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The Soldiers, Sailors, Airmen and Families Association - Forces Help and another (Respondents) v Allgemeines Krankenhaus Viersen GmbH (Appellant) (2022) UKSC 229

On 14 June 2000 the claimant was born at a hospital in Viersen, North-Rhine Westphalia, Germany, operated by the third party, Allgemeines Krankenhaus Viersen GmbH ("AKV"). He alleged 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 alleged that SSAFA and/or the second defendant, the Ministry of Defence (which had agreed to indemnify SSAFA) were 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 was liable in respect of the same damage as the defendants

The parties agreed that the claimant's claim against the defendants was governed by German law, that any liability of the third party to the claimant was 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 had overriding effect. If the contribution claim was governed by German law, it was time barred. However, the defendants maintained that the 1978 Act had overriding effect with the result that limitation was governed by the law of England and Wales and the contribution claim was not time barred.

IN BRIEF

The UKSC held that the Civil Liability Act 1978 did not have overriding effect and did not apply to a contribution claim brought by a claimant in England & Wales but whose claim was governed by German law.

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

The Supreme Court unanimously allowed the appeal.

The issue before the court was whether the 1978 Act had overriding effect so that it applied to all contribution claims brought in England and Wales, or whether it applied only when domestic choice of law rules indicated that the contribution claim in question was governed by the law of England and Wales.

The 1978 Act did not provide expressly that it had overriding effect. It did not provide that the 1978 Act applied irrespective of the foreign law otherwise applicable to the contribution claim. The question was whether such an intention must be implied from the provisions of the statute.

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, considered these provisions equivocal. Their efficacy was not dependent upon overriding effect. In particular, even in the absence of overriding effect, section 1(6) would be effective in many situations such as where the parties to the contribution claim were in a special relationship governed by the law of England and Wales.

Nothing in the admissible Parliamentary materials or the legislative history supported the view that the legislation was intended to have overriding effect. However, the Bill was a Law Commission Bill and statements by the Commission in other reports suggested it was not intended to have overriding effect. The weight of academic commentary strongly favoured the view that the 1978 Act does not have overriding effect.

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

In coming to the conclusion that the 1978 Act was not intended to have overriding effect, the Supreme Court was influenced in particular by two considerations. First, there would be many situations in which a contribution claim would be governed by the law of England and Wales, notwithstanding the fact that the underlying liabilities were governed by a foreign law. Secondly, it was difficult to see why Parliament should have intended to confer a statutory right of contribution whenever the party from whom contribution is sought could be brought before a court in this jurisdiction, regardless of the law with which the contribution claim had its closest connection. A failure of foreign law to provide for contribution claims was 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.

The full judgment may be found at: [The Soldiers, Sailors, Airmen and Families Association - Forces Help & Anor v Allgemeines Krankenhaus Viersen GmbH [2022] UKSC 29 (02 November 2022) (bailii.org)]