



5 March 2014

PRESS SUMMARY

Stott (Appellant) v Thomas Cook Tour Operators Ltd (Respondents) [2014] UKSC 15

On appeal from the Court of Appeal of England and Wales [2012] EWCA Civ 66

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Reed, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEAL

Mr and Mrs Stott decided to take a holiday in Zante, Greece, in September 2008. Mr Stott is paralysed from the shoulders down and a permanent wheelchair user. He has double incontinence and uses a catheter. When travelling by air, he depends on his wife to manage his incontinence, help him to eat, and change his sitting position.

Mr Stott booked return flights with Thomas Cook Tour Operators Ltd (“Thomas Cook”), a tour operator and air carrier. He telephoned Thomas Cook’s helpline twice, informing them that he had paid to be seated with his wife, and was assured that this would happen. However, on arrival at check-in for the return journey, Mr and Mrs Stott were told that they would not be seated together. They protested, but were eventually told that the seat allocations could not be changed.

Mr Stott had difficulties in boarding the aircraft, and was not sufficiently assisted by Thomas Cook staff. He felt extremely embarrassed, humiliated, and angry. He was eventually helped into his seat, with his wife sitting behind him. This arrangement was problematic, since Mrs Stott could not properly assist her husband during the three hour and twenty minute flight. She had to kneel or crouch in the aisle to attend to his personal needs, obstructing the cabin crew and other passengers. The cabin crew made no attempt to ease their difficulties.

Mr Stott, assisted by the Equality and Human Rights Commission, brought a claim under the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (SI 2007/1895) (“the UK Regulations”), which implement EC disability rights regulations (“the EC Regulations”). The UK Regulations enable civil proceedings in UK courts for breaches of the EC Regulations, and state that compensation awarded may include sums for injury to feelings. The EC Regulations require Community air carriers (among other things) to make reasonable efforts to provide accompanying persons with a seat next to a disabled person. Mr Stott claimed that Thomas Cook had breached this duty, and sought a declaration and damages for injury to his feelings.

Thomas Cook argued that it had made reasonable efforts and that the Montreal Convention (“the Convention”), an international treaty which governs the liability of air carriers in international carriage by air, precluded a damages award for injury to feelings. Under Articles 17 and 29 of the Convention, damages can only be awarded for harm to passengers in cases of death or bodily injury.

The judge at trial found that Thomas Cook had breached the UK Regulations, and made a declaration to that effect. However, he held that the Convention prevented him from making any damages award to Mr Stott. The Court of Appeal agreed. Mr Stott appealed, arguing that his claim was (i) outside the substantive scope of the Convention, since the Convention did not touch the issue of equal access to air travel which are governed by the EC Regulations and (ii) outside the temporal scope of the Convention, since Thomas Cook’s failure to make all reasonable efforts began before Mr and Mrs Stott boarded the aircraft. He relied on EU cases discussing a different EU Regulation which required compensation and assistance for

passengers in the event of cancellations and delays: the European Court had held that this Regulation was not incompatible with the Convention. The Secretary of State for Transport intervened to support Mr Stott's claim on the second (temporal) ground.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The judgment of the Court is given by Lord Toulson, with a concurring judgment by Lady Hale. Mr Stott was treated in a humiliating and disgraceful manner by Thomas Cook. However, his claim falls within the substantive and temporal scope of the Convention, and as a result damages cannot be awarded for injury to feelings. Substantively, the Convention deals comprehensively with the carrier's liability for physical incidents involving passengers between embarkation and disembarkation. The fact that Mr Stott's claim involves an EU law right makes no difference. Temporally, Mr Stott's claim is for damages and distress suffered in the course of embarkation and flight, and these fall squarely within the temporal scope of the Convention. It is not enough that the operative causes began prior to boarding.

REASONS FOR THE JUDGMENT

- The only true question in the case is whether Mr Stott's claim falls within the scope of the Montreal Convention. There is no dispute between Mr Stott and Thomas Cook as to the interpretation of the EC Regulations or UK Regulations, or their compatibility with the Convention. The EU cases do not assist: that other Regulation concerned general standardised measures, and the European Court had recognised that any claim for individualised damages would be subject to the Convention. The case raised no question of European law [54-59].
- On substantive scope: the Convention was intended to deal comprehensively with the liability of the air carrier for whatever might physically happen to passengers between embarkation or disembarkation. The fact that Mr Stott's claim relates to disability discrimination makes no difference. The underlying difficulty is that the Montreal Convention and its predecessors long predated equality laws. It is unfair that someone suffering as Mr Stott had could not obtain any compensation, but that is the plain meaning of the Convention. It would be desirable for the states parties to the Convention to consider its amendment. It is also possible that the Civil Aviation Authority could take other enforcement actions against Thomas Cook [61-64].
- On temporal scope: the operative causes of Mr Stott's treatment undoubtedly began at check-in, prior to embarkation. However, this is not enough. Mr Stott's claim is for damages for the humiliation and distress that Mr Stott had suffered during the course of the flight, which fall squarely within the Convention period of exclusivity. To hold otherwise would encourage deft pleading and would circumvent the purpose of the Convention [60].
- In her concurring judgment, Lady Hale considers it disturbing that the Convention excludes damages claims for breaches of individuals' fundamental rights. It is particularly unsettling that this applies not only to private air carriers such as Thomas Cook, but also to state airlines. A treaty which contravened a fundamental international law norm would be void. Torture is a fundamental norm of this kind, and race discrimination might be another. There is a respectable view that Mr Stott's treatment would, under the European Convention on Human Rights, constitute inhuman and degrading treatment ("IDT"). However, it appears that IDT has not yet become a fundamental international law norm. Since Thomas Cook is not a state air carrier, these issues do not arise in this case. At the very least, however, the grave injustice done to those in Mr Stott's position should be addressed by the parties to the Convention [67-70].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

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