Smith v. Northamptonshire County Council

[2009] UKHL 27

Country: United Kingdom
Region: Europe
Year: 2009
Court: House of Lords
Health Topics: Occupational health
Human Rights: Right to favorable working conditions

Facts

Jean Smith brought an action for damages against her employee, Northamptonshire Council, under the Provision and Use of Work Equipment Regulations 1998, for injuries she suffered in her employment.

Ms. Smith was employed by the council as a driver and a carer. Her duties included picking up Mrs. Cotter, who was confined to a wheelchair, from her residence and dropping her off at a day centre. The council, having assessed the needs of Mrs. Cotter, had installed a ramp outside her house such that access could be provided to the adjoining road. On one occasion when Ms. Smith was moving Mrs. Cotter from her house to the minibus that would take her to the day centre, the ramp (which was ten years old) collapsed. Ms. Smith sustained injuries. Ms. Smith filed for damages for the injuries she sustained, arguing that the ramp qualified as equipment used at work as per the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306, reg 3(2), which imposed upon the employer a regime of strict liability in respect of â€œwork equipmentâ€•.

Decision and Reasoning

The Court found by a majority of 3-2 that the council was not liable to pay damages to Ms. Smith for the injuries she sustained. Although on a literal reading, the legislative regime imposed strict liability on an employer for injuries sustained through any equipment used at work, the Court considered that a purposive reading required a closer connection between the equipment and the employerâ€™s responsibility or control.

The majority held that the test for whether work equipment was â€œusedÂ â€¦ at workâ€• within the meaning of reg of the 1998 Regulations was: â€œwhether the work equipment has been provided or used in circumstances in which it was as between the employer and employee incorporated into and adopted as part of the employer's business or other undertaking, whether as a result of being provided by the employer for use in it or as a result of being provided by anyone else and being used by the employee in it with the employer's consent and indorsement.â€• (Lord Mance, para. 65)

In this case, the ramp had not been incorporated into the employerâ€™s business, and liability for its condition could not attach to the employer. The employer had not supplied or repaired the ramp. It had inspected the ramp at an early stage, but that was merely out of care for its employeesâ€™ safety. Such care could not give rise to liability which was not otherwise covered by its statutory duty. The Court accordingly dismissed the appeal by Ms Smith.

Decision Excerpts

â€œOn the facts of this case, I do not consider that it can properly be said that the ramp was either incorporated into and adopted as part of the council's undertaking, or indeed under their control. In my view, the judge was too kind when he said that the council had â€˜controlâ€™ of the ramp. They did not provide it. They did not own or possess it. They did not have any responsibility or indeed any right without more to repair it. It was no more than part of the environment, like the Westminster underground station escalator or the House of Lords chair, which any employee must face, when performing his or her functions at work away from any premises or place occupied by his employer.â€• Lord Mance, para. 67.

â€œThe regulations are not on any view an all-embracing protection which renders superfluous, at places with which an employer has no connection except that his or her employee has while working to visit them, the Occupiersâ€™ Liability Acts or ordinary common law duties of care or such other duties as may in this case have

been owed by the National Health Service as suppliers of the ramp. Courts should be careful not to impose on employers responsibilities which go far beyond those at which the directive and regulations can in my opinion have been intended to impose. The judgeâ€™s (over) generous interpretation of the concept of control would, if accepted, add both unjustified stringency and undesirable uncertainty into this area.â€• Lord Mance, para. 69.

â€œIt is of course true that the council inspected Mrs Cotter's home and prepared Personal Handling Plansâ€”Transport dated 14 November 2001 and 9 February 2004, in each case identifying the means of access as the French windows where the ramp stood, though not referring expressly to it. In making such inspections, the council observed nothing amiss with the ramp, because any defect was latent. What that shows is that the council was careful, not that it controlled the ramp or incorporated it into its undertaking, or should be strictly responsible for any defect in it. The ramp was someone else's equipment on someone else's premises visited by its employees while at work. â€˜I am monarch of all I surveyâ€™ is not to be taken literally as opposed to literarily. In carrying out the inspection, the council was simply fulfilling its duty under reg 3(1) of The Management of Health and Safety at Work Regulations 1999, SI 1999/3242 to â€˜make a suitable and sufficient assessment ofâ€”(a) the risks to the health and safety of his employees to which they are exposed whilst they are at workâ€™. Performance of that duty cannot have the â€˜Catch 22â€™ consequence of making the council strictly liable for latent defects in equipment which they did not provide, which was not part of its undertaking and which it had no obligation to provide or repair.â€• Lord Mance, para. 70.