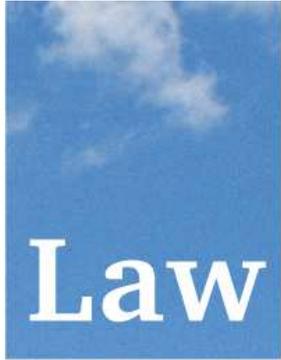


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**Supreme Court applies  
Greek law in assessing  
compensation due to  
holidaying UK driver in  
Greece**

*Tiffany Moreno v The Motor Insurers' Bureau*  
[2016] UKSC 52

**Article by David Bowden**

The Supreme Court has allowed the MIB's appeal in this case. The judge below was compelled to follow 2 earlier decisions of the Court of Appeal. The Supreme Court has overruled those decisions as being wrong. It said that the compensation scheme in relation to uninsured drivers set out by the EU was clear and that compensation due to a UK domiciled person in relation to a car accident that occurred in Greece by an uninsured Albanian driver had to be assessed under Greek and not English law. This meant that Ms Moreno may receive less compensation than she would if damages were assessed under English law. The Supreme Court said the result was clear from the EU Directives and it did not need to refer this to the CJEU in Luxembourg for any further guidance on their interpretation.

*Moreno v. The Motor Insurers' Bureau*

[2016] UKSC 52

3 August 2016

Supreme Court of the United Kingdom (Lords Mance, Clarke, Sumption, Toulson & Hodge JJSC)

### What are the facts?

On 17th May 2011 25 year old Ms Moreno (a resident of England & Wales) was on holiday in Zakynthos, Greece. She was on a road verge when a car left the road and struck her. She suffered grievous injury to her legs and her right leg was later amputated below the knee. Her left leg required surgery too. She must now wear a prosthesis and to use a wheelchair. The car in question was registered in Greece. The driver is uninsured. The driver is Albanian and cannot be traced. Ms Moreno made a claim for compensation with the UK Motor Insurers' Bureau ('MIB'). The MIB admits the driver is liable under Greek law for the accident. Whilst the MIB says that the Greek guarantee fund is liable to compensate Ms Moreno, the MIB says that the level of damages due has to be assessed in accordance with Greek law (where the accident occurred) and not English law (where Ms Moreno is domiciled). The level of damages under English law would be more generous to Ms Moreno.

### What is the MIB Scheme?

The MIB scheme is funded by a levy on all insured drivers. The MIB provides a safety net so that where an accident is caused by the fault of an uninsured driver, it will step in and provide compensation in accordance with the scheme rules. In addition there is a Green Card scheme where UK drivers can be insured when travelling on the roads in continental Europe. Pursuant to various international agreements, the MIB will deal with accidents occurring in Europe involving uninsured drivers involving UK citizens in the same way as if the uninsured accident had occurred in the UK. There is a mechanism so that the MIB equivalent compensation fund in other EU member states ultimately funds the damages caused where the uninsured accident occurred in that EU member state.

### What happened when the case came before Mr Justice Gilbart?

Gilbart J had to determine as a preliminary issue whether the compensation due to Ms Moreno should be assessed according to Greek or English law. In his reserved judgment handed down on 17 April 2015 [2015] EWHC 1002 (QB), he ruled that Greek law applied to the compensation due to Ms Moreno.

### What had the Court of Appeal previously decided in *Jacobs v. MIB*?

On 27 October 2010 the Court of Appeal handed down its judgement in *Jacobs*: [2010] EWCA Civ 1208. Moore-Bick LJ ruled on the position of a UK resident (Jacobs) who was injured by an uninsured German driver in an accident in Spain. Following a thorough analysis of all the authorities however, Moore-Bick LJ ruled that the MIB had to pay compensation to Jacobs to be assessed under English law principles rather than Spanish law ones. The decision in *Jacobs* was then followed by the Court of Appeal in a later case called *Bloy v MIB* [2013] EWCA Civ 1543.

### Why was a leap frog certificate granted?

In a further judgement dated 23 April 2015 [2015] EWHC 1142 (QB) Gilbart J acknowledged he was bound by *Jacobs*. He noted that permission to appeal *Jacobs* had been granted by the Supreme Court but that the appeal was not proceeded with because the CJEU subsequently held in *Homawoo v. GF Assurances* C-412/10 [2011] ECR I-11603 that Rome II was not in force at the relevant time.

For this reason Gilbart J said all conditions for a leap frog appeal from the High Court directly to the Supreme Court as set out in s12(3) and 12(3A) of the Administration of Justice Act 1969 were met and there was an important issue to be determined which will affect a substantial number of claims.

He therefore granted a leap frog certificate. On 28 July 2015 Lords Mance, Clarke and Hodge JJSC then granted permission to appeal to the Supreme Court.

#### **What were the issues on this appeal before the Supreme Court?**

The issues for the Supreme Court boiled down to these 2 issues:

- whether the relevant EU Directives prescribe any particular approach to the scope or measure of recovery applicable in a claim against a compensation body, and
- if they do, whether the language of Regulation 13(2)(b) of the 2003 Regulations reflects this approach (or requires some other approach) whatever the EU Directives may have required.

#### **What does the injured driver say?**

The injured driver says that the Court of Appeal's approach in *Jacobs* was correct. She submits that the compensation due under Greek law would be less than that due under English law and this would amount to an injustice to her.

#### **What does the MIB say?**

The MIB submitted that the decision in *Jacobs* was wrong. The MIB said the whole scheme of the EU compensation arrangements as set out in the EU Directives is clear and that compensation is to be assessed according to the law of the member state where the accident occurred.

#### **What are the main EU legislative measures that are relevant?**

There are a series of EU Directives in this which have been codified in 2009. They are:

- Directive **72/116/EEC** dated 24 April 1972 ('the 1<sup>st</sup> Directive'),
- Directive **84/5/EEC** dated 30 December 1983 ('the 2<sup>nd</sup> Directive'),
- Directive **2000/26/EC** dated 16 May 2000 ('the 4<sup>th</sup> Directive'),
- Directive **2009/103/EC** dated 16 September 2009 ('the 6<sup>th</sup> Directive'),

The 6<sup>th</sup> Directive had been transposed into UK law by the Motor Vehicles (Compulsory Information) (Information Centre and Compensation Body) Regulations 2003 **SI 2003/37** ('the 2003 Regulations') under section 2 of the European Communities Act 1972. Article 3 of the 1<sup>st</sup> Directive was transposed into UK law in sections 143-145 of the Road Traffic Act 1988.

Also relevant is Regulation (EC) No **864/2007** dated 11 July 2007 on the law applicable to non-contractual obligations ('Rome II').

#### **Are there any prior authorities of any relevance?**

These authorities are most relevant:

*Marleasing SA v La Comercial Internacional de Alimentación SA* [1990] ECR I-4135

In construing EU Directives the starting point is that they should be interpreted in a sense which is not in any way inconsistent with those Directives.

*Evans v. Secretary of State for Transport* [2004] RTR 32

The intention of the 2<sup>nd</sup> Directive is to entitle victims of damage or injury caused by uninsured vehicles to protection equivalent to and effective as that available to persons injured by identified or insured vehicles.

*Harding v. Wealands* [2007] 2 AC 1

Issues of liability and heads of recoverable damages are normally determined by reference to the law of the place where the accident occurred.

*United States of America v Nolan* [2015] UKSC 63

Where a Directive is in general terms leaving member states freedom to decide on the precise means for its implementation, provisions which the UK makes within the scope of such freedom will, on the face of it, fall within ECA 1972 s2(2)(a), as being for the purpose of implementing or enabling the implementation of the Directive.

#### **Which agreements which the MIB have made are relevant?**

*Convention complémentaire entre Bureaux nationaux* - 12 December 1973

*Agreement between Compensation Bodies and Guarantee Funds* – 29 April 2002

*European Commission Decision* – 27 December 2002

An agreement between compensation bodies and guarantee funds in EU member states.

*Untraced Drivers' Agreement – 7 February 2003*

An agreement between the Secretary of State for Transport and the UK MIB.

*Uninsured Drivers' Agreement – 3 July 2015*

An agreement between the Secretary of State for Transport and the UK MIB.

**What did the Supreme Court rule on the approach to the measure of damages?**

Viewed as a whole, the EU Directives are a scheme of which the constant aim has been to improve the prospects and ease with which injured parties can recover the compensation to which they are entitled in respect of any loss or damage caused by vehicles. The inference is that a victim of a motor accident is entitled to the same compensation, whether against:

- the driver responsible, or
- his insurer, or
- the MIB equivalent of the EU member state of the accident, or
- the compensation body established in the victim's state of residence.

Clauses 7.2 and 8.2 of the Agreement between Compensation Bodies and Guarantee Funds dated 29 April 2002 provide that the compensation body in the victim's country of residence was to '*apply, in evaluating liability and assessing compensation, the law of the country in which the accident occurred.*' The Agreement needs to be viewed as part of the wider scheme, which in turn needs to be construed as a consistent whole.

The EU Directives do not leave it to an individual member state to provide for compensation in accordance with any law that such states may choose. On the contrary, they proceed on the basis that a victim's entitlement to compensation will be measured on a consistent basis and by reference to the law of the state of the accident whichever of recovery routes is invoked. It makes no difference which route is chosen to the measure of liability of the body or person ultimately responsible.

**What did the Supreme Court rule on the UK implementing regulations?**

The 2003 Regulations are consistent with the scheme of the EU Directives. The loss and damage recoverable by Ms Moreno from the MIB is said in Regulation 12(2)(b) to be that '*properly recoverable in consequence of that accident by the injured party from [the insured] person under the laws applying in that part of the United Kingdom in which the injured party resided at the date of the accident.*' The purpose of this is to determine which of the UK's 3 systems should apply rather than prescribing the measure of recovery in such proceedings

**Why did the Supreme Court over-rule *Jacobs*?**

Regulation 13 of the 2003 Regulations provides:

**'Entitlement to compensation where vehicle or insurer is not identified**

**13(1)** This regulation applies where—

(a) an accident, caused by or arising out of the use of a vehicle which is normally based in an EEA State, occurs on the territory of—

(i) an EEA State other than the United Kingdom, or

(ii) a subscribing State,

and an injured party resides in the United Kingdom,

(b) that injured party has made a request for information under regulation 9(2), and

(c) it has proved impossible

(i) to identify the vehicle the use of which is alleged to have been responsible for the accident, or

(ii) within a period of two months after the date of the request, to identify an insurance undertaking which insures the use of the vehicle.

(2) Where this regulation applies—

(a) the injured party may make a claim for compensation from the compensation body, and

(b) the compensation body shall compensate the injured party in accordance with the provisions of Article 1 of the second motor insurance directive as if it were the body authorised under paragraph 4 of that Article and the accident had occurred in Great Britain.'

Lord Mance said it followed from his ruling on the interpretation of the compensation scheme when properly construed by reference to the EU Directives that the decision in *Jacobs* as well as *Bloy*

should be over-ruled in relation to the meaning of regulation 13(2)(b).

**Will there be a reference to the Court of Justice of the European Union?**

No. Lord Mance said:

*'39. I conclude, in these circumstances, that the scheme of the Directives is clear, and that they do not leave it to individual member states to provide for compensation in accordance with any law that such states may choose. On the contrary, they proceed on the basis that a victim's entitlement to compensation will be measured on a consistent basis, by reference to the law of the state of the accident, whichever of the routes to recovery provided by the Directives he or she invokes. In consequence, it also makes no difference to the measure of liability of the body or person ultimately responsible, which route is chosen. Since the position as a matter of European Union law is in all these respects clear, there is no need to contemplate a reference to the Court of Justice.'*

**What would be the position for accidents in other EU member states involving foreign drivers?**

Although damages under Greek law may be less than those under English law, it is by no means a one-way street. A paper was prepared by the MIB for the hearing setting out the position in other EU member states. Lord Mance picks out 2 examples from that. In Ireland damages for personal injuries can be significantly higher than awarded under English law. Under Italian law, its courts can in fatal accident cases award significantly more (and to a broader range of persons) than under English law.

**What will happen after Brexit in this situation?**

The case was heard over 2 days on 12/13 July 2016 after the UK referendum and there were some interventions from the panel about this. Lord Mance in observing that *'The expressed and obviously beneficial purpose of the arrangements introduced by the Directives and Regulations is to ensure that compensation is available for victims of motor accidents occurring anywhere'* in the EU.

Looking ahead he notes that:

*'With British exit from the Union, this will, no doubt, be one of the many current arrangements requiring thought.'*

**What are the consequences of this decision?**

With the August summer holiday season upon us, this case is a useful reminder of the compensation scheme arrangements that apply where there is an uninsured driver. Many British holiday makers will take advantage of the Green Card scheme whilst driving on continental Europe or Ireland. If they do have the misfortune to have an accident with an uninsured driver, the 2003 Regulations spell out the procedure to be followed. In the UK the MIB is both the compensatory body and the guarantee fund.

For accidents occurring outside the UK damages payable for personal injury will be assessed according to the law of the EU member state where the accident occurred. If that is Italy or Ireland then damages could end up being more than would be payable under English law and, as this case illustrates, accidents in Greece may mean that less compensation is payable.

The 6 EU directives attempted to harmonise compensation arrangements relating to uninsured car drivers. It is a wholly more ambitious exercise for the European Commission to try and harmonise the laws of the 28 member states relating to the assessment of damages. With Brexit looming, even if it had done so, it may not prove to be of much benefit to UK drivers now in any event.

**3<sup>rd</sup> August 2016**