Consumer protection act 1987

Law

Abstract

The Consumer Protection Act 1987 was enacted in order to provide consumers with sufficient protection in relation to defective products. This is achieved by the strict liability the Act imposes upon producers of defective product since there is no need for negligence to be established. Regardless of this, Hence, many obstacles still need to be overcome before consumers can demonstrate that a product is defective. This produces much difficulty and makes it hard for consumers to be redressed when they have suffered injury or damage as a result of a defective product. In accordance with this, it is therefore questionable whether the objectives of the Act have in fact been achieved.

Introduction

The Consumer Protection Act 1987 is the governing legislation withrespectto protecting consumers from defective products and was enacted in order to enable the Product Liability Directive (Directive of the Council of the European Communities 85/374/EEC dated 25th July 1985) to take effect. Hence, the Directive imposes strict liability upon those found responsible for producing defective products within the common market.[1] It is questionable whether the Act does in fact, provide sufficient protection to consumers, though it is a far cry from the previous system where negligence could only be proved under the common law by showing that the consumer was owed aduty of care, that the duty was breached and that it was the breach that caused the damage; Roe v Minister.[2]This proved rather difficult for consumers to establish, which in turn led to much injustice since

consumers were required to satisfy the neighbour principle in theDonoghue v Stevenson[3]case. Producers of defective products were therefore capable of escaping liability since it was almost impossible to apply this test in such circumstances. Consequently, the 1987 Act has certainly widened the scope of protection available to consumers and as put by Horvarth et al; " consumer protection laws are often broadly worded and liberally interpreted so as to permit substantial breadth and flexibility for the protection of consumers."[4] Despite this, many problems continue to arise and consumer protection is not always guaranteed. In accordance with this, it will therefore be considered whether the objectives of the Act, as laid downA v National Blood Authority[5], are currently being achieved by reviewing the operation of strict liability and considering any obstacles a claimant has to overcome in order to succeed with a claim. It will also be determined what defective goods are defined as and whether there are any defence available to producers found liable.

Literature Review

The threefold objective of the Directive, as highlighted in theA v National Blood Authority[6]case, was introduced in order to increase consumer protection; impose an obligation on producers by way of strict liability; and made it easier for injured parties to obtain compensation by removing the concept of negligence as an element of liability. Whilst consumer protection has certainly been increased by this, issues still arise when interpreting the Directive. This is especially the case when it comes to defining what defective goods are since there appears to be some complexity with this. Therefore, although the common law principles of negligence no longer have

to be ascertained, consumers still have the difficulty of proving that the product was defective and that the defect caused the injury. To an extent, the common law principles have been upheld because, although negligence does not have to be established, the consumer will still have the burden of proving these two elements. As asserted by Bradgate and Savage; " very often it is the proof of causation which is the Plaintiff's main difficulty in a negligence action."[7] Arguably, the fact that causation is still required for liability signifies how problems will continue to arise. InKay v Ayrshire and ArranHealthBoard,[8]it was exemplified that proof of causation is a difficult concept to determine and claimants will not be given an easy ride in establishing this element. Moreover, in considering whether a product is, in fact, defective a determination needs to be made as to whether the public knew of and accepted the risks.

InRichardsonv LRC Products[9]it was held by the court thatfailureof a product to work is not in itself a ground to establish that a product is defective and instead it must be shown that the defect caused the failure to occur. In light of this, it is evident that many obstacles will need to be overcome before a court will accept that a product was defective, which makes it clear that injured parties will still find it difficult to obtain compensation from producers. In addition, the existence of the due diligence defence under s. 39 of the Act further enables liability to be escaped since producers will only need to show that the actions which occurred were beyond the producer's control. Therefore, as provided for under this section of the Act, a person will only need to show that they " took all reasonable steps and exercised all due diligence to avoid committing the offence."[10] In establishing this defence,

it will therefore have to be shown that reasonable precautions were taken to avoid the commission of the offence by taking reasonable steps to ensure that their products complied with the order specification. This could be achieved by giving staff the relevant training, regularly reviewing the operations of the system and “ modifying existing management or quality assurance system to include due diligence requirements.”[11]

Whilst this defence is important in ensuring that the rights of traders are not being undermined, in turn it makes it more difficult for consumers to establish liability. However, this is deemed necessary in ascertaining a balance between traders and consumers.[12] The “ development risks defence”, pursuant to Article 7(e) of the Directive and provided under s. 4 of the Act, also makes it harder for consumers since producers will not be found liable if they can prove that “ scientific and technical knowledge at the time was not such as to enable the existence of the defect to be discovered.” [13] InCommission v UK[14]it was stated by the court that the burden of proof was on the defendant to show, on the basis of the reasonableness test, that the products defect could not have been discovered at the time. In view of these defences, it appears as though consumers will only be protected if no steps were taken to prevent any defects from occurring. This clearly limits the amount of protection available and has been considered a “ controversial aspect of the Act.”[15] Essentially, it cannot be said that the objective of the 1987 Act are being fully achieved as complexities continue to exist and consumers will still have to overcome a number of obstacles before demonstrating that they have been provided with a defective product as enunciated inXYZand others v Schering Health Care Ltd and others.[16]

Conclusion

Overall, it is evident that the threefold objective of the EC Product Liability Directive, as signified in theBloodcase is not being sufficiently attained. This is because, whilst the Consumer Protection Act 1987 was enacted in order to fulfil these objectives, many difficulties still remain for consumers trying to establish liability. Thus, consumers have the burden of proving that the product was defective and that the defect caused the injury. This can be extremely problematic which results in producers escaping liability in many instances. The due diligence defence and the developments risks defence are further obstacles standing in the way of possible actions for consumers and unless reform to this area is made, the objectives of the EC Product Liability Directive will not be fulfilled.

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