CO/2713/2016

Neutral Citation Number: [2016] EWHC 3597 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Manchester Civil and Family Justice Centre
1 Bridge Street West
Manchester
Greater Manchester
M60 9DJ

Monday, 19th December 2016

B e f o r e:

LORD JUSTICE McCOMBE

MR JUSTICE KERR

- -

Between:
OLDHAM BOROUGH COUNCIL

Claimant

v

MOHAMMED SAJJAD

Defendant

- -

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Mr Moss appeared on behalf of the **Claimant**
Mr Hussain appeared on behalf of the **Defendant**

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J U D G M E N T

1. LORD JUSTICE McCOMBE: This is an appeal by way of Case Stated by the Justices sitting at the Oldham Magistrates' Court, in respect of a decision made by them on 26th February 2016.

2. The appellant is the Oldham Borough Council and the respondent is Mr Mohammed Sajjad. The appellant has been represented before us by Mr Moss of counsel and the respondent by Mr Hussain. I, for my part, am most grateful to them for their submissions.

3. The appeal is brought by the appellant against the decision of the Justices that the respondent was not guilty of the offence of using a motor vehicle on a road without there being in force a valid policy of insurance, contrary to section 143 of the Road Traffic Act 1988.

4. The respondent was the driver of a vehicle with the benefit of a Hackney Carriage licence issued by the Rossendale Borough Council, entitling the vehicle to be plied for hire within that borough's local authority area but not elsewhere. The respondent was charged with two offences alleged to have been committed on 23rd January 2015. They were first, plying for hire in the Oldham area and (b) driving without insurance, contrary to section 143 of the 1988 Act. Section 143 of the Act provides as follows:

> "Subject to the provisions of this Part of this Act—
>
> (a) a person must not use a motor vehicle on a road [or other public place] unless there is in force in relation to the use of the vehicle by that person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act..."

Then subsection (2):

> "If a person acts in contravention of subsection (1) above he is guilty of an offence."

5. On 10th January 2016 the respondent pleaded guilty to the "plying for hire" offence but maintained a plea of not guilty to an offence of using the vehicle without insurance. On 26th February 2016 the justices heard the matter and found the respondent not guilty of the offence of driving without insurance. The appellant borough council now appeals against that finding.

6. The facts appearing in the Stated Case, with the written submissions of the parties annexed are as follows. The evidence was in effect agreed. On 23rd January 2015 officers from the appellant's licensing section and officers at the Greater Manchester Police took part in an operation called "Operation Arizona", targeting Hackney Carriage drivers thought to be plying illegally for hire outside the area of the local authority which had granted them a Hackney Carriage driver's licence. At the time of the alleged offence the respondent was driving the Hackney Carriage vehicle, a Toyota Avensis, registration number FL56LAE which had been licenced by Rossendale Borough Council to ply for hire within that borough but not elsewhere. The respondent

held a Hackney Carriage driver's licence issued by the same council with a similar restriction.

7. The respondent was driving in Oldham at approximately 22.55 hours when he picked up two police officers on Oldham Road in Grotton. In his statement one of the officers stated that he raised his hand into the air to flag down the respondent's taxi. The respondent stopped and the officer opened the front door and asked him if he had a booking and he replied "no". The officer then asked: "Are you free to take to us to..." and he gave an address to which the respondent replied "Yes". He then gestured to the officers to get into the taxi, he turned on his meter but did not contact anyone via his radio. The officers were dropped at the requested address which was a predetermined location. The respondent was identified and it was established that he held a Hackney Carriage drivers licence issued by Rossendale and that he worked for Premier Cars, a private hire operator licenced by Oldham. He had a call sign called "Driver 34".

8. An interview was arranged for a later date with an interpreter being summoned as the respondent had difficulties understanding the officer who had spoken to him on the night in question.

9. On 11th February 2015 the respondent was interviewed under caution with an interpreter. In the interview he stated that he had been licensed as a Hackney Carriage driver with Rossendale for just over 12 months. He confirmed that in Oldham he worked for Premier Cars. He understood that he could not pick up passengers off the streets in Oldham. He admitted to plying for hire unlawfully and that he had picked the officers by mistake after believing that they were his customers. He stated that he also understood his insurance did not cover plying for hire in Oldham. Of course that last opinion of his is not strictly relevant; the question for the court is whether there was in place a valid insurance.

10. The respondent had at the time a hire agreement with a Mr Amar F Hossain in respect of the Toyota with the registration number that I have quoted. It was common ground he was entitled to drive under the terms of Mr Hossain's insurance. It was an insurance policy commencing on 1st January 2015 and ending on 22nd December 2015 in which the date concerned fell.

11. The certificate of insurance stated the limitations as to use in the following terms:

> "(a) Use for business purposes and social and domestic and pleasure purposes by any person who is entitled to drive the vehicle.
>
> (b) Use for business purposes including the carriage of passengers for hire or reward under a public hire licence."

12. Before the justices the appellant borough council argued that the terms of the insurance policy were clear, the respondent was permitted to ply for hire under a public hire licence. The respondent did not hold a Hackney Carriage driver's licence with Oldham and the vehicle was not licensed to apply for hire in Oldham. He therefore could only lawfully ply for hire in Rossendale and not in Oldham. His plea to the offence of

plying for hire was inevitable. The appellant contended therefore he was acting outside the terms of the insurance policy as the policy would not cover the activity of plying for hire outside the area of the local authority which issued the Hackney Carriage licence. Further, such plying for hire constituted a criminal offence - see the guilty plea to the other charge.

13. The respondent, for his part, submitted there were no exclusions or conditions contained in the certificate of insurance that required the insurer to have a current vehicle licence or a private hire driver's licence for a specific borough or district. Moreover, the certificate of insurance did not contain conditions requiring the insurer to comply with any rules and regulations of any particular licensing authority. The respondent argued that on the facts and details of the insurance certificate therefore he was insured. The activity covered by the insurance certificate was, quoting again the terms of the policy (b) "use for business purposes including the carriage of passengers for hire or reward under a public hire licence." That was the exact same activity in which the respondent was engaged.

14. In the court below the respondent relied particularly on the case of Adams v Dunne [1978] QB RTR 281. In that case a disqualified driver had obtained a cover note by way of a false representation to the insurance company and, therefore, the insurance contract was voidable by the insurance company on the grounds of misrepresentation. It was held in that case that the driver was insured because the insurance policy was not void but only voidable at the material time. The respondent contended in the present case that his circumstances and those of the defendant in Adams v Dunne were comparable. In Adams, although the defendant was restricted from driving by a court order and he had obtained the insurance policy fraudulently, he was still covered by the terms of the policy. The present case of course does not concern any question of misrepresentation to the insurance company.

15. On this material the magistrates in our present case formed a view that certificate of motor insurance did not state that a vehicle was not covered by insurance for hire or reward under a public hire licence outside Rossendale. Therefore the respondent at the material time was covered by a valid policy of insurance in respect of third party risks. Although the respondent was found to be plying for hire in an area outside that to which his Hackney Carriage vehicle licence was granted, his certificate of insurance was therefore valid and accordingly the offence had not been committed.

16. The magistrates were also referred to the case of Telford and Wrekin Borough Council v Ahmed and/Ors [2006] EWHC 1748 (Admin) in addition to the Adams v Dunne case to which I have already referred. I will return briefly to the case of Telford a little later.

17. In the Case Stated in the present matter, the magistrates asked the following question for the opinion of this court:

> "Was the court right in finding from the submissions made that the certificate of insurance produced by the defendant was valid in the circumstances whereby the defendant admits that he was plying for hire in an area outside of that which the Hackney Carriage licence was granted?"

18. The arguments raised on appeal before us were to a degree those urged upon the justices but with a gloss which is not apparent from the papers that have been before us.

19. Mr Hussain, for the respondent, now submits that the restriction of the insured activity of using for business purposes including the carriage of passengers for hire or reward has been restricted by reference to an area. That restriction, accordingly offends section 148(2) of the 1988 Act. It is necessary to incorporate certain parts of the Act for the purposes of this judgment to which I will particularly refer. First to section 145, which provides as follows:

> "(1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions...
>
> (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 148 of the Act then provides as follows:

> "(1) Where a certificate of insurance ... has been delivered under section 147 of this Act to the person by whom a policy has been effected... so much of the policy or security as purports to restrict—...
>
> (a)the insurance of the persons insured by the policy, or...
>
> by reference to any of the matters mentioned in subsection (2) below shall, as respects such liabilities as are required to be covered by a policy under section 145 of this Act, be of no effect."

Then subsection (2):

> "Those matters are—
>
> (e) the time at which or the areas within which the vehicle is used."

20. Mr Hussain's submission is that the effect of these provisions is to render the restriction on the permitted activity of use for hire or reward, is to restrict it with a restriction prohibiting the time which or the areas within which the vehicle is to be used. Moreover, what the respondent did, although a criminal offence, was nonetheless covered by the policy.

21. Mr Moss submits that the policy does not cover the activity on which the respondent was engaged, namely plying for hire in Oldham. Section 148(2)(e) is therefore not offended. He points out to the fact the respondent was guilty of a criminal offence to which the plea of guilty to plying for hire bears eloquent testimony.

22. Mr Hussain's response is that many driving activities can constitute criminal offences, for example dangerous or careless driving and a multitude of other matters that one can imagine. However, without more, the driver is not rendered guilty of the further offence of driving without insurance in such cases.

23. The situation is perhaps exemplified by the Adams case upon which the respondents relied below. In that case the facts were these. The defendant concealed from the insurers the fact that he was disqualified but managed to obtain a cover note for use by him of a car. The insurers took no step to avoid the contract but it was clear they would not have granted cover had they known the defendant was disqualified. He was charged with the offence of using a motor vehicle on a road without insurance under the then 1972 Act. The justices were of the opinion the cover note remained in force as it had not been cancelled by the insurers and an appeal was dismissed by this court (Melford Stevenson J, Cantley J and Coombe-Johnson J). It was held the cover note was in respect of the very driving activity being conducted by the respondent and it remained in force because even though voidable the insurers had not sought to void it. Of course driving while disqualified was clearly a quite separate criminal offence but the driver's insurance was not rendered invalid by that fact alone.

24. In contrast, in the Telford and Wrekin case, to which I have referred above, which was heard by Latham LJ and myself, an appeal was brought against dismissal by the District Judge Magistrates' Courts of informations preferred against the respondents alleging offences under section 143 of the present Act. In addition each of the seven respondents faced a charge in respect of an alleged offence of plying for hire a Hackney Carriage for which a licence to ply for hire had not been obtained. All the respondents stood convicted of this latter offence. Each had a licence to carry passengers for reward provided that a prior booking had been made and motor insurance policy in respect of private hire work on prior booking. Note, there was no area restriction in that case. The respondent's insurance policies covered private hire in various forms but they excluded specifically public hire at all. The appeal was allowed and the case was remitted to Magistrates' Court with a direction to convict.

25. In my own judgment, with which Latham LJ kindly agreed, I said this:

> "Whether a policy covers a particular risk and therefore whether there is in force a valid insurance covering that risk will usually be a matter of construction of the insurance policy in question, rather than a matter of evidence. That was certainly so in the present case. In my view, it is entirely clear that the limitations to the insurance in each of these cases demonstrated that the vehicle was not covered when being used on 'ply for hire' operations...
>
> 10. It may be true that the policy in each of these cases remained in force notwithstanding any breach of its terms by the relevant respondent until avoided by the insurer. However the fact remained that such policy, in its unavoided form, did not cover the risk in question. In Adams v Dunne the risk was covered, notwithstanding that the policy was voidable for misrepresentation by the insured; it had not in fact been avoided at the

relevant time. That is not the issue in this case."

26. While I said in Telford that the risk would usually be a matter of construction of the insurance policy in question rather than a matter of evidence, that related to the meaning of the policy as to the risk covered. I was anxious to explain in the Telford decision that the view of the witness in that case, a Mr Kemp, as to whether or not the insurer was on risk could not dictate the true meaning of the policy. The question still remains, once one has found the nature of the risk covered as a matter of language of the insurance policy, to determine whether the activity being conducted on the occasion in question is within that covered risk. Certain Mr Moss's submissions to us this morning struck me as seeking to demonstrate consequences of a particular construction of the policy rather than the questions of construction of the policy and the Act as this court has to do.

27. In the present case, the question is whether the insurance on its true construction, and with reference to the Act and on the facts as found, covered the activity being conducted by this respondent. He was covered for business use including the carriage of passengers for hire or reward under a public hire licence. The vehicle had a public hire licence but not for the type of hire and the area in question on which the respondent had been engaged by his passengers on this occasion. However, in so far as the insurance policy sought to limit the insurance to activity in a particular area, thus if the restriction is rendered ineffective by the operation of section 148 then the policy is to be read, as it seems to me, as if that restriction was treated as deleted in blue pencil from its wording. As Kerr J pointed out in the course of argument, that seems to be the effect of the opening words of section 148(1) which say that "so much" of the policy as purports to restrict the insurance by reference to any of the matters mentioned should be of no effect. So one would therefore remove from the relevant condition the offending passage.

28. Until directed to the terms of section 148(2)(e) of the Act by Mr Hussain, I confess that I was inclined to think that this case was on all fours with Telford. However, having considered that section and Mr Hussain's submissions together in particular, with the judgment of Collins J in Singh v Solihull Borough Council [2007] EWHC (Admin) I consider that Mr Hussain's submission is correct. In that particular case the policy wording was as follows:

> "limitations as to use:
>
> 'Social Domestic and Pleasure purposes and Use for the business of the policyholder including the carriage of passengers for hire or reward.""

Then there was an exclusion:

> "Excluding use for racing, competitions, rallies or trials, public hire, commercial travelling or any purpose in connection with the motor trade."

29. The principal issue in that case was whether the effect of certain European Union Directives and the decision of the Court of Justice of the European Union in Ruiz

Bernaldez meant that the offender in that case was at all times insured for third party risks notwithstanding contravention of the terms of his policy in the clear and explicit terms. Collins J held the Directive did not have that effect but went on to consider (obiter) the effect of the prohibition of certain conditions under section 148 of the Act - see in a particular paragraphs 29 and 30 of the judgment. He held at paragraph 29 among other things:

> "Our domestic legislation prevents such policies from containing some exclusions of liability. Those provisions comply with what is required in particular in the Third Directive but go to a degree beyond that and it is in my judgment apparent that no offence under section 143 is committed in relation to a breach of one of those excluded conditions."

Again at paragraph 30:

> "It follows that, so far as the prohibited conditions are concerned, there would be no offence committed of using a vehicle without the necessary insurance under section 143. But the existence of the prohibited conditions shows that there may well be other conditions which are not prohibited..."

30. The question therefore, as before, is as to the construction of this policy together with the impact of the Act upon it. Does the condition here purport to restrict the insurance by reference "... the areas within which the vehicle is used."

31. In my judgment, it does purport to restrict the otherwise permitted activity of "hire or reward", which is quite general, by reference to the area restriction in the licence. Under the Act that restriction is to my mind no effect. The policy is to be read for these purposes as if the restriction were not there. Accordingly, I consider that the justices were correct in the decision that they reached, although perhaps for reasons somewhat less full than the ones that have been argued before us.

32. For these reasons therefore I would answer the question posed by the justices in the affirmative and would dismiss the appeal.

33. MR JUSTICE KERR: I agree.

34. LORD JUSTICE McCOMBE: Are there any consequential matters, gentlemen?

35. MR MOSS: My Lord, a claim for costs in this case, a schedule been supplied. There has been some discussion between me and my learned friend although my Lord will see a figure, a grand total of £5,616 I was --

36. LORD JUSTICE McCOMBE: Hang on I do not think I have seen that. I will glance through that before you make any further comment (Pause). Yes?

37. MR MOSS: My Lords, discussions between my learned friend and I were concluded with the view that the may well be justification in the words set out in the schedule, and therefore consequently the claim is of the grand total of £5,000 including VAT.

38. LORD JUSTICE McCOMBE: £5,000 including VAT.

39. MR HUSSAIN: I do not resist that.

40. LORD JUSTICE McCOMBE: You do not resist that.

41. We will therefore dismiss the appeal with costs assessed at £5,000 including VAT.

42. MR MOSS: My Lords.

43. LORD JUSTICE McCOMBE: Gentlemen, as I said in my judgment, we are grateful for your submissions.

44. Perhaps I should hand back the document that was handed to us Mr Moss (Same Handed). Thank you.

Postscript

45. By way of postscript, we should add the following. After we had heard the oral argument in this case, we gave extempore judgments dismissing the appeal for the reasons given. Before the order was drawn, we received further written submissions from Mr Moss on behalf of the appellant. He wished to rely on further written argument which, he contended, ought to be considered by the court and ought to persuade us to reach a different conclusion. His argument was that the EU directives considered by Collins J in Singh v Solihull MBC should not impel the court to construe the legislation as contended by the respondent; private hire licences had been geographically limited by reference to local authority areas for well over a century, going back to the Town Police Clauses Act 1847. He invited us to construe the present legislation in the same manner, as not requiring restrictions in insurance policies defined by reference to local authority areas to be treated as of no effect.

46. Mr Hussain, for the respondent, did not object to us considering this additional material. We were prepared to do so. Mr Hussain argued in written submissions, as he had done at the hearing, that the domestic legislation is clear' that it plainly invalidates area-based restrictions in insurance policies, of the type at issue in this case; that there was no reason to construe the legislation in the unnatural manner proposed by the appellant; and that the law was not thereby rendered deficient; it adequately punished those who ply for hire outside the geographical area of their licence, since by doing so they commit a criminal offence (to which his client had pleaded guilty) irrespective of the insurance position. We agree. We did not find in Mr Moss's added submissions any good reason to alter our reasoning or the conclusion to which it leads. The appeal is dismissed.