

Secondary victims: what counts as ‘an event’?

Case summary of Paul & Anor v Royal Wolverhampton NHS Trust [2020] EWHC 1415 (QB)

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Background

This case was brought by the widow (“the First Claimant”) and two young daughters (“the Second and Third Claimants”) of Mr Paul. Mr Paul was admitted to a hospital in the Defendant Trust in November 2012 complaining of chest and jaw pain. Investigations were undertaken and he was discharged. On 26 January 2014, some 14 months later, he suffered from a heart attack and died. The Second and Third Claimants were present at the scene and witnessed their father collapse. The First Claimant arrived shortly thereafter.

It is the Claimants’ case that the hospital should have performed a coronary angiography on Mr Paul in November 2012 which would have revealed a significant, but treatable, coronary artery disease. As such, his heart attack and consequent death could have been avoided.

All three claimants have brought claims against the Defendant Trust for psychiatric injury caused by seeing these traumatic events. The Defendant applied to strike out the statements of case of the Second and Third Claimants and, alternatively, for summary judgment (pursuant to CPR r. 3.4(2)(a) and CPR r. 24.2(b) respectively). At first instance, the Master agreed and their claims were struck out. The Second and Third Claimants appealed.

The law on recovery for psychiatric injury by secondary victims

The law on the duty of care owed to secondary victims who suffer psychiatric injury after witnessing horrifying events has a long and complicated history. Chamberlain J gave a thorough review of the case law in this area which is worthy of reading in full [5-41]. The key criteria that a potential claimant must satisfy come from the decisions in *McLoughlin v*

O'Brian [1983] 1 AC 410 and *Alcock v Chief Constable of South Yorkshire Police* [1992] AC 310 and are:

1. It was reasonably foreseeable that a person of normal fortitude would suffer from a psychiatric injury from witnessing the event in question
2. The secondary victim has a sufficiently close personal relationship with the primary victim who suffered an immediate injury
3. The secondary victim was sufficiently proximate in time and space to the primary victim at the time of the injury
4. The psychiatric illness was caused by shock as the result of a sudden and horrifying event

Decision (Chamberlain J)

The key question in this case was what constituted a relevant 'event' that a secondary victim must witness in order to be owed a duty of care. The core of the Defendant's case was that it could not be liable for an injury suffered by secondary victims 14 months after the potentially negligent act.

The judge rejected this argument for the following reasons:

- Although in *McLoughlin* and *Alcock* there was a relatively short time between the negligent act and the event that lead to the psychiatric harm, there was nothing in any of the House of Lords authorities to suggest that this must be so [63].
- It could not be said that the Second and Third Claimants were not at the 'scene of the tort', as the tort was not complete until damage had been suffered. Taking the Claimants case at its highest (for the purpose of a summary judgment application), the tort was complete when Mr Paul suffered his heart attack (at which, of course, the Claimants were present) [65-66].
- It was foreseeable that a negligent failure to diagnose a heart condition could result in a heart attack [68].
- It was not necessary, on the current case law, to show that the secondary victim knew that the injury to the primary victim was caused by the Defendant's negligence [69].
- A traumatic event did not have to be 'external' to the primary victim (such as an accident). It could be a sudden but internal event, such as a seizure or heart attack (citing *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792) [70-71].

- The ratio of *Taylor v A Novo* [2014] QB 150 is that, in a case where the defendant's negligence results in an 'event' giving rise to injury in a primary victim, a secondary victim can claim for psychiatric injury only where it is caused by witnessing that event rather than any subsequent, discrete event which is the consequence of it. While 'accident' cases (where the negligent act and shocking event occur simultaneously or very quickly in time) are the paradigm example, there is no reason why this cannot apply in other settings. In this case, the Second and Third Claimants did witness that 'event' [73-74].

On this analysis, the claims brought by the Second and Third Claimants were not bound to fail.

Finally, it was noted that even if it was shown that the Defendant's failure to diagnose Mr Paul's heart condition prior to his collapse on 26 January 2014, so long as it could be shown that the collapse was the first occasion on which the damage became manifest, this could still constitute a relevant 'event'. This could be distinguished from cases such as *Taylor v A Novo*, where the secondary victim did not see the primary victim until sometime after the horrifying event had occurred [76-81].

Comment

While only a strike out and summary judgment application, this detailed and well-reasoned decision represents another incremental step in the development of the fiendishly complicated law of duties of care owed to secondary victims. It will be a welcome to claimants who witness horrifying events that are a result of previous negligent acts, inside and out of the medical arena.

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