



SUPREME COURT OF CANADA

CITATION: 2008 SCC 3

DATE: 20080207

DOCKET: 31515

BETWEEN:

Attorney General of British Columbia

Appellant

v.

Insurance Corporation of British Columbia

Respondent

CORAM: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

REASONS FOR JUDGMENT: LeBel J. (McLachlin C.J. and Bastarache, Binnie,
(paras. 1 to 12): Deschamps, Fish, Abella, Charron and Rothstein JJ.
concurring)

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b.c. (a.g.) v. i.c.b.c.

Attorney General of British Columbia

Appellant

v.

Insurance Corporation of British Columbia

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Indexed as: British Columbia (Attorney General) v. Insurance Corporation of British Columbia

Neutral citation: 2008 SCC 3.

File No.: 31515.

2007: December 12; 2008: February 7.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the court of appeal for british columbia

Police — Torts committed by police officers — Scope of vicarious liability of Attorney General — Police officer chasing stolen car in city street — Innocent driver killed in collision with stolen car — Uninsured 14-year-old driver of stolen car found 90 percent liable and police officer 10 percent — Multiple tortfeasors at fault for same

damage jointly and severally liable under Negligence Act — No action for damages lying against police officer under Police Act for acts of simple negligence done in performance of duty — Liability arising from police officer's fault transferred to Attorney General — Attorney General's liability not limited to proportion of damages attributed to fault of police officer — Victim entitled to full compensation from Attorney General as damages indivisible — Police Act, R.S.B.C. 1996, c. 367, ss. 11, 21 — Negligence Act, R.S.B.C. 1996, c. 333, s. 4(2).

Held: The appeal should be dismissed.

Statutes and Regulations Cited

Family Compensation Act, R.S.B.C. 1996, c. 126.

Negligence Act, R.S.B.C. 1996, c. 333, s. 4.

Police Act, R.S.B.C. 1996, c. 367, ss. 11, 21.

APPEAL from a judgment of the British Columbia Court of Appeal (Ryan, Levine and Smith JJ.A.), [2005] 8 W.W.R. 149, 209 B.C.A.C. 144, 41 B.C.L.R. (4th) 43, 21 C.C.L.I. (4th) 195, 2005 CarswellBC 417, [2005] B.C.J. No. 363 (QL), 2005 BCCA 104, affirming in part a decision of Allan J. of the British Columbia Supreme Court (2003), 15 B.C.L.R. (4th) 305, 50 C.C.L.I. (3d) 219, [2003] B.C.J. No. 1461 (QL), 2003 BCSC 958. Appeal dismissed.

D. Geoffrey Cowper and Helen Roberts, for the appellant.

Terrence L. Robertson, Q.C., and *Guy P. Brown*, for the respondent.

The judgment of the Court was delivered by

1 LeBel J. — The Attorney General of British Columbia (“AGBC”) appeals from a judgment in which the British Columbia Court of Appeal held him vicariously liable to pay damages resulting from the death of a driver in a crash that occurred during a police chase of a stolen car. For the reasons which follow, the AGBC is in my opinion liable for all the damages, and I would accordingly dismiss the appeal.

2 T.B., who was 14 years old, stole a car. An RCMP constable pursued the car through the streets of Vancouver. T.B. hit a car driven by a woman, who died in the collision. The woman’s family sued T.B. and the AGBC for compensation under the *Family Compensation Act*, R.S.B.C. 1996, c. 126. The British Columbia Supreme Court found T.B. 90 percent at fault and the police officer 10 percent at fault.

3 Section 4(2) of the *Negligence Act*, R.S.B.C. 1996, c. 333, provides that multiple tortfeasors who are found to be at fault for the same damage are jointly and severally liable. Under the *Police Act*, R.S.B.C. 1996, c. 367, s. 11, the AGBC is deemed to be liable for torts committed by provincial constables in the performance of their duties. Section 21(2) of the *Police Act* exempts police officers from liability to pay damages resulting from acts of simple negligence in the performance of their duties by barring any actions against them. According to s. 11, the AGBC is “jointly and severally” liable for torts committed by a police officer.

4 After the initial finding of liability and a judgment which determined the amount of compensation, the focus of the litigation shifted to determining who would pay the compensation _ the AGBC or the Insurance Corporation of British Columbia (“ICBC”) _ given that T.B. was an uninsured driver.

5 The judgments of the Supreme Court of British Columbia and the Court of Appeal addressed the scope of the AGBC’s vicarious liability and other questions relating to ICBC’s liability. The chambers judge held that the AGBC was jointly and severally liable with T.B. for the damages, and that ICBC was required to pay the portion of the damages attributed to T.B. ((2003), 15 B.C.L.R. (4th) 305, 2003 BCSC 958). Levine J.A., writing for the Court of Appeal, upheld the finding of joint and several liability against the AGBC, but held that the AGBC was not entitled to contribution from ICBC ((2005), 209 B.C.A.C. 144, 2005 BCCA 104).

6 In the meantime, the family of the deceased received full payment of the damages from the AGBC. It assigned its rights to the AGBC. Legal proceedings between the AGBC and ICBC concerning their respective contributions to the damages are still under way in the British Columbia courts.

7 At the hearing in this Court, the AGBC stated that the sole issue before us is the scope of his vicarious liability under the *Police Act*. He asserted that the Court need not comment on any other issue.

8 The AGBC addressed the scope of his liability. In brief, he argued that it is limited and does not exceed the proportion of the damages attributed to the fault of the police officer.

9 In my opinion, Levine J.A. correctly defined the scope and effect of the vicarious liability imposed on the AGBC for torts committed by police officers. She stated, at paras. 21 and 22, that the AGBC's liability was the liability that would have been imposed on the officer were it not for the immunity granted in s. 21.

10 Section 21 grants immunity to the police officer. But s. 11 protects the victim by transferring the tortfeasor's liability to the AGBC. The AGBC takes the officer's place. The victim retains his or her rights, but against a different debtor. If the officer would have been jointly and severally liable with another tortfeasor but for the statutory immunity, the AGBC will also be so liable.

11 Under the *Police Act*, the imposition of vicarious liability requires fault on the officer's part and damages. Section 21 exempts the officer from liability, and the liability arising from his fault is transferred to the AGBC. As the damages are deemed to be indivisible, the police officer and T.B. would normally be jointly and severally liable under s. 4(2) of the *Negligence Act*. Because s. 21(2) of the *Police Act* exempts the officer from liability while s. 11 deems the AGBC to be liable, the victim is entitled to claim full compensation from the AGBC.

12 For these reasons, I would dismiss the appeal with costs in our Court.

APPENDIX

RELEVANT STATUTORY PROVISIONS

Negligence Act, R.S.B.C. 1996, c. 333

- 4** (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.
- (2) Except as provided in section 5 if 2 or more persons are found at fault
- (a) they are jointly and severally liable to the person suffering the damage or loss....

Police Act, R.S.B.C. 1996, c. 367

- 11** (1) The minister, on behalf of the government, is jointly and severally liable for torts committed by
- (a) provincial constables, auxiliary constables, special provincial constables and enforcement officers appointed on behalf of a ministry, if the tort is committed in the performance of their duties....
- 21** (1) In this section, “police officer” means a person holding an appointment as a constable under this Act.
- (2) No action for damages lies against a police officer or any other person appointed under this Act for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.

Appeal dismissed with costs.

Solicitor for the appellant: Attorney General of British Columbia, Vancouver.

Solicitors for the respondent: Harper Grey, Vancouver.