

Secondary Victims - An Update

On 7 June 2021, the Scottish Sheriff Appeal Court issued its Judgment in the case of *Danielle Weddle v Glasgow City Council [2021] SAC (Civ) 17*. This case represented a further opportunity for the courts to consider the position over pursuers who have suffered a psychiatric injury alone. Such pursuers are ordinarily divided into primary and secondary victims.



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In this case, the appellant sought to challenge the Sheriff's findings of fact that placed her in the category of secondary victim. The Court upheld the findings of fact made by the Sheriff at first instance.

The accident that Ms Weddle witnessed was the Glasgow Bin Lorry crash. This was, sadly, a well-known incident whereby the driver of a bin lorry suffered a black out at the wheel and lost control of his lorry. Tragically, six people were killed and a further fifteen suffered injury. The appellant was close to the scene of the accident, witnessed the latter part of events and suffered a psychiatric injury.

In law, she would only be successful in her claim for damages if she was able to show that she had held a reasonable fear of being harmed in the accident, or that she was a secondary victim who fulfilled the requirements as set out by the Courts, principally in cases arising from the Hillsborough disaster.

Upgrading your victim class – when does secondary become primary

Within the more specific realm of claims seeking damages for only a psychiatric injury, establishing to whom a negligent party owes a duty of care can sometimes be less than straightforward.

When it comes to victims who have suffered a recognised psychological or psychiatric condition in isolation, the current position is that such a person can only recover damages if they were directly involved in the accident. Such direct involvement is ordinarily taken to mean that there was an actual exposure to the danger of physical injury, or when a person has witnessed an incident at close hand and that person had a reasonable fear of suffering physical injury. The key point here is that the fear of physical harm must be a reasonable one.

In their judgment, the Scottish Sheriff Appeal Court revisited the case of *Campbell* where Lord Reed noted...'*one has to identify the range of foreseeable physical injury. This includes not only situations in which the pursuer was in fact objectively exposed to danger, but also situations in which he could reasonably believe that he was exposed to danger.*'

If a person does not have a reasonable fear of physical injury being caused to them, but they do suffer a recognised psychiatric condition, they will only be able to recover damages if they meet the control requirements set out in *Alcock v Chief Constable of South Yorkshire Police, 1991*.

Secondary Victims - An Update Cont'd.

Secondary victims – additional criteria

The *Alcock* requirements are:

- That the risk of injury is foreseeable;
- There must be the required degree of proximity between the pursuer and the defender;
- The incident requires to have been witnessed by the pursuer's own senses.

The 'required degree of proximity' element is more commonly described as close ties of love and affection. By setting out this requirement for a close tie of love and affection, the Courts are in effect cutting out those who are merely witnesses.

Finally, the negligent act must be witnessed by a person's own senses. A potential victim must have either seen or heard the incident rather than viewing a real time incident on television.

A reasonable fear of suffering harm

The appellant in *Weddle* did not know any of the persons involved the accident. Therefore, she would only be successful if she could demonstrate that she had a reasonable fear of suffering physical harm. The judgment here sets out that this fear must be assessed objectively.

The Sheriff Appeal Court agreed that as neither vehicle came close to her at any time, it was not possible to conclude that the appellant had a reasonable fear of being harmed. In this finding, they concurred with the Sheriff at first instance.

Conclusion

It appears that when it comes to secondary victims, the Courts are not currently willing to deviate from the established control mechanisms for secondary victims. By refusing to allow eyewitnesses who suffer a recognised psychiatric injury, the Courts have given a clear definition of to whom a potential negligent person owes a duty of care. In strictly adhering to these categories, the Court may, on one view, be seeking to prevent a dramatic increase in the number of potential pursuers.

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