RECENT DEVELOPMENTS

AUTOMOBILE LIABILITY POLICY HELD TO COVER STOLEN CAR

Sperling v. Great American Indemnity Company
7 N.Y.2d 442, 199 N.Y.S.2d 465, 166 N.E.2d 482 (1960)

This action was brought by plaintiff judgment creditor to compel the insurer, under a family automobile policy, to pay a judgment obtained by plaintiff against the insured's 16 year old daughter, who, while driving an automobile she had stolen, collided with another vehicle, causing the death of plaintiff's testate. The Court of Appeals affirmed the judgment below holding that since the express terms of the policy regarding nonowned vehicles did not require permission by the owner, the stolen car driven by the daughter of the insured was within the terms of the policy.

The relevant portions of the insurance policy provided: "Persons insured: (a) With respect to the owned automobile, (1) the named insured and any resident of the same household, (2) any other person using such automobile, provided the actual use thereof is with the permission of the named insured; (b) With respect to a nonowned automobile, (1) the named insured, (2) any relative, but only with respect to a private passenger automobile or trailer not regularly furnished for the use of such relative."[1]

The problem presented is whether or not it was the intent of the parties, as expressed in the contract of insurance, for the policy coverage to extend to relatives driving stolen cars. It was argued by the dissent that the words, "not regularly furnished," implied a positive requirement that the car be furnished, *i.e.*, loaned with permission, and thus the policy was not intended to include a stolen car which was not furnished at all.[2] The purpose of the "regular use" clause was to withdraw from coverage cars not owned by the insured which were used often or regularly by the insured or his family.[3] The

[1] Sperling v. Great Am. Indem. Co., 7 N.Y.2d 442, 446, 199 N.Y.S.2d 465, 468, 166 N.E.2d 482, 484 (1960). The term "relative" was defined in the policy as meaning "a relative who is a resident of the same household," and the term "nonowned automobile," was defined as meaning "an automobile or trailer not owned by the named insured or any relative, other than a temporary substitute automobile." *Supra* at 446, 199 N.Y.S.2d at 468, 166 N.E.2d at 484.

[2] This was in fact one of the main points in the dissenting opinion written by Judge Foster. "The phrase most opposite to the phrase 'not regularly furnished,' and the one that would commonly come to mind, is 'occasionally furnished.' To adopt such a construction is not writing anything in the policy. It is simply adopting the most natural implication that arises from the key word 'furnished,' and carries with it the idea of use with permission, express or implied. A stolen car is never 'furnished' and of course not operated with permission, express or implied." *Id.* at 453, 199 N.Y.S.2d at 474, 166 N.E.2d at 488.

[3] See Campbell v. Aetna Cas. & Sur. Co., 211 F.2d 732 (4th Cir. 1954); Miller v. Farmers' Mut. Auto Ins. Co., 179 Kan. 50, 292 P.2d 711 (1956); Vern v. Merchants Mut. Cas. Co., 21 Misc. 2d 51, 118 N.Y.S.2d 672 (Sup. Ct. 1952); Farm Bureau Mut. Auto Ins. v. Boecher, 48 N.E.2d 895 (Ohio Ct. App. 1942).

insurance coverage was not intended to reach such cars because the premiums were insufficient to justify the risks involved. Concededly, consent of the owner was lacking in this case. However, since the words "not regularly furnished" were not designed to require permission, it is difficult to say that they should imply the affirmative condition that permission was required for coverage. It is clear that a stolen car is not within the exclusion of cars furnished for regular use and if permission for occasional use is not implied from the positive exclusion it would seem that the stolen car is within the scope of the policy. As the court said, to interpret the word "furnished" as requiring consent would entail rewriting the phrase "not regularly furnished" so as to read "occasionally furnished, with the permission of the owner" thereby converting a negative condition into a positive condition, not furthering the purpose which the limitation of coverage was designed to serve.[4] Moreover, if the insurer intended to make permission a condition of liability in the case of nonowned automobiles they could easily have made it an express requirement as they did for vehicles owned by the insured.

The inclusion of a stolen car within the literal terms of the contract of insurance is clear, but several policy considerations raised by the dissent cast some doubt whether inclusion is wise. The dissent argued that it was inconceivable that the parties intended the policy to cover stolen cars.[5] This might have been the subjective intent of the insurer but he failed to express this intent objectively by excluding stolen cars in the words of the contract. Since the insurer prepares the insurance policy and the insured is forced to accept it as written it is generally held that any ambiguity must be construed against the insurer.[6] In a case where a literal reading includes coverage, a universally accepted rule of construction might well be the determining factor.

The dissent also stressed the argument that holding the insurance company liable would in effect make the insured the beneficiary of her own crime in that she was driving a stolen car at the time of the accident.[7] Arguably, the same defense could be applied whenever an insured violated the law while operating a motor vehicle.[8] Furthermore, the insurer is not asked to indemnify the insured for the criminal consequences of her stealing the car, but rather for the results of her negligence in the operation of the car.[9] The point is difficult however for the accident did occur when the

---

[4] Sperling v. Great Am. Indem. Co., *supra* note 1, at 446, 447, 199 N.Y.S.2d at 469, 166 N.E.2d at 485.

[5] *Id.* at 453, 199 N.Y.S.2d at 474, 166 N.E.2d at 488.

[6] Bachman v. Independence Indem. Co., 214 Cal. 529, 6 P.2d 943 (1931); Greaves v. Pub. Serv. Mut. Ins. Co., 5 N.Y.2d 120, 181 N.Y.S.2d 489, 155 N.E.2d 390 (1959); Bobier v. National Cas. Co., 143 Ohio St. 215, 54 N.E.2d 798 (1944).

[7] Sperling v. Great Am. Indem. Co., *supra* note 1, at 453, 199 N.Y.S.2d at 474, 166 N.E.2d at 488.

[8] See Fireman's Fund Ins. Co. v. Haley, 129 Miss. 525, 92 So. 635 (1922); Sky v. Keystone Mut. Cas. Co., 150 Pa. Super. 613, 29 A.2d 230 (1942).

[9] See Messersmith v. American Fid. Co., 232 N.Y. 161, 133 N.E. 432 (1921); Annot., 19 A.L.R. 876 (1922).

daughter was attempting to elude the police who were in pursuit of the stolen car. But the principle remains that a person should not profit from his own wrong, and it is difficult to see how the daughter made a profit by committing the crime.

On balance the court seems to give great weight to the social policy of equalization of risk and compensation for innocent victims. This position of the court appears to be justified from a policy standpoint because the New York Legislature has expressed a definite desire to protect the traveller on the highways from the hazards of motor travel apart from merely holding the tortfeasor responsible in damages. Since 1929 New York has had a Motor Vehicle Safety Responsibility Act,[10] requiring proof of financial security after the first accident. In 1957 New York passed the Motor Vehicle Financial Security Act[11] which requires proof of financial security prior to registration of the automobile. It is the declared purpose of the new act that innocent victims of motor vehicle accidents be compensated for physical injury and monetary loss inflicted upon them.[12] Policies of insurance written under these laws should be interpreted liberally to further the purpose expressed by the legislature.[13]

Initially, this decision seems difficult to justify, but viewed in the light of other decisions dealing with related areas of automobile insurance law, it becomes easier to accept. An Illinois Court reached the same result in a recent case when faced with an analogous fact situation.[14] The policy, as in the *Sperling* case, covered nonowned automobiles not regularly furnished for the use of the insured. The accident occurred when the insured employee was driving his employer's car without authority and after working hours. The Court reasoned that the car was not furnished for the regular use of the insured employee at the time of the accident and that there was nothing in the policy which excluded coverage in the event the car

[10] N.Y. Vehicle and Traffic Law §§ 330-368. On this general subject see Collins, "Implementation of Public Policy Against Financially Irresponsible Motorists," 19 Brooklyn L. Rev. 11 (1952); Legislation, 26 Fordham L. Rev. 170 (1957); Note, 8 Syracuse L. Rev. 223 (1957).

[11] N.Y. Vehicle and Traffic Law §§ 310-321.

[12] N.Y. Vehicle and Traffic Law § 310 reads in part as follows: "Declaration of purpose. The legislature is concerned over the rising toll of motor vehicle accidents and the suffering and loss thereby inflicted. The legislature determines that it is a matter of grave concern that motorists shall be financially able to respond in damages for their negligent acts, so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them. . . ."

[13] 7 Appleman, Insurance Law and Practice § 4295 at 62, 63 (1942). "The beneficiaries of such an act and of such a policy when issued, are the members of the general public who may be injured in automobile accidents by such person; and the policies are generally construed with great liberality to accomplish their purpose." On purpose of compulsory insurance statute see N.Y. Edison Co. v. City of N.Y., 268 N.Y. 669, 198 N.E. 550 (1936). On purpose of similar statute in Massachusetts see Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

[14] Schoenknecht v. Prairie State Farmers Ins. Ass'n, 27 Ill. App. 2d 83, 169 N.E.2d 148 (1960).

involved was being operated by the insured without the owner's knowledge. This case is not quite as far-reaching as *Sperling* in that the taking was authorized in the first place, but the principles applied to both cases are the same.

A New York case[15] and an Ohio case[16] dealing with the related question of permission both held that the requirement was satisfied even though at the time of the accident the person who had obtained permission to drive the car of the insured had relinquished the wheel to a companion against the instructions of the insured. These cases are further illustrations of the liberality of the courts in interpreting automobile insurance policies.

In this age of high-powered automobiles and crowded highways everyone should have the assurance that if he is involved in an accident he will be compensated at least to some degree for his loss. The great danger involved due to the increased number of cars on the road would seem to require adequate liability insurance coverage for all drivers. By the same token, insurance companies should offer policies which provide for a reasonable amount of coverage. The innocent victim's wife in the *Sperling* case should be compensated by someone and perhaps it is better to spread the risk among society as a whole rather than placing the burden entirely on the person responsible for the accident.[17] While a consideration of these policies of the law should not extend coverage beyond the limits of the contract, they should be considered in construing any ambiguity with respect to coverage.

---

[15] Grant v. Knepper, 245 N.Y. 158, 156 N.E. 650 (1927). See Annot., 54 A.L.R. 845 (1928).

[16] Brown v. Kennedy, 141 Ohio St. 457, 48 N.E.2d 857 (1943).

[17] For criticism of this view see Cooperrider, Book Review, 56 Mich. L. Rev. 1291 (1958).