



Press Summary

2 November 2022

The Soldiers, Sailors, Airmen and Families Association – Forces Help and another (Respondents) v Allgemeines Krankenhaus Viersen GmbH (Appellant)

[2022] UKSC 29

On appeal from: [2020] EWCA Civ 926

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Kitchin, Lord Hughes, Lord Lloyd-Jones.

Background to the Appeal

On 14 June 2000 the claimant, Mr Harry Roberts, was born at a hospital in Viersen, North-Rhine Westphalia, Germany, operated by the third party, Allgemeines Krankenhaus Viersen GmbH (“AKV”). He alleges that in the course of his birth he suffered an acute hypoxic brain injury as a result of negligence on the part of the attending midwife. The attending midwife was employed by the first defendant, the Soldiers, Sailors and Airmen and Families Association – Forces Help (“SSAFA”). The claimant alleges that SSAFA and/or the second defendant, the Ministry of Defence (which has agreed to indemnify SSAFA) are liable for the acts or omissions of the midwife. The defendants in turn brought a claim for contribution against the third party on the basis that, pursuant to the Civil Liability (Contribution) Act 1978 (“the 1978 Act”), the third party is liable in respect of the same damage as the defendants.

The parties agree that the claimant’s claim against the defendants is governed by German law, that any liability of the third party to the claimant is also governed by German law and that, applying domestic choice of law rules, German law would apply to the contribution claim unless the 1978 Act has overriding effect. If the contribution claim is governed by German law it is time barred. However, the defendants maintain that the 1978 Act has overriding effect with the result that limitation is governed by the law of England and Wales and the contribution claim is not time barred.

At first instance, it was held that the 1978 Act has overriding effect and applies irrespective of domestic choice of law rules. The Court of Appeal agreed, dismissing AKV’s appeal. AKV now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Lloyd-Jones gives the judgment, with which Lord Reed, Lord Hodge, Lord Kitchin and Lord Hughes agree.

Reasons for the Judgment

The issue before the court is whether the 1978 Act has overriding effect so that it applies to all contribution claims brought in England and Wales, or whether it applies only when domestic choice of law rules indicate that the contribution claim in question is governed by the law of England and Wales [1].

The 1978 Act does not provide expressly that it has overriding effect. It does not provide that the 1978 Act applies irrespective of the foreign law otherwise applicable to the contribution claim. The question is whether such an intention must be implied from the provisions of the statute [38]. Three statutory provisions were identified variously by the Court of Appeal as supporting overriding effect: sections 1(6), 2(3)(c) and 7(3). The Supreme Court, however, considers these provisions equivocal. Their efficacy is not dependent upon overriding effect [39]-[48]. In particular, even in the absence of overriding effect, section 1(6) will be effective in many situations such as where the parties to the contribution claim are in a special relationship governed by the law of England and Wales [43].

Nothing in the admissible Parliamentary materials or the legislative history supports the view that the legislation was intended to have overriding effect [49] – [51]. However, the Bill was a Law Commission Bill and statements by the Commission in other reports suggest it was not intended to have overriding effect [52]-[55]. The weight of academic commentary strongly favours the view that the 1978 Act does not have overriding effect [73]-[79].

A line of authorities supports overriding effect. In a number of these cases overriding effect was assumed, was not directly in point and was not argued [56]-[60]. *Arab Monetary Fund v Hashim (No 9)* provides direct support for overriding effect, but the reasoning is open to the criticism that it is circular [61]-[68].

In coming to the conclusion that the 1978 Act was not intended to have overriding effect, the Supreme Court is influenced in particular by two considerations. First, there will be many situations in which a contribution claim will be governed by the law of England and Wales, notwithstanding the fact that the underlying liabilities are governed by a foreign law [82]. Secondly, it is difficult to see why Parliament should have intended to confer a statutory right of contribution whenever the party from whom contribution is sought can be brought before a court in this jurisdiction, regardless of the law with which the contribution claim has its closest connection. A failure of foreign law to provide for contribution claims is not a defect requiring remedy by legislation in this jurisdiction. Moreover, it would seem contrary to principle for the law of England and Wales to be applied if the contribution claim were most closely connected to a foreign system of law [83].

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: [Decided cases - The Supreme Court](#)