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"Arising out the use of a vehicle?" Common sense definition prevails

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Judy Dawson, who specialises in insurance indemnity issues, reviews the authority of Carroll v QBE Insurance which was handed down on 30th January 2020 and provided a helpful review of the current statutory and case law on the definition of the Road Traffic Act wording "arising out of the use of the vehicle"

The Facts

In Neil Carroll v Michael Taylor, Michael Doyle, Emms Taxis Limited & QBE Insurance (Europe) Limited [2020] EWHC 153 QB the facts were relatively straightforward; Mr Carroll hailed a black cab driven by the First Defendant and owned by the Second Defendant after a night out drinking. Rather than taking him home, the First Defendant firstly stole his debit card (in fact swopping it for the debit card he had stolen from a previous fare) and then secondly when the First Defendant asked him to stop so he could get cash out, watched as the First Defendant (presumably repeatedly) put in his pin number, not realising that his attempt to obtain cash was doomed to failure as he was using somebody else's card. Having thus obtained his pin number, the First Defendant then drove away leaving Mr Carroll stranded (and indeed within a short period of time removed £220 from Mr Carroll's account with the ill-gotten card and pin number).

Mr Carroll telephoned his partner who advised him to go to his Uncle's house nearby (which he rejected as he did not want to wake him up so late), get another taxi home (as she thought they would have enough money in the house to pay the fare) or to wait where he was and she would pick him up. She gained the impression that they had decided on the third course of action and departed to pick him up. He (perhaps confused through drink or perhaps in an attempt to meet her part of the way back) did not wait where he was but commenced walking home. After walking about 2km and it being at least 40 minutes after the taxi had left him, it was accepted for the purposes of the preliminary issue hearing that he had sat down on the barrier of the

flyover on the M62, accidently fell off and fell a considerable distance down onto the ground below, suffering catastrophic head injuries in the process. He was not found until 8am the following morning.

The Law

Two questions were agreed to be dealt with by way of the preliminary issue.

Question 1: Did the Claimant's injuries arise out of the use of the taxi on a road or other public place within the meaning section 145(3)(a) of the RTA?

Question 2: Given the basis for the Court's finding on the first question and, in particular, the relevance or otherwise of the First Defendant's deliberate criminal acts, does the insurance policy issued by insurer to the Second Defendant respond to the Claimant's claims in tort against the First and Second Defendants if those claims in tort are proved?

The first question is the one upon which this article will concentrate given its wider importance. It gave rise to two issues, namely: (1) was there a use of the taxi on a road or public place; and (2) did the Claimant's injuries arise out of that use?

Issue (1) was not in dispute. The First Defendant's carriage of the Claimant in the taxi culminating in him driving away from the cash point on Prescot Road was a "use of the vehicle".

Issue (2) involved a study of the relevant statutory framework and law in relation to section 145(3)(a) of the RTA which states;

(3) Subject to subsection (4) below, the policy – (a) must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road or other public place in Great Britain; …

Section 151 of the RTA states that where a judgment is obtained against any person relating to a liability where liability with respect to that matter is required to be covered by a policy of insurance under section 145 of this Act, [the insurer must satisfy such judgment]

The RTA does not require all uses of the vehicle to be insured. Rather, there is an obligation on the user to have insurance for the particular use to which he puts the vehicle. If the use from which the injuries allegedly arose was outside the permitted use then section 151(2)(a) is not satisfied and the insurer is not required by section 151 to meet the judgment awarded against the wrongdoer.

Mrs Justice Tipples, in an admirably masterful judgment, reviewed all the relevant case law that had previously been before the Courts, including in particular the authorities of Dunthorne v Bentley [1996] RTR 428 (Court of Appeal) and AXN v Worboys [2012] EWHC 1730 (QB).

In Dunthorne v Bentley the insured, Mrs Bentley, was driving her car on the road when she ran out of petrol. She parked at the side of the road with the hazard lights flashing and stood at the rear of the car. After about 10 minutes she was seen by a colleague, who stopped her car on the opposite side of the road. Following some shouted conversation, Mrs Bentley ran across the road. She was struck by an oncoming vehicle and killed. The driver of that vehicle was Mr Dunthorne, who was seriously injured and claimed damages against the administrators of Mrs Bentley's estate, who admitted negligence. The motor insurers were joined as defendants. There was a trial of a preliminary issue to determine whether the accident 'arose out of' Mrs Bentley's use of the car so that the insurers were liable for Mr Dunthorne's injuries under the terms of the motor insurance policy issued to Mrs Bentley pursuant to section 145(3)(a) of the 1988 Act. The trial judge inferred from the agreed facts that Mrs Bentley was running across the road to obtain assistance in restarting her car, and this was closely and causally connected with her use of the car and, as a result, the accident 'arose out of such use' and the insurers were liable. The trial judge's decision was upheld by the Court of Appeal.

AXN v Worboys [2012] EWHC 1730 (QB) arose out of in some ways similar facts to the incident claim in that Mr Worboys, like Mr Taylor, was using the perceived "safe" status of a black cab to in fact carry out criminal activites – in Mr Worboy's case drugging and then sexually assaulting single female passengers. Silber J summarised the principles that emerge from Dunthorne v Bentley as:

"first, that the concept of "arising out of" is a wider concept than "caused by"; secondly, that the focus of the inquiry has to be to consider whether the injuries of the claimant were matters "arising out of the use of the car"; and thirdly, that it is necessary to analyse the activities of the driver whose insurers are being sued to see what he was doing at the time when the injuries were suffered in order to ascertain if they were "arising out of the use of the car"."

The Claimant in the Worboys case was unsuccessful on the identical point as to whether the injuries suffered arose out of the use of the with the Judge in that case finding that;

"the relationship to which the words "arising out of" must be applied is between the injuries suffered (not the negligent and wrongful acts) and the use of the vehicle not at the start of the journey, but as at the time when the injuries were suffered;

the application of the words "bodily injury … arising out of the use of a vehicle" entails considering all the material circumstances. What was crucially important in Dunthorne in reaching the decision that the injuries of the claimant arose out of B's [Mrs Bentley's/the insured's] use of the car is that she would not have crossed the road if she had not run out of petrol and sought help to continue her journey"

The Judgment

Having considered that the injuries were not geographically, temporally or qualitatively closely linked to the use of the taxi, the journey having ended once the Claimant got out of the taxi, Mrs Justice Tipples found;

"There is no evidence whatsoever about what the taxi driver was doing, or where he was, at the time the Claimant sustained his injuries. Having stolen money out of the Claimant's bank account, the taxi driver could have been anywhere in the Liverpool area. This fact alone makes it crystal clear that the accident to the Claimant did not arise out of the use of the taxi. In these circumstances it is impossible to see how there is a relevant causal link between the use of the taxi and the injuries suffered by the Claimant under section 145(3)(a) of the RTA.

In my view, the Claimant's injuries had nothing whatsoever to do with "the use of the vehicle on a road" in the context of section 145(3)(a) of the RTA. Rather, the injuries occurred where they did, and when they did, because the Claimant had decided to make his way home on foot and these injuries were not in any sense closely linked with the use of the taxi".

Given such decision, question two could be dealt with relatively briefly;

"The taxi driver had no intention of using the taxi to take the Claimant home to Huyton. Rather, he was using the taxi as an integral part of his "modus operandi" to steal from people, like the Claimant, who had been drinking and were seeking to make their way home in the early hours of the morning after a night out in the centre of Liverpool. On the facts of this case I have reached the clear view that, from the taxi driver's perspective, the essential character of the journey in which he took the Claimant in the taxi from Hardman Street to the Santander cash point was to steal from him and that he was using the taxi for a criminal purpose.

Section 145(3) of the RTA only requires insurance for the use to which the person, in this case, the taxi driver, is putting the vehicle. The policy in this case limits use to "social, domestic and pleasure purposes", "use for the Insured's business" or "use for the carriage of passengers for hire and reward under the terms of a Hackney Carriage Licence". The journey in this case did not therefore constitute a permitted user".

Comment

One can understand the temptation for those advising a catastrophically injured Claimant to attempt to utilise the very extremes of definitions to try to persuade a Court to connect an accident to "arising out of the use of the vehicle" to enable such a victim to recover compensation against an insurance company. It is clear from a reading of the Court of Appeal decision in Dunthorne v Bentley that the appellate Court felt that the Judge's decision took the definition of "arising out of the use of the vehicle" to its limits and it only just (and not without hesitation) allowed that such facts could fall within the interpretation. The Worboys case sought (and failed) to extend the interpretation further and this claim attempted to do the same (indeed to do so, the Claimant's Counsel had to submit that at least one principle within the Worboys judgment was incorrect). It is to be hoped that this judgment will seek to confirm what would appear to be the common sense approach and interpretation of the Road Traffic Act; I would suspect its draftsmen would have been flabbergasted were it to have been suggested that such an Act was intended to fix insurers with commercial liability for injuries from criminal enterprises far beyond the driving of such vehicles.

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Contact Judy's clerks

Francine Kirk on 0113 202 8605
Talia Webster on 0113 213 5207
Patrick Urbina on 0113 213 5250