

Case study claim for damages in negligence scenario law essay



In seeking to effectively advise Steve and Tina in relation to whether they have a claim/claims for damages arising out of the facts of this scenario for negligence, it is necessary to look to deal with the evidentiary aspects that are considered to be involved with the claim. As a result, this will involve looking to provide for recognition of the evidence that both Steve and Tina would be required to present (including any particular witness evidence) related to the need for there to be a recognised duty of care that was breached that was proximate leading to a recognised harm in fact so as to then be able to serve to substantiate each of their claims as they arise.

Moreover, there is also a need to look to comment on as to how successful Steve and Tina's claims would be in looking to take account of the evidence that is available along with any defences that may possibly be levied on the facts. With this in mind, this means that it is necessary in advising Steve and Tina to look to analyse the facts as they are presented and give reasons for the view that is given whilst also referring to any relevant case law and/or legislative provisions as and when and where they are considered to be applicable in relation to each of the points made individually and collectively.

Finally, this essay will look to conclude with a summary of the key points that have been derived from this discussion with a view to then advising Steve and Tina with regard to as to whether they have a claim/claims for damages arising out of this scenario as it is presented on the facts.

First, with a view to effectively advising Steve and Tina, there is a need to show an understanding of the fact that, whilst the burden of proof in a given

case is dependent upon the circumstances that lead to the particular claims arising on the facts.

However, in the case of civil actions for damages, such as those arising on the facts of this scenario that Steve and Tina are now looking to claim for, the burden of proof normally falls upon the party that is affirming something to be the case (i. e. Steve and Tina) and not upon the party that is looking to make a denial (i. e. the other parties that are involved on the facts).[1]

Nevertheless, it is also to be appreciated that, by majority, the House of Lords recognised in the case of *Re H & Others*[2] that, the more serious an allegation was that was made on the facts, the less likely it was going to prove to be true so there was a need for stronger and more weightier evidence to be provided to prove it in the circumstances.

On this basis, the legal burden falls upon Steve and Tina for establishing the essential elements of their respective claims for damages for negligence on the basis of the facts of this scenario and advise Steve and Tina accordingly. Therefore, Tina and her husband Steve (who was driving) were going along a lane in the country one summer's evening at 8. 00pm beside North Berwick to their favourite restaurant - 'The Crusty Crab' - for a meal whose entrance is also an exit and consists of a very sharp blind bend that is used by both goods and customer vehicles.

The problem is that as Steve approached the entrance to the restaurant car park at 'The Crusty Crab', he slowed down, but confidently took the bend worried that they would be late for their table booking since they were

concerned that it might be given away but, as he entered the restaurant
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grounds, he collided with a large Heavy Goods Vehicle (HGV) that was reversing out onto the lane.

Therefore, in advising Steve and Tina regarding their claims for negligence against the other parties involved on the facts and the evidence as it stands, it is to be appreciated that the recognition of a duty of care is ostensibly a legal obligation that is usually placed on an individual like Steve (who was driving), the HGV driver, the owners of 'The Crusty Crab', and Dr Bill so they must adhere to a reasonable standard of care to avoid foreseeable harm to others. This effectively means it is for the plaintiffs (i. e. Steve and Tina) to articulate a duty of care which one or more of the defendants has breached to proceed with a negligence claim because breaching a duty of care may subject them to liability.[3]

In addition, there is also a need to articulate what is understood in relation to evidence of the duty of care in the claims brought against the defendant in any given case who is found to be in breach of such a duty of care in the event their conduct has fallen short of the standard they were expected to meet respectively in the circumstances. Generally, any defendant like Steve, the HGV driver, the owners of 'The Crusty Crab' needs to provide evidence with a view to then meeting the standard of what is considered aspirational for a 'reasonable man'[4] fundamentally revolved around the idea the standard of objectivity expected is based on what could be expected of a 'reasonable person' because perfection cannot be expected.[5]

On this basis, it is necessary to advise Steve and Tina that there will be a need to consider whether Steve and the HGV driver's actions are in keeping

with the actions of reasonable people on the facts and also as to whether the owners of ' The Crusty Crab' were reasonable in having a blind entrance and exit used by both customer and goods vehicles.

Ostensibly, Steve and Tina will be advised that the court must first consider what the defendants knew so that the witness statements of the parties will become of great significance because, to illustrate the point, it was found in the case of *Roe v. Minister of Health*[6] that a defendant will only be liable if a ' reasonable person' would have also foreseen the loss or damage in the circumstance.

However, it is also to be appreciated that the ' eggshell skull' rule recognises a victim of harm should be taken as they are found so if they have a particular unknown defect that makes them more susceptible to injury than the person inflicting the injury can still be held liable.[7] In addition, it is also necessary to advise Steve and Tina in relation to the degree of risk because it has come to be understood that the greater the risk that is involved with a particular activity, the greater the precautions that were needed on the facts.[8]

This effectively means that it will have been necessary to look to see whether the entrance and exit at ' The Crusty Crab' was effectively delineated in view of the fact that it was a blind turn, as to whether the HGV driver had his warning lights on and reversing warning system enabled and was also driving slowly and with due care and attention.

More importantly, however, there is a need to note that the driver of the HGV actually had what is considered to be adequate turning space on the <https://assignbuster.com/case-study-claim-for-damages-in-negligence-scenario-law-essay/>

evidence of the facts as they stand to turn the vehicle in the car park of the restaurant - as opposed to reversing out - so that he would have had more awareness of other road users in the way that most other people would have done when faced with the same situation.

Similarly, Steve and Tina need to be advised that, when looking to enter the car park, it is open to question as to whether Steve was driving with due care and attention and was looking to enter the car park at 'The Crusty Crab' on the basis of the facts as they stand here. It is then necessary for the court to look to consider how practical these precautions were in advising Steve and Tina since, for example, in the case of *Wilson v. Governor of Sacred Heart Roman Catholic Primary School*[9] a primary school was deemed not negligent for not employing someone to supervise the playground after the close of school hours so the test for how practical precautions are is about looking to strike a balance of reasonableness of precautions against foreseeable injury.

Moreover, there is a need to evaluate the social importance of a defendant's activity because in the event that a defendant's actions are deemed socially useful they may then be considered justified for taking greater risks[10]- although that is unlikely to be the case here. Finally, in effectively advising Steve and Tina there is a need to evaluate as whether there is any common practice in relation to the acts and omissions of each of the given defendants on the evidence.

This is because it has been recognised that, in the event that a defendant in a given case is found to have complied with common practice in their

activity, they will usually be considered to have met a reasonable standard, unless the court considers the practice negligent.[11]

At the same time, however, in advising Steve and Tina with regard to the claims brought there is a need to consider the matters of proximity and remoteness in relation to whether there enough evidence to show the events transpired are considered sufficiently related to a legally recognisable injury to be its cause through the consideration of causation in terms of the 'but for test' and proximate cause.

The 'but for test' is on the fact a defendant will only be liable where the claimants injuries would not have occurred 'but for' their negligence - i. e. the HGV driver, the owners of 'The Crusty Crab', and Stevel - although the defendant will not be deemed liable if the damage would, or could, on the balance of probabilities have occurred anyway because the loss or injury sustained by Steve and Tina must not be too remote to ensure any liability is fairly placed on the right defendant.[12]

Therefore, the issue of 'causation' in relation to Steve and Tina's claim for damages for negligence primarily relates to the 'causal relationship between conduct and result' to connect conduct, complete with actus reus, with the resulting harm[13]in a concerted effort to produce results that are generally considered to be both just and fair in their nature.[14]

Steve and Tina also need to be advised with regard to as to whether Dr Bill's activities as a third party in providing the couple with medical treatment at the hospital effectively serves to break the chain of causation regarding the acts of the other potential defendants.

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With a view to making a decision, this is largely dependent upon whether the intervention in question was foreseeable with the general rule being that the original defendant will be held responsible for harm caused by a third party so long as it was a highly likely occurrence.[15] In advising Steve and Tina in this regard there is a need to consider whether there is a 'Novus Actus Interveniens' (i. e. 'a new act intervening') and is thus considered a general defence in the law of tort.

This is because a third party's act (like that of Dr Bill) will serve to intervene between the original act or omission and the damage produced as a result, unless that original act or omission is still considered the main contributing factor to the damage because the act of the third party had no impact upon the events as they unfolded.[16]

This is because this could amount to a third party's inadvertent contribution since, for example, in R v. Cheshire[17] the victim was shot and taken to hospital where he suffered pneumonia and other respiratory problems and was placed in intensive care where he was given a tracheotomy but still later died.

The court found there was an element of medical negligence because the tracheotomy the patient had been given caused a thickening of the patient's tissue leading to his suffocation. As a result, Lord Justice Beldam established the following test that recognised " Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing

death, that they regard the contribution made by his acts as insignificant”.

[18]

At the same time, however, in effectively advising Steve and Tina it is to be appreciated that, whilst there may have been an element of contributory negligence related to Steve’s injuries (in the accident he sustains whiplash injuries to his neck and bruising to his chest caused by the impact of his seatbelt) if the evidence shows that he was failing to fulfil his duty of care to drive with due care and attention in the interests of his passenger (i. e. Tina) and other road users (i. e. like the HGV driver), Tina may also have contributed to her own injuries.

This is because of the fact that, seconds before the vehicles collided, Tina took off her seatbelt in anticipation of getting out of the car quickly to rush into the restaurant because of being late for their reservation so as to sustain similar, but more serious, whiplash injuries to Steve.

As a result, as a victim, Tina effectively contributed to her own injuries illustrated by the decision in the case of R v. Dear.[19] In this case on the facts a man, believing the victim had sexually interfered with his daughter, attacked the victim with a knife. The defendant then argued the chain of causation had been broken because the victim later committed suicide so it became necessary to determine whether the injuries inflicted by the defendant were a significant cause of, or contribution to, the victim’s death. Nevertheless, as to whether the resumption or continuation of that bleeding was deliberately caused by the victim, the defendant’s conduct remained the most significant cause of death.[20].

As for the matter of Steve and Tina being taken to the local hospital, Steve and Tina also need to be advised in relation to their treatment by a junior doctor, Bill, (inexperience is no defence so a junior staff member should always seek help from a more experienced staff member[21]) who has just read an article in a medical journal about a new and experimental treatment using acupuncture for whiplash injuries written by the Chairman of the Acupuncture Society, Dr. D. Odgy.

The Acupuncture Society involves a group of doctors who support the use of acupuncture as much as possible in the treatment of common road traffic injuries and so, on the basis of the aforementioned article, Bill treats both Steve and Tina with acupuncture. As a result of this treatment, their injuries become worse so that both Steve and Tina have to return to hospital 3 weeks later to be treated conventionally when they then feel much better and recover within days. Steve and Tina need to be advised that this is effectively an example of medical negligence perpetrated by Dr Bill.

This is because, as professional people, medical personnel are held ready to give medical advice or treatment so someone like Bill also impliedly undertakes they are possessed of skill and knowledge for a purpose equivalent to any reasonable practitioner and cannot be held to the same standard as an ordinary person.[22]This effectively means that the standard of care becomes what can be expected of a similar 'reasonable professional' doctor like Bill - a special standard of care.[23]

Therefore, as to whether or not someone like Bill is a registered medical practitioner,[24]it is also to be appreciated in advising Steve and Tina that

someone like Bill who is consulted by a patient is commonly considered to owe them a duty of care on the basis of the recognition of the evidence on the facts since that is what they are trained to do in exercising reasonable care and skill in diagnosing, advising and treating them[25]and them alone. [26]

As a result, Steve and Tina need to be advised that a breach of this duty of care on the part of Dr Bill to Steve and Tina causing an exasperation of their personal injury claims will serve to support a claim for negligence on the facts by the patient along with some compensation for any financial loss accrued on this basis.[27]

In advising Steve and Tina, however, there is a need to recognise that an error of judgment will not necessarily amount to a claim for damages for an act of negligence on the part of Dr Bill unless it would not have been made by a reasonably competent practitioner acting in keeping with an ordinary duty of care that is judged against the current state of professional knowledge[28]or where there are differing and well-established professional schools of thought.[29]

This is because, as has already been recognised, Dr Bill had just read an article in a medical journal about a new and experimental treatment using acupuncture for whiplash injuries written by Dr. D. Odgy as Chairman of the Acupuncture Society that involves doctors who support the use of acupuncture in the treatment of common road traffic injuries.

However, on the basis of the available evidence, Steve and Tina need to be advised that the treatment that was administered to them by Dr Bill will be <https://assignbuster.com/case-study-claim-for-damages-in-negligence-scenario-law-essay/>

held to be negligent. Therefore, this would serve to make him and potentially the hospital also vicariously liable as Dr Bill's employer if it cannot be shown to the court's satisfaction the opinion relied upon is reasonable or responsible[30]unless - (i) there is a practice normally and usually utilised; (ii) the defendant has not adopted it; and (iii) the course of action is one that no professional of ordinary skill would have taken had they been acting with ordinary care.[31]

To conclude, having sought to advise Steve and Tina in relation to whether they have a claim/claims for damages arising out of the facts of this scenario, it is to be appreciated that it has been necessary to look to consider what is ostensibly involved with a successful claim for damages for negligence against each of the defendants as they are identified on the facts.

To this effect, as has already been recognised, there is a need for Steve and Tina to make successful claims for negligence on the basis of their being (i) a duty of care; (ii) with a breach of that duty; (iii) that was proximate and not too remote; (iv) leading to recognised harm in fact.[32]

On this basis, it would seem arguable that it is possible for Steve and Tina to look to raise claims for damages for negligence against the HGV driver, the owners of 'The Crusty Crab' restaurant and Dr Bill (along with a claim against Steve by Tina - although this may be unlikely as it will most likely depend on the nature of their relationship and as to whether Tina blames him in anyway).

But at the same time there is also a need to appreciate that, in advising Steve and Tina, both of them may have actually contributed to their own injuries in view of the fact that Steve may have breached his duty of care by driving without due care and attention and the fact that Tina released her own seatbelt before the car that Steve was driving in came to a halt.

In addition, it is arguable that there was a 'novus actus interveniens' in this case that only served to further exacerbate the injuries that both Steve and Tina sustained that may also serve to be a case of medical negligence. This is because, in looking to treat Steve and Tina at the hospital, Dr Bill's treatment of them actually served to make their injuries somewhat worse and he would thus be considered negligent along with the hospital vicariously unless - (i) there is a practice normally and usually utilised; (ii) the defendant has not adopted it; and (iii) the course of action is one that no professional of ordinary skill would have taken had they been acting with ordinary care.[33]

The reason for this is that, as has already been recognised in the advice provided to Steve and Tina, Dr Bill had just read an article in a medical journal about a new and experimental treatment using acupuncture for whiplash injuries written by Dr. D. Odgy as Chairman of the Acupuncture Society that involves doctors who support the use of acupuncture in the treatment of common road traffic injuries and based their treatment on this.