

# HIGH COURT OF AUSTRALIA

Government Insurance Office of N.S.W.

Vs.

R.J. Green & Lloyd Pty. Ltd.

(Barwick C.J.(1), McTiernan(2), Taylor(3), Menzies(4) and Windeyer(5) JJ. )

25 February

BARWICK C.J.

The respondent is a building contractor whose equipment at the course of building construction. The hoist took the form of a jib or tower with two wheels at its lower end to facilitate its placement in working position. When about to move this equipment from one scene of its building operations to another, the respondent brought to the location of the hoist its table-top truck. Workmen employed by the respondent raised the upper end of the jib whereupon the truck was backed under the up-raised portion of the hoist and planks were laid from the rear of the table-top to points on the ground coincident with the wheels of the hoist. A rope was then secured to the upper end of the jib and passed around a horizontal timber member on the track immediately behind its driver's cabin. The workmen, partly by pulling on this rope and partly by pushing the base of the hoist, then moved it into a position over the table-top where its upper end was presumably near the driver's cabin and its lower end overhanging the table-top with its wheels on the inclined planks. Apparently when the upper end had reached a point where no further progress could be obtained by pulling on the rope the workmen raised the lower end of the planks on which the wheels of the hoist were resting, raising the planks above the horizontal so that the hoist would tend to run on to the table-top by means of its own wheels. During the course of this part of the operation the hoist slid off the planks and injured one of the workmen. As a result, the respondent became liable to the workman for damages for the bodily injury which he had sustained by the hoist thus falling upon him. (at p440)

2. The respondent, in compliance with the Motor Vehicles (Third Party Insurance) Act, 1942-1951 of the State of New South Wales (the Act), had kept on foot with respect to its motor truck a policy of insurance with the appellant in statutory form in conformity with s. 10 of the Act and the Regulations made under the Act. The policy recites that the respondent had paid the premium appropriate to the use of the motor vehicle for purposes set out in item 3 of a schedule to the policy, there being a statement that no other use of the vehicle was permitted without notice and the payment of a further premium. Item 3 of the schedule to the policy did not describe a purpose but described a vehicle as adapted for the conveyance of goods. The operative promise in the policy was that the appellant would indemnify the respondent against "all liability incurred by the respondent in respect of the death or bodily injury to any person caused by or arising out of the use of the motor vehicle". (at p441)

3. In an action on this promise for the amount paid or payable by way of damage to the injured workman the Supreme Court held that the workman's injury arose out of the use of the insured motor vehicle and accordingly found a verdict for the respondent for an amount of 1,919 pounds 5s.

5d., being the amount paid or payable by the respondent to the injured workman. (at p441)

4. The appellant appeals to this Court submitting that the Supreme Court was in error in point of law in holding that the injury received by the workman arose out of the use of the motor vehicle within the meaning of the policy of insurance. The appellant makes two submissions: first, that the motor vehicle was not being "used" at the time that the injury was received by the workman; and, secondly, that even if the vehicle was then being "used" the injury of the workman did not arise out of the use of the motor vehicle. (at p441)

5. The terms in which the indemnity in the policy of insurance are expressed are identical with the relevant language of s. 10 of the Act. The appellant calls in aid in the construction of this clause of the policy the provisions of the Act generally, and seeks thereby to support its contention that injury will not be caused by or arise out of the use of a motor vehicle within the meaning of the policy unless the motor vehicle is in motion, or some part of it is in operation so that the injury is caused by or arises out of the use involving that motion or that operation. (at p441)

6. I agree that some assistance is obtained from a consideration of the terms of the Act when deciding what is the proper area covered by the indemnity of the policy; but I do not think that that consideration supports the contention of the appellant: rather I think it emphasizes that the Act is not limited to the use of a vehicle in or upon public thoroughfares or to its use in movements: and that in choosing the expression "the use of the motor vehicle" as the basis for the requirement of a policy of insurance and for the delimitation of the area of the indemnity to be obtained, the Act indicates an intention to cover a very wide field, a field more extensive than what might be called the traffic use of the motor vehicle. (at p442)

7. I have no difficulty in the present case in concluding that the insured motor vehicle was being "used" during the operation of placing this hoist upon its table-top. The vehicle had been brought to the place where the hoist was in order to transport it thence to another place; the positioning of the hoist upon the motor vehicle was an indispensable step in that operation. At the very lowest, the table-top of the truck was being used as an integral and significant part of the truck to receive the load for the purpose of its conveyance. Indeed, part of the lorry was in fact being used as a mechanical aid to draw the hoist on to the table-top, though no part of the vehicle was moving in the course of that operation. (at p442)

8. I do not think that every act in loading a vehicle for the conveyance of what is loaded upon it is necessarily a use or a part of the use of the motor vehicle. But the act of actually placing the load on the part of the vehicle designed to bear it during transport and for the purpose of its transportation, must, in my opinion, be a use of the motor vehicle in the sense relevant to the Act and to the terms of the policy. In my opinion, the relevant use of the vehicle cannot be confined to the periods it is in motion, or its parts moving in some operation. It may be in use though stationary. (at p442)

9. I have also found little difficulty in concluding that upon the particular facts of the case the injury to the workman did arise out of the relevant use of the motor vehicle, and I am well content to hold that the Supreme Court was right in finding a verdict for the respondent in the action. The hoist fell as it was being placed in position on the truck. The operation of raising the planks, which being done carelessly or inexpertly, was the immediate cause of the workman's injury, was part of the very act of placing the hoist upon the table-top of the lorry. The height to which the planks were raised, a circumstance inextricably involved in the result, was determined by the physical characteristics of the lorry and of the hoist. (at p442)

10. But I have a good deal of difficulty in expressing as a matter of law with any degree of satisfaction and certainty the area which is covered by the expression "caused by or arising out of the use of the motor vehicle", as used in the Act and the policy. The phrase "arising out of" is not here found in the same collocation as it is in workers' compensation legislation, where it is in juxtaposition to a temporal expression. In that sphere the words "arising out of" clearly point to a causal relationship. The words "arising out of" in s. 10 of the Act and in the indemnity clause of the policy are not merely, if at all, explicative of the words "caused by"; they are really used in contrast to them; and in the total expression are extensive in their import. Bearing in mind the general purpose of the Act I think the expression "arising out of" must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words "caused by". It may be that an association of the injury with the use of the vehicle while it cannot be said that that use was casually related to the injury may yet be enough to satisfy the expression "arise out of" as used in the Act and in the policy. (at p443)

11. On the other hand, injuries received away from the vehicle but in the course of bringing goods or things to it to be loaded upon it ought not, if no more appears, to be regarded as having arisen out of the use of the motor vehicle. To say that the operation of loading and unloading a transport vehicle is part of its use is to state the matter too widely. The general observation of Jacobs J. in *Vaux v. Law Union and Rock Insurance Co. Ltd.* ([1960](#)) [78 WN \(NSW\) 588](#) is not, in my respectful opinion, expressed as a general proposition, supportable. But in saying so much I cast no doubt on the propriety of the conclusion in fact to which his Honour came in that case. (at p443)

12. But however that may be I see no need in order to decide this case to attempt an exposition universally applicable of what constitutes a use for the purposes of the Act and of a policy such as the present, or to express a general view as to the precise ambit of the expression "arising out of". Indeed, it seems to me unprofitable to attempt to interpolate in the words of the Act or the words of the indemnity in the policy some adjective or adjectival expression in an endeavour to limit the generality of the expression "the use of the motor vehicle" so as to confine it within what is considered to be the evident purpose of the legislation. No doubt there are uses of the fabric or structure of the motor vehicle which are outside the purview of the legislation and the words of the policy, but for my part I do not derive much, if any, assistance in identifying the included uses of the motor vehicle by inserting words, e.g. "as such" or "vehicular" into the statutory expression whether as in the terms of the Act or as in the prescribed terms of the policy. I doubt whether the words "as such" would offer any solution of the problems which are thrown up by the need to apply the statutory expression to a great range of situations; nor do I think that any real assistance is obtained by qualifying the word "use" by the word "vehicular". If this adjective is used to import the notion of movement, I do not think that any such limitation is warranted by the Act. Plainly the Act intends to cover vehicles whose use takes place when as vehicles in the "vehicular" sense they are stationary, e.g. tar boilers - see item 17 of the schedule to the policy. If this adjective does no more than call attention to the use of the vehicle "as such", I have already expressed myself as to it. (at p444)

13. With every respect, I do not think that we should be warranted in intruding into the statutory expression the limitation of the relevant use of the motor vehicle to its negligent use as was done by the Supreme Court of New Zealand in connexion with a somewhat different statutory formula in *A.P.A. Union Assurance Society v. Ritchie and Barton Ginger & Co. Ltd.* ([1937](#)) [NZLR 414](#); *Commercial Union Insurance Co. Ltd. v. Colonial Carrying Co. of New Zealand Ltd.* ([1937](#)) [NZLR 1041](#) and *State Fire Insurance Office v Blackwood* ([1956](#)) [NZLR 128](#) The Act does not evidence any intention to limit the injury against the liability for which the insured is to be indemnified to

injury caused by or arising out of a negligent use of the motor vehicle. Of course, the liability of the owner to the injured person may require some tortious act, usually negligence for which the owner is responsible though many cases of liability will arise out of workmen's compensation legislation. But the necessity for some tortious or other basis of the liability of the owner does not require any qualification of the word "use" in the statutory expression. It is the injury which must be caused or arise out of the use, not the liability for the injury. (at p444)

14. After consideration, I have come to think it better to endeavour to apply the statutory expression as it is to circumstances as they arise, bearing in mind, as my brother Menzies has pointed out in *Fawcett v. B.H.P. By-Products Pty. Ltd.* [1960] HCA 59; (1960) 104 CLR 80, at p 87, that in this field one should not be seeking subtleties but rather applying broad and practical conceptions. (at p444)

15. The facts in this case, in my opinion, plainly fall within the terms of the policy. (at p444)

16. I am of opinion that the appeal should be dismissed. (at p444)

MCTIERNAN J. I agree with the reasons for judgment of the Chief Justice and his conclusion. (at p444)

TAYLOR J. I agree with the Chief Justice in thinking that the facts show that the injury for which the respondent became liable in damages was a liability "arising out of" the use of the motor vehicle in question. I have nothing to add to his reasons and I would, therefore, dismiss the appeal. (at p445)

MENZIES J. One Williams, an employee of the respondent, was injured in circumstances giving rise to liability on the part of the respondent to pay damages. That liability was compromised and the respondent sued the appellant for an indemnity under, and by virtue of, a third-party insurance policy covering liability incurred by the owner of a vehicle in respect of bodily injury to any person "caused by or arising out of the use of the motor vehicle". (at p445)

2. Upon the facts found by Manning J., I consider that, at the time when Williams was injured, the respondent's motor truck covered by the insurance policy, was being "used" by the respondent for the purposes of that policy. (at p445)

3. The use being made of the stationary truck was the receiving of a hoist which was being loaded upon the tray for transport to another building site. A rope was attached to the top end of the hoist and ran around a board which formed part of the framework of the truck body. Then, as found by his Honour: "The heavy or bottom end of the hoist was then placed on planks and efforts were made to slide the hoist up these planks onto the tray of the truck whilst the front or light end was continuously held attached to the front end of the truck as mentioned. Whilst this operation was proceeding, the hoist slewed and fell", injuring Williams. The hoist fell because the men who were handling it at the back of the truck exerted lifting pressure unevenly. (at p445)

4. Manning J. held that the injury to Williams was caused by, or arose out of, the use of the truck. (at p445)

5. I do not think that the mere fact that the hoist was being loaded upon the truck when it fell is enough to warrant the conclusion that Williams' injury was caused by the use of the truck. The question which has troubled me is whether the injury in question arose out of the use of the truck.

The words "arising out of the use" have no doubt a wider connotation than the words "caused by . . . the use". To my mind, however, they do import a relationship between the use of the vehicle and the injury which has some causal element in it. They would, for instance, cover the relationship between the use of the vehicle and the injury relied upon in *Government Insurance Office of N.S.W. v. King* (1960) [104 CLR 93](#) had what was there being done to the motor vehicle amounted to the use of that vehicle for the purposes of the policy. (at p445)

6. With some hesitation, I have reached the conclusion here that there was sufficient connexion between the use of the truck and the accident to justify the conclusion that the injury did arise out of the use of the truck. (at p446)

7. I agree that this appeal should be dismissed. (at p446)

WINDEYER J. The question in this case is whether the appellant is liable as insurer under an insurance policy. The policy is in the form required by regulations made under the [Motor Vehicles \(Third Party Insurance\) Act, 1942](#) (N.S.W.). The policy insures the owner of a motor vehicle "against all liability . . . incurred by the owner and/or the driver in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle in any part of the Commonwealth of Australia". It is not disputed that the respondent incurred a liability in the sum of 1,837 pounds to one of its servants in respect of bodily injury suffered by him while helping to load a builder's hoist on to a motor truck for the purpose of its being conveyed to another site. And it was proved at the trial, although not alleged in the declaration, that the respondent was the owner of the motor truck. The only question for the learned trial judge was therefore whether - on the facts proved, and I need not repeat them - the bodily injury, for the consequences of which the respondent became liable in damages, was caused by or arose out of the use of a motor vehicle. (at p446)

2. The appellant sought to limit the expression "injury caused by or arising out of the use of a motor vehicle" to injuries resulting from the movement of the vehicle or from the operation of some part of its mechanism. But no sound reason was given for restricting the phrase "the use of a motor vehicle" in this way. The only limitation upon its generality that I can see is that the injury must be in some way a consequence of a use of the vehicle as a motor vehicle. Any use that is not utterly foreign to its character as a motor vehicle is, I consider, covered by the words. Various illustrations have been given or can be imagined of a use that is not covered. One will suffice. Suppose a vehicle owner, negligently or with intent to cause harm, ties a trip wire between his stationary vehicle and a tree, whereby someone suffers bodily injury: I would think that - generally speaking at all events - the owner, although liable in damages, could not recover under the policy. The injury, it might be said, arose out of his use of the motor vehicle. But it was used as a physical thing to which to fix a wire, not in any sense in its character as a motor vehicle. As I understand the cases, it is this limitation of the generality of the idea of use that here and in New Zealand has been expressed by such qualifying phrases as a use of the motor vehicle "as such", "qua motor vehicle", "in its vehicular function". I see no objection to such expressions if they be understood, as I consider they should be understood, as merely excluding some use that is altogether foreign to any use of the vehicle in its ordinary character and for its normal purposes. Repeating what I said in *Fawcett v. B.H.P. By-Products Pty. Ltd.* [[1960](#)] [HCA 59](#); ([1960](#)) [104 CLR 80](#), at p 91, I consider that the kind of use of a motor vehicle that is covered by the policy is driving it or doing something to it or with it that is incidental to its normal use as a motor vehicle. I shall not attempt to better this by some other paraphrase of the words of the policy. In my view no paraphrase is really necessary. I refer, however, as expressing the same idea in a similar context, to what Rand J. said in the Supreme Court of Canada in *Stevenson v. Reliance Petroleum Ltd.* ([1956](#)) [5 DLR \(2d\) 673](#), a case referred to

by Bunbury C.J. in his judgment in *Welsh v. The Queen* ([1962 Tas SR 213](#)) Of course, the nature of the particular vehicle must be considered in every case. The policy covers a vehicle of a kind described when used for its ordinary purposes. In the present case the vehicle, a motor truck, was classified as a "goods vehicle". The loading of a vehicle designed to be used, and ordinarily used, for the carriage of goods is a necessary element in its ordinary use. Loading it is incidental to the use of it in the normal way. But that does not mean that whatever is done that is incidental or ancillary to such loading is itself a use of the vehicle in the relevant sense. Therefore, if a person suffers bodily injury when engaged upon some task connected with loading, the question whether his injury was caused by or arose out of the use of the vehicle depends upon whether it was a consequence, direct and not remote, of the operation of loading. (at p447)

3. But the question that arises in cases such as this is not answered simply by asking was the vehicle being used. The words "injury caused by or arising out of the use of the vehicle" postulate a causal relationship between the use of the vehicle and the injury. "Caused by" connotes a "direct" or "proximate" relationship of cause and effect. "Arising out of" extends this to a result that is less immediate; but it still carries a sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant, not considered to be, in a relevant causal sense, a contributing factor. But it is not necessary for the solution of this case to go into the wordy jungle that surrounds the lawyer's concept of causation. I have on other occasions sought to explain my understanding of this topic: see in particular *The National Insurance Co. of New Zealand Ltd. v. Espagne* ([1961 HCA 15](#); [\(1961\) 105 CLR 569](#)), at pp 590 597 (at p447)

4. In my opinion the decision of the learned trial judge was right. The question for him was ultimately one of fact, to be resolved on the facts of the case before him. Comparison with the facts of other cases can be of little help. (at p448)

5. I would dismiss the appeal. (at p448)

## **ORDER**

Appeal dismissed with costs

</html</htm