IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CLW 362/1994

BETWEEN	SONIA WILSON	CLAIMANT
AND	MUFFLER SPECIALISTS LIMITED	DEFENDANT

Mrs. Sharon Morgan-Grindley instructed by Mr. Alton Morgan & Company for the Claimant

Mr. Garth McBean instructed by McBean & Company for the Defendant

Heard: February 27 and 28, 2006 and March 17, 2006

Straw J (Ag.)

On October 6, 1993, the claimant, Ms. Sonia Wilson was injured while on the premises of the defendant, Muffler Specialists Limited.

She had taken the vehicle there in order for an examination to be carried out. Whilst in the pit area under her vehicle, there was a loud explosion from which she suffered injuries. She is suing the defendant for damages for negligence and/or breach of the Occupiers Liability Act arising from the same incident.

Events leading up to the explosion

The defendant carries on the business of the manufacture, supply, distribution, installation and repair of mufflers and muffler systems for motor cars.

Prior to October 10, 1993, the claimant had visited the premises of the defendant in relation to an examination of the muffler system. However, she returned to Muffler Specialists on the 6th as she had noticed that the car was losing power and the sound of the engine was louder. According to her, the muffler seemed to have a hole.

The vehicle was placed on the ramp and examined by Mr. Gerald Lacey Jr. one of defendants' managers. He advised the claimant that there was nothing wrong with the muffler system. After Lacey Jr. indicated that he found nothing, the claimant insisted that there was. Both parties disagreed as to what took place thereafter.

The claimant's evidence

The claimant states that Mr. Lacey Jr. invited her into the repair pit for a closer examination of the vehicle; that while both herself and Mr. Lacey Jr. were in the pit under the car, Mr. Lacey instructed another employee to rev the engine. The claimant stated as follows:

> *"I was very apprehensive whilst under the car because of the loud noise from the engine as it seemed to me that the car was being given the maximum revolutions per minute that it could sustain."*

Whilst the claimant and Lacey Jr. were in the pit, there was a loud explosion. As a result, the claimant sustained serious injuries to both legs.

The evidence in relation to the defendant

Mr. Lacey Jr. has denied that he invited the claimant into the pit; that there is a company policy that customers are not allowed to go towards the pit area while the vehicle is being examined. He stated further that while the claimant was at the office door, he had told her of the dangers of being in the pit area, that he did not invite her to the said area. He did state, however, that while he was in the pit, he saw her come to the side of the car and pointed to the front of the car as the area from which she had heard the sound.

He could not remember if he insisted that she move away. He also agreed that she was in the pit when she was injured but that he did not know at what point she

entered the pit. He explained that the entrance to the ramp is at the back of the pit but he was to the front of the pit with his back to the said entrance.

He stated further that he did not warn her of the dangers of being in the area while she was positioned to the side of the car. Neither did he cease the operations of revving the engine.

While he was under the car, Lacey Jr. explained that he requested one Linval Dixon to rev the engine; Mr. Dixon did this and on the third occasion, he heard an explosion from under the vehicle. As a result, he received a blow to his right jaw from a piece of metal which flew from the vehicle. He then noticed that the claimant was injured.

Both Mr. Lacey Jr. and Mr. Dixon stated that after the explosion they noticed a hole in the gearbox housing of the claimant's car and that metal parts including the flywheel from the gearbox were all over the ground in the vicinity of the car.

The court finds this to be crucial in light of the evidence of the expert witness, Mr. Michael Forrest, who subsequently examined the car in an effort to discover the cause of the explosion.

Other relevant facts

Unknown to Mr. Lacey Jr., the claimant had also been experiencing some problems with her clutch. In July 1993, she had taken the said vehicle to Andrew Thwaites Esso Service Centre where work was done which included removing and repairing the gearbox and fixing of the clutch. Exhibit 0 is the invoice from Thwaites describing the said repairs.

The claimant also gave evidence that two weeks prior to the explosion, she had taken the car back to Thwaites as she was not satisfied with the performance of the vehicle. She stated that the car was not going into second gear; that she had made an appointment with Thwaites' relative to that problem for a date subsequent to her visit to the defendant on October 6, 2003.

Mr. Dixon stated in his witness statement that prior to the explosion, the claimant had informed him that a third party had worked on the gearbox.

Claimant's submission on the issue of negligence

In her pleadings, the claimant is alleging that the defendants' servants were negligent in running or operating the said vehicle at a rate which was excessive and that this was done while they knew the claimant was underneath the same.

She is asking the court to find that it was the defendants' employees over revving of the engine that caused it to explode; that the court can infer this from the evidence of the expert Michael Forrest and also the evidence of Gerald Lacey Snr.

Claimant's submission on Breach of Duty under the Occupiers Liability Act

Mrs. Morgan-Grindley submitted on behalf of the claimant that the duty of care owed by an occupier is the statutory duty of care as expressed in Section 3(2) of the Occupiers Liability Act.

Section 3(2) reads as follows:

> *"The common duty of care is the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonable safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."*

In addition, Section 3(4) and 3(5) read as follows:

> 3(4) *"In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances."*
>
> 3(5) *"Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonable safe."*

The claimant has asked the court to find that the defendants' servants did not warn her to avoid entering the ramp area but that she was actually invited by Mr. Lacey Jr. to be there. In the alternative, if the court finds that she was so warned, then that warning was not sufficient to enable her to be reasonable safe in the circumstances in keeping with Section 3(5) of the above named Act; that since there was an inherent danger of being in that area, once any of the employees of Muffler Specialists observed that Ms. Wilson was in the repair pit or around the work area, she should have been asked to leave or be escorted from the area.

In relation to the issue of causation, it was submitted that "but for" the defendant's negligent handling of Ms. Wilson's motor vehicle by revving the engine while she was under the car or in the work area, she would not have suffered the injuries. (see **Barnett v Chelsea and Kensington Hospital Management Committee** (1968) 1 All ER 1068).

Defendant's submission on the issue of Causation

Mr. McBean has argued on behalf of the defendant that the explosion which resulted in the claimant's injuries were solely caused by negligence of a third party. He

quoted the text of **Winfield and Jolowicz on Tort** at page 147 and page 148 respectively as follows:

> *"Even if the plaintiff proves every other element in the tortuous liability, he will lose the action or in the case of torts actionable per se, fail to recover more than nominal damages if the defendant has not caused his loss or even if there is the required causal link, if the harm the plaintiff has suffered is too remote of the defendant's conduct."*
>
> *"As a first step, it must be decided whether the defendant's breach of duty was, as a matter of fact, a cause of the damage---. If the result would not have happened but for a certain event then that event is the cause; contrariwise, if it would have happened anyway, the event is not the cause."*

Main issue for court's determination

The main issue for the court's determination whether in relation to negligence or Breach of the Occupiers Liability Act is the issue of causation. Has the claimant on a balance of probabilities, proved that the actions of the defendants' employees were the cause of the explosion or was there a 'nova causa interveniens?'

At page 169 of the text **Winfield and Jolowicz**, the authors state:

> *"If the defendants breach of duty has done no more than provide an occasion for an entirely independent act by a third party and that act is the immediate cause of the plaintiff's damage, then it will amount to a nova causa interveniens and the defendant will not be liable."*

The evidence in relation to the cause of the explosion

The defendant called an expert witness, Mr. Michael Forrest, who examined the claimant's motor vehicle on October 10, 1999. He is a Motor Vehicle Loss Adjuster and Managing Director of Trans Jam Loss Adjusters. Mr. Forrest examined the engine room and made the observation that there was damage to the gearbox bell housing, flywheel assembly and bolts.

In his opinion, the flywheel disintegrated causing damage to other components. He did not actually see the flywheel on the vehicle. He concluded from his observation and from information he had received (that previous repairs had been carried out to gear-box) that it appeared that the previous repairs resulted in a mechanical failure, that is, the disintegration of the flywheel.

Mr. Forrest explained that the gearbox bell housing is a separate compartment from the engine (albeit bolted together) and that it houses the flywheel, clutch disc and pressure plate. When the car is put in gear, the pressure plate puts the clutch disc to the flywheel and the vehicle is able to move. If the gear is in neutral, the fly wheel would not be engaged.

Effect of running engine

According to Mr. Forrest once the gear is in neutral and the engine is running, the flywheel would still be spinning but not engaged. The fly wheel is fitted into the crankshaft by bolts. In order for the flywheel to disintegrate, the bolts would have to give and the flywheel will fly off. In some cases it will just fly off, in other cases it may rest in the bell housing. However, this is dependent on the revolutions per minute applied. In this particular case, it caused damage to other components.

The effect of the engine being over-revved

The witness was inconsistent in his evidence in relation to effect on a gearbox of an engine being over-revved. At one stage, he indicated he would not expect anything to happen to the gearbox if the engine is over-revved although over-revving can result in the engine exploding.

He explained the type of damage he has seen to the engine as a result of an explosion e.g. the connecting rod flies and damages the engine block. The connecting rod is in the engine compartment. Also, the tappets (small metal objects in the tappet cover) can fly. In the normal course of things he would not expect a gearbox to disintegrate.

Under cross-examination, Mr. Forrest stated that in the normal operation of the engine running with the gear being in neutral, there would be no movement of clutch or pressure plate. This would be so no matter how hard it is revved. He further indicated that based on his observation, he would not expect an engine of this type to suffer the damage seen if it was revved between the normal band.

However, he went onto say that, if the flywheel was not tightened properly, it could dislodge even at a low revving of the engine.

The claimant has asked the court to find that the engine was over-revved and that this was the cause of the explosion. Mr. Forrest's evidence, however, has pointed to other factors which could affect the flywheel not associated with over-revving.

The court does accept that something happened to the flywheel at the time of the explosion. Both Mr. Lacey Jr. and Mr. Linval Dixon testified that they saw metal parts including the flywheel from the gearbox all over the ground after the explosion. This evidence has not been challenged.

Damages associated with the vehicle being examined on the ramp

Gerald Lacey Snr., the General Manager of the defendant outlined the risks involved in relation to the motor vehicle being on the ramp.

Firstly, if the vehicle is stationary on the ramp, the risk would involve the possibility of hot oil falling. There is also a risk associated with the exhaust being hot.

Secondly, if the engine is running, the risks are the same as those stated above. However, if the engine is being revved, the possibility exists that the engine could explode if it is over-revved. A person in the pit could be affected because of this. He stated that all his employees are cognizant of this fact and that they have experience in the revving of motor vehicles. However, they could not have foreseen that the gearbox could explode.

Gerald Lacey Jr. explained that it is customary to rev the engine in order to check for noise in the exhaust system. The necessary checks cannot be made unless this is done

Decision of the court on the issue of liability

As already indicated, this court has come to the conclusion that something happened to the flywheel on the claimant's vehicle on October 6, 1993. The defendant specializes in muffler repairs. They had nothing to do with any repairs to the gearbox. The witnesses have indicated that there was no over-revving.

On a balance of probabilities, the claimant has not proved that the vehicle was being over-revved. The court has come to this conclusion based on the evidence of the expert in relation to the flywheel, i.e., that it could dislodge at low revving if the bolts were not tightened properly. The possibility exists that some repairs had taken place which could have involved the flywheel. The defendant could not have foreseen that there might have been something amiss with the gearbox bell housing and flywheel and that the revving of the engine would have caused an explosion in that area.

The court accepts the evidence of Mr. Dixon and Mr. Lacey Jr. that they saw a hole in the gearbox. Mr. Forrest saw damage to the gearbox bell housing. There was no damage seen to the engine that was usually associated with over-revving.

It is clear that something may have gone amiss with the flywheel and this could possible be due to some previous repairs done by a third party. This would not be in the knowledge of the defendants' servants. The court notes that it was not the engine itself which exploded but that the damage was limited to the gearbox.

Even if the court were to find that the defendant invited or allowed the claimant to be in the pit, the claimant has not proved on a balance of probabilities that it was the defendant's negligence or breach of duty that was the immediate cause of the explosion.

Based on the evidence, the court finds that there was a 'nova causa interveniens' and that the defendant is not liable.

Judgment for the defendant.

Costs to be agreed or taxed.