THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 218

Record No.: 2017/499

Edwards J.
Costello J.
Donnelly J.

BETWEEN/

FELIX MOOREHOUSE

PLAINTIFF/APPELLANT

- AND –

THE GOVERNOR OF WHEATFIELD PRISON, MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

DEFENDANT/RESPONDENT

JUDGMENT of the Court delivered on the 31st day of July, 2020 by Ms. Justice Donnelly

1. The judgments of my colleagues in this appeal, together with the judgment of the trial judge, distil to the essence the complex web of facts which raise an equally complex legal issue. While that issue is whether the plaintiff has discharged the onus of proof, it can be narrowed down to a consideration of the circumstances in which a court may infer causation in a personal injuries action. The issue has produced careful, considered but conflicting views as to those circumstances.

2. My view, on reading the papers and submissions placed before the Court and on hearing the compelling oral submissions made at the hearing, is that for the reasons set out in the judgment of Edwards J., this appellant must succeed in his appeal to the extent set out therein. There is, in short, no reason in principle why the ability to infer causation should not extend, in the interests of justice, to a case where an honest plaintiff is, for whatever reason, an unreliable historian and it is otherwise possible to determine the true, proximate cause of the accident.

3. The reference to an honest plaintiff is important; the history of the courts have shown that honest people can give mistaken evidence on even apparently fundamental issues. In the present case, the trial judge rejected an application to have this claim dismissed on the basis that the plaintiff dishonestly gave evidence that was false or misleading in a material respect. In my view, the result of this decision today is not to open the floodgates to dishonest plaintiffs, but on the contrary, to provide justice for those persons who are clearly injured through the <u>proven</u> negligence of others. As providing justice through compensation to those persons who are clearly injured through the proven negligence of others is the purpose of litigation in tort, there is no requirement to deny a

plaintiff who is not dishonest, damages for his/her injuries solely on the ground that his/her evidence as to the precise mechanism of the action is rejected where negligence can properly be inferred from the other evidence he or she presents.

4. The interests of justice of course require that there is no shift in the burden of proof onto a defendant in any case. The interests of justice also require that there is no unfairness arising from the manner in which a matter has been pleaded, thereby resulting in an inability on the part of the defendant to address a significant matter in the course of the trial. In drawing the appropriate inference on causation in this case, there is no shift in the burden from plaintiff to defendant. Moreover, no case is made out that there was an inability on the part of the defendant to address significant matters in the course of the trial on the aspect of primary liability. It must be noted that two central features of the case were decided in the plaintiff's favour; he was permitted to operate the machine when the defendant knew or ought to have known that it was unsafe and dangerous for him to do so and that the defendant failed to have an adequate guard in place on the machine.

5. In respect of the permission to operate the machine, there was an express statement by the trial judge (at para. 134) that if the Prison Officer had remained at or near the machine, it was probable to the point of near certainty that the accident could not and would not have occurred. In respect of the failure to have an adequate guard, it is implicit within the judgment of the trial judge that the accident would not have happened but for the clearly established breaches of statutory duty of the defendants with respect to the guard.

6. The authorities cited before us do not deal with precisely the same issue as to when it is appropriate to reach a finding of causation where the mechanism of the accident, as described by the plaintiff, has been rejected, but there remains evidence from which negligence on the part of the defence can be drawn to the extent of a finding that "but for" that negligence the accident would not have occurred. I accept the principles to be drawn from those authorities opened to us as set out by Edwards J. To the extent that Costello J. has highlighted passages in *Connaughton v. Minister for Justice, Equality and Law Reform* [2012] IEHC 203, Holt v. Holroyd Meek Limited [2002] EWCA Civ. 1004 and *Ellis v. Translink* [2012] NIQB 112, I would like to make some comments on those passages.

7. The passage highlighted by Costello J. from para. 42 of the judgment of Irvine J. in *Connaughton* restates the basic principle that the law requires that the plaintiff adduce evidence that gives rise to a reasonable inference that the defendant's negligence was the cause of the accident. Such evidence can be adduced directly by the plaintiff or on behalf of the plaintiff. As set out more fully in the judgment of Edwards J., it has been established by the evidence adduced by <u>or</u> on behalf of the plaintiff that the defendant's negligence caused his injury.

8. The passage highlighted by Costello J. from the decision in *Holt* forbids a judge giving judgment "*because of his view that he does in fact know how the accident occurred which, although differing from the claimant's account, is nonetheless consistent with*

liability". I consider that this passage has no relevance to the point at issue here. This is not a situation where we are dealing simply with the trial judge's view of how the accident occurred. What is at issue here are findings of negligence made by the trial judge after a very conscientious review of the evidence adduced before him. Here, the clear finding of fact based upon the evidence was to the effect that there was evidence of negligence on the part of the defendants and that but for that negligence, the accident would not have occurred. As *Holt* goes on to say, where the essential facts are nonetheless clear and are not at odds with the general thrust of the claimant's case and are such that the ingredients of liability are established, a judge is obliged to give judgment accordingly. That is the position in this case; the central case was always that the plaintiff was severely injured when he was permitted to use a (highly dangerous) machine that was defective because of an inadequate guard.

9. In my view, the passage highlighted by Costello J. from the judgment in *Ellis* does no more than establish that a court must examine a case in detail and reach a position. That was what the trial judge did in this case. The trial judge reached a view on credibility as to the mechanism of the accident. He also reached a view that there was a lack of intent to mislead by the plaintiff; those findings must also be seen against the trial judge's earlier findings as to the plaintiff's background which revealed multiple disadvantages in life, in particular with respect to his education and his drug addiction. Importantly, the trial judge was able to rule in favour of the plaintiff on crucial aspects of the case such as the absence of the guard and the failure to warn him (or indeed prevent him) from using the machine without the guard. The real issue central to this appeal is one of law; namely whether, having made those findings, the trial judge was obliged to find that the plaintiff had established liability in negligence against the defendant. For the reasons set out in the judgment of Edwards J., I am satisfied that where such sufficient evidence exits, the law obliges a judge to make a primary finding of liability in favour of the plaintiff, even when the trial judge is not satisfied that the plaintiff has set out the precise mechanism of the accident but has found that the plaintiff did not intentionally set out to mislead experts or the court.

10. I hesitate to seek to draw any kind of analogy with a criminal case but nonetheless there is some assistance from the approach that might be taken in a criminal trial where a central witness, often the purported victim, gives evidence on oath that completely contradicts the prosecution case. A major difference between the two is of course, that in criminal proceedings, the case is not taken by the victim but by the prosecution (on indictment, the case is brought by The People of Ireland at the suit of the Director of Public Prosecutions), while in a civil trial, the plaintiff has full carriage of the case. The point I wish to make, is that it is perfectly fair to ask a defendant in a criminal trial to defend a case where a purported victim gives evidence diametrically opposed to the prosecution case and to ask a jury to conclude from the remaining evidence that not only did the crime occur, but that the defendant carried it out. The purported victim may, in certain circumstances, be made a hostile witness or have their previous inconsistent statement admitted into evidence as part of the prosecution case under the provisions of s. 16 of the Criminal Justice Act, 2006. The importance of this point lies in understanding

that it is not inherently unfair in terms of procedure or substance, to permit the trier of fact to reach a conclusion on the totality of the evidence presented by the prosecution even where significant conflicts of evidence in the prosecution case have arisen.

11. As stated above, I am of the view that there was no procedural unfairness in the present case. Notice of the case being made as regards liability was pleaded in its essentials. There is no inherent interest of justice which demands that a plaintiff, who is not dishonest, must fail in his or her claim because he or she has given evidence that the accident occurred in a manner rejected by the trial judge, even when the totality of the plaintiff's evidence establishes that the accident was caused by the negligence of the defendant. I am of the view that as regards the finding of primary liability, the interests of justice require the opposite.

12. I agree therefore, that the appeal should be allowed on Grounds 1, 12 and 20 and that there should be an order quashing the dismissal of the plaintiff's claim. I agree that the matter should be remitted to the High Court to be resumed and progressed to a conclusion in light of that order. I also agree with the proposal made in relation to the issue of costs.