

No more double money

Should a claimant be able to recover under an employees' insurance policy as well as in a claim for damages?

The Court of Appeal has overturned its 1990 decision, *McCamley v Cammell Laird Ship Builders Ltd*. In a unanimous judgment in *Gaca v Perrelli General plc*, the court has re-examined the exceptions to the double recovery principle.

The facts

Ms Gaca was injured in an accident at work and made a claim against her employers. Ms Gaca's injuries prevented her return to work; this qualified her for payment under an employees' insurance policy.

The question for the court was: should the proceeds of the insurance policy be deducted from the damages awarded to the claimant?

In *McCamley*, where the facts were almost identical, the Court of Appeal had found in favour of the claimant, saying that the case came within the "benevolent exception" to the principle of avoiding double recovery.

Benevolent exception

In his leading judgment, Lord Justice Dyson referred to the principle that the person responsible for an injury should not benefit as a result of the generosity of third parties. When a claimant has received money, say, from a disaster fund, this money must be disregarded.

But the position should be different where the payment has been made by the defendant to the claim. The claimant should not be compensated twice by the person who has done him or her wrong. Employers injuring employees would be discouraged from making ex gratia payments if these were not deducted from awards in damages.

McCamley was wrongly decided; an ex gratia payment by an employer who is responsible for the wrong done to an employee does not fall within the benevolence exception to the double recovery rule.

The insurance exception

Ms Gaca had not contributed to the insurance policy provided for her. The position would be completely different where a claimant paid premiums on an insurance contract, met with an accident and received compensation under the policy.

It was suggested to the court that, by working for the employer, Ms Gaca had indirectly contributed to the premiums which the employer had paid. This argument was dismissed; contribution could not be inferred by the fact that a claimant was an employee for whose benefit the insurance was arranged.

Comment

The Court of Appeal has properly reversed the decision in *McCarmley*. Employers were paying premiums both on permanent disability insurance cover and to insure against claims for loss of earnings. With premiums based on claims experience, a company would face increased premiums while a claimant was unjustly enriched. Damages should put the claimant in the position he or she would have been in but for the accident, not provide a windfall.

This is different from where a payment is made from sympathy or the claimant has prudently taken out insurance cover.

A question: does the insurance exception apply where claimants have – on the basis of having received a benefit in kind – paid tax on an insurance policy taken out by employers on their behalf?

Andrew Caplan