

## Supreme Court rules that an RTA claim form cannot be amended to substitute an unidentified driver

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**The Supreme Court has unanimously held in *Cameron v Liverpool Victoria Insurance Co Ltd* that the driver of a car, who was not anonymous but could not just be identified, cannot be sued under a pseudonym or description. Christian Du Cann, barrister, and Nicholas Higgs, pupil barrister, at 39 Essex Chambers, Andrew Baker, partner at Horwich Farrelly, and Andrew Parker, partner at DAC Beachcroft, comment on the case and its implications.**

### Background

As Baker points out, in the simplest terms, Miss Cameron's (the respondent's) 'claim was...to bring proceedings against an unidentified driver in order to secure a judgment which thereafter triggered an insurer's liability under section 151' of the Road Traffic Act 1988 (RTA 1988).

In May 2013, the respondent, while driving, collided with a Nissan Micra. Her car was written off in the collision and she and her passengers suffered minor personal injuries. On collision, the driver of the Micra did not stop, but its number plate was taken down by a passing driver. Further investigation revealed that the Micra was registered in the name of a Mr Hussain and insured by Liverpool Victoria Insurance Company Limited (the appellant).

The respondent issued proceedings against Mr Hussain, as the main defendant, and the insurance company, as a co-defendant. Then, the appellant applied for summary judgment, arguing that the respondent was unable to prove Mr Hussain was the driver at the time of the collision. At that point, the respondent sought to amend her claim by replacing Mr Hussain with 'the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZIZ on 26 May 2013'.

In 2014, Wright J refused the respondent's application to substitute the name of the first defendant for the suggested description and granted summary judgment for the appellant. In 2015, HHJ Parker dismissed the appeal by the respondent against that decision. By that time, it was common ground that Mr Hussain was not the driver of the vehicle at the time of the collision. In 2017, when the case came before the Court of Appeal, the majority sided with the respondent.

### Judgment

The issue before the Supreme Court was whether the respondent was entitled to bring a claim for damages against an unnamed defendant as the victim of an unidentified hit-and-run driver while the unidentified driver was covered by an insurance policy, albeit one in the name of someone untraceable. On 20 February 2019, the Supreme Court allowed the appeal and reinstated the original order of Wright J.

Du Cann and Higgs highlight that:

'This decision is not about service of a claim form in an RTA claim--it concerns the right to amend a claim form to name as a defendant an unidentifiable person in such a claim. A clear distinction is to be drawn between defendants who are anonymous but can be identified and those who are anonymous but cannot be identified. In deciding whether it will be appropriate to permit a claim to proceed with the latter category of defendant, primary consideration is whether service can be effected--it is a basic principle of natural justice that a person cannot be made subject to the jurisdiction of the court unless that identifiable defendant has notice of any such claim.'

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'Sufficient description of the defendant must therefore be made such that proceedings can be brought to their attention. This may be achieved by alternative service, but if there are no means for the defendant to be brought under the court's jurisdiction, then the test for allowing an unnamed defendant will not be met.'

Baker points out that:

'As well as highlighting such practical difficulties, the court highlighted the conceptual problems of what had been permitted in *Cameron*, Lord Sumption stating: "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."

According to Parker:

'The Supreme Court in *Cameron v Liverpool Victoria Insurance Co Ltd* has...restored some welcome sanity to the concept of bringing a claim against an unidentified motorist.'

### **'Decision provides clarity'**

The judgment of the Supreme Court has attracted a fair amount of positive feedback, especially for its clarification benefits.

Baker believes that:

'The decision provides clarity to claimants and insurers by reinstating the position pre-*Cameron* and highlighting the importance of the untraced drivers' agreement (UtDA) as an intrinsic part of the UK compensation system for victims of RTCs.

'This decision is welcomed for clarifying the uncertainty which had arisen following the Court of Appeal's decision in *Cameron* many cases having been left in limbo pending the outcome of this appeal. Claimants who have brought proceedings against an unidentified driver will, in all probability, have to discontinue their claims and instead claim against the MIB under the UtDA.'

Additionally, Baker comments that:

'The decision is a clear reiteration of the need for a claimant to deal properly with service to bring the proceedings to the attention of the defendant. Only in instances where the defendant had deliberately sought to evade service, might an order dispensing with service be granted. The court did not consider that the facts of *Cameron* were sufficient to permit an order dispensing with service. In particular, the fact a driver failed to stop and/or provide their particulars did not amount to a clear attempt to evade service of proceedings.'

### **'MIB insurers will be sighing with relief'**

Du Cann and Higgs believe that:

'MIB insurers will be sighing with relief--as was recognised in the dissenting judgment in the Court of Appeal, if claimants had been able to obtain judgment against unnamed/unserved defendants and then pursued the motor insurer by way of relief under RTA 1988, s 151, significant potential for fraud would arise since such proceedings would be taken against unnamed drivers without MIB investigation.

'Disallowing that avenue under RTA 1988, s 151 probably reduces litigation and legal costs and prevents insurers being deprived of an ability to pursue an indemnity against the unnamed driver.'

### **No 'significant disadvantage to the victim of the RTA'**

Du Cann and Higgs believe that the judgment, while being beneficial to insurers, is not at the same time detrimental to victims:

'The court identifies the MIB untraced drivers scheme as being the proper recourse in a RTA claim where the driver at fault is untraceable. Such a route would not entail significant disadvantage to the victim of the RTA--

the claimant's right to compensation is no different and is not thereby significantly affected, though costs recovery may be limited to some extent.'

### Exceptions confirmed

As Parker points out, the decision of the Supreme Court does not create any legal revolution, to the contrary:

'The Supreme Court confirmed that the general rule remains that proceedings may not be brought against unnamed parties, except in limited and well-defined circumstances. Those exceptions to the general rule are there for good reason, limited to persons who are anonymous but identifiable--such as squatters occupying land, identifiable by their location although not named.

'Critically, in all those limited exceptions, the proceedings can still be served on those persons or brought to their attention. Those exceptions do not extend to serving proceedings on motor insurers, unless the insurers had contractual authority to accept service on the driver's behalf or to appoint solicitors to do so. Such authority could in any event only extend to the policyholder, who it was agreed was not the driver in this case.'

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