GROUP: Fire and General Insurance
SERVICE: Motor Vehicle (Personal Lines)
Complaint No : 112531
YEAR: 2007

Casebook Index: Exclusion - Vehicle, Insurance Law Reform Act 1977, Unsafe condition

Background

In March 2007, C insured his 1997 Subaru Legacy GTB SW Turbo ("the vehicle") with P.

On 26 May 2007, at about 6 am, C lost control of the vehicle in wet weather and crashed ("the accident"). The police attended the accident site. C made a claim to P for the damage to the vehicle, which P's assessor confirmed was a total loss.

In June 2007, the police wrote to C advising he would be issued with Infringement Offence Notices for "[f]*ail*[ing] *to drive entirely within lanes*" and "[o]*perat*[ing] *a vehicle with a smooth tyre.*" In the same month, the assessor appointed by P provided it with a report, which he had requested from a specialist tyre firm, on the condition of the vehicle's left rear tyre ("LR tyre"), which was bald.

In July 2007, P advised C it was declining the claim, on the basis the vehicle was being driven in an unsafe or unroadworthy condition at the time of the accident, because of the condition of the LR tyre and that C would have been aware of its condition. P also believed the condition of the LR tyre caused or contributed to the accident.

C disagreed with P's decision and said he was not aware of the condition of the LR tyre. C also referred to the fact that the vehicle had been issued with a new warrant of fitness prior to him purchasing the vehicle. Moreover, the part of the tyre that was worn was not easily observed, because it was on the inside running surface. C asked P to reconsider its decision to decline the claim.

Assessment

The relevant policy exclusion stated, as follows:

> "*There is no cover if an Accident occurs while the Car is not in a safe and roadworthy condition unless*
>
> - *You can satisfy us that this did not cause or contribute to the Accident*
>
> *or*
>
> - *You can show that …You…*[did not know] *about the condition of the Car and could not have been reasonably expected to know.*"

C also had an obligation to ensure the vehicle was roadworthy and adequately maintained.

- Unsafe or unroadworthy condition

P declined the claim on the basis that, at the time of the accident, the vehicle was in an unsafe and unroadworthy condition, by virtue of the condition of the LR tyre. The evidence P relied on included: the police report; the assessor's report; and the tyre specialist's report, including photographic evidence of the condition of the LR tyre. All the reports indicated the LR tyre did not meet the legal requirements for tread pattern and tread depth.

Warrant of fitness inspections are primarily a road safety measure designed to ensure that, on a periodic basis, vehicles are properly maintained and that they comply with certain legal requirements. A warrant of fitness is an assessment of a vehicle's condition at the time of inspection. This does not mean that, for the following 6 or 12 months (depending on the age of the vehicle) the vehicle will automatically meet warrant of fitness standards in all respects. The owner of a vehicle has a responsibility to ensure that the vehicle is maintained in a safe and roadworthy condition at all times. This includes regularly inspecting the overall condition of a vehicle's tyres.

When the warrant of fitness was issued on 1 March 2007, the vehicle's odometer reading was 146,610 km and, at the time of the accident on 26 May 2007, the reading was 151,396 km. Therefore, the vehicle had travelled an additional 4,786 km on a LR tyre which, given its condition at the time of the accident, could only have been marginally above the legal minimum tread pattern and tread depth requirements, when the warrant of fitness was issued.

The evidence clearly indicated that the LR tyre did not comply with the legal requirements for tread pattern and tread depth. The Case Manager believed this supported a finding that the vehicle was in an unsafe and unroadworthy condition at the time of the accident.

- C's knowledge of the condition of the vehicle

C argued that he was not aware of the poor condition of the LR tyre. He said:

> "*Furthermore, the rear tyre in question was unevenly worn. It had tread on the half of the tyre that was readily visible to the driver, indicating to a typical person that the tyre was satisfactory. That part of the tyre that was worn was located on the inside, which was not so readily observed.*
> …
> *These facts lead to a view that I, or any other reasonable person, would not have known that the tyre was worn.*"

The Case Manager did not accept C's argument and believed that a reasonable person, who was concerned for their safety and the safety of other road users, would carry out frequent checks on a number of areas of their vehicle, including the tyres.

The Case Manager could not be certain whether C regularly checked the inflation pressures and the condition of the vehicle's tyres. However, given the make and model of the vehicle, the Case Manager believed a reasonable person would have done so. From the photographic evidence provided, the Case Manager believed a cursory check would have revealed the condition of the LR tyre did not comply with legal requirements. In fact, the tyre specialist's report indicated the outside running surface of the tyre, which would have been "*readily visible*", was below the minimum legal tread depth.

In the circumstances, the Case Manager believed C knew, or could have been reasonably expected to know, about the condition of the LR tyre. Therefore, on the basis of the evidence provided, the Case Manager believed P was entitled to decline the claim, unless it could be shown that the unsafe and unroadworthy condition of the vehicle did not cause or contribute to the accident.

- Cause of the accident

P declined the claim under the policy exclusion which excludes cover when the vehicle is involved in an accident, while it is "*not in a safe and roadworthy condition*". The exclusion was included in the policy, because the excluded circumstances would be likely to increase the insurance risk. Section 11 of the Insurance Law Reform Act 1977 ("the Act") was, therefore, applicable to C's complaint.

In some cases, where an insurance contract contains an exclusion excluding liability in defined circumstances (and the reason for the exclusion is that the excluded circumstances would be likely to increase the risk), the insured can argue that the exclusion should not apply. The onus was on the insured to prove, on the balance of probabilities, that the accident was not caused or contributed to by his breach of the policy. This meant C had to prove, on the balance of probabilities, it was more likely than not that the unsafe and unroadworthy condition of the vehicle did not cause or contribute to the accident.

The police wrote to C, as follows:

> "*The Police have concluded that the major contributing factor to the accident, has been the almost bald left rear tyre fitted to the vehicle. This, coupled with a wet seal; has more than likely caused the loss of traction on the corner in question.*"

The Case Manager believed the evidence supported a finding that the unsafe and unroadworthy condition of the vehicle was a major causative factor of the accident. Therefore, the Case Manager did not believe section 11 of the Act assisted C and, therefore, P was entitled to decline the claim.

Result Complaint not upheld