

# A Supreme Court decision involving a Micra that is by no means micro: *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6

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By [Henrietta Hughes](#)

20.02.19 saw the handing down of a very significant Supreme Court judgment.

## Background:

On 26.05.13, Ms Cameron was injured when her car collided with a Nissan Micra, the driver of which caused the collision. Whilst the driver made off without stopping or reporting the accident to the police, a passing taxi driver took down the vehicle registration number of the Nissan. The registered keeper, Mr Hussain, was not the driver and was convicted for failing to disclose the driver's identity. The car was insured by Liverpool Victoria Insurance Co Ltd ('LV') to a Mr Bahadur, believed by LV to be a fictitious person. The driver, whoever he was, was not insured to drive the car.

At first Ms Cameron brought a claim against Mr Hussain for damages. The proceedings were amended to add a claim against LV for a declaration that it would be liable to meet any judgment against him. LV served a defence denying liability on the ground that there was no right to obtain a judgment against Mr Hussain as there was no evidence that he was in fact the driver.

Ms Cameron then sought to substitute for Mr Hussain, 'the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013.' DJ Wright dismissed that application and entered summary judgment for LV. HHJ Parker dismissed Ms Cameron's appeal too.

However, the Court of Appeal allowed the appeal by a 2 to 1 majority who considered that the court had a discretion to permit an unknown person to be sued whenever justice required it and that an alternative right of claim against the Motor Insurance Bureau ('MIB') was irrelevant. Sir Ross Cranston, dissenting, would have dismissed the appeal in light of the alternative right to an MIB claim. The Court of Appeal gave Ms Cameron permission to amend the claim form so as to sue the driver under the above description; directed under CPR 6.15 that service on the insurer should constitute service on the driver and that further

service on the driver should be dispensed with; and gave judgment against the driver, as described above, recording in their order that LV accepted that it was liable to satisfy the judgment.

LV's appeal to the Supreme Court was in relation to 2 issues:

- (1) The power to issue or amend the claim form, and
- (2) The compatibility of the Road Traffic Act 1988 ('the 1988 Act') with the Sixth Motor Insurance Directive (2009/103/EC).

The MIB were interveners in the appeal.

**The appeal was allowed.** Lord Sumption gave the lead judgment, but all Lords agreed.

Crucially in relation to suing unnamed persons and service Lord Sumption stated.

*'15. An identifiable but anonymous defendant can be served with the claim form or other originating process, if necessary by alternative service under CPR 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form ...*

*16. One does not, however, identify an unknown person simply by referring to something that he has done in the past. "The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013", does not identify anyone. It does not enable one to know whether any particular person is the one referred to. Nor is there any specific interim relief such as an injunction which can be enforced in a way that will bring the proceedings to his attention. The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but to the fact that it is not known who the defendant is ...*

*21. In my opinion, subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant ....*

*23 ... ordinary service on the insurer would not constitute service on the driver, unless the insurer had contractual authority to accept service on the driver's behalf or to appoint solicitors to do so. Such provisions are common in liability policies ... it is agreed that the driver of the Micra was not the policy holder ...*

24 ... it is plain that alternative service on the insurer could not be expected to reach the driver of the Micra. It would be tantamount to no service at all ...

25 ... No submission was made to us that we should treat this as a case of evasion of service, and there are no findings which would enable us to do so. I would not wish arbitrarily to limit the discretion which CPR 6.16 confers on the court, but I find it hard to envisage any circumstances in which it could be right to dispense with service of the claim form in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought ...

26. I conclude that a person, such as the driver of the Micra in the present case, who is not just anonymous but cannot be identified with any particular person, cannot be sued under a pseudonym or description, unless the circumstances are such that the service of the claim form can be effected or properly dispensed with ...'

Moreover, as to bringing a claim against the MIB:

' 22 ... The availability of compensation from the Bureau makes it unnecessary to suppose that some way must be found of making the insurer liable for the underlying wrong when his liability is limited by statute to satisfying judgments.'

As to the European Law issue, Lord Sumption concluded:

' 29 ... the right that she asserts against him on this appeal is a right to sue him without identifying him or observing rules of court designed to ensure that he is aware of the proceedings. Nothing in the Directive requires the United Kingdom to recognise a right of that kind. Indeed, it is questionable whether it would be consistent with article 47 of the Charter of Fundamental Rights regarding the fairness of legal proceedings ...

30 ... In reality, the complaint is not about the extent of the Bureau's coverage, which unquestionably extends to this case. The complaint is that it is the Bureau which is involved and not the insurer. But that is because the insurer is liable only to satisfy judgments ...'.

**Comment:**

This Supreme Court decision is sure to be welcomed by insurers, and it is undeniable that it will have a widespread affect on cases where the claim was previously brought against an anonymous unidentifiable person. The proper recourse in those cases will be to rely on the MIB Untraced Drivers Agreement.

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