



25 January 2016

PRESS SUMMARY

Williams (Respondent) v The Bermuda Hospitals Board (Appellant) (Bermuda) **[2016] UKPC 4**

From the Court of Appeal of Bermuda

JUSTICES: Lady Hale, Lord Clarke, Lord Hughes, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

On 30 May 2011, Mr Williams went to hospital with abdominal pain. He arrived at 11:17 and was examined at 11:40. A CT scan was ordered at 13:10 and performed at 17:27. The CT scan report was received by the relevant doctor and read at 19:30. The hospital recommended surgery for suspected acute appendicitis and Mr Williams was taken to the operating theatre at around 21:30. The delays in diagnosing and treating Mr Williams were partly due to the hospital's negligence. Mr Williams suffered injury to his heart and lungs as a result of the sepsis caused by rupture of the appendix. That sepsis had developed incrementally over a period of approximately six hours, progressively causing myocardial ischaemia. Mr Williams sued the appellant hospital board, responsible for the management of the hospital, for damages for his pain and suffering, medical expenses and loss of earnings. He alleged that the complications were the result of negligent delay in his treatment.

At trial Hellman J held that there had been negligence in the form of culpable delay but that Mr Williams had not proved that the culpable delay caused the complications. In Hellman J's view, had the CT scan been obtained and interpreted promptly, the complications might have been avoided, but he was not satisfied that they probably would have been avoided. Therefore he awarded Mr Williams \$2,000 in damages for his extra suffering during the period of culpable delay prior to the operation. The Court of Appeal of Bermuda (Evans and Ward JJA and Bell AJA) reversed the judge's decision on causation stating that the question was not whether the negligent delay caused the injury to Mr Williams but rather whether it contributed materially to the injury.

On the case being remitted back to the first instance judge, Hellman J increased the award to \$60,000 excluding interest. The appellant hospital board appealed to the Judicial Committee of the Privy Council.

JUDGMENT

The Board humbly advises Her Majesty that the Bermuda Hospitals board's appeal should be dismissed. Lord Toulson gives the judgment of the Board.

The Judicial Committee of the Privy Council

Parliament Square London SW1P 3BD T: 020 7960 1886/1887 F: 020 7960 1901 www.jcpc.uk

REASONS FOR THE JUDGMENT

In the case of *Bonnington Castings Ltd v Wardlaw* [1956] AC 613 the claimant contracted pneumoconiosis caused by the inhalation of dust. There were two sources of that dust, the defendant being only culpable for one. However the disease could not be attributed to the dust from one source or the other. It was caused by the whole of the noxious material inhaled. In this situation the question of causation is whether the dust from the source for which the defendant was responsible “*materially contributed*” to the disease. It is not right for the court simply to ask which was the most probable cause of the disease. [26-29]

There is an obvious parallel with the current case. In the present case the injury was caused by sepsis attributable to both the hospital’s negligence (its culpable delay) and the sepsis which had already begun regardless of that delay. Where an injury is caused by two (or more) factors operating cumulatively, as in this case and in *Bonnington*, it is immaterial whether they operate concurrently or successively. [39]

A claim will fail if the most that can be said is that the claimant’s injury is likely to have been caused by one or more of a number of disparate factors, one of which was attributable to a wrongful act or omission of the defendant. There the claimant will not have shown as a matter of probability that the factor attributable to the defendant caused the injury. By contrast, here, the sepsis was not divided into separate components causing separate damage to the heart and lungs. Its development and effect on the heart and lungs was a single continuous process, during which the sufficiency of the supply of oxygen to the heart steadily reduced. [40-41] On the trial judge’s findings, that process continued for a minimum period of two hours 20 minutes longer than it should have done. In the judgment of the Board, it is right to infer on the balance of probabilities that the hospital board’s negligence materially contributed to the process, and therefore materially contributed to the injury to the heart and lungs. [42]

Two additional matters are addressed:

1. The Board addresses the case of *Bailey v Ministry of Defence* [2009] 1 W.L.R. 1052, and comments that the first instance judge in that case was right to hold the hospital responsible for the claimant’s injuries, not sharing the view of that case’s Court of Appeal that there had been a departure from the “but-for” test. [44-47]
2. The “doubling of risk” test which is sometimes used as a tool in deciding questions of causation should be used cautiously. It has its uses in certain circumstances but “inferring causation from proof of heightened risk is never an exercise to apply mechanistically. A doubled tiny risk will still be very small.” [48]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html