



Supreme Court Precedent - The Piccalli Precedent*

Breach of Policy terms due to external reasons which are beyond the control of the Insured v. breach due to reasons under the Insured's control

Background

The case, which was heard by four separate instances of the Israeli Courts, including twice by the Supreme court, concerns an insurance claim for damage as a result of a car crash. The insured car was driven at the time of the accident by a 23-year-old employee the Insured. The Motor Vehicle Policy included an age limitation pursuant to which cover applied only to drivers aged 30 years or above. Accordingly, the Insurer declined cover on the grounds of the driver's age.

Previous Court's Decisions

Both the Magistrate Court (the trial court, the first instance) and the District Court (the initial appeal court) held that since the Insured intentionally did not purchase a policy to cover younger drivers, Insurers' declination of cover is justified.

However, on second appeal to the Supreme Court, this ruling was overturned. The Supreme Court based its precedential ruling on the Insurance Contract principle of proportionate cover as opposed to an "all or nothing" approach.

The Insurance Contract Law mandates in Sections 17 and 18 that where there has been material aggregation of the risk cover will apply based on a pro-rata proportionate rule – by calculating the premium terms that would have applied had the aggregated risk been known to the Insurer, in relation to the terms that applied, reducing benefits accordingly.

The Supreme Court viewed the young age of the driver through the prism of the proportionate cover for aggregated risk. The Supreme Court ruled that cover applied at a reduced rate, in accordance with the proportion between the premium that was in fact charged, divided by the premium that would have applied had the Insured purchased cover for younger drivers.

The Decision of the "Additional Hearing" by the Supreme Court

In rare cases, where the Supreme Court has issued a precedential ruling that has changed previous law or concerns a new issue with potentially wide impact, Israeli Civil Procedure allows for an additional appeal after a Supreme Court ruling on appeal.

In view of the importance of the issue subject of

the Piccalli Appeal, the Supreme Court granted an Additional Hearing with an expanded panel of Judges. The Additional Hearing overturned the previous precedent.

In this final and binding decision, the Supreme Court ruled that in this case the insurance policy cannot apply to the damage caused while the car was driven by the young driver in breach of the policy age limitation. This is not a situation of aggravation of the risk which the insurer can be seen in retrospect to have agreed to cover, but rather a simple case of breach of the policy terms due to reasons which are under the Insured's control.

A distinction should be made between events and terms which are under the Insured's control and external events which are beyond the Insured's control.

The provisions of the Insurance Contract Law which applies a proportionate remedy in case of risk aggravation, are only relevant to external events which are beyond the control of the insured. It would not apply where the policy was breached knowingly by the Insured – in this case, by allowing a young person to drive the car.

There was no dispute in the Piccalli case that the Insured intentionally did not purchase cover for a young driver, in order to save the additional incremented premium. The Supreme Court ruled that this intentional decision cannot be rectified retroactively.

To conclude - where the Insured has breached the policy terms due to intentional conduct or decision, the policy does not apply and the Insurer is fully exempted from any liability under the Policy.

GOS Comments

Although this case concerns a Motor Vehicle Policy, it has far reaching implications to other classes of insurance. The Supreme Court places a clear dam to stop the growing trend in recent years towards expanding policy coverage under the "proportionate cover application", which started with the Slutzki Ruling (2013). The new decision takes a clear stand on full exemption from liability based on whether there has been aggregation of risk due to an external event that was beyond the Insured's control, or as a result of conscious decision of the Insured to take a risk that he/she deliberately refrained from purchasing cover for, in a controlled decision to breach the policy terms.

We expect that this new ruling will reduce uncertainty that prevailed in recent years.

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