BENNETT-HULLIN *v.* T. P. CLARK & CO.

FULL COURT (Mann C.J., Lowe and O'Bryan JJ.). DECEMBER 1, 9, 1943.

Insurance—Motor vehicle policy in name of individual and company—Personal accident benefits—Non-application when "assured consists of a firm company or more than one person"—Meaning of "person"—Whether corporation included—Property Law Act 1928 (*No.* 3754), *sec.* 61.

A policy of motor vehicle insurance, issued in the name of an individual as hirer and a company as owner, conferred benefits "in the event of bodily injury to the assured or the assured's wife caused by accidental external and visible means in direct connection with the insured vehicle," subject to a proviso that such benefits "shall not apply when the assured consists of a firm, company or more than one person".

Held, by MANN C.J. and LOWE J. (O'BRYAN J. dissenting), that the word "person" in the proviso meant a natural person and did not include an incorporated company.

Decision of Gavan Duffy J. reversed.

APPEAL.

T. P. Clark and Company issued a policy of insurance in respect of a motor vehicle to Harold Bennett-Hullin as hirer and Commercial Discounters Limited as owner. Section J of the conditions of the policy related to "Personal Accidents to Assured and/or wife" and provided that: "In the event of bodily injury to the assured or the assured's wife caused by accidental external and visible means in direct connection with the vehicle . . . the underwriters shall pay—(*a*) the sum of 1,000*l.* if death results within three calendar months directly and exclusively and independently of all other causes from such injury." By a proviso to section J, it was provided that: "4. The benefits insured under this section J shall not apply where the 'assured' consists of a firm, company, or more than one person." While the policy was in force, the wife of the said Harold Bennett-Hullin died as a result of bodily injury caused by accidental external and visible means in direct connection with the insured vehicle and death resulted within three calendar months directly and exclusively and independently of all other causes from such injury. At all material times the vehicle referred to in the policy was held by Bennett-Hullin as a hirer from the owner thereof, the Commercial Discounters Company (a duly incorporated company), under a hire purchase agreement (case stated, par. 5 (*b*), (*c*)). An arbitration having taken place between Bennett-Hullin and T. P. Clark & Co. as to the latter's liability to pay the former 1,000*l.* under the policy in respect of the death of his wife, the arbitrator stated his award in the form of a special case pursuant to sec. 19 of the *Arbitration Act* 1928.

The special case was determined by Gavan Duffy J. who held that the word "person" in the proviso to section J should *primâ facie* be read

as including corporation and that there was no context which would justify a narrower meaning. He accordingly held that T. P. Clark & Co. were not liable to pay the sum of 1,000*l.* to Bennett-Hullin. Bennett-Hullin appealed.

Voumard, for the appellant—The only person assured under the policy is Bennett-Hullin. If anyone else is assured, the other assured is not a "person" within the meaning of the proviso to section J. A corporation is not a person within the meaning of the proviso. The language of section J is such as to exclude the notion that "person" in the proviso includes an artificial person. The section relates to "Personal Accidents to Assured and/or wife". Where you have a natural person and a corporation insured, the corporation cannot claim and there is no reason why there should be an exclusion of rights which a natural person would have if he were insured alone.

Ham K.C. (with him, *Mulvany*), for the respondent—"Person" in the proviso to section J includes a corporation and there is no context to give it a contrary meaning. [He referred to the *Property Law Act* 1928, sec. 61.] An insurer is under no liability under the section where the sole assured is a company, and there is no reason for creating liability where both a company and a natural person are insured. A company includes a corporation. The language of the policy is plain and the judgment appealed from should not be reversed.

Cur. adv. vult.

MANN C.J. read the following judgment: It has been long established by undoubted judicial authority and now by statute that the word "person" occurring in a written contract such as the policy before us is to be read as including a corporation unless a contrary intention appears—or as the *Property Law Act* 1928 expresses it, unless the context otherwise requires. This is a technical rule of convenience limited to the construction of written documents, and is quite contrary to all practice in spoken language, as was pointed out by Lord Blackburn in *Pharmaceutical Society* v. *London & Provincial Supply Association* (*a*).

It is the more necessary therefore to have the rule clearly in mind when approaching the construction of the proviso to section J of the conditions of the policy before us, and after a very able argument in which counsel for the respondent demonstrated to us how hopeless was the task of explaining the choice of the language of the proviso as a whole by reference to any clear principle in the mind of the draftsman,

(*a*) [1880] 5 App. Cas. 857, at p. 868.

he urged us to decide the case upon the one thing that remains clear, namely, the *primâ facie* meaning of "person" as established by law. This is a very attractive argument if only by reason of the simplification it offers of the problem before us. But the *primâ facie* meaning referred to is only a meaning in the air until one seeks to apply it, and to my mind the *primâ facie* meaning at once changes by virtue of the immediate context in which the word "person" is distinguished to the eye as much as to the ear from the words "firm" or "company".

If there were to be found in this policy or in any document the phrase "firm, company or person" I venture to say that there would be no room for doubt that "person" here meant a natural person, and that the phrase would include corporations only because the word "company" included incorporated companies. But here the phrase is "firm, company, or more than one person". Does this difference let in the wider meaning of "person"? If one reads the phrase again with the wider meaning clearly in view, a sense of confusion as it seems to me at once arises in the mind—the three categories of policy-holders—firms, companies and persons—must at once be thought of as four, namely, firms, companies, corporations, and persons, which is not the language of the document. The present appellant would fail because his co-assured is incorporated. If his co-assured were a body of persons called the Commercial Discounters Company he would be covered by the policy. Mr. Ham invited us to abstain from speculating as to what might be the vice in incorporation from the insurer's point of view and to regard only the words and the statute. But I think a fallacy lurks in this way of dealing with the matter. The rule recognised in the statute does not in any way alter or diminish the ordinary rules of construction except in one particular or affect the duty of the Court to consider the whole document and in doing so to weigh and consider the consequences flowing from the competing constructions. In fact, every statement of the rule expressly or impliedly demands an enquiry whether the word "person" will in its context reasonably bear the enlarged meaning.

On a perusal of the policy as a whole I can find nothing to throw any light upon the question before us except section J, and the proviso to it which we are now considering and upon which the defendant company rests its case. First as to the substantive section. Its whole subject-matter is insurance against bodily accidents to human beings. It has not been contended in this appeal, nor apparently was it contended on the argument upon the special case before Gavan Duffy J., that the defendant could escape liability upon the wording of the section alone. The word "assured" would certainly constitute something of a trap if it were held to exclude a man who was jointly assured along with a corporation as in the present case. The insuring company might with a word have excluded any person insured jointly with any firm or

company, but it has not done so either in the substantive part of the clause or in the proviso. Such an exclusion if it had been made would still have left open the much more important question—for how many men and wives may the insurers be providing cover against accident? The answer to this question at all events is made abundantly clear by the proviso, and I cannot find in it any indication of any other purpose. The use of the words "consists of" has given rise before us to much argument as to why it was used. But it is not ambiguous and it is admitted that it cannot be read as "consists of or includes". If it could be so read there would be no need to discuss in this case the meaning of "person" in this proviso. But if a reason is to be sought, there seems to me no necessity to seek further than the one which appears on the surface namely that the draftsman saw no reason for excluding claims by a man who was assured along with a firm or company.

In the end I return to first impressions. Firms, companies, and persons are the three different classes of policy-holders with which every assurance company is familiar and they are the words any insurance company would use to differentiate them. It is quite immaterial in my opinion that in point of law an unincorporated company is commonly the same thing as a firm. In practice the two words are not used indifferently, the choice being determined for the most part by the name assumed by the partners. Trading and other business associations whose name ends with the word "company" and who are not incorporated are quite common and are not in my experience commonly spoken of as firms.

The word "company" clearly includes incorporated company, but the word "person", in this proviso, in my opinion does not. It is necessary so to hold because to apply the larger meaning would introduce into the contract important consequences of a fortuitous and unreasonable nature not intended by the parties as appears from the context, and, as I think, not discoverable on perusal by any lay person.

I am of opinion therefore that the appeal should be allowed and the order of Gavan Duffy J. made on the hearing of the special case be set aside and that this Court should declare its opinion to be that the respondent is liable to the appellant.

Lowe J. read the following judgment: I agree that the appeal should be allowed. We indicated during argument that we thought the "assured" under the policy in question consisted of both the proponent Hullin and Commercial Discounters (Victoria) Pty. Ltd., and that consequently the contention that the sole assured was Hullin could not be sustained. The question that remains for decision comes down in the final analysis to what is the proper meaning of "person" in the fourth clause of the proviso to section J of the policy conditions.

If "person" means only a natural person the claimant succeeds; if the word includes an artificial person the claimant fails. The question so stated must be determined by considering the whole contract as embodied in the policy of insurance. The rubric to section J is "Personal Accidents to Assured and/or wife". It was not contended either before Gavan Duffy J. or before us that the clause in question could have no application to the present case, because the assured consisted of a natural person and a corporation and no such composite assured could have a wife. It was conceded (and I think rightly on a consideration of the whole policy), that the words were to be read distributively and that, apart from the effect of the proviso, they applied to a natural person who was included in the assured. Starting from this point, it is important to notice the words "personal accidents" and "wife" and the nature of the events in respect of which the section makes compensation payable. So far the inference is irresistible that the section is dealing with and only with natural persons. Nor was this view contested in argument before us.

The whole burden of the argument for the insurer was rested on clause 4 of the proviso which reads—"The benefits insured under this section J shall not apply where the 'assured' consists of a firm, company or more than one person." Mr. Ham relied upon sec. 61 of the *Property Law Act* 1928 which provides that, "In all deeds contracts wills orders and other instruments made or coming into operation after the commencement of this Act, unless the context otherwise requires . . . (*b*) person includes a 'Corporation'," and he contended that in this policy there was no context to displace the statutory meaning. This is the view to which effect was given by Gavan Duffy J., though his attention does not seem to have been directed to the Property Law Act.

In my opinion this contention fails and for the following reasons: The clause of the proviso distinguishes between firm, company and person. *Primâ facie* each of these words denotes a different object. Mr. Ham contended (and I think rightly) that the word "company" included an incorporated company. To construe "person" as including a corporation involves (to write it in an expanded form) that the meaning is: firm, company (including an incorporated company) or more than one person (including an incorporated company). This is a meaning which I think no one would naturally give to these words without a compelling context. It is, of course, not impossible or even very unusual to use different words to denote the same object but in a document which purports to be carefully drawn this is not to be expected. The very choice and use of distinct words in collocation points to the distinct words denoting different objects. To my mind this view of the meaning of "person" is corroborated by the other use of

the same word in the policy. In every other instance in which it is used it is to signify a natural person and the inference from this consistent use does not seem to me to be destroyed by saying that in all those instances the context indicates that a natural person is referred to. It is just this consistent use in the same sense which is helpful in seeing the meaning of the draftsman in the disputed clause. Moreover Mr. Ham's contention seems to me to result in construing the clause as if the words "consists of" had the same effect as "is or includes", language not uncommonly used in similar clauses but absent from the clause in question. The matters to which I have referred do, in my opinion, furnish a context which requires that in this policy "person" should not be read to include "corporation".

Mr. Ham pointed out that clause 4 of the proviso clearly exempted the insurer from liability where the sole assured was a company and he contended it was inconceivable that the insurer intended to accept liability where the assured consisted of a company *and* a natural person. But we are dealing here not with intention only but with the proper construction of what has been expressed. If the insurer intended not to accept liability in such a case it was for it to make clear that intention and not leave the matter to speculation. I feel confident that it would not occur to the assured, reading this policy, that the word "person" in clause 4 of the proviso included "corporation" and this is a matter of some importance. "In all deeds and instruments," said Blackburn J. in *Fowkes* v. *Manchester & London Assurance Association* (*b*), "the language used by one party is to be construed in the sense in which it would be reasonably understood by the other. If there is any ambiguous phrase, another rule of construction, which was also known to the Civil law, applies, *Verba chartarum fortius accipiuntur contra proferentem.* And if the party who proffers an instrument uses ambiguous words in the hope that the other side will understand them in a particular sense, and that the Court which has to construe the instrument will give them a different sense, the above rules apply, and they ought to be construed in that sense in which a prudent and reasonable man on the other side would understand them."

In my opinion the insurer is liable to pay.

O'Bryan J. read the following judgment: In my opinion this appeal should be dismissed. The policy is a comprehensive motor car policy issued in the name of Harold Bennett-Hullin as hirer, and Commercial Discounters Limited as owner. There is no corporation known as Commercial Discounters Ltd., but it is clear on the admitted facts that this is a misnomer for Commercial Discounters (Victoria) Proprietary

(*b*) [1863] 3 B. & S. 917, at p. 929.

Limited. It is as plain a case for the application of the maxim *falso demonstratio non nocet* as one could wish.

The contention of counsel for the appellant that the only contract is with Harold Bennett-Hullin in my opinion plainly fails. It is only necessary on this point to refer to the case stated, par. 5 (*b*), (*c*), the proposal for insurance signed by H. B. Hullin asking for the policy to be made out in his own name and that of Commercial Discounters (and the answers to questions 7 and 8 in the proposal), and to the names of the parties contained in the policy itself. I have no doubt that the insured under this policy are H. B. Hullin and the Commercial Discounters (Victoria) Pty. Ltd.

The question is whether under this policy Mr. Hullin is entitled to the benefits under section J. Section J is headed *Personal Accidents to Assured and/or wife*. The section provides that in the event of bodily injury to the assured or the assured's wife caused by accidental external and visible means in direct connection with the insured vehicle or whilst entering into or dismounting from or driving or being driven in any other private motor car (other than a hired car) the underwriters shall pay—(then follow a series of amounts according to the nature and result of such injury).

The question to be determined is whether Mr. Hullin is excluded from the benefits of this section by proviso 4, which reads as follows: "The benefits insured under this section J shall not apply where the 'assured' consists of a firm, company or more than one person."

If the word "person" in this proviso includes a corporation the appellant is not entitled to the benefits of section J. It is a canon of construction that in such an instrument as this the word "person" includes a corporation unless the context otherwise requires (*Property Law Act* 1928, sec. 61). Does the context here otherwise require? I am prepared to assume the words, "unless the context otherwise requires", mean no more than "unless a contrary intention otherwise appears." But is there a contrary intention apparent in this document? The strongest argument in favour of the view that it is apparent that the word "person" is used in the more restricted sense of "natural person" is the collocation of the words "firm, company and person" in the proviso. I suppose one may say generally that if these words are found in a clause following on each other, *e.g.*, "firm, company or person," and you are satisfied that in the context the word "company" includes a corporation, you might readily assume that the word "person" was being used in this restricted sense.

But in this proviso I do not feel at all sure that the word "company" includes a corporation, and the word "person" does not follow immediately after the words "firm" and "company" but has interposed

between it and the word "company" the words "or more than one" which in my opinion destroys the reason for supposing that it is used restrictively. In the first place it is to be remembered that this is a proviso to a substantive clause which can only operate in favour of a natural person. A proviso to such a clause which says that the benefits assured thereunder shall not apply when the assured consists of a company can hardly be intended to exclude something which never was included. It is common ground that "consists of" means "consists solely of", and I therefore do not think that it is at all clear that "company" includes a corporation, as it would be idle to exclude from the benefits of this clause a policy in which the sole assured is a corporation. It is clear that in some contexts the word "company" is used in a sense which excludes a corporation—see *Smith* v. *Anderson* (*c*).

The inclination of my view is that "company" is here used in that more limited sense; otherwise it would be an absurd exclusion. At all events it is not so clear that corporations are included that one can safely say that the word "person" is being used in the sense of natural person in contradiction to "artificial person" already embraced in the word "company". On the other point as to whether those three words are really being used as adding a new and exclusive class to what has gone before, it is to be noted that up to the word "company" the proviso is excluding policies in which there is only one assured, viz., a firm or a company. The word "or" really introduces a new and different exclusion, viz., when there is more than one assured. The third exclusion is independent of the first two and for that reason it is in my opinion erroneous to interpret each of these words "firm", "company" and "person", as though they were dealing with mutually exclusive entities. I therefore can find nothing in the words of the proviso to indicate that the word "person" is used in the restricted sense of natural person.

Nor do I think that any help is got from the use of the word "person" in other parts of this policy. It is true that the word "person" is used in various places in the policy in the sense of a natural person, but it is to be remembered that it has this restricted meaning in those sections only because of its particular context there, and, in an instrument like this where you have various different kinds of insurance, indemnity against public liability, insurance against costs, damage to property, fire and theft, personal accident, etc., each dealt with in its own section, it does not appear to me to be reasonable to say that because a word apparently has a restricted meaning in one section because of its context there, it should be given the same restricted meaning in another section,

(*c*) [1880] 15 Ch.D. 247, at p. 273.

which is dealing with an entirely different subject-matter and in which there is no context which requires that more restricted meaning. In other words the context which is material for the interpretation of the word in this instrument is the context contained in section J. It cannot be said that the draftsman of this instrument has shown any indication that he is using the word "person" in its restricted sense throughout the whole document.

It was suggested in argument that the ambit of the operative part of the section gives a clue to the meaning of the proviso. As I understood the argument it went in this way: The benefits are for compensation for bodily injuries to the assured or his or her spouse. That is obviously a benefit provided for natural persons only, and when you find a proviso that the benefits are not to apply where the assured consists of more than one person you will readily infer that "person" in the proviso means "a natural person" only. Why? Because I suppose it is to be assumed that the object of the proviso is to limit the area of risk to injuries to *one* assured and his spouse, and such an object is not defeated if the policy is in favour of a corporation and a real person. But surely this is to interpret the clause by first assuming what its object is. Is it not first necessary to interpret the clause in order to ascertain its purpose?

The fact is that this benefit is given to an assured, not under every kind of policy, but only under policies which are not excluded by the proviso. It is necessary to interpret the proviso to ascertain the extent of the exclusion, and I can see no reason for supposing that the insurer wanted to exclude one type of policy rather than another. The risk undertaken is limited in two ways—first, by specifying the person for whose injuries, and the conditions under which, payment will be made, and secondly, by defining the kinds of policies in which the benefit is excluded, that definition being made by reference to whom the assured is or are. The benefit is excluded, *e.g.*, if the assured is a firm; this exclusion would be satisfied if the firm consisted of a real person and a corporation (see *Lindley on Partnership* (10th ed.), p. 100).

It was quite properly said in argument that it is wrong to commence with an *a priori* assumption that an insurer would not want to exclude the benefits of this section in a policy issued to a corporation and a natural person. There are a number of business reasons why he might want to do so. It is a cover that is somewhat extraneous to the main purpose of a motor car policy, and an insurer may desire that it should operate only in a limited number of policies, viz., in effect where there is only one person assured and that a natural person. But it is not a question of speculating why the insurer may want to limit the ambit of his risk in a certain way; the question is how far has he limited the risk by the words in the proviso.

I can find in section J nothing that indicates one way or the other what is intended to be covered by the word "person", unless it be that the use of the word "assured" in the operative part of the section suggests that the section is only to operate in the case of a policy issued to a real person. What I mean by that is this: It is clear that section J can only operate in favour of natural persons. A corporation cannot receive bodily injuries and cannot have a husband or a wife. If section J is applicable in a policy issued to a corporation and a natural person, the word "assured" in section J does not mean, as you would expect it to mean, "the parties assured under the policy," but one only of the assured, viz., the natural person assured. This use of the word "assured" in the operative part may be some indication that the draftsman had in mind that it was quite an appropriate word in section J, and would not have to be read in other than its grammatical meaning because the policy was not intended ever to apply if a corporation were one of the assured. It is a small point, and, perhaps loses most of its force when you read section K, but it has this virtue; it is an argument founded upon the words of the document, which is more than can be said for the argument that an insurer would probably not want to exclude this risk under this type of policy. I can find nothing else in section J to indicate in what sense the word "person" in the proviso is used.

For these reasons effect should, in my opinion, be given to sec. 61 of the Property Law Act by interpreting "person" as including a corporation. I agree with the judgment of Gavan Duffy J.

Appeal allowed.

Solicitors for the appellant: *Gray & Gray.*

Solicitors for the respondent: *Ellison, Hewison & Whitehead.*

P. E. J.