



20 November 2019

PRESS SUMMARY

**Edwards on behalf of the estate of the late Thomas Arthur Watkins (Respondent)
v Hugh James Ford Simey Solicitors (Appellant)**

[2019] UKSC 54

On appeal from: [2018] EWCA Civ 1299

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Lloyd-Jones, Lord Sales, Lord Thomas

BACKGROUND TO THE APPEAL

This appeal relates to a compensation scheme (the “Scheme”) set up in 1999 by the Department for Trade and Industry to provide tariff-based compensation to miners employed by the British Coal Corporation (“British Coal”) who suffered from a medical condition called vibration white finger (“VWF”) as a result of excessive exposure to vibration through the use of vibratory tools. The Scheme provided for compensation to be paid for pain, suffering and loss of amenity (“General Damages”) and handicap on the labour market and other financial losses including past and/or future loss of earnings (“Special Damages”), which could include a services award to cover the need for assistance in performing specified domestic tasks. Rather than conducting an individual assessment of each claimant’s ability to carry out the specified tasks, the Scheme applied a presumption based on the condition reaching a certain level of severity.

Mr Arthur Watkins was employed by British Coal as a miner from 1964 until 1985 and had developed VWF by the early 1980s. In 1999 he instructed the appellant to act for him in relation to a claim under the Scheme. Findings from a medical examination and interview indicated that Mr Watkins could obtain General Damages and qualified for the presumption in his favour that he satisfied the requirements for a services award. Mr Watkins sought a services award. In 2003 he was instead offered the tariff award for General Damages in full and final settlement of his claims. The appellant wrote to Mr Watkins on 18 February 2003 reporting the offer. After a telephone conversation with an employee of the appellant, Mr Watkins accepted the offer.

In 2008, Mr Watkins instructed new solicitors to bring a claim against the appellant for professional negligence, on the basis that as a result of the appellant’s negligence Mr Watkins had lost the opportunity to bring a services claim under the Scheme. Mr Watkins died in 2014 and his daughter, Mrs Jean Edwards, was appointed to continue the claim on behalf of his estate. The first-instance court held that the letter of 18 February 2003 and the advice given had been negligent and that had Mr Watkins received appropriate advice he would probably have rejected the offer and pursued his services claim. A jointly instructed medical expert, who had been

instructed not to apply the presumption that would have applied under the Scheme, provided a report that concluded Mr Watkins's symptoms would have been insufficient to succeed on a services claim. The court therefore held that Mr Watkins had suffered no loss and dismissed the claim. Mr Watkins successfully appealed to the Court of Appeal, which decided that the trial judge had been wrong to determine the value of the services claim on the basis of evidence that would not have been available at the time of the notional claim. The appellant seeks to appeal that decision.

The issue in the appeal is whether, in assessing the prospects of success of the negligence claim, the court should have taken account of the further medical report.

JUDGMENT

The Supreme Court unanimously dismisses the appeal and remits the matter for assessment of the value of the loss of the opportunity to pursue the services claim. Lord Lloyd-Jones gives the judgment, with which all members of the Court agree.

REASONS FOR THE JUDGMENT

In order to succeed in his claim in the tort of negligence, Mr Watkins had to establish a negligent breach of duty, causation and loss. The trial judge found that there had been a negligent breach of duty and that causation was established. Neither conclusion has been appealed [22]. To succeed, therefore, Mr Watkins's estate must prove loss, specifically that in losing the opportunity to pursue the claim Mr Watkins lost something of value, i.e. that his services claim had a real and substantial rather than merely a negligible prospect of success [23].

Mr Watkins's original claim was within the Scheme, and it is therefore necessary to consider whether the claim was of more than negligible value within the context of that Scheme [25]. The expert report was concerned with causation, not loss, and was prepared to assist in the assessment of whether Mr Watkins's failure to pursue a services claim arose from negligent advice or from an inability to assert truthfully that he had lost the ability to perform activities that would qualify him for a services award [27]. As a result, the expert was instructed not to apply the presumption used under the Scheme [28].

Had Mr Watkins pursued a services claim it would have proceeded on the basis of the Scheme's procedures. He would have had to undergo only a limited second medical examination and there would have been no equivalent of the expert's report. His entitlement to a services award would have been decided by the application of the Scheme's presumption. There was no justification for considering a further medical examination and report which would not have been commissioned under the Scheme and therefore the judge erred in taking this into account [29]. Given other findings in the expert report, the court is unable to accept that the services claim had no chance of success so that the lost claim was of no value [30]. The first-instance judge should have proceeded to assess the value of the lost claim on a loss of opportunity basis. The court therefore dismisses the appeal and remits the matter for that assessment [32].

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:

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