Whether insurer liable for acts of a schizophrenic insured

The claimant was injured when the defendant, his uncle, set fire to himself, engulfing them both in flames. The uncle died of his injuries and was diagnosed post-mortem as having suffered florid paranoid schizophrenia.

The uncle had a household insurance policy which provided cover for "all sums which you become legally liable to pay as damages for...accidental bodily injury...to any person". The insurer argued that the uncle's actions were deliberate and so did not cause "accidental bodily injury"; instead, they fell within the exclusion for "Liability arising from ... any wilful or malicious acts by you".

The experts confirmed that, at the time of the incident, the uncle had been acting under delusional beliefs and agreed that he was not in control of his actions. At first instance, the judge concluded that the uncle had not been acting voluntarily and so did not breach a duty of care to the claimant. Accordingly, he was not liable to the claimant (although the judge also concluded that the injury had been "accidental" and so any liability would have been covered by the policy).

The Court of Appeal has now allowed the claimant's appeal from that decision and held that the uncle was liable to the Claimant.
It was held that the uncle owed a duty of care and: "The issue is simply whether, unwell as he was, he breached that duty since he did not measure up to the objective standard of care". Although the objective standard is moderated for children, there is no such moderation for a defendant who fails to meet the normal standard of care partly because of a medical problem. The only exception is where the defendant's condition entirely eliminates responsibility: "If, akin to the man holding a knife whose arm was gripped by another and directed, [the uncle] had no part to play in his physical acts, he would escape liability... Likewise, had he been in a state of automatism or were he a sleepwalker". Put another way, were the claimant's injuries sustained because the defendant suffers "some entirely unheralded, unexpected and unforeseen incapacitating attack" (due to a physical or mental health problem)? If so, the defendant would not be liable.

But that was not the position here. The uncle had been "acting at all relevant times" and the acts causing the injuries had still been directed by the uncle's deranged mind. He had physical (although not rational) control over his actions.

As for the insurance policy, both Vos LJ and Arden LJ agreed that the injury had been "accidental", the uncle having clearly lost control of his ability to make choices and so could not be said to have intended to cause injury to the claimant (ie he was not malicious or wilful). They agreed with the claimant that: "it would be unrealistic to interpret accidental injury or damage in the policy as limited to that caused by some means external to the insured: that would reduce the cover to significantly less than the parties must have contemplated".

COMMENT:

- The Court of Appeal decision helpfully clarifies the law. Lady Justice Rafferty, who gave the lead judgment, cited extensively the pertinent civil and criminal case law starting with *M'Naghten's Case* in 1843 from which the *McNaghten* Rules are derived. These are the rules used by the criminal courts in crimes requiring mens rea (intention), which, if successfully deployed, lead to a not guilty verdict due to insanity – the accused did not know the nature of their actions or that such actions were wrong.

- But torts of negligence do not require intention as an ingredient; it is duty of care. Because of this it is, and would be, unhelpful if the law applied a different standard of care and responsibility to a person (or even excused a person's actions) due to their particular mental and / or physical vulnerability as compared to the "ordinary" person. We must take the person as we find them but still apply a unified approach. It is for this reason that a leaner driver is judged by the same standards as a qualified driver.

- As such the Court of Appeal's unanimous verdict was that a defendant can only avoid liability if their conduct was entirely involuntary and wholly beyond their own control such as an unexplained loss of consciousness whilst driving. That must be right. To allow otherwise would be to create uncertainty and undue complexity.

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