HIGH COURT OF AUSTRALIA

10 September 2014

MAXWELL v HIGHWAY HAULIERS PTY LTD

[2014] HCA 33

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia, and held that s 54(1) of the *Insurance Contracts Act* 1984 (Cth) operated to prevent the insurers from refusing to pay claims for indemnity made by the insured, in circumstances where the insured failed to comply with an endorsement forming part of the contract of insurance.

Section 54(1) of the Act states that "where the effect of a contract of insurance would, but for [that] section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured or of some other person, being an act that occurred after the contract was entered into ... the insurer may not refuse to pay the claim by reason only of that act", but that "the insurer's liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced" by that act. Section 54(2) provides that the insurer may nonetheless refuse to pay a claim where the relevant act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the contract.

The respondent, Highway Hauliers Pty Ltd, had been refused indemnity for two accidents involving its vehicles. An endorsement forming part of the contract of insurance stated that no indemnity was provided when a vehicle was being operated by a driver unless, among other things, the driver had a PAQS driver profile score of at least 36 (or an approved equivalent). Drivers of the respondent's vehicles in both accidents had not undertaken a PAQS test or an equivalent. It was conceded that the fact that each vehicle was being operated by an untested driver could not reasonably be regarded as being capable of causing or contributing to any loss incurred by the respondent as a result of each accident, and that the insurers' interests were not prejudiced as result of the vehicles being operated, at the time of the accidents, by untested drivers. The respondent was successful in proceedings for indemnity under the policy and for damages for breach of the insurance contract in the Supreme Court of Western Australia and before the Court of Appeal. By special leave, the appellant, a nominated authorised representative of the insurers, appealed to the High Court.

Rejecting the appellant's argument that the "claim" to which s 54(1) refers is a claim for an insured risk, the High Court held that, the respondent having made claims in relation to accidents which occurred during the period of insurance, it was sufficient to engage s 54(1) that the effect of the contract of insurance was that the insurer may refuse to pay those claims by reason only of acts which occurred after entry into the contract. Section 54(1) applied to the respondent's claims because the operation of each vehicle by an untested driver was properly characterised as having been by reason of an "act" that occurred after entry into the contract of insurance.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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