

AIDA Israel Meeting on 31st July 2019

Supreme Court Judgement Picali v. Hachshara & Others

Driving in breach of the age limitation in the Policy
Partial payment of insurance benefits

AIDA Israel has organized a meeting concerning the Picali judgement which arose strong reactions in the insurance industry.

The Supreme Court decided that where there is an age limitation in Car Insurance (Property) that the driver allowed to drive would be beyond the age of 30, that as long as fraudulent intent is not proven, the Insurer should pay partial insurance benefits in the ratio of the increased premium which would have been paid.

In the meeting, Adv. John Geva who represented Plaintiff, presented the opinion given by the majority judges (Justice Barak Erez, Justice Grosskopf) according to which this situation should be dealt with according to the Insurance Contract Law Section 18, which deals with aggravation of risk.

(According to the law, where the risk is aggravated, there has been a change concerning a matter on which the Insured was asked a question by the Insurer).

According to the law, when the Insured becomes aware of a change in a material matter as defined, he should notify the Insurer of this change and the Insurer can choose to either set aside the Insurance Contract or demand a higher premium. But if the insured event has already occurred, the Insurer's remedy is either to pay diminished benefits; or in case of fraud or in case no reasonable Insurer would have accepted the insurance under the changed circumstances – to be totally exempt of liability.

The majority of opinion was that this arrangement should also apply where a young driver drove the car even though the insurance purchased was for a driver older than 30.

Dr. Shachar Weller, author of the book "The Insurance Contract Law", presented at the meeting the minority opinion of Judge Amit. According to this opinion a change of risk should relate to a change of the agreed risk and the risk of a young driver contrary to the age limitation, is a risk outside the insurance contract.

Dr. Weller is of the opinion that this case concerns breach of a term in the Policy and not a situation of aggravation of risk. Another speaker in this meeting was Judge Y. Shimoni (Ret.) who also supported the position of a breach of contract.

Dr. Weller told the audience that a motion would be filed with the Supreme Court for an additional hearing concerning this issue.

It should be noted that leave for an additional hearing in the Supreme Court is granted only in rare cases where a judgement includes a new precedent which has a large impact beyond the direct parties to the litigation, and is not granted when the judgement solely applies the law or previous precedents.