

CANADA / JUDGMENT

Vergata v. Vergata et al.

[1978] 1 SCR 289

COURT

Supreme Court of Canada

DECIDED

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Vergata v. Vergata et al.

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Date

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Report

[1978] 1 SCR 289

Judges

Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Manitoba

Subjects

Insurance

Decision Content

Supreme Court of Canada

Vergata v. Vergata et al., [1978] 1 S.C.R. 289

Date: 1977-06-14

Benito Vergata Appellant;

and

Rita Vergata and The Manitoba Public Insurance Corporation Respondents.

1977: March 3; 1977: June 14.

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Insurance—Motor vehicles—Car owner killed while passenger in own automobile—Action by owner's estate against driver—Universal compulsory automobile insurance scheme—Exclusion for loss resulting from death of insured—Driver not excluded from coverage—Separate contracts—The Manitoba Public Insurance Corporation Act, C.S.M. c. A180—Man. Reg. 333/74, s. 31(3)(h).

The appellant (BV) was the driver of a motor car which was involved in a collision with another car in Manitoba, where all the parties had their domicile. The registered owner of the automobile driven by the appellant was his brother (AV), who was killed in the accident. The individual respondent (RV), both personally and as administratrix of the estate, sued the appellant alleging his gross negligence. Whereupon appellant requested the respondent Corporation to take up his defence and to provide indemnification, if needed, under the universal compulsory automobile insurance scheme evidenced by Regulation 333/74, being a regulation respecting coverage under The Manitoba Public Insurance Corporation Act, C.S.M. c. A180. This request was denied by the Corporation and appellant made an application to the Court of Queen's Bench for a declaration of his rights; he was successful in that Court but the Court of Appeal set aside the order. Hence the appeal to this Court, in which RV took no active part.

It was common ground that: 1. At all material times BV was the holder of a valid and subsisting driver's certificate. 2. At all material times AV was the holder of a valid and subsisting owner's certificate designating the motor vehicle BV was driving when the fatal collision occurred. 3. BV was operating the vehicle with AV's consent. The Corporation's denial of coverage was based on the exception provided in para. (h) of s. 31(3) of the Regulation, the relevant portion of which reads: "The Corporation shall not pay insurance moneys under this Part... (h) for loss or damages resulting from bodily injury to, or the death of, an insured".

Held (Martland, Judson, Dickson and de Grandpré JJ. dissenting): The appeal should be allowed and the judgment at trial restored.

Per Laskin C.J. and Ritchie, Spence, Pigeon and Beetz JJ.: Although neither owners' policies nor drivers' policies are issued under the Manitoba scheme, the owner's and the driver's certificates evidence separate contracts which provide distinct coverages and must be construed as if the terms of each were separately set forth instead of having to be gathered from the Act and the Regulation. If appellant had been provided with a certificate setting forth the terms of the coverage under his driver's certificate, the exclusion of liability for loss resulting from the death of "an insured" could not have been read otherwise than as referring to an insured under that particular certificate. The exclusion from the coverage under the driver's certificate cannot be

read as referring to an insured under the owner's certificate unless the driver is considered as insured under the owner's contract.

The difference between the Manitoba scheme and the coverage under ordinary commercial motor vehicle owner liability policies is that, in the latter case, the contract insures a person named therein and every other person who, with his consent, personally drives the automobile. Under the Manitoba scheme coverage is provided to an "insured" and an "insured" includes the holder of a driver's certificate as such. Even under an ordinary commercial policy, the House of Lords held in *Digby v. General Accident Fire and Life Assurance Corporation*, [1943] A.C. 121, that the stipulation in favour of other drivers was to be construed "as creating a new contract". A fortiori must it be so when, as here, there is a separate driver's certificate involving a distinct coverage called a "Driver's policy" for which a separate premium is collected and in case of a bad driving record, an additional premium is charged.

Murray Bay Motor Co. v. Bélair Insurance Co., [1975] 1 S.C.R. 68, distinguished.

Per Martland, Judson, Dickson, and de Grandpré JJ., dissenting: The appellant's submission that, under the Manitoba scheme, the coverage to the owner is separate and distinct from the coverage of the driver should not be accepted. The Court of Appeal was correct in holding that the word "insured" in s. 31(1) and in s. 31(3)(h) "refers to both owner and driver and is not ambiguous", so that the latter operates to exclude public liability coverage by respondent to appellant. Also, as held by the Court of Appeal, once it is conceded that coverage is provided to BV by the owner's certificate, as an unnamed insured, subject to the exclusions mentioned in s. 31(3), resort may not be made to the extended coverage provided by a driver's certificate under s. 31 (2) of the Regulation. BV was entitled to the coverage under s. 31(1) in the same manner and to the same extent as any other holder of an owner's or driver's certificate, and as such was subject to the exclusions or limitations of coverage mentioned in s. 31(3) of the Regulation. Extended coverage under s. 31(2) respecting a driver's certificate does not apply when, as here, the particular driver is clearly an insured under s. 31(1) as operator of the insured vehicle, the one designated in the owner's certificate.

APPEAL from a judgment of the Court of Appeal for Manitoba[1] allowing an appeal from a judgment of Dewar C.J.Q.B. Appeal allowed, Martland, Judson, Dickson, and de Grandpré JJ., dissenting.

R. Tapper, for the appellant.

S.S. Kapoor and W.S. Saranchuk, for the respondents.

The judgment of Laskin C.J. and Ritchie, Spence, Pigeon and Beetz JJ. was delivered by

PIGEON J.—The question on this appeal is whether Benito Vergata, the appellant, is entitled to be indemnified by The Manitoba Public Insurance Corporation against any judgment for damages he may suffer in an action brought against him by Rita Vergata, suing personally and as administratrix of the estate of appellant's deceased brother, Antonio Vergata, who was killed while riding as a passenger in his own motor vehicle when that vehicle, operated by Benito Vergata, collided with another. It is common ground that:

1. At all material times Benito Vergata was the holder of a valid and subsisting driver's certificate;
2. At all material times Antonio Vergata was the holder of a valid and subsisting owner's certificate designating the motor vehicle Benito Vergata was driving when the fatal collision occurred;
3. Benito Vergata was operating the vehicle with Antonio's consent;

The Corporation's denial of coverage is based on the exception provided in para. (h) of s. 31(3) of the Manitoba Automobile Insurance Regulation, the relevant portion of which reads:

31(3) The Corporation shall not pay insurance moneys under this Part

...

(h) for loss or damages resulting from bodily injury to, or the death of, an insured;

Reference should also be made to ss. 30, 31(1) and 31(2) which read:

DEFINITIONS

30 In this Part,

(a) "insured" means a person who is named in a valid and subsisting owner's certificate, and includes a person who,

(i) being named in a valid and subsisting driver's certificate; or

(ii) being a resident of a jurisdiction other than Manitoba,

(A) is qualified and authorized by law to operate a motor vehicle in the jurisdiction of his residence; and

(B) is at least sixteen years of age;

operates a vehicle designated in an owner's certificate with the consent of the person named therein;

(b) "insured vehicle", means a vehicle designated in a valid and subsisting owner's certificate;

- (c) “owner’s household” means a husband, a wife, a son or a daughter who ordinarily resides in the same dwelling unit or dwelling premises as an insured, and any other person who ordinarily resides in the same dwelling unit or dwelling premises as an insured.

COVERAGE

31(1) Subject to the Act and this regulation, coverage is hereby provided to an insured under this Part, for damages, in the amounts herein specified, for liability imposed by law in respect of bodily injuries to, or the death of, another person, or in respect of the loss of, or damage to, the property of another arising out of the ownership, use, or operation, of an insured vehicle by an insured, in Canada or the United States, or upon a vessel plying between the ports thereof.

DRIVER’S POLICY

31(2) Coverage under subsection (1) is extended to a person who is named in a valid and subsisting driver’s certificate, while he personally uses or operates a motor vehicle that is not otherwise insured for legal liability imposed by law arising out of the ownership, use, or operation thereof, if,

- (a) he believes, upon reasonable and probable grounds, that the vehicle is designated in a valid and subsisting owner’s certificate, or is otherwise insured against the legal liability imposed by law for the ownership, use, or operation thereof; and
- (b) the vehicle is not owned by the driver, or by his spouse, or by a person who ordinarily resides in the same dwelling unit or dwelling premises as the driver;

but no coverage extends under this section, by reason of a breach of condition under a policy of other insurance by which the vehicle is insured.

It must be noted, as stated by Dewar C.J.Q.B., that:

Under the universal compulsory insurance scheme administered by the respondent individual policies of insurance are not issued. Upon payment of the required premiums the insurer issues to an owner, an owner’s certificate designating a specific motor vehicle, and to a driver, a driver’s certificate. These certificates serve also in the case of an owner, as the owner’s certificate of automobile registration and, in the case of a driver, a driver’s licence, under The Highway Traffic Act. They are the only documents evidencing the existence of a contract of insurance.

In conclusion, Dewar C.J.Q.B. found that the exclusion would not apply. He said:

However interpreted, the exclusion must be construed with respect to a specific contract of insurance. Otherwise, it would appear any person holding an owner’s certificate or driver’s certificate must be regarded as “an insured”. Neither the statute nor the Regulations suggest such a result. A finding that the exclusion denies to Benito Vergata a right to indemnity under Antonio Vergata’s contract does not lead to the same conclusion with respect to Benito Vergata’s contract, which is a driver’s policy.

In, my view, this reasoning is well-founded. Although neither owners' policies nor drivers' policies are issued, the owner's and the driver's certificates evidence separate contracts which provide distinct coverages and must be construed as if the terms of each were separately set forth instead of having to be gathered from the Act and the Regulation. If appellant had been provided with a certificate setting forth the terms of the coverage under his driver's certificate, the exclusion of liability for loss resulting from the death of "an insured", could not have been read otherwise than as referring to an insured under that particular certificate. The exclusion from the coverage under the driver's certificate cannot be read as referring to an insured under the owner's certificate unless the driver is considered as insured under the owner's contract.

I cannot agree that under The Manitoba Public Insurance Corporation Act and Regulation it can be said that the cars are insured, not the drivers: the contrary appears from several provisions. The very first definition in s. 1(1) of the Act reads:

- (a) "additional premium" means the premium charged against an applicant for a driver's certificate by reason of demerit points charged against the applicant's record for convictions for offences designated in the regulations;

"Premium" is defined in the following terms:

(gg) "premium" means any sum of money paid or to be paid by an insured or an applicant for insurance to the corporation for the purchase of or the maintenance of insurance coverage provided under this Act or the regulations;

At this point I should note how, by the compulsory coverage of drivers, Manitoba has solved the problem of justifying increased premiums based on a motorist's record of traffic convictions. These are levied on the drivers, not on the owners. Under voluntary insurance, "non-owner's" policies are rare, car owners only are insured as a rule; there is therefore no obvious connection between the insured's record of convictions and the risk of accidents. It must often happen that the driver with a bad record is not the owner of the car. The provision for an increased premium based on each driver's record is cogent evidence that in the Manitoba scheme, the driver's certificate involves coverage separate from the owner's.

By Manitoba Regulation 26/74 dated January 25, 1974, published in the Manitoba Gazette on February 9, 1974, basic premium rates for drivers were fixed as follows:

3(2) The premium assessed as basic premium shall be fixed upon the basis of an applicant's sex, and an applicant's age, and the applicant shall be assessed for basic premium in the amount appropriate to the classification applicable to him or her as follows:

Age Group

Male Applicants

Female Applicants

16-24

\$25.00

\$10.00

25 and over

10.00

5.00

By the same regulation, the additional premium assessment was fixed at \$75 for 6 demerit points going up to \$325 for 20 demerit points. These premium rates were unchanged in Manitoba Regulation 332/74 “Respecting Drivers’ Certificates, Owners’ Certificates, Rates, and Agents” made and published at the same time as the Automobile Insurance Regulation previously referred to.

Under the Regulation, public liability coverage is by the terms of s. 31(1) provided to “an insured”. By the terms of the definition of “insured”, this “includes a person who, being named in a valid and subsisting driver’s certificate... operates a vehicle designated in an owner’s certificate with the consent of the person named therein”. This wording clearly indicates that the holder of a driver’s certificate is insured as such. It is true that, as a rule, it is a condition of his coverage that he must be driving a vehicle covered by an owner’s certificate, but s. 31(2) shows that his coverage does not come from the owner’s contract because it will exist even when there is no such contract if “he believes, upon reasonable and probable grounds, that the vehicle is designated in a valid and subsisting owner’s certificate, or is otherwise insured against...”.

That the driver’s certificate is a separate contract also appears from the caption “DRIVER’S POLICY” above s. 31(2) of the Regulation. This caption cannot be considered as limiting to the cases contemplated in s. 31(2) the extent of the driver’s policy. This would be contrary to the opening words: “Coverage under subsection 1 is extended.” It would not be an extension unless there was already a primary coverage under s. 31(1) by virtue of the definition of “insured” in s. 30(a).

The difference between the Manitoba scheme and the coverage under ordinary commercial motor vehicle owner liability policies is that, in the latter case, the contract insures a person named therein and every other person who, with his consent, personally drives the automobile. Under the Manitoba scheme coverage is provided to an “insured” and an “insured” includes the holder of a driver’s certificate as such. Even under an ordinary commercial policy, the House of Lords held in *Digby v. General Accident Fire and Life Assurance Corporation*[2] that the stipulation in favour of other drivers was to be construed “as creating a new contract” (per Lord Wright at p. 142). A fortiori must it be so when there is a separate driver’s certificate involving a distinct coverage called a “DRIVER’S POLICY” for which a separate premium is collected and in case of a bad driving record, an additional premium is charged. The judgment of this Court in *Murray Bay Motor Company v. Bélair Insurance Company*[3] was concerned only with an automobile owner’s policy and dealt with the exclusion of liability in respect of relatives “of any person insured by this policy”. The wording of the Manitoba Regulation is not the same and the

general scheme of the Manitoba public system is also totally different. In my view, this makes the case irrelevant here. I have noted with interest that the wording of the Manitoba exclusion of liability in respect of near relatives (s.31(3)(f)) is such that an owner is not deprived of protection against claims by such relatives of the driver. This exclusion applies only in respect of “the son, daughter or spouse of an insured while an occupant of his insured vehicle”; (underlining added).

I should point out that to construe “an insured” in exclusion (h) as referring only to a person insured by the certificate under which indemnity is claimed, does not render the provision useless. It will be applicable in the case of a driver from another jurisdiction who is an “insured” by virtue of para. (ii) of the definition. This is logical because it puts such drivers substantially in the same situation as under a typical commercial automobile owner’s policy. What would be illogical would be to preserve part of Murray Bay while taking care to do away with its major point.

I would allow the appeal and restore the judgment of Dewar C.J.Q.B. with costs in this Court and in the Court of Appeal against the Manitoba Public Insurance Corporation.

The judgment of Martland, Judson, Dickson and de Grandpré JJ. was delivered by

DE GRANDPRE J. (dissenting)—On April 22, 1974, appellant was driving a motor car which was involved in a collision with another car in Manitoba, where all the parties had their domicile. The registered owner of the automobile driven by appellant was his brother Antonio, who was killed in the accident. Respondent Rita Vergata, both personally and as administratrix of the estate, sued appellant alleging his gross negligence. Whereupon appellant requested the respondent Corporation to take up his defence and to provide indemnification, if needed, under the universal compulsory automobile insurance scheme evidenced by Regulation 333/74, being a regulation respecting coverage under The Manitoba Public Insurance Corporation Act, (C.S.M.) c. A180. This request was denied by the Corporation and appellant made an application to the Court of Queen’s Bench for a declaration of his rights; he was successful in that Court[4] but the Court of Appeal set aside the order[5]. Hence this appeal, in which Rita Vergata has taken no active part.

Under the Manitoba Scheme, the only documents evidencing insurance protection are issued by the licencing authorities, under The Highway Traffic Act:

- an owner’s certificate designating the vehicle;
- a driver’s certificate.

It is common ground that two valid certificates were subsisting in the case at bar, one in the name of Antonio Vergata as owner, identifying the vehicle, and another in the name of Benito Vergata as driver. These documents being very short, the extent of the coverage is to be found in the regulation.

Appellant’s submissions are as follows:

- 1) section 31(1) is the relevant insuring section for purposes of public liability insurance; it creates coverage in favour of the person most relevant to the vehicle in the event, here the driver; it follows that the exclusion expressed in s. 31(3)(h) “for loss... resulting from... the death of an insured” can refer to only one death, namely that of the insured driver;
- 2) in the alternative, if s. 31(3) does operate to exclude coverage to the driver when the claim is made by the owner or by his estate, then s. 31(2) operates to supply such coverage.

Before examining each one of these submissions, a word should be said about the general scheme of the regulation. Three parts thereof are relevant to my purpose, namely:

—Part II creating accident insurance benefits generally in favour of all persons suffering bodily injuries or death as a result of the operation of a motor car, be it as driver, passenger or pedestrian;

—Part III entitled “All Perils Insurance” providing indemnities in respect of loss or damage to the vehicle designated in a valid and subsisting owner’s certificate;

—Part IV entitled “Public Liability and Property Damage” with which we are concerned in the case at bar.

It is to be noted that the coverage created by these three parts is of the type to be found in modern policies of automobile insurance.

I—Sections 31(1) and 31(3) (h)

As already noted, the coverage created by Part IV of the Regulation is found in s. 31(1). Leaving aside those words that have no relevancy here, the section reads:

... coverage is hereby provided to an insured ... for damages ... for liability imposed by law in respect of ... the death of another person... arising out of the ownership, use, or operation, of an insured vehicle by an insured,...

For the purpose of this Part, the word “insured”, is defined in the previous section: 30 In this Part,

- (a) “insured” means a person who is named in a valid and subsisting owner’s certificate, and includes a person who,
 - (i) being named in a valid and subsisting driver’s certificate;

...

operates a vehicle designated in an owner’s certificate with the consent of the person named therein;

- (b) ...

As to “insured vehicle”, the definition found in s. 30(b) reads:

“insured vehicle” means a vehicle designated in a valid and subsisting owner’s certificate.

This general coverage is subject to a number of exclusions listed in s. 31(3) under the heading “Where no coverage provided”. These exclusions are fourteen in number and deal with all sorts of situations and of classes of persons. For our purposes, it is sufficient to quote only the following:

The corporation shall not pay insurance moneys under this Part

...

- (f) for loss or damage resulting from bodily injury to, or the death of, the son, daughter, or spouse of an insured while an occupant of his insured vehicle; or
- (g) ...
- (h) for loss or damage resulting from bodily injury to, or the death of, an insured; or
- (i) ...

There is no doubt in my mind that if these provisions were found in an ordinary instrument known as a policy of automobile insurance, the obvious conclusion would be:

—the insuring agreement stipulates coverage in favour of two persons, the owner as named insured and the driver as unnamed insured;

—both these insureds have certain limits to their right of indemnity, one being the claim by the wife of either against both the owner and the driver, and another being the claim by the owner against the driver. This is the clear result of the decision of this Court in *Murray Bay Motor Company Limited v. Bélair Insurance Company*[6]. In that case, the wife of the driver had obtained judgment against the owner who sought indemnity from his insurer. The policy contained an exclusion as to the claim of the wife “of any person insured by this policy”. The Quebec Court of Appeal and this Court held that the exclusion applied to both owner and driver and that, in the event, Murray Bay Company could not obtain indemnity from its insurers. Although Pigeon J. was dissenting as to the result, he was in agreement with the majority on this ground; his dissent is based on the existence of a rider, the counterpart of which does not exist in the case at bar.

In my view, Murray Bay makes it clear that *Digby v. General Accident Fire and Life Assurance Corporation*[7] cannot be invoked when an ordinary policy stipulates an exclusion as to the claim of an insured; in *Digby*, no such exclusion existed. Murray Bay is also an answer to the proposition that the words to be found in exclusion 31(3)(h) are ambiguous; no such statement is to be found in the judgments, on the contrary Pigeon J. wrote that the meaning of the clause was not doubtful.

Appellant has attempted to distinguish Murray Bay on two grounds:

- 1) under the Regulation, it is the car that is insured not a person; the short answer is to be found in the definition of “insured” in s. 2(1)(k)(iii):

a person to whom, or on whose behalf, insurance moneys are payable, if bodily injury to, or the death of another, or damage to property, for which he is legally liable, results from one of the perils mentioned in Part IV, whether or not he is named in a certificate;

- 2) the policy in Murray Bay excluded the claim of “any person insured by this policy”, or of relatives of that person, whereas here what is excluded is the claim of “an insured”; inasmuch as all owners and drivers of Manitoba are insured under the plan, the claim of the other driver injured in a collision would also be excluded, he being “an insured” in the wide sense.

On this last point, I would first note that in fact the Corporation has taken over the claim presented by the other driver as a result of the accident with which we are here concerned; this conduct of the Corporation is not a full answer to the proposition but still constitutes a strong indication of the meaning of the Regulation. What is more important is that such a reading of the exclusion is done in a vacuum and not in the context of a coverage as spelled out in s. 31(1). What is insured is the liability of a person for the death of another arising out of the operation of a vehicle designated in a certificate delivered to an owner; it is in relation to that vehicle and to that certificate that coverage exists. If we now turn to the exclusion, it cannot be made to apply to anything other than that liability, i.e. the one attached to the operation of a particular vehicle mentioned in a particular certificate; to say that the exclusion applies to persons not connected with that car and that certificate is to forget all basic rules of construction.

The real thrust of appellant’s argument is that we are not in the field of commercial automobile insurance but in that of a statutory scheme providing a new type of coverage. Because all Manitoba owners and drivers are covered under the scheme and hold one or the other of the certificates mentioned in s. 30 of the Regulation, and because a certificate “means a certificate of insurance” issued under The Manitoba Public Insurance Corporation Act or the Regulations (s. 1(1)(j) of the Act), it is submitted that the coverage to the owner is separate and distinct from the coverage of the driver. Thus, it is said, the owner is not an insured under the driver’s certificate and the driver is not an insured under the owner’s certificate. The result, of course, would be, in the case at bar, that Antonio Vergata was not an insured under Beni- to’s certificate and that his claim would not fall within the exclusion in s. 31(3)(h).

If that submission is correct, that particular exclusion is meaningless. If the insurance coverage created by the Act and the Regulations is afforded to Benito Vergata, and to him alone, under his driver’s certificate and not under the owner’s certificate of Antonio, nobody else could be an insured under Benito’s certificate. On the other hand, obviously, Benito could not sue himself for consequences of his own negligence, so that the exclusion would be without substance.

Legislators, even delegated ones, have been known to write useless enactments but fortunately this is not the rule, and courts must strive valiantly to reach a more positive result and uphold the legislation, if at all possible. In the present instance, I have no difficulty in reaching such a result.

Although the scheme is universal and compulsory, it is still basically automobile insurance. A comparison of Part IV of the Regulation and of s. 239 and following of The Insurance Act, c. I 40, makes it abundantly clear. Under that Act, the driver is the unnamed insured under the owner's policy which is primary; the driver's policy only comes into the picture as excess. Under the scheme, there is no need for the excess protection of the driver's policy because there is a uniform ceiling of \$50,000 applicable to all certificates. It follows that there is no need to consider the driver's certificate as separate insurance under the plan, except in the narrow circumstances of s. 31(2).

The wording of the Regulation supports the conclusion that the coverage under the owner's certificate is the basic one. The general definition of "insured" to be found in s. 2(1)(k)(iii), quoted above, must be kept in mind. If the driver were to be an insured under his own certificate, the words "whether or not he is named in the certificate" appearing at the end of that definition would not have been needed as far as the Manitoba driver is concerned, because he would always be named in his own certificate. I cannot believe that those words have been included to cover only the case of the out of Manitoba driver described in s. 30(a)(ii) of the Regulation, namely the one qualified in his own jurisdiction and being at least 16 years of age. Surely, there would have been easier and better methods of describing that occasional driver if the legislator had only his case in mind in defining "insured" in s. 2.

I am supported in my reading of the Regulations by s. 36 of The Manitoba Public Insurance Corporation Act which reads:

A person insured by but not named in an owner's certificate may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose may, in his own name and on his own behalf, exercise the same rights and shall be subject to the same obligations as if named therein as the insured.

It is to be noted that this section to all intents and purposes is the same as s. 243 of The Insurance Act. Again, I find it impossible to accept that this enactment is meant only to provide rights for out of Manitoba drivers, which would be the situation if the local driver in all cases were covered under his own certificate and were not simply an unnamed insured under the owner's certificate.

The general definition of "insured" to be found in s. 2 of the Regulation is refined by that in s. 30, which, however, does not change the basic approach. As already noted, for the purpose of Part IV "insured" means a person named in an owner's certificate and includes two different classes:

—the holder of a driver's certificate;

—the out of Manitoba resident.

How could the coverage of s. 31(1) be said to constitute two separate and distinct coverages under the two certificates when both owner and driver are residents of Manitoba and only one coverage for the joint benefit of the owner and of the driver when the latter is a non-resident?

I am, therefore, in agreement with the Court of Appeal that the word “insured” in s. 31(1) and in s. 31 (3)(h) “refers to both owner and driver and is not ambiguous”, so that the latter operates to exclude public liability coverage by respondent to appellant. It is to be noted that the learned Chief Justice of the Court of Queen’s Bench declined to rule on this point; he simply assumed that such was the case and he decided in favour of appellant on the basis of s. 31(2) to which I now turn.

II—Section 31(2)

To be found under the heading “Driver’s policy”, the opening paragraph of the section reads:

Coverage under subsection (1) is extended to a person who is named in a valid and subsisting driver’s certificate, while he personally uses or operates a motor vehicle that is not otherwise insured for legal liability imposed by law arising out of the ownership, use or operation thereof, if

(a) ...

It being common ground that the situation in the case at bar warrants a finding in favour of appellant if the motor vehicle was “not otherwise insured”, there is no need to quote the rest of the section.

It must first be noted that this text reinforces my conclusion in the first part of these reasons; if the driver’s certificate were the source of the coverage in all cases, the coverage under s. 31(1) would not be extended, because it would already extend to the entire field; as a matter of fact, s. 31(2) in its entirety would be useless. As to the expression “motor vehicle that is not otherwise insured for legal liability”, it is unfortunate because, under Part IV of the Regulation as already noted, it is the liability of the person that is insured, arising out of the ownership, use or operation of the car, and not the car itself.

This unfortunate choice of words does not, however, cloud the issue: are we here in a situation where the motor vehicle was not otherwise insured for legal liability, or are we simply in a situation where the insurance was in existence at all material times but charged with certain exclusions expressed in s. 31(3)? In my view, the latter is the case and I adopt the words of Hall J.A., speaking for the Court (p. 377):

The next point is that once it is conceded, or as in this case assumed by the Chief Justice, that coverage is provided to Vergata by the owner’s certificate, as an unnamed insured, subject to the exclusions mentioned in s. 31(3), resort may not, in my opinion, be made to the extended coverage provided by a driver’s certificate under s. 31(2) of the regulation. On this point, the Chief Justice said (p. 549):

Assuming that the exclusion expressed in s. 31 (3)(h) of the regulation applies to Antonio Vergata’s contract in the circumstances of this case, the motor vehicle is not otherwise insured for that legal liability.

I respectfully disagree. Vergata was driving the vehicle designated in the deceased owner's certificate and with consent. He was accordingly an insured within the meaning of s. 30 and entitled to coverage by s. 31(1), subject to the limitations imposed on that coverage by s. 31(3). The fact that exclusion (h) applies because the claim is for the death of an insured does not bring into play s. 31(2), as the learned Chief Justice appears to have thought. That extended coverage does not arise when the driver is operating a motor vehicle designated in an owner's certificate. In support of this view are the words of subs. (2) of s. 31 which read in part, "operates a motor vehicle that is not otherwise insured". The motor vehicle in the present case was and continued to be insured even though it was subject to certain exclusions. Added support is to be gained by the nature of the conditions annexed to extended coverage; these quite clearly contemplate a holder of a driver's certificate operating a vehicle not designated in an owner's certificate, which he had reasonable grounds to believe would be the case, but the present vehicle was so designated.

In my view, Vergata is entitled to the coverage under s. 31(1) in the same manner and to the same extent as any other holder of an owner's or driver's certificate, and as such is subject to the exclusions or limitations of coverage mentioned in s. 31(3) of the regulation. Extended coverage under s. 31(2) respecting a driver's certificate does not apply when, as here, the particular driver is clearly an insured under s. 31(1) as operator of the insured vehicle, the one designated in the owner's certificate.

* * *

For these reasons, I would confirm the decision, of the Court of Appeal and dismiss the appeal with costs.

Appeal allowed with costs, MARTLAND, JUDSON, DICKSON and DE GRANDPRE JJ. dissenting.

Solicitor for the appellant: J.R. Glowacki, Winnipeg.

Solicitor for the respondent, The Manitoba Public Insurance Corporation: S.S. Kapoor, Winnipeg.

Solicitors for the respondent, Rita Vergata: Aikins, MacAulay & Thorvaldson, Winnipeg.

[1] [1976] 4 W.W.R. 373, 67 D.L.R. (3d) 527.

[2] [1943] A.C. 121.

[3] [1975] 1 S.C.R. 68.

[4] [1976] 3 W.W.R. 544.

[5] [1976] 4 W.W.R. 373.

[6] [1975] 1 S.C.R. 68.

[7] [1943] A.C. 121.

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