Neutral Citation Number: [2020] EWHC 3479 (QB)

Case No: QB 2019 003582

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2020

Before :

MRS JUSTICE EADY

- -

Between :

1)ROBERT BUTT
2)KATHERINE BUTT
3)RALPH HENRY MICHAEL BUTT
(a child by his mother and litigation friend KATHERINE BUTT)
4)GILES SEBASTIAN NIGEL BUTT
(a child by his mother and litigation friend KATHERINE BUTT)
5)EMILIA STELLA MARIANNE BUTT
(a child by her mother and litigation friend KATHERINE BUTT)
6)DOROTHY FAITH MARGARET BUTT

Claimants

- and –

1)CHARLES D'AMATO
2)CITY SIGHTSEEING LIMITED
(a company incorporated in accordance with the laws of the Republic of Malta)
3)MAPFRE MIDDLESEA PUBLIC LIMITED COMPANY
(a company incorporated in accordance with the laws of the Republic of Malta)
4) AWTORITA GHAT-TRASPORT F'MALTA, TRANSPORT FOR MALTA
(a body corporate established pursuant to the laws of the Republic of Malta)

Defendants

- -
- -

Ms Katherine Deal QC (instructed by **Irwin Mitchell**, Solicitors) for the **Claimants**
Mr Charles Dougherty QC (instructed by **Kennedys Law LLP**, Solicitors) for the **Third Defendant**
Ms Sarah Crowther QC (instructed by **Horwich Cohen Coghlan**, Solicitors) for the **Claimants** in **SINGH AND ORS v D'AMATO AND ORS** Claim No. G90MA115

Hearing dates: 8 December 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE EADY

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 18 December 2020.

The Honourable Mrs Justice Eady:

Introduction

1. I am concerned with an application made by the Third Defendant, MAPFRE Middlesea Plc ("D3"), received by the Court on 13 November 2020, for a preliminary reference to be made to the Court of Justice of the European Union ("CJEU"), pursuant to Article 267 of the Treaty on the Functioning of the European Union ("the TFEU"), in relation to the following questions:

   (1) Where the limit of indemnity under a motor insurance policy is insufficient to satisfy claims by all injured victims in a motor accident, does European law (in particular, Motor Insurance Codification Directive 2009/103/EC) require that the available indemnity be distributed between the victims in any particular way?

   (2) If so, on what basis (taking into account that claims by victims can be advanced at different times and in different jurisdictions)?

2. The underlying claim arises out of a road traffic accident ("the accident") in Malta, on 9 April 2018, involving a tourist sightseeing bus operated by City Sightseeing, the Second Defendant ("D2"); the First Defendant ("D1") was the driver. D2 was insured by D3 in relation to the use of the bus involved. The Fourth Defendant, Transport for Malta ("D4"), is alleged to be liable for failing to keep the road clear; it has an outstanding application, due to be heard in January 2021, challenging the Court's jurisdiction.

3. The Claimants are an English family; the first to fifth Claimants were passengers on the bus, who suffered injuries as a result of the accident.

4. In support of its application, D3 relies on a statement by a Mr Camilleri, its Head of Claims (Commercial, Motor and Personal Lines). Mr Camilleri explains that this is one of a number of claims brought against D3 in different jurisdictions in respect of the accident and it is likely that additional claims will be issued in due course.

5. More particularly, on 30 March 2020, separate proceedings were issued in the Manchester District Registry, on behalf of the Singh family (see *Singh and ors v D'Amato and ors* Claim No. G90MA115). I am also told that other claims have been filed in Scotland.

6. It is D3's contention that the proposed questions identify a question of EU law that arises in this case, in respect of Motor Insurance Codification Directive 2009/103/EC ("the Codified Directive"), and which it is necessary for the CJEU to determine. A degree of urgency arises in considering this application as, pursuant to the European Union (Withdrawal Agreement) Act 2020, this Court will not be able to make a reference to the CJEU after 11 pm 31 December 2020; it is, however, common ground that that fact cannot inform my decision on this application.

7. I am told that D1 has not been served and has played no part in these proceedings. The Claimants take a neutral stance on the application but were represented at the hearing by Ms Deal QC, who sought to assist the Court by providing a skeleton argument setting out the principles to be applied and further explaining her clients' position at the hearing. As for D2 and D4, their respective Solicitors have notified the Court that they also adopt a neutral stance on the application, making clear that they did not intend to make any further representations or to attend the hearing.

8. Although not parties to these claims, the Claimants in *Singh v MAPFRE* appear before me today by Ms Crowther QC, who seeks leave to make representations on their behalf, in opposition to the application; I will return to Ms Crowther QC's clients' position below.

9. Given the on-going need to reduce transmission of the coronavirus, and with the agreement of the parties and it being an effective means of ensuring justice in this matter, the hearing before me took place remotely by Microsoft Teams. These remained, however, public proceedings, and the hearing and details for access were published in the cause list, thus ensuring the principle of open justice.

Background

The accident

10. The accident involved an open-top, double decker, sightseeing bus - operated by D2, driven by D1 - which collided with the branches or trunk of a tree, causing significant damage to the upper deck. There were some 52 passengers on the bus at the time; two passengers were killed and a number of others were very seriously injured. The passengers, who were tourists, were domiciled in multiple jurisdictions.

11. The Claimants are an English domiciled family, the first to fifth of whom were passengers on the bus. The first and second Claimants are a married couple and are the parents of the third, fourth and fifth Claimants, who, as children, bring this claim with their mother, the second Claimant, acting as their litigation friend; the sixth Claimant is the mother of the first Claimant.

12. The first to fifth Claimants suffered personal injuries in the accident on 9 April 2018; the first Claimant in particular was very seriously injured, suffering a traumatic brain injury and a serious spinal injury, resulting in tetraplegia.

The insurance policy

13. D2 was insured by D3 in relation to the use of the bus under a motor policy ("the Policy"), which is stated to be governed by Maltese law. It is accepted that under Maltese law road traffic victims have a direct claim against the liability insurer of any party alleged to be liable. D3 contends, however, that its liability under the Policy is limited in respect of personal injury arising from an accident to €6.07 million, whatever the number of victims and irrespective of how many claims are issued and in which jurisdiction they are brought.

14. It is accepted by the Claimants in these proceedings that, if valid, this limitation would mean that the Policy would not be sufficient to meet the insured liabilities (indeed, they observe that the first Claimant's claim would, of itself, account for much of that liability).

15. A further issue is also raised as to whether the Policy limit would include costs; that is disputed by the Claimants. If that were the case, however, that would further diminish the pot available to the victims of this accident.

The pleadings

16. This claim was issued on 8 October 2019; the Particulars of Claim are dated 10 October 2019. D2 has served a Defence and D3 has served a Defence and Counterclaim.

17. It is common ground that all questions of liability and quantum in contract and tort will be subject to Maltese law.

18. There is currently an ongoing "Magisterial Inquiry" in Malta in relation to the accident, and D3 has reserved its position as to its liability to indemnify D1 and D2 until the findings of the inquiry are published. D3 accepts, however, that under Maltese law, even if neither party are entitled to an indemnity under the Policy, it will have an obligation to discharge any liability of D1 and D2, up to (and subject to) the limit of indemnity set out above.

19. Although liability is thus currently denied, the essential facts leading up to the accident are agreed by both D2 and D3. At para 17 of its Defence, however, D3 asserts a positive case that:

> "… as a matter of Maltese law, taking into account the obligations set out in Directive (2009/103/EC), where the limit of indemnity under a motor policy may be insufficient to satisfy all claims by victims, the available indemnity should be distributed proportionately between victims by reference to the sum awarded to each victim."

20. D3 further contends that no order for payment should be made against it until such a proportionate share can be determined.

21. Consistent with that pleading, by its Counterclaim, D3 seeks a declaration as to the limit of its indemnity and how (and when) the indemnity should be distributed as between victims, when it will be insufficient to meet all claims.

Other claims and the position of the Singh Claimants

22. As I have already recorded, this is one of a number of claims brought or threatened against D3, in different jurisdictions, in respect of the accident. Mr Camilleri states that claims, or intimations of claims, have been received from Belgian, Bulgarian, German, Italian and Scottish victims. In March 2020, proceedings were issued in the Manchester District Registry on behalf of the Singh family. The third and fourth Claimants in those proceedings are a married couple and are the parents of the first and second Claimants. The first, second and fourth Claimants all suffered personal injuries as a result of the accident; those suffered by the first Claimant (who was then 6 years old) were the most significant, as he sustained severe brain injury, The third Claimant (mother of the first and second Claimants and wife of the fourth**)** was downstairs on the bus but witnessed the immediate aftermath, including the injuries to her husband and sons, and claims damages for the psychological injuries she sustained. I refer to these four Claimants as "*the Singh Claimants*" in order to them from the Claimants in the present proceedings.

23. The Singh Claimants object to this application and ask to be heard, although they are not parties to the present proceedings. As notice of D3's application was only sent to those acting for the Singh Claimants on 2 December 2020, they consider they have been placed at a disadvantage; that is all the more so as they have not been provided with the statements of case and other documentation in the current proceedings. In appearing for the Singh Claimants at this hearing, however, Ms Crowther QC did not request an adjournment but sought to be permitted to make submissions on her clients' behalf. Without conceding Ms Crowther QC's standing on this application, neither Ms Deal QC nor Mr Dougherty QC objected to my hearing her submissions *de bene esse*.

The Codified Directive

24. As D3 observes, by a series of Directives, EU Member States have been required to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance. Compulsory minimum amounts of insurance cover were introduced by the Second Motor Insurance Directive 84/5/EEC ("the Second Directive"), to address the disparities between the laws of the different Member States. At that time, compulsory insurance against civil liability was completely unlimited in Luxembourg and Belgium, and unlimited in respect of personal injury in Ireland and the United Kingdom. By contrast, Germany, Denmark, Italy and the Netherlands imposed an overall limit per claim, irrespective of the number of victims. In its proposal for the Second Directive, the EU Commission explained that unlimited liability was not possible for "*social reasons connected with the amount of premiums*". Reference was also made to the different approaches adopted in different Member States, in terms of imposing

a limit on amount per victim (only France) or per claim, irrespective of the number of victims (the approach, for example, in Germany, Denmark and Italy). The requirement introduced by the Second Directive allowed for either approach, laying down (where unlimited cover was not in place) minimum levels of compulsory insurance either per victim or per claim.

25. As is explained at recital (1), the Codified Directive subsequently consolidated the earlier motor insurance Directives.

26. The concern addressed by the provisions thus consolidated by the Codified Directive is explained at recital (2):

> "Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings … Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the internal market in motor insurance."

27. At recital (3), it is provided:

> "Each Member State must take all appropriate measures to ensure that civil liability in respect of the use of vehicles usually based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures."

28. By recital (12), it is further explained that:

> "Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries, while taking into account the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event. A minimum amount of cover per victim or per claim should be provided for...."

29. And, at recital (13), it is made clear that the minimum amount of cover will be subject to review, to ensure that it is not eroded over time.

30. The importance of ensuring consistency across Member States is further made clear by recital (20), which provides:

> "Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur."

31. There is also recognition of the importance of a right to invoke the insurance contract and to claim against the insurer directly (see recitals (30) and (36)) and, by recital (32), reference is made to the right for injured parties to bring legal proceedings against a civil liability insurance provider in the Member State in which they are domiciled.

32. By article 3 of the Codified Directive, the requirement on Member States is then stated, as follows:

> "Each Member State shall … take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.
>
> The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of the measures referred to in the first paragraph.
>
> Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:
>
> (a) according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;
>
> (b) …
>
> …"

33. Article 9 lays down the relevant minimum amounts of cover that are to be required (without prejudice to any higher guarantees that Member States may prescribe). Providing that these sums will be the subject of regular review and automatic adjustment, it was stated that, "*whatever the number of victims*", the minimum cover must be set at: (a) for personal injury, €1 million per victim or €5 million per claim; (b) for property damage, €1 million per claim. It is common ground that further review has meant that, as relevant to the present proceedings, the minimum amount of cover required in the case of personal injury has been increased to €6.07 million per claim, whatever the number of victims.

Maltese Law

34. The obligations imposed by the Codified Directive have been transposed into Maltese law by article 4 of Chapter 104 of the Laws of Malta (and by article 9A it is provided that, in relation to an accident that occurred in Malta, an injured party has a direct right of action against the insurer). Regulation 3(a) of the Limits of Liability Regulations (S.L 104.05) fixes the minimum indemnity cover at €5 million per claim for personal injury, and €1 million in respect of property damage, in line with the Codified Directive. Pursuant to regulation 5, these figures are updated by inflation.

Distribution of the indemnity under EU and Maltese Law

Background

35. On the assumption (which all agree seems likely) that the overall claims made arising out of the accident will significantly exceed the level of indemnity of the Policy, the question posed by D3 is how the sum provided by the Policy, and the cap on liability under it, is to be apportioned between the victims.

36. It is common ground that the Codified Directive does not expressly deal with the question of how the indemnity should be distributed amongst victims where liability is in excess of the limit set out in article 9. In a legal opinion from Maltese lawyer Dr Paul Cachia (exhibited to Mr Camilleri's statement), it is stated that there is also nothing in Maltese law that provides a definitive answer on how funds are to be distributed in these circumstances.

D3's position

37. For D3, it is submitted that, given the scheme and purpose of the Codified Directive and CJEU case-law, it is unlikely that the question of distribution is purely a matter of national law. In this regard, D3 places reliance on the CJEU's decision in *Linea Directa v Segurcaixa* (case C-100/18), where it was observed (at paragraph 33):

> "… the aim of EU legislation concerning insurance against civil liability in respect of the use of vehicles, including Directive 2009/103, is, on the one hand, to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, and, on the other hand, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see, to that effect, judgment of 20 December 2017, Núñez Torreiro, C-334/16, EU:C:2017:1007, paragraphs 25 and 26*)*."

38. In *Linea Directa*, the CJEU was concerned with the exclusion from insurance cover under Spanish law of a stationary vehicle involved in an accident that had no connection with the transport function of that vehicle. It was in this context that the CJEU held concept of "*use of vehicles*" within the first paragraph of article 3 of the Codified Directive could not be left to the discretion of each Member State; "*use of vehicles*" was an autonomous concept of EU law and thus (see paragraph 32):

> "… must be interpreted, in accordance with the Court's settled case-law, in the light, in particular, of the context of that provision and the objectives pursued by the rules of which it is part (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 24)."

39. D3 further prays in aid the CJEU's decision in *Ambrosio Lavrador and Olival Ferreira Bonifacio* (C-409/09), [2011] ECR I-4955, which raised the question whether, and to what extent, Member States could exclude or reduce the compensation available to a victim of a road traffic accident (in that case, the claim under domestic law was dismissed because the victim (a child who was killed in the accident in question) had been riding his bicycle on the wrong side of the road). At paragraph 25 of *Ambrosio Lavrador*, the CJEU distinguished between the obligation to provide motor insurance cover against civil liability arising in such contexts ("*defined and guaranteed by European Union legislation*") and the extent of the compensation to be afforded to victims of road traffic accidents on the basis of the civil liability of the insured person ("*essentially, governed by national law*"), holding that (paragraph 26):

> "… it is apparent from the aim of the … [motor insurance] directives, and from their wording, that they do not seek to harmonise the rules of Member States governing civil liability and that, as European Union law now stands, Member States are free to determine the rules of civil liability applicable to road accidents …"

40. D3 observes, however, that the CJEU then went on to emphasise:

> "27. However, Member States are obliged to ensure that the civil liability arising under their domestic law is covered by insurance compatible with the provisions of the … [motor insurance] directives ….

> 28. Secondly, it is apparent from the case-law that the Member States must exercise their powers in that field in compliance with European Union law and that the national provisions which govern compensation for road accidents may not deprive the … directives of their effectiveness ….
>
> 29. As the Court has stated, those directives would be deprived of their effectiveness if, solely on the basis of the victim's contribution to the occurrence of his injuries, national rules, established on the basis of general and abstract criteria, either denied the victim the right to be compensated by the compulsory motor vehicle insurance or limited such a right in a disproportionate manner …. It is only in exceptional circumstances that the amount of the victim's compensation may be limited on the basis of an assessment of his particular case …."

41. In *Ambrosio Lavrador* itself, however, the CJEU accepted that national law did not have the effect of automatically excluding, or disproportionately limiting, a victim's right to compensation by means of compulsory insurance against the civil liability of the driver of the vehicle involved in the accident. That, the CJEU held, did not affect the obligation under EU law to ensure that civil liability arising under national law was covered by insurance as required by the (now) Codified Directive.

42. For D3, emphasis is placed on the requirement that national law must thus give effect to the Codified Directive and that there must be "*comparable treatment*" (paragraph 33 *Linea Directa*) that (per recital (12) of the Codified Directive) compensates "*fully and fairly*" (emphasis added). D3 accepts that the question of civil liability for road traffic victims remains a matter for national law, but contends that the question of the scope of cover provided by motor policies has thus been held to be determined by the Directives (not national law), with the result that national law provisions as to the scope of cover which are inconsistent with the directive have been held to be incompatible.

43. It is in this context that D3 argues that the question how the minimum indemnity mandated by the Codified Directive should be distributed between victims appears to be an EU law question, dependent on a true construction of the Codified Directive, especially taking into account recitals (2), (12) and (20) (see above). D3 further submits that it is currently unclear as to how that question should be answered. It observes that to adopt a "*first come, first served*" basis for distribution (as would apply in England and Wales) would risk unfairness to all other victims involved in the accident, which would seem inconsistent with the aims of the Codified Directive. It argues that adopting a proportionate approach - proportionate to the insured amount and the sustained damage – (the position D3 has argued in these proceedings, and as applies in other Member States) appears to be more consistent with the Codified Directive's aim of "*fully and fairly*" compensating all victims, ensuring that the victims of accidents receive "*comparable treatment*" in relation to cover irrespective of where in the EU the accident occurred. It observes, however, that the question then arises as to how such an approach is to be applied where multiple claims from different jurisdictions have not yet been issued and might not be issued for a number of years.

The Position of the Singh Claimants

44. As I have recorded, the Claimants in the present proceedings are neutral in respect of this application; for the Singh Claimants, however, it is contended that the application should be refused. In particular, it is argued that the course proposed by D3 would effectively be to ask the CJEU to write additional words into the Directive, inviting the CJEU to make a policy choice as to what scheme of distribution should be used in cases of under-insurance; that, it is

submitted, does not fall within the function of the CJEU, whose role is limited to interpretation of EU law and does not extend to re-writing EU legislation.

45. The position of the Singh Claimants is that the interpretation of the terms of the Policy as between private individuals will be a matter for the Member State court hearing the action to determine as a matter of national law (here, Maltese law); it is settled EU law that it is not within the jurisdiction of the CJEU to interpret national law, *Sodiprem SARL v Douanes Cases C-37 and C-37/98 [1998] ECR I-2039*. Moreover, the Codified Directive could not govern the terms of individual insurance contractual relationships. As the CJEU had reiterated in *Smith v Meade Case C-122/17* (see paragraphs 42-43), an EU Directive cannot impose obligations on private individuals; even where the words of the Directive are clear, precise and unconditional, they are not capable of being used to set aside the terms of a contract between two private individuals - to do otherwise would be to breach the prohibition on horizontal direct effect of Directives.

46. As for the different approaches to distribution of indemnity identified by D3, the Singh Claimants observe that there would not seem to be any reason in principle why the same approach should apply in every Member State: given the diverse systems of national civil law (including insurance law), and the wide variety of factual situations which might arise, the principle of subsidiarity would suggest that it would be entirely appropriate for EU law to leave the questions of how much is paid to each of a group of claimants to the courts determining the claims under the national law. Moreover, the fact that there are claims before different courts in Europe could not be relevant, as they would each all apply the same contract terms and Maltese law. For the Singh Claimants it is contended that the real question which the English Court will be required to answer is: what is the meaning and effect of the contract when its wording is silent on distribution? That, they submit, will be a question for the Court in light of the facts and the applicable Maltese law.

Discussion and Conclusions

References to the CJEU – the approach

47. It is common ground that the preliminary reference procedure is intended to provide national courts with assistance on questions regarding the interpretation of EU law and to contribute to a uniform application of EU law across the Union. It is not intended to answer questions of academic interest, and the answers provided by the CJEU should determine issues in the claim which underlies the reference.

48. Moreover, since this Court is not one of last instance, against whose decision there is no judicial remedy, it is a matter of discretion whether a reference should be made, bearing in mind the test laid down by article 267 TFEU: that is, whether a decision on a question of EU law is necessary to enable this Court to give judgment in this case? The CJEU will not rule on purely hypothetical issues but a reference may be made at any stage of domestic proceedings provided the domestic Court can be satisfied that it is necessary to seek such a ruling; as was observed in *UEFA v Euroview Sport Ltd* [2010] EWHC 1066 (Ch), at paragraph 33:

> "… A national court has a discretion to refer a question to the Court of Justice on the interpretation of a rule of European Union law if it considers it necessary to do so in order to resolve the dispute before it. It is for the national court to explain why the interpretation sought is necessary to enable it to give judgment. Such an order may be made at any stage of the proceedings provide the court has found that a ruling on the point is necessary for it to give judgment. It is desirable that a decision to seek a preliminary ruling should be taken when the national proceedings have reached a stage at which the national court is able to

> define the factual or legal context of the question. However, it is clear that this may be at a preliminary stage of the proceedings. …"

49. In considering the application made in these proceedings, I have found it helpful to ask myself the following questions: (1) whether there is a question of EU law to be determined? If so, (2) whether a decision on that question can be said to be necessary in these proceedings?

Is there a question of EU law to be determined?

50. As was common ground at the hearing before me, EU law (in the form of the Codified Directive) does not make provision for how the indemnity provided under the compulsory minimum levels of insurance cover is to be distributed. The question that informs the application for a reference to the CJEU is not, therefore, one that concerns a concept of EU law as such (in contrast to the position in *Linea Directa*). Indeed, in what might be seen to be a more standard case – that is, one involving fewer victims and where the minimum levels of compulsory insurance are likely to be able to meet all potential liabilities – the answer would seem to be clear: EU law is not concerned with how individual Member States approach the question of distribution, that is a matter of national law and procedure.

51. This might be seen to be consistent with the discretion afforded to Member States by the Codified Directive in (for example) allowing a minimum level of insurance per victim or per claim (regardless of numbers of victims); such questions are recognised to be matters of national law and it would not be for the CJEU to determine how such issues of domestic law are to be interpreted.

52. Moreover, while the aim of the Codified Directive (consistent with the earlier Directives it consolidated) is to provide a minimum amount of cover for personal injury "*so as to compensate fully and fairly all victims who have suffered very serious injuries*" (recital (12)), it does not require that the cover must be unlimited; as a matter of social policy, in thus requiring minimum levels of insurance cover rather than unlimited cover, EU law again recognises that an element of choice must remain with individual Member States. The guarantee of insurance cover in respect of certain minimum amounts is "*an important element in ensuring the protection of victims*" but it is implicitly acknowledged that this might not always provide full protection for all victims (hence the observation that account was taken of "*the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event*").

53. That, it seems to me, provides relevant context for the issue raised in the current proceedings. The possibility of multiple, seriously injured victims in one accident was not unforeseen, but the requirement imposed on Member States was still limited to an obligation to ensure minimum levels of insurance cover, rather than providing for an unlimited indemnity. Moreover, although minimum cover by victim might have provided for greater protection than minimum cover by accident, the approach to be adopted was still seen to be a matter for the individual Member State to determine. Yet further, although provision might have been made for the method of distribution of the indemnity – in particular, in the "*small number of accidents in which several victims suffer very serious injuries in the course of one and the same event"* – the Consolidated Directive does not descend to that detail; it is a matter that again appears to have been left to the individual Member States.

54. All that said, even where matters of civil liability are left to national law, Member States are required to ensure that domestic provisions governing compensation for road accidents do not deprive the Consolidated Directive of its effectiveness (per *Ambrosio Lavrador,* supra). For D3, it is said that this is sufficient of itself to necessitate a reference: if national law is to be interpreted consistently with EU law in this regard, it is first necessary to know what is permitted (or required) under the Consolidated Directive.

55. I am not, however, persuaded that a question of EU law does arise in this respect. Accepting that the terms of the Policy will be subject to Maltese law, which will (in turn) need to be interpreted consistently with EU law, that is something the Court will be able to do having regard to the stated aims of the Consolidated Directive, so as to ensure its effectiveness. The issue, it seems to me, is one of the correct interpretation of Maltese law, rather than EU law.

56. I further agree with the submissions made on behalf of the Singh Claimants: the reference that D3 urges the Court to make effectively seeks to invite the CJEU to import into the Consolidated Directive a mechanism for distribution of the indemnity; that is not its function.

57. Should I be wrong in my conclusion on this first question, I have, however, gone on to consider whether it can be said that there is a question of EU law that it is necessary to determine in these proceedings.

Is a reference necessary?

58. Assuming that it can be said that a question of EU law arises, at this stage I am unable to say that it is a question that is required to be answered in these proceedings.

59. In coming to this view, I acknowledge that there is a benefit for all parties (including Claimants, or potential Claimants, in other proceedings) in having a clear, early understanding as to any limitation on the indemnity provided under the Policy, and as to how any limited indemnity might be distributed. In the normal course, it might be expected that a preliminary hearing would take place to determine those questions, having regard to the terms of the Policy and the approach to be adopted under Maltese law. That stage has not yet been reached in these (or any other) proceedings. In my judgement, however, it would only be after such a preliminary determination of these issues that it could be said that it was necessary to seek a reference to the CJEU.

60. At this stage, I am not persuaded that a reference is a necessary step in these proceedings. The issues identified raise matters that are to be determined on the basis of the applicable national law (here, Maltese law), albeit the approach adopted under national law must seek to give effect to the aims and purpose of the Consolidated Directive. It seems likely to me that this is something that the Court will be able to do without the necessity of a reference to the CJEU. At present, I have no basis for thinking that Maltese law would automatically exclude or impose a disproportionate limitation on compensation (in contrast to the circumstances which the CJEU considered would be contrary to EU law in *Ambrosio Lavrador*) and it would not be right to refer any question to the CJEU to determine on a purely hypothetical basis. Even if I allow that a question of EU law might arise in general terms, at this stage, I am therefore unable to see that this gives rise to a question that it would be necessary to determine for the purpose of these proceedings.

Conclusion

61. For the reasons I have explained, I am not satisfied that a decision on a question of EU law is necessary to enable this Court to determine these proceedings. I therefore refuse this application.