

Litigation - Cyprus

No use crying over spilled coffee: court rules in negligence case

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December 13 2011

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Tort of negligence

The Civil Wrongs Law provides that negligence consists of either performing an act which, under the circumstances, a reasonable prudent person would not do or failing to perform an act which, under the circumstances, such person would do, causing damage as a result.

Compensation for such damage is recoverable only by a victim to whom the perpetrator of negligence owed a duty not to be negligent, under the circumstances.

The standard of negligence is not absolute, but is dependent on the circumstances, and in the case of contributory negligence - neglect of one's own personal safety - a court must regard the plaintiff's distractions, strain and fatigue at the time of the accident.

Contributory negligence

As regards contributory negligence, the Civil Wrongs Law reproduces the provisions of the 1945 English Law Reform (Contributory Negligence) Act. A leading English case on contributory negligence is *Caswell v Powell Duffryn Associated Collieries Ltd*,⁽¹⁾ in which Lord Atkin stated:

"The injury may, however, be the result of two causes operating at the same time, a breach of duty by the defendant and the omission on the part of the plaintiff to use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances. In that case the plaintiff cannot recover because the injury is partly caused by what is imputed to him as his own default. On the other hand, if the plaintiff were negligent, but his negligence was not a cause operating to produce the damage, there would be no defence...I think that the defendant will succeed if he proves that the injury was caused solely or in part by the omission of the plaintiff to take the ordinary care that would be expected of him in the circumstances. But, having come to that conclusion, I am of opinion that the care to be expected of the plaintiff in the circumstances will vary with the circumstances; and that a different degree of care may well be expected from a workman in a factory or a mine from that which might be taken by an ordinary man not exposed continually to the noise, strain and manifold risks of factory or mine."⁽²⁾

Employer negligence

Under the Civil Wrongs Law, an employer is liable for the negligence of its employees towards one another in the same way as it is liable for their negligence towards third parties, provided that the negligent act or omission occurs within the course of employment or is otherwise authorised by the employer.

The employer's duty towards its employees to provide a safe work system has its roots in common law, which imposes a duty on the employer to ensure that employees jointly engaged with it in carrying out its work or industry do not suffer injury, either via its personal negligence or through its failure to superintend and control appropriately the undertaking in which it and they are mutually engaged.

The primary safety duties owed by an employer towards employees include:

- to provide competent staff;
- to supply adequate materials (eg, proper machinery, plant and appliances); and
- to institute and maintain proper and safe supervision where necessary in order to satisfy statutory safety regulations.

Res ipsa loquitur

Res ipsa loquitur is a doctrine of law which states that a person is presumed to be negligent if he or she had exclusive control of whatever caused injury (even though there may be no specific evidence of a negligent act) and if, without negligence, the accident would not have occurred. The *res ipsa loquitur* principle is codified in the Civil Wrongs Law and has been explained in various Cyprus and English cases.

In the English case of *Lloyde v West Midlands Gas Board*,⁽³⁾ it was said:

"If at the end of the evidence for the plaintiff, taking into account the possibility, whatever it may be, of outside interference, on the evidence and on proper inferences one way or the other from the evidence or absence of evidence with regard thereto, the correct conclusion is that on balance of probability the cause of the accident was some negligent act or omission on the part of the defendants, then res ipsa loquitur applies, and, subject to the effect of any rebutting evidence on behalf of the defendants thereafter, the plaintiff's claim succeeds."

Facts

The first instance judgment in *P Argyrou v Aegean Airlines SA* was delivered by the Limassol District Court on August 11 2011. The judge awarded damages of €10,000 plus interest against Aegean Airlines to the claimant for burns suffered when coffee was spilled on her onboard a flight from Cyprus to Greece. On landing in Athens, the claimant was taken to the airport hospital and asked the police to file an incident report.

The claimant stated at the trial that the flight attendant lost her balance and, as a result, the coffee cup fell from her tray onto the seat's folding table. The coffee spilled onto the claimant's legs, resulting in burns. The claimant further testified that following the incident, the aircraft crew were apologetic to her and before landing, a flight attendant checked the seat's folding table and loudly said, "This is broken".

The airline claimed that the cup of coffee had already been served and placed on the folding table, and was spilled by the claimant herself when she tried to reach for a sugar packet from the flight attendant's tray. It was also alleged that the claimant apologised to the flight attendants after the incident. Accordingly, the airline suggested in its defence that the accident was the claimant's fault.

Decision

The evidence and undisputed facts suggested that:

- the flight attendant served coffee during the flight;
- the flight attendant, as an employee of the defendant airline, had a duty of care towards the claimant;
- the claimant was injured by the spilled coffee; and
- the risk of injury to the claimant by the coffee was foreseeable.

Therefore, the district court judge rejected the defendant's version of the facts.

The principal factor which strengthened the claimant's allegations against those of the defendant was the testimony of an independent person unconnected in any way with the claimant - namely, another passenger sitting nearby who witnessed the incident and testified in support of the claimant's version of events.

The level of compensation had already been agreed by the parties at €10,000; the sole matter for consideration at the trial was whether the airline was negligent and at fault for the accident.

Comment

It is well established that negligence is a failure to take reasonable care under the particular circumstances and, in each case, the question of whether a person has been negligent is one of fact. Accordingly, and as evidenced by the outcome of this case, the credibility of witnesses, the quality of the evidence provided and the overall impression that a witness gives to the trial judge are factors of critical importance, especially where documentary evidence is lacking.

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Endnotes

⁽¹⁾ (1939) 3 All ER 722.

⁽²⁾ *Ibid*, pp 730-731.

⁽³⁾ (1971) 2 All ER 1240, p1247.

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