

# Fatal accident claims: victory in suicide case

The House of Lords have allowed the widow of a man horrifically injured at work to claim damages for his subsequent suicide. Jamie Clarke reviews the ruling

**THE MODERN** PI practitioner familiar with modern medical knowledge would probably not be startled by the following proposition: "There is no doubt . . . that but for the employer's negligence, the accident at work would not have happened, that but for the accident at work and the physical damage he suffered [the employee claimant] would not have become clinically depressed and that but for that psychiatric feature, he would not have entertained suicidal thoughts or have attempted suicide."

On 27 February 2008, in the matter of *Corr (administratrix of Thomas Corr (deceased)) v IBC Vehicles Limited* [2008] UKHL 13, the Lords held that in these circumstances, the widow of the employee can recover her losses attributable to her husband's suicide on a dependency claim pursuant to s 1 of the Fatal Accidents Act 1976.

## The facts

What probably troubled the defendant when presented with the claim was that Mr Corr took his own life nearly six years after the relevant accident. Mr Corr died on 23 May 2002, while suffering from an episode of severe depression that had developed out of an accident at work on 22 June 1996, in which he might have died had he not instinctively moved his head out of the path of a metal panel that had been moved forcibly in his direction by an automated arm he was working on. As it was, he suffered serious, disfiguring head injuries. A depression developed and worsened with the passage of time.

Mr Corr was assessed as a significant suicide risk in March 2002, but he was not an automaton or insane in the M'Naghten sense. Mr Corr's condition was far more refined. For instance, it was considered likely that he would have appreciated danger and been aware of the likely consequences of jumping from a high building. As Lord Bingham put it: "He acted deliberately, with the intention of killing himself", albeit "suffering from a disabling

mental condition, namely a severe depressive episode which impaired his capacity to make reasoned and informed judgments about his future".

Furthermore, regardless of the time lag, there is a sense that a suicide is different because, in Lord Bingham's words: "It is a feeling which perhaps derives from recognition of the finality and irrevocability of suicide, possibly fortified by religious prohibition of self-slaughter and recognition that suicide was, until relatively recently, a crime."

## The principles

The defendant's arguments that it was not liable for the dependency claim focused on causation and reasonable foreseeability, together with various related concepts such as new intervening cause, the chain of

causation and *volenti non fit injuria*. These issues were considered only in moderate detail by their Lordships and there is little in their opinions that practitioners will find to add to the lexicon of knowledge on such technical matters. This is not simply because these facts do not fit easily in the familiar concepts that govern whether or not there is liability, but because the claim needs to be understood as a "policy" decision rooted in its historical and social context. Not only is suicide no longer a crime, but to quote Sedley LJ in the Court of Appeal in *Corr* (quoted by Lord Bingham): "To cut the chain of causation here and treat Mr Corr as responsi-

ble for his own death would be to make an unjustified exception to contemporary principles of causation. It would take the law back half a century to a time when the legal and moral opprobrium attaching to suicide placed damages for being driven to it on a par with rewarding a person for his own crime. Today, we are able to accept that people to whom this happens do not forfeit the regard of society or the ordinary protections of the law" (emphasis added). In other words, times have changed. It was consistent with the social and moral attitudes of the time that it was once difficult to recover damages arising out of a suicide, and tended to be limited to cases where the victim had been rendered "insane" by a tort. Lord Bingham agreed with Sedley LJ that such notions are now retrograde.

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The Lords' approach reflects not only modern social and moral attitudes to suicide, but also an improved state of knowledge; medical experts and lawyers now recognise the relationship between physical injury and psychological effect, and the medical profession better understands that "suicide [is] a not uncommon sequel of severe depression". It may also have been relevant that there is no risk of floodgates being opened by this decision. Lord Scott of Foscote supposed that "the percentage of cases in which an accident of the sort that befell Mr Corr would lead to clinical depression and suicide would lie in the range of two to four per cent".

### The position now

The primary issue under consideration by the Lords, simply put, was whether a special rule should apply to suicides following injury by which the claimant would have to show that suicide itself was a reasonably foreseeable consequence of the tort.

The answer is that there is no such special rule and the guidance is that a suicide depending on the facts will be treated as an actionable consequence of a tort. Again to quote Sedley LJ from Lord Bingham's opinion, we are left with: "Once it is accepted that suicide by itself does not place a clinically depressed individual beyond the pale of the law of negligence, the relationship of his eventual suicide to his depression becomes a pure question of fact. . . whether it has been shown that it was the depression that drove the deceased to take his own life." A defendant cannot argue that they are not liable on the basis that the victim died deliberately, perhaps even rationally in their own mind, by their own hand. There may, however, be other facts that should be investigated.

### Contributory negligence?

Of more interest to future claims of this type was the split decision on a possible reduction for contributory negligence. The defendant's argument did not prevail only because it had not been the subject of any findings by the lower court and was only addressed in the House of Lords by both parties with extreme brevity and cursory argument, but Lords Scott, Mance and Neuberger gave some careful thought to the issue for the benefit of future cases. Lord Bingham's opinion, with which Lord Walker agreed, was that a finding of contributory negligence to any degree would be inconsistent with their analysis of reasonable foreseeability. In essence, Mr Corr's conduct was a direct cause of an accident for which the defendant was liable and in which Mr Corr had no responsibility.

Given the finding that Mr Corr's capacity to make reasoned and informed judgments about his future had been impaired by the accident, it is hard to see how it could seriously be argued that he should share responsibility for a suicide that would not otherwise have occurred. This analysis is in contrast to the "custodian" cases such as *Reeves v Metropolitan Police Commissioner* [2001] AC 360, where a prisoner was already a suicide risk and known to be such when he came into the defendant's custody, in respect of which the reduction for contributory negligence was 50 per cent.

In holding that Mrs Corr's claim should be reduced by 20 per cent, Lord Scott pointed to

### SJ takeaway

- Where an accident causes psychological damage which, in turn, so affects the claimant's mind that they commit suicide (which they would not have done but for the accident), then subject to proof of the necessary facts, an action can be pursued for damages arising out of the suicide.
- C is not required to show that suicide itself was a foreseeable consequence.
- The rule that damages will be recoverable only where the victim was "insane" no longer applies.
- The court can apportion blame so as to reduce damages.
- A working "tariff" is 20 per cent, and it is suggested that the lowest reduction is 10 to 15 per cent, with the highest realistic reduction being a third. A 50 per cent reduction is likely to be rare.
- The key is in the expert medical evidence. The issues for consideration will be:
  - (i) whether there is a link between the accident and the suicide via a psychiatric injury, to the exclusion of other reasons; and then
  - (ii) the extent to which the victim's personal autonomy has been overborne by the impairment so as to justify a percentage reduction of damages.

Mr Corr's autonomy and that the statistical evidence that between a tenth and a sixth of those with suicidal tendencies succumb to them is evidence also that between nine in 10 and five in six do not. That is a flawed deployment of statistics because it assumes that the 83-90 per cent who don't succumb to suicide do so by a choice that Mr Corr might otherwise have exercised, and may not even include those who make a serious attempt on their own life, only to be thwarted by others. The point is that Mr Corr felt he had no choice but to take his own life as a consequence of the feelings of worthlessness and hopelessness inflicted on him by the accident. It is an analysis that goes against the grain of their Lordships' generally balanced approach to suicide in a move away from the "blunt instrument" of a test based on "insanity".

On the other hand, Lord Scott and the others are probably betraying a sense that even in these two to four per cent of cases of serious injury, there is a harshness in imposing a liability on the defendant for death by suicide, and that a modest reduction of 20 per cent fairly reflects the justice between the parties. It is another "policy" decision. On the basis of the analysis of Reeves (and the 50 per cent deduction), 20 per cent should be treated as a rough "tariff" in future cases. Anything less than 10 or 15 per cent would probably be so meaningless as not worth registering, and to find a suicide victim more than one-third to blame perhaps

comes perilously close to a finding that the victim exercised a substantial element of personal choice compared with what might be expected from a person "not of entirely sound mind".

Where a reduction is justified, it is likely to be modest, and rarely as high as 50 per cent.

### Practicalities

On the question of primary liability and contributory negligence, parties will need to focus on the expert medical evidence. Lord Mance was clear on this: "The concept of impairment is itself one which could usefully be further explored in expert evidence in another case. . . It may be right not only to consider more closely with the benefit of expert evidence what is involved in 'impairment', but also to identify differing degrees of impairment and responsibility. It may also be relevant if other factors were operating on the claimant independently of the accident and the consequent depression – for example, impending exposure of lack of probity, financial ruin or matrimonial breakdown."

Therefore, the first step is to consider, with the benefit of expert medical evidence, whether there is a link between the initial accident and a psychiatric condition giving rise to a suicidal tendency, keeping in mind the possibility of other intervening causes. It may even be that there is no depressive illness, which might tend to suggest an altogether separate cause, and hence no liability.

One can imagine a case where the knock-on financial effects of an accident drive a victim to suicide so that there is no liability, but it is unlikely that would be in the absence of a psychiatric condition.

The next step is to consider whether there are other contributory causes to the suicide and/or the extent to which the victim, as a consequence of their psychiatric condition, is capable of making a reasoned and informed judgment on their future, so as to determine whether or not to attribute an element of responsibility in reduction of the claim.

Essentially, the question is whether there is an element of choice or, to put it another way, the extent to which the victim's personal autonomy has been overborne by the impairment so as to justify a percentage reduction of damages.

This is all easier said than done, as Lord Neuberger observes: "While a relatively easy question to formulate, [it] will. . . be a relatively difficult question to answer."

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