



Halech -v- State of South Australia [2006] SASC 29

This is a decision of the full court of the South Australian Supreme Court which was handed down on 3 February 2006

It was an appeal against the dismissal of a claim for damages for negligence brought by Mr Halech ("the Plaintiff") against the State of South Australia.

Main Facts

- Four people had been killed in a motor vehicle accident, one of whom was the Plaintiff's mother
- The Police attending the scene got two of the victims mixed up so that the Plaintiff's mother, Ms Halech was confused with another occupant of the vehicle, Ms Fetisinski. The body erroneously thought to be that of Ms Fetisinski was cremated and the ashes transported to Russia. The body thought to be Ms Halech was buried.
- At the scene, identification was ascertained by reference to the contents of the handbags found in the vehicle. The bodies were then transported to the morgue.
- Mr Halech attended the morgue and incorrectly identified his mother's body when in fact he had viewed the body of Ms Fetisinski. However he says he was not given proper opportunity to identify the body because he was told the body was his mothers prior to the viewing, the body was positioned 4-5 feet away from him behind glass, he was not shown enough of the body to allow him to see her clearly, and he was not provided with any clothing or effects which belonged to the body.
- The error was not discovered until after the autopsies were performed. By this time Ms Halech was buried and Ms Fetisinski cremated.
- As a result the Plaintiff claimed he suffered a major depressive disorder which he blamed on the alleged negligence of the police in the manner they identified the bodies.

The Plaintiff sued the State of South Australia for the negligence of the Police.

The claim was dismissed at first instance on the basis that no duty of care existed and there was no causal connection between the errors of the police and the injury complained of.



The Issue on Appeal

The question before the Court of Appeal was whether there was an error in the finding that there was no relevant duty of care owed by the police officers and that causation had not been established.

The Decision

The Appeal was dismissed.

The South Australian Supreme Court first noted that merely because it is foreseeable that a careless act upon the part of one person may cause harm to another, does not of itself mean a duty of care arises.

The Court then articulated the reluctance to create a duty for individual members of the public as a result of the way the police exercise their duty to enforce the law. This is based on a concern that it would place the police in an untenable position. Police are charged with the responsibility of exercising powers in the public interest. This responsibility should not ordinarily subject them to a duty that would conflict with this. Even if it was reasonably foreseeable that someone could suffer an injury as a result of an incorrect identification of a victim of an accident, no duty of care would be imposed upon the police during this process. In the present case it was noted that the identification of bodies at the scene of the accident was no more than the expression of an opinion based on available evidence and therefore it was not reasonably foreseeable that the Plaintiff would have suffered a psychiatric injury as a result of an incorrect identification at that stage. However putting this aside, it would still be contrary to the interests of the community if the police had a duty imposed on them as it could inhibit their investigatory role.

The Court also agreed the facts did not support a causal link between the incorrect identification of the bodies and the Plaintiff's psychiatric injury.

Implications

- This decision followed Tame –v- NSW; Annetts v Australian Stations Pty Ltd (Tame involved a negligent misstatement by police officers allegedly causing psychiatric injury). The decision is also consistent with the cases of Sullivan –v- Moody (whether a duty is owed to an alleged perpetrator of abuse during an investigation into sexual abuse) and Hill –v- Chief Constable of West Yorkshire (the mother of the last victim of a serial killer sued police for failing to properly investigate the earlier crimes).
- The case reiterates the line of authority that holds that it would be inappropriate to impose a duty of care on police officers making decisions during the course of an investigation to the extent that the proposed duty of care would be inconsistent with this official function. Members of the public aggrieved by negligent conduct of police may have not have a private



remedy, but despite this, public policy concerns support the decision not to impose a duty of care.

- While a Court is likely to be less generous to Defendants outside the police context, it demonstrates that a Defendant may avoid the imposition of a duty of care owed to a particular plaintiff if can be shown what an inconsistent obligation is owed to another person. This will particularly be the case where the Defendant is charged with some sort of statutory responsibility or is exercising powers in the public interest.
- The case also provides a useful summary of the law relating to pure psychiatric injury at common law. At page 26 Judge Besanko says:

“in summary the common law as to recovery for nervous shock is that there will only be a duty of care if a recognisable psychiatric illness was reasonably foreseeable. The normal fortitude, sudden shock and direct perceptions rules have been rejected as definitive tests of liability or control mechanisms. However, they, and in particular the normal fortitude rule, will still provide assistance in determining whether having regard to the facts, a recognisable psychiatric illness was reasonably foreseeable. It is not necessary that the particular type of disorder be reasonably foreseeable; what must be reasonably foreseeable, is a psychiatric illness as commonly understood and not necessarily whether it is an illness referred to in the DSM-IV –TR. In addition to this requirement the plaintiff may only recover damages for recognisable psychiatric illness”

- Finally, this case reminds all parties to litigation of the need for the Plaintiff to link the claimed psychiatric injury to the pleaded cause of action.



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