The question of liability for negligence of mentally disabled persons

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Personal Injury analysis: When do those suffering from a mental disability owe a duty of care to others? Richard Spearman QC of 39 Essex Chambers and Stuart Nicol, junior counsel, examine the Court of Appeal’s decision in Dunnage v Randall.

Original news

Dunnage v Randall and another [2015] EWCA Civ 673, [2015] All ER (D) 49 (Jul)

The claimant had suffered burns when his uncle, who had unknowingly been suffering with florid paranoid schizophrenia, had set fire to himself. He sought damages in negligence under his uncle’s household insurance policy. The judge found that his uncle’s actions had not been voluntary, therefore he had not owed a duty of care. The Court of Appeal, Civil Division, allowed the claimant’s appeal. It held that the actions of a defendant, who was merely impaired by medical problems, whether physical or mental, could not escape liability if he caused injury by failing to exercise reasonable care unless his condition entirely eliminated his responsibility.

What were the key features of this case?

The facts of the case were striking and horrific. In October 2007, the claimant was visited in his home by his uncle (V) with whom he had been on good terms, but who was diagnosed post-mortem as having suffered florid paranoid schizophrenia. The claimant, a rescuer to whom both the judge and the Court of Appeal paid tribute, was extremely seriously burned as a result of V pouring petrol over himself. The claimant struggled unsuccessfully to prevent V igniting the petrol with a lighter that V was holding, and both were engulfed in flames. V died at the scene. The claimant jumped to safety from a balcony.

Following a trial on liability in February 2014, the judge dismissed the claim on the basis that due to his mental illness, V’s acts were involuntary and that V therefore had no legal liability to the claimant.

There were two main aspects to the case. The first concerned the tortious liability of those suffering from mental illness. There was no previous Court of Appeal decision which considered this issue, and the claimant argued that it raised difficult issues of legal policy, which involve striking a balance between, on the one hand, fair and just criteria of legal responsibility, and, on the other hand, the protection of the legitimate interests and expectations of people in general and the victims of injury caused by mentally disabled persons in particular. The second concerned the policy wording, and, in particular, the meaning of ‘accident’ for insurance purposes.

The claimant contended that:

- (a) his uncle (V) owed him a duty of care and that V’s mental illness was no bar to recovery of damages
- (b) the applicable standard of care was that of the ordinary reasonable person, and not a modified standard that took account of V’s individual characteristics
- (c) V did not intend the claimant harm, rather the harm was a consequence of V’s unsound mind and was accidental, and
- (d) the claim therefore came within section 3 of the policy, which provided: ‘We will indemnify...your family against all sums which you become legally liable to pay as damages for...accidental bodily injury...to any person...in the circumstances described in the contingencies’

The insurer argued with regard to point (a) that the judge's reasoning was correct, and with regard to points (b)-(d) that the opposite conclusions were correct.

At the appeal hearing, the claimant put the question raised under the first aspect of the case as ‘What is the liability of a person suffering from mental illness for an act which is on the face of it negligent and a tort?’ or, more narrowly, as ‘Is a person suffering mental illness to the extent that his actions are entirely directed by his deluded and deranged mind liable in damages to a person injured?’
Can an individual who suffers from mental illness owe a duty of care?

It was not in issue between the parties that an individual who suffers from mental illness can owe a duty of care. The nature of the dispute concerned:

- whether the applicable standard of care is, as the claimant contended, that of the ordinary reasonable person, or, as the insurer contended, a modified standard that took account of V's mental illness, and
- whether, on the facts, V had breached such duty of care as he owed to the claimant

The Court of Appeal held:

- there is no justification for treating mental and physical illnesses differently
- what matters is the effect of the illness (specifically whether it entirely eliminates fault or responsibility for the injury caused because it means that the defendant did nothing to cause it)
- an adult who suffers from mental illness is required to meet the objective standard of the ordinary reasonable person, not a modified standard which takes account of that mental illness, and
- on the facts, unwell though he was, V was not divested of responsibility for his acts which occasioned injury to the claimant and did not meet that objective standard

To what extent can mental illness act as a bar to recovery of damages?

The Court of Appeal held that, as is also true in the case of physical illness, mental illness can act as a bar to the recovery of damages where it entirely eliminates fault or responsibility for the injury caused because it means that the defendant did nothing to cause it. In the words of Vos LJ at [131]-[133]:

"only defendants whose attack or medical incapacity has the effect of entirely eliminating any fault or responsibility for the injury can be excused. It is only defendants in that category that have not actually broken their undoubted duty of care. The actions of a defendant, who is merely impaired by medical problems, whether physical or mental, cannot escape liability if he causes injury by failing to exercise reasonable care....What then does it mean to say that a medical condition entirely eliminates any fault or responsibility for the injury? It simply means that the defendant himself did nothing to cause the injury...In my judgment, however, at all intermediate stages where the defendant does something himself he risks being liable for failing to meet the standards of the reasonable man."

How did the court approach the structure and wording of the policy?

The judge reasoned that:

- the bodily injury V caused to the claimant was 'accidental' in accordance with both
  - authority, and
  - the wording of the policy
- the insurer could not rely upon the exclusion in section 3c of the policy for 'Liability arising from...any wilful or malicious acts by you or your family'
- the insurer's argument that it would be contrary to public policy to allow V to recover indemnity under the policy also failed, and
- the other arguments raised by the insurer concerning the construction and scope of the policy had 'fallen away in the course of the trial'

Those other arguments were that:

- even if the bodily injury occasioned to the claimant was 'accidental' it was caused by a form of accident which was excluded by implication from cover under the policy
- the insurer was entitled to rely upon the general condition which stipulates 'Reasonable care...Liability You and any other person to whom this insurance applies must take all reasonable steps to prevent loss, damage or accident'
- the insurer was entitled to rely upon section 3 i) of the policy, which provides that 'What is NOT covered
[includes].... Liability arising from ... i. accidental bodily injury (including death or disease) to you or your family', and

○ that 'bodily injury' did not include 'psychiatric harm and its consequences'.

The Court of Appeal upheld the judge's rulings on these points. Arden LJ said at [156]:

"The critical matter is whether the injury suffered by the claimant was accidental bodily injury. In my judgment, the injury was accidental because on the evidence [V] had clearly lost control of his ability to make choices and therefore he could not be said to have intended to cause injury to the claimant. ...it would be unrealistic to interpret accidental injury or damage in the policy as limited to that caused by some means external to the insured: that would reduce the cover to significantly less than the parties must have contemplated."

And at [157]:

"For the same reason, [V] cannot be said to have been wilful or malicious within the exclusion for wilful or malicious conduct (see per Tuckey LJ in Patrick v Royal London Mutual Insurance Society [2007] Lloyd's IRLR 85). [V] was deluded."

What is the significance of this decision?

The claimant accepted that, when attempting to formulate a coherent and principled approach to the liability in the tort of negligence of mentally disabled persons, a range of solutions could reasonably be adopted. This was borne out by the cases from a number of foreign jurisdictions which were analysed in detail by Rafferty LJ. As Arden LJ said at [154]:

"Different common law systems may take a different view on the policy issue. This can be seen from some of the cases which Lady Justice Rafferty has cited...It is still valid to look at these authorities so long as that point is borne in mind. Although my judgment is brief, I have found the citation of foreign materials assisted me to weigh up the arguments in this case."

The judgments of the Court of Appeal provide for the first time in clear and comprehensive terms the answer given to the problem by English law.

Richard Spearman QC is a barrister at 39 Essex Chambers. He has a wide ranging practice and has appeared in many high profile and reported cases, including five cases in the House of Lords, and numerous cases in the Court of Appeal and all divisions of the High Court, as well as advising on and appearing in litigation overseas and in commercial, media and sport arbitrations. He has argued cases in the Court of Appeal concerning freezing injunctions, civil fraud, tracing, disclosure, arbitration, police powers, negligence, contracts, insurance, defamation, copyright, confidence, data protection, and personal injuries.

Stuart Nicol is a barrister who is a sole practitioner (formerly a tenant at 13 King's Bench Walk). He has been practising for almost 20 years and specialises in commercial and civil law, including insurance law where there are indemnity issues and catastrophic injury claims where there are psychiatric issues.

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