), already quoted, states the objective of the Directive as laying down special provisions for claims resulting from accidents "which are caused by the use of vehicles insured and normally based in a Member State". Likewise, article 1(2) states that articles 4 and 6 apply only in the case of accidents "caused by the use of a vehicle (a) insured through an establishment in a member state …" These provisions are looking, as one would expect, to the time of the accident. Article 5(3) and (4) requires member states to ensure that an injured party is entitled for a period of seven years after the accident to obtain information concerning the name and address of the insurance undertaking. There is no rational basis for concluding that this obligation would cease if during that period of seven years the relevant insurance undertaking ceased to be authorised.

39. Secondly, the submissions presuppose that claims against insurers which are in an insolvency process will not be addressed or paid either in part or in full. This is a false assumption. Some insurers may be in an insolvency process in order to protect the assets for an orderly run-off of its book of business. In cases where it is not anticipated that claims will be met in full, it by no means follows that they will not be met in part or that those responsible for the administration of the insurance business, whether they are liquidators, administrators or agents appointed to conduct the run-off, will not deal with claims as and when they are made. Assuming that there are assets available for distribution, even if to a limited extent, it will be the duty of the relevant persons and it will be in the interests of creditors generally for all claims to be properly addressed.

40. Thirdly, these considerations are all the more powerful if, as Mr Mercer ultimately submitted, the critical issue is whether the undertaking has ceased to be authorised. Insurers may cease to be authorised to carry on new business without becoming insolvent or going into an insolvency process. For their own business reasons, an insurer may cease to be authorised and simply run-off its business. It would be very odd indeed if that were to have the effect of terminating the rights of injured parties under article 6 of the Fourth Directive.

41. Fourthly, there remains the fundamental point that the MIB's submissions require reading into the Fourth Directive a substantial qualification which is nowhere expressed and which is unnecessary to enable the Directive to function in accordance with its purpose and terms.

42. For these reasons, I would allow the appeal and answer affirmatively the question posed in the revised preliminary issue, in respect of both paragraphs (a) and (b).

**Sir Robin Jacob:**

43. I agree.

**Lady Justice Gloster:**

44. I also agree.

# SCHEDULE

## Entitlement to compensation where the insurer is identified

**11.**—(1) This regulation and regulation 12 apply in a case where—

(a) an injured party is resident in the United Kingdom,

(b) that person claims to be entitled to compensation in respect of an accident occurring in an EEA State other than the United Kingdom or in a subscribing state, and

(c) the loss or injury to which the claim relates has been caused by or arises out of the use of a vehicle which is—

(i) normally based in an EEA State other than the United Kingdom, and

(ii) insured though an establishment in an EEA State other than the United Kingdom.

(2) Where this regulation applies, the injured party may make a claim for compensation from the compensation body if—

(a) he has not commenced legal proceedings against the insurer of the vehicle the use of which caused the accident, and

(b) either of the conditions set out in paragraph (3) is fulfilled.

(3) The conditions are—

(a) that the injured party has claimed compensation from the insurer of the vehicle or the insurer's claims representative and neither the insurer nor the claims representative has provided a reasoned reply to the claim within the period of three months after the date it was made;

(b) that the insurer has failed to appoint a claims representative in the United Kingdom, and the injured party has not claimed compensation directly from that insurer.

## Response from the compensation body

**12.**—(1) Upon receipt of a claim for compensation under regulation 11, the compensation body shall immediately notify—

(a) the insurer of the vehicle the use of which is alleged to have caused the accident, or that insurer's claims representative;

(b) the foreign compensation body in the EEA State in which that insurer's establishment is situated; and

(c) if known, the person who is alleged to have caused the accident, that it has received a claim from the injured party and that it will respond to that claim within two months from the date on which the claim was received.

(2) The compensation body shall respond to a claim for compensation within two months of receiving the claim.

(3) If the injured party satisfies the compensation body as to the matters specified in paragraph (4), the compensation body shall indemnify the injured party in respect of the loss and damage described in paragraph (4)(b).

(4) The matters referred to in paragraph (3) are—

(a) that a person whose liability for the use of the vehicle is insured by the insurer referred to in regulation 11(1)(c) is liable to the injured party in respect of the accident which is the subject of the claim, and

(b) the amount of loss and damage (including interest) that is properly recoverable in consequence of that accident by the injured party from that person under the laws applying in that part of the United Kingdom in which the injured party resided at the date of the accident.

(5) The compensation body shall cease forthwith to act in respect of a claim as soon as it becomes aware that—

(a) the insurer referred to in regulation 11(1)(c), or the claims representative of that insurer, has made a reasoned response to the claim, or

(b) the injured party has commenced legal proceedings against the insurer.