



8 February 2018

## PRESS SUMMARY

### **Robinson (Appellant) v Chief Constable of West Yorkshire Police (Respondent) [2018] UKSC 4 On appeal from [2014] EWCA Civ 15**

**JUSTICES:** Lady Hale, Lord Mance, Lord Reed, Lord Hughes, Lord Hodge

#### **BACKGROUND TO THE APPEAL**

In July 2008, the Appellant, then aged 76, was knocked over on a street in the centre of Huddersfield by a group of men. Two of the men were police officers (DS Willan and PC Dhurmea) and the third was a suspected drug dealer (Williams) whom they were attempting to arrest. As the officers struggled with Williams, he backed into the Appellant, who was standing close by. She fell over, and the three men fell on top of her, causing her to be injured. The officers had foreseen that Williams would attempt to escape. They had not noticed that the Appellant was in the immediate vicinity.

The principal question to be decided in this appeal was whether the officers owed a duty of care to the Appellant and whether, if they did, they were in breach of that duty. The judge held that the officers had been negligent, but that the police were immune from claims against them in negligence. The Court of Appeal found that most claims against the police when engaged in their core functions will fail the third stage of the “*Caparo test*” i.e. that it will not be fair, just and reasonable to impose a duty of care. The Court also found that Williams had caused the harm to the Appellant and the case therefore concerned an omission by the police, rather than a positive act. Finally, the Court considered that even if the officers had owed the Appellant a duty of care, they had not acted in breach of it.

The issues to be resolved in the Supreme Court were (1) does the existence of a duty of care always depend on an application of the “*Caparo test*” (2) is there a general rule that the police are not under any duty of care when discharging their core functions, and is there any distinction between acts and omissions (3) was this a positive act or an omissions case (4) did the police owe a duty of care to the Appellant (5) if so, was the Court of Appeal correct to overturn the judge’s finding that the officers failed in that duty and (6) if there was a breach of a duty of care, were the Appellant’s injuries caused by it?

#### **JUDGMENT**

The Appeal is allowed. Lord Reed gives the lead judgment with which Lady Hale and Lord Hodge agree. Lord Mance and Lord Hughes also allow the appeal but reach the conclusion that a duty of care existed by different reasoning.

#### **REASONS FOR THE JUDGMENT**

The proposition that there is a *Caparo test* which applies to all claims in the modern law of negligence, and that in consequence the court will only impose a duty of care where it considers it fair, just and reasonable to do so on the particular facts, is mistaken [21-24]. It is normally only in novel cases, where established principles do not provide an answer, that the courts need to exercise judgment that involves consideration of what is “fair, just and reasonable” [27]. This case concerned an application of established principles of the law of negligence and so the existence of a duty of care did not depend on the application of a *Caparo test* [30].

Like other public authorities, in accordance with the general law of tort, the police are subject to liability for causing personal injury [45-48]. On the other hand, as held by the Supreme Court in *Michael v Chief Constable of South Wales Police (Refuge and others intervening)* [2015] UKSC 2, the general duty of the police to enforce the criminal law does not carry with it a private law duty towards individual members of the public. The common law does not normally impose liability for omissions, or, more particularly, for a failure to prevent harm caused by the conduct of third parties [50].

The case of *Hill v Chief Constable of West Yorkshire* [1989] AC 53 is not authority for the proposition that the police enjoy a general immunity from suit in respect of anything done by them in the course of investigating or preventing crime. The effect of *Hill* is that the police do not owe a duty of care, in the absence of special circumstances, to protect the public from harm through the performance of their function of investigating crime [54-55]. The authorities relied on by the respondent [56-66] are not inconsistent with the police being generally under a duty of care to avoid causing personal injury where such a duty would arise according to ordinary principles of the law of negligence [67-68]. Applying these principles, the police may be under a duty of care to protect an individual from danger of injury which they have themselves created [70].

The present case concerned a positive act, not an omission. The reasonably foreseeable risk of injury to the Appellant when the arrest was attempted was enough to impose a duty of care on the officers [74]. The judge was entitled to find negligence where Willan accepted that he was aware of the risk that Williams would attempt to escape and of the risk to members of the public in that event, that he would not have attempted the arrest at a time when he was aware that someone was in harm's way, and that he had failed to notice the Appellant [75-78]. The Appellant's injuries were caused by the officers' breach of their duty of care; she was injured as a result of being exposed to the danger from which they had a duty of care to protect her [79-80].

Both Lord Mance and Lord Hughes agreed with the majority that the present case concerned a positive act, not an omission, and that the finding of the trial judge on negligence should be restored [82; 122-124]. However, Lord Mance found it unrealistic to suggest that, when recognising and developing an established category of liability, the courts are not influenced by policy considerations [84]. It was not possible to state absolutely that policy considerations may not shape police liability where the conduct of the police may be analysed as positive, rather than simply as involving some form of omission [85-94]. However, he concluded that we should now recognise the direct physical interface between the police and the public, in the course of an arrest placing an innocent passer-by at risk, as falling within a now established area of general police liability for positive negligent conduct which foreseeably and directly inflicts physical injury [97].

Lord Hughes referred to vital policy considerations which impose limits on the duty of care which the police owe to individuals. Such considerations are the ultimate reason why there is no duty of care imposed on police officers engaged in the investigation and prevention of crime towards victims, suspects or witnesses. The greater public good requires the absence of any duty of care [103-120]. In response to these points, Lord Reed emphasised that discussion of policy considerations is not a routine aspect of deciding cases in the law of negligence, and is unnecessary when existing principles provide a clear basis for the decision, as in the present appeal [69].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>