Press Summary

14 February 2024

Armstead (Appellant) *v* Royal & Sun Alliance Insurance Company Ltd (Respondent)

[2024] UKSC 6

On appeal from [2022] EWCA Civ 497

Justices: Lord Briggs, Lord Leggatt, Lord Burrows, Lord Richards, Lady Simler

Background to the Appeal

This case concerns a road traffic accident in which a car was damaged. Although the sum at stake is only £1,560, the decision has the potential to affect a significant number of other cases. It also raises some fundamental questions in applying the tort of negligence (a form of civil wrong).

The appellant, Lorna Armstead, was unlucky enough to be involved in two road traffic collisions within a short space of time, neither of which was her fault. After the first collision, while her car was being repaired, she hired a car, a Mini Cooper, from a company called Helphire Limited on credit hire terms. The business model of credit hire companies is that they rent out a substitute car on credit to an accident victim believed not to have been at fault while the victim's car is repaired. The hire company seeks to recover the hire cost on behalf of the victim from the other driver's insurers and only looks to the victim for payment if the claim fails. In the normal course of events, this enables the accident victim to have the use of a hire car for which she does not have to pay.

The hire agreement between Helphire and Ms Armstead was on Helphire's standard terms, which included an obligation on the hirer to return the car in the same condition as it was at the start of the hire and to pay Helphire for any damage to the car. Most significantly for the purposes of this appeal, there was a term in the agreement, clause 16, under which, if the hire car was damaged, the hirer was required to pay the daily hire rate, up to a maximum of 30 days, for Helphire's loss of use while the car was being repaired, or awaiting repair, and was therefore out of use.

While she was driving the hire car, Ms Armstead was involved in the second accident when she was hit by a van that was being negligently driven. She brought a claim against the van driver's insurers (Royal & Sun Alliance Insurance Company Ltd, "**RSA**"). She sought damages for the cost of repair of the Mini but also for the sum under clause 16 ("**the clause**

16 sum") that she was contractually liable to pay Helphire for its loss of use. The issue on the appeal is whether she is entitled to damages for the clause 16 sum (which is agreed to be £1,560).

Ms Armstead's claim to the clause 16 sum was rejected by a Deputy District Judge, a Recorder and the Court of Appeal.

Ms Armstead now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Ms Armstead is held entitled to damages for the clause 16 sum. This is essentially because a claimant in the tort of negligence can recover, as damages, the amount of a contractual liability that the claimant owes to a third party, when that contractual liability is incurred as a result of the defendant's wrongful act in negligently damaging the claimant's property. Such a loss is not what the law terms "pure economic loss" which is normally irrecoverable in the tort of negligence. Furthermore, on these facts, the clause 16 sum was not too remote.

Lord Leggatt and Lord Burrows give the lead judgment, with which Lord Richards and Lady Simler agree. Lord Briggs gives a brief concurring judgment.

Reasons for the Judgment

It is well-established that, in tort, a person owes a duty of care not to cause physical damage to another person's property (such as a car) and, if in breach of that duty, is liable to pay damages to compensate the injured person for the reduced value of the property and any financial loss consequent on the damage **[19]**–**[20]**. A person may bring a claim against the wrongdoer in respect of the damage if they are entitled to possession of the property damaged **[21]**. Ms Armstead, as the hirer of the car, was entitled to possession of it when it was damaged. Therefore, Ms Armstead was entitled to recover the clause 16 sum unless excluded or reduced by the general principles limiting the recovery of damages **[22]**–**[23]**. Such loss was not "pure economic loss" because it arose from damage to property that was in Ms Armstead's possession **[27]**, **[44]**.

Previous cases established that, in principle, a contractual liability owed to a third party could be recovered as damages, provided that it was consequential on physical damage to the claimant's property **[31]**–**[36]**. The Court of Appeal sought to distinguish these cases on various bases, each of which is rejected by the Supreme Court **[38]**–**[41]**.

The real issue was whether the Court of Appeal was entitled to conclude that the clause 16 sum was too remote to be recovered because it was not a reasonable estimate of Helphire's loss of use—i.e., the likely losses that Helphire might incur if, due to repairs, the hired car was unavailable for hiring out **[45]**. Ms Armstead had conceded before the Court of Appeal, and reaffirmed in the Supreme Court, that, to be recoverable, the clause 16 sum needed to be a genuine and reasonable pre-estimate of Helphire's loss of use **[46]**. Although not bound by this concession, the majority considers that it was correctly made. If the contractual liability to Helphire did not represent a reasonable pre-estimate of Helphire's loss of use, it would be too remote to be recoverable because it would not be the type of loss that could be reasonably foreseen **[47]**, **[52]**. The same result is reached by analysing the contractual liability as either an unenforceable penalty or an unfair term that is not binding on a consumer under the Consumer Rights Act 2015 **[48]**–**[51]**. The Supreme Court decides that, where the question is whether loss is too remote from a tort, as in this case, the burden of proof in respect of remoteness is on the defendant. **[58]**–**[64]**.

In this case, RSA pleaded no case and led no evidence to prove that the clause 16 sum was not a reasonable pre-estimate of Helphire's loss of use **[65]**, **[71]**. The Court of Appeal was, therefore, wrong to make the factual assumption, unsupported by any evidence, that the clause 16 sum was not a reasonable pre-estimate of Helphire's loss of use **[67]**–**[69]**. Indeed, on its face, using the contractual rate payable under Ms Armstead's hire agreement (capped at 30 days' hire) to calculate the sum was a reasonable way to pre-estimate Helphire's likely loss of use **[70]**.

Accordingly, as RSA had not discharged its burden of showing that the clause 16 sum was too remote to be recoverable, Ms Armstead was entitled to recover, as damages, that sum (of £1,560). The Supreme Court, therefore, allows her appeal **[74]**.

Lord Briggs gives a concurring judgment. He agrees with the majority's reasoning and conclusion but would simply rely on Ms Armstead's concession that the clause 16 sum needed to be a genuine and reasonable pre-estimate of Helphire's likely losses without deciding whether the concession was correctly made **[75]**–**[79]**.

References in square brackets are to paragraphs in the judgment.