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Police failure to take preventative steps at the scene of an RTA was not negligent

Tindall and another v Chief Constable of Thames Valley Police and another (2022) EWCA Civ 25

The issue in this appeal was whether the facts pleaded by the claimant against the first defendant ["the Chief Constable"] disclosed a reasonable cause of action in tort, capable of giving rise to an award of substantial damages. The Chief Constable applied to strike out the claimant's claim against him as disclosing no reasonable cause of action or, alternatively, for summary judgment. A Master refused both applications.

The proceedings arose out of a fatal road traffic accident which occurred at about 5.45 am on 4 March 2014. In briefest outline, the claimant claimed as the widow and administratrix of the estate of her late husband who was killed while driving on a road. A car driven in the opposite direction by a Mr Carl Bird went out of control on black ice and collided head-on with Mr Tindall's car. Mr Bird was also killed.

There had been another accident on the same stretch of road about an hour earlier, also caused by black ice. In the first accident the driver, Mr Kendall, had lost control of his car, which rolled over and ended up in a ditch, causing him to suffer injuries for which he was taken to hospital. Police officers, for whom the Chief Constable was responsible, attended the scene of the first accident. They arrived about 20 minutes after it had happened and were there for about 20 minutes. While

IN BRIEF

The Court of Appeal held that an appreciation by the police that a road was dangerous because of ice did not impose on them duty to act to prevent the danger.

Following their attendance at a road traffic accident, the police had no liability for failing to take steps which may have prevented the deceased's subsequent accident at the same location.

there they cleared debris from the road and put up a "Police Slow" sign by the carriageway. Having done that, they left the scene about 20 minutes or so before the fatal accident that was the subject of these proceedings, taking their "Police Slow" sign with them. It was alleged that their conduct at and on leaving the scene was negligent and that the Chief Constable was vicariously liable to the claimant in tort.

The appeal was pursued on three grounds:

i) Ground 1 was that the Master erred in concluding that it was arguable that the Chief Constable owed a duty to the claimant because his officers had made things worse by attending at the earlier accident and leaving again even though they did nothing which either created or increased the hazard posed by ice on the road. In particular it was submitted that the Master erred in holding that the police arguably made matters worse by removing Mr Kendall from the scene and by holding that they made matters worse by placing a warning sign on the road for the duration of their attendance and then removing it when they left the scene;

ii) Ground 2 was that the Master erred in concluding that it was arguable that the police officers owed a duty because they had taken control and assumed responsibility in circumstances where they might be held to have had sufficient power to influence the situation so as to create a relationship of proximity between them and road users;

iii) Ground 3 was that the Master erred when concluding that the point of law in this appeal could only be determined after a trial of the facts.

Allowing the appeal, the Court of Appeal held that the claimant's submissions attached a significance to the departure of Mr Kendall that it could not bear. It was plain that the claimant's case at its highest was that the arrival and presence of the police caused Mr Kendall to assume (privately) that they would act in a certain way, which influenced him to decide for himself to go to hospital in an ambulance. That was not a proper basis for holding that the police came under a private law duty to prevent road-users from suffering harm. The allegation in the Particulars of Claim that negligence on the part of the police caused Mr Kendall to cease his own attempts to warn other motorists was equally unsupportable. By the time that Mr Kendall decided to leave in the ambulance the police had not done anything that could reasonably be described as negligent which may have contributed to his decision.

The second aspect of the police's conduct that the Master considered raised an arguable case on making matters worse was their transient intervention by putting out their "Police Slow" warning sign, sweeping debris from the road, taking down the sign and leaving. This was a paradigm example of a public authority responding ineffectually and failing to confer a benefit that might have resulted if they had acted more competently. In the present case the police were confronted by a dangerous stretch of road which (it was to be assumed) they had power to render less dangerous by a competent response. They failed to take steps that might have prevented harm being suffered but they did not make matters worse: they merely left the road as they found it. There was no material distinction to be drawn between the facts of this case and a case where the fire brigade attended, made ineffectual attempts to control or extinguish the fire and then left. *Capital & Counties (1997)* established that, in such circumstances, no duty of care was owed, breach of which could give rise to a claim for damages.

By taking down the "Police Slow" sign the police did not make matters worse within the meaning of the principles that were to be applied. The police officers' failure to keep the sign in position was a

failure to confer a benefit and not a case of making matters worse. Furthermore, an appreciation by the police that the road was dangerous because of ice (which was to be assumed for present purposes) did not impose on them a duty to act to prevent the danger.

For these reasons, the facts of this case fell squarely within the principles that applied when a public authority acting in pursuit of a power conferred by statute failed to confer a benefit.

Turning to Ground 2, the Master did not explain why she considered it to be arguable that the police had assumed responsibility so as to give rise to a duty of care to prevent harm. The proposition was unarguable.

The claimant's submission was not acceptable that a duty could arise in circumstances "where a defendant had the power to exercise physical control, or at least influence, over a third party, including a physical scene (such as the accident scene in the present case) and, absent their negligence, ought to have exercised such physical control." The submission was far too wide. If correct, it would mean that whenever a public authority had the power to prevent harm and, if acting competently, ought to have prevented it, then a duty of care to prevent the harm arose. This was directly contrary to the firmly established principles that were set out in and derived from the authorities.

There was nothing in the pleaded facts that could justify a finding that the police assumed responsibility to Mr Tindall or other road users. There was no feature differentiating the relationship of the police with Mr Tindall from their relationship with any other road user.

What occurred was a transient and ineffectual response by officers in the exercise of a power. It did not involve any assumption of responsibility to other road users in general or to Mr Tindall in particular for the prevention of harm caused by a danger for the existence of which the police were not responsible.

Turning to Ground 3, there was no reason why the point of law in this appeal could only be decided after a trial. The facts as pleaded were clear. There was no reason to think that further examination of the facts that were now assumed to be true could lead to a different outcome. The law was not in a state of flux. On the contrary, the law was settled by successive decisions that were binding upon this court.

The full judgment is available at: Tindall & Anor v Chief Constable of Thames Valley Police & Anor [2022] EWCA Civ 25 (18 January 2022) (bailii.org)

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