



Press Summary

12 June 2024

George (Respondent) v Cannell and another (Appellants)

[2024] UKSC 19

On appeal from [2022] EWCA Civ 1076

Justices: Lord Hodge, Lord Hamblen, Lord Leggatt, Lord Burrows and Lord Richards

Background to the Appeal

This appeal concerns the civil wrong of malicious falsehood, which is committed when someone maliciously publishes words that cause another person financial loss. The main issues raised are: (1) whether section 3(1) of the Defamation Act 1952 removed the need, in specified circumstances, for a claimant to prove their financial loss to establish a defendant's liability for this wrong; and (2) if so, whether a claimant who successfully relies on section 3(1) can recover damages for injury to feelings related to the publication of the malicious falsehood, even if no financial loss has been caused to them.

The claimant, Fiona George, was an employee of the second defendant, LCA Jobs Ltd, a recruitment agency owned and operated by the first defendant, Linda Cannell. After resigning from LCA, the claimant was employed by another recruitment agency. She soon began targeting LCA's clients. Linda Cannell told two third parties, one of whom was the claimant's new line manager and the other a client of LCA, that by doing this the claimant was in breach of her contract of employment with LCA. In fact, as Linda Cannell knew, there was no term of that contract which prohibited the claimant from soliciting business from LCA's clients.

On a claim for damages for malicious falsehood, the High Court judge found that the statements made to the two third parties were false and malicious (because Linda Cannell did not believe them to be true); but that they had not caused the claimant any financial loss (because she showed a copy of her contract to her line manager, who saw that it contained no relevant restriction, and because the client of LCA whom she had approached had decided not to do business with her new employer anyway). The judge also held that the claim could not succeed in the absence of any financial loss and, therefore, dismissed the claim. On appeal, the Court of Appeal reversed this decision, holding that it was sufficient to establish liability under section 3(1) that the false statements were likely to cause financial loss, even

though no such loss had in fact occurred. The Court of Appeal also held that, because liability was made out, the claimant could recover damages for injury to her feelings.

The defendants appealed to the Supreme Court.

Judgment

By a three-to-two majority, the Supreme Court allows the appeal. The Supreme Court unanimously holds that the effect of section 3(1) is to enable a claimant to establish liability for malicious falsehood where a falsehood is likely to cause financial loss even if, in fact, it does not; but that the claimant can only recover damages (other than merely nominal damages) for financial loss actually suffered. For reasons given by Lord Leggatt (with whom Lord Hodge and Lord Richards agree) the majority of the court also holds that compensation for injury to feelings can only be recovered if such injury is consequent on financial loss caused by a maliciously false statement. As no financial loss was caused here, the claimant is entitled only to nominal damages. Lord Hamblen and Lord Burrows dissent on this issue.

Reasons for the Judgment

Effect of section 3(1)

Section 3(1) of the Defamation Act 1952 provides that, in an action for malicious falsehood, “it shall not be necessary to allege or prove special damage” if the words upon which the action is founded “are calculated to cause pecuniary damage” to the claimant and are published in writing or are calculated to cause pecuniary damage to the claimant in respect of any office, profession, calling, trade or business [18].

The background to this provision is that, under the common law, proof of financial damage is an essential ingredient of a claim for malicious falsehood; so that, unless it is proved that the publication of the words has caused quantifiable financial loss to the claimant, no wrong has been committed.

The defendants argued that, where section 3(1) applies, it creates a rebuttable presumption that financial loss is likely to have resulted from the publication of the false words (even without evidence of such loss), but does not make the defendant liable if the evidence shows that no financial loss actually occurred [47]–[50]. The Supreme Court rejects that argument. In the context of the Act, the term “special damage” means actual pecuniary damage (ie financial loss). Whether the words published “are calculated to cause pecuniary damage” is to be judged at the time of publication by asking whether, given the facts which the defendant knew or should have known when publishing the words, their publication was likely to cause the claimant financial loss [68], [80]–[82], [199]. If this condition is fulfilled, there is an irrebuttable presumption that financial loss was caused. There is, however, no presumption as to the amount of such loss. So the claimant can only recover damages which are more than merely nominal for financial loss which he or she has actually suffered as a result of the publication [51].

Here, the false statements made by Linda Cannell to third parties were, on the facts known to her, likely to cause the claimant financial loss even though, as it turned out, no loss was actually suffered [83]–[84]. Liability was therefore established, although the claimant had suffered no financial loss for which (more than purely nominal) damages can be recovered [89].

Damages for injury to feelings

The claimant argued that, where liability is established as it has been here, damages can be recovered for injury to feelings caused by the publication of the malicious falsehood, even if

the claimant has suffered no financial loss. The majority of the Supreme Court rejects that argument.

Malicious falsehood is described as an “economic tort” because it protects purely economic interests. Under the common law financial damage is an essential element of the wrong, which consists in the infliction of financial loss by maliciously publishing false words. Where the infliction of such loss results in injury to the claimant’s feelings - for example, because the publication of a malicious falsehood badly damages the claimant’s business, causing him acute distress and anxiety about his livelihood and his family’s future - the damages awarded can include compensation for these injured feelings as well as for the financial loss caused. But the claimant cannot recover damages for hurt and indignation caused simply by learning that the defendant has published false and malicious words about the claimant because emotional wellbeing is not an interest protected by the law of malicious falsehood: causing injury to feelings by maliciously publishing false words is not a legal wrong [102]–[105].

Section 3(1) has not altered this. Where section 3(1) applies, it gives rise to a presumption of financial loss. But it was not intended to transform an economic tort into a psychological one and cannot reasonably be interpreted as having this effect. Thus, section 3(1) does not enable the claimant to recover compensation for injury to feelings caused by the publication of a malicious falsehood where the injury to feelings is not consequential on any economic damage (because none has been suffered) [57]–[59], [106]–[113].

In relation to any wrongdoing, if the defendant’s conduct in committing the wrong or in responding to the claim was especially insulting, “aggravated damages” may be awarded [92]; but there was no such conduct here [114]–[119].

Accordingly, the claimant is entitled only to nominal damages.

Lord Hamblen and Lord Burrows disagree. They start from the principle (in agreement with the majority) that the claimant is entitled to compensation for all pecuniary and non-pecuniary loss caused by the tort, subject to normal rules restricting or diminishing damages such as remoteness and mitigation [234]. Given that the effect of section 3(1) is to render malicious falsehood actionable per se it logically follows from that starting principle that mental distress damages are recoverable for malicious falsehood (subject to remoteness etc).

In their view, it is inconsistent with the Supreme Court’s unanimous decision (above) that section 3(1) turns the tort of malicious falsehood into a tort actionable without proof of pecuniary loss, to then conclude that mental distress damages should only be awarded on proof of pecuniary loss. It would be artificial and arbitrary for the availability of mental distress damages to turn on whether, for example, the claimant can prove that he or she has suffered a small pecuniary loss [234(vi)–(vii)]. They would therefore have upheld the order of the Court of Appeal that the case should be remitted to the trial judge to carry out an assessment of damages for injured feelings [235]–[236].

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](#)