



30 March 2011

PRESS SUMMARY

Jones (Appellant) v Kaney (Respondent) [2011] UKSC 13
On appeal from the High Court of Justice [2010] EWHC 61 QB

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lady Hale, Lord Brown, Lord Collins, Lord Kerr, Lord Dyson

BACKGROUND TO THE APPEALS

The appellant in this case challenged the rule that an expert witness enjoyed immunity from any form of civil action arising from the evidence he or she gave in the course of proceedings.

The appellant had been hit by a car in March 2001 and suffered physical and psychiatric consequences. He consulted solicitors with a view to bringing a claim for personal injury, and they instructed the respondent, a clinical psychologist, to prepare a report on his psychiatric injuries for the purposes of the litigation. She reported that the appellant was suffering from post traumatic stress disorder (PTSD). Proceedings were issued and liability was admitted, so that the only remaining issue was the amount of damages. The appellant was examined by a consultant psychiatrist instructed by the defendant driver, who expressed the view that the appellant was exaggerating his symptoms. The district judge ordered the two experts to hold discussions and to prepare a joint statement to assist the court at the trial. It is the appellant's case that the respondent carried out this task negligently, and thereby signed a joint statement which wrongly recorded that she agreed that the appellant had not suffered PTSD and that she had found the appellant to be deceitful in his reporting. This was so damaging to his claim for damages that he felt constrained to settle it for a significantly lower sum than he might otherwise have been able to achieve.

The appellant accordingly issued proceedings for negligence against the respondent. She applied for the claim to be struck out. The judge in the High Court was bound by the Court of Appeal's decision in *Stanton v Callaghan* [2000] QB 75 to hold that the respondent, as an expert witness, was entitled to immunity from such a claim in respect of her preparation of a joint statement for trial, and granted the application. The appellant's appeal against this order came direct to the Supreme Court as a point of general public importance.

JUDGMENT

The Supreme Court by a majority (Lord Hope and Lady Hale dissenting) allows the appeal. Lord Phillips gives the lead judgment. The majority hold that the immunity from suit for breach of duty (whether in contract or in negligence) that expert witnesses have enjoyed in relation to their participation in legal proceedings should be abolished.

REASONS FOR THE JUDGMENT

- Witness immunity dates back over 400 years, long before the development of the modern law of negligence and the practice of forensic experts to offer services to litigants for reward [11]. It originally took the form of absolute privilege against defamation claims but was extended to all forms of suit [12]. It overlapped with the wider immunity formerly enjoyed by an advocate from negligence claims by his own client, before that immunity was abolished by the House of Lords in 2001 on the ground that it could no longer be justified [13].
- The general rule was that every wrong should have a remedy and that any exception to this rule must be justified as being necessary in the public interest and kept under review [51][88][113]. The primary rationale for the immunity was a concern that an expert witness might be reluctant to give evidence contrary to his client's interest, in breach of his duty to the court, if there was a risk that this might lead his client to sue him [41]. In common with advocates, however, there was no conflict between the duty that the expert had to provide services to his client with reasonable skill and care, and the duty he owed to the court. The evidence did not suggest that the immunity was necessary to secure an adequate supply of expert witnesses [54][117]. The removal of immunity for advocates had not diminished their readiness to perform their duty, nor had there been a proliferation of vexatious claims or multiplicity of actions [57 - 60][85].
- For these reasons the majority concluded that no justification had been shown for continuing to hold expert witnesses immune from suit for breach of duty in relation to the evidence they give in court or for the views they express in anticipation of court proceedings [61]. This decision did not affect the continued enjoyment by expert witnesses of absolute privilege from claims in defamation [62], nor did it undermine the longstanding immunity of other witnesses in respect of litigation [125].
- Lord Hope and Lady Hale, dissenting, disagreed with the majority's approach of reviewing the justification for the immunity. The rule was longstanding and its application to claims beyond defamation in respect of evidence given by any witness was confirmed by the House of Lords in *Watson v M'Ever* [1905] AC 480 [141]. The question therefore was whether an exception to this rule could be justified [161][176]. The main concern arising from the decision of the majority was the effect on disappointed litigants liable to commence worthless but time-consuming claims against their experts [165][188]. The lack of a secure principled basis for removing the immunity, of a clear dividing line between what was to be affected by the removal and what was not, and of reliable evidence to indicate what the effects might be, suggested that the wiser course was to leave any reform, if needed, to Parliament [173][189].

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. Judgements are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html