Woods v Multi-Sport Holdings Pty Ltd (2002) 186 ALR 145

Chapter 4

Relevant facts

While batting in an indoor cricket match, Wood mistimed a shot and was hit in the right eye. The injury caused him to lose sight in the eye. The indoor cricket match was organised by Multi-Sport Holdings Pty Ltd (MSH) and held at a facility owned and operated by MSH. MSH supplied some equipment to the players (bats, balls and groin protectors) but did not provide helmets with a face guard or pads. MSH did not display a sign warning of the risk of serious eye injury.

Wood sued MSH for damages alleging MSH had breached the duty of care it owed to him by (1) failing to supply a helmet with a face guard to Wood; and (2) failing to warn Wood of the risk or danger of injury.

Indoor cricket is fast paced and conducted in a confined space, which means that there is a high risk of collision between players and of any player (batter, bowler or fieldsman) being hit by the ball. However, helmets are not usually worn in indoor cricket matches.

Legal issue

What is the standard of care owed by an occupier running a commercial operation in circumstances where the occupier goes beyond the mere provision of facilities? What reasonable steps ought MSH have taken to avoid risk of injury to players arising from dangers involved in playing indoor cricket? How should the obviousness of a risk be used in assessing reasonableness?

Decision

On 7 March 2002, a majority of the High Court of Australia (Gleeson CJ, Hayne and Callinan JJ) upheld decisions of District Court of Western Australia and the Full Court of Supreme Court of Western Australia in favour of MSH. Each member of the majority delivered separate reasons but agreed that reasonableness did not require MSH to provide a helmet with a guard or to warn Wood about the risk of eye injury.

According to Gleeson CJ (at 152):

> Where it is claimed that reasonableness requires one person to provide protection, or warning, to another, the relationship between the parties, and the context in which they entered into that relationship, may be significant. The relationship of control that exists between an employer and an employee, or of wardship that exists between a school authority and a pupil, may have practical consequences,

> as to what it is reasonable to expect by way of protection or warning, different from those which flow from the relationship between the proprietor of a sporting facility and an adult who voluntarily uses the facility for recreational purposes. I say 'may', because it is ultimately a question of factual judgement, to be made in the light of all the circumstances of a particular case.

According to Gleeson CJ (at 154):

> What reasonableness requires by way of warning from an occupier to an entrant is a question of fact, not law, and depends on all the circumstances, of which the obviousness of a risk may be only one.

According to Hayne J (at 144):

> That a player could suffer serious injury, even permanent and disabling injury, by playing this sport was evident to all participants in it. Reasonable care did not require the respondent to warn participants of that. Nor was there any reason to single out one form of injury and warn of that.

Kirby and McHugh JJ dissented. Both held that MSH was negligent in failing to provide a helmet and to warn of the risk of eye injury on the basis that MSH breached its duty of care due because reasonableness required MSH to do both. According to Kirby J (at 175):

> Warnings are sometimes required by those in control of situations to alert those who are inattentive, distracted or unlikely in the circumstances to consider the risk, although objectively, and with hindsight, it is 'obvious'. The duty to warn depends on the circumstances of the case, not just suggested lack of 'obviousness' of the risk.

Significance

This decision demonstrates judicial preference in cases involving sporting activities to assess liability based on the standard of care owed rather than whether there was a defence of voluntary assumption of risk. This could be in part because of the fact that voluntary assumption of risk requires the defendant establish the plaintiff fully appreciated that the danger will materialise.

It provides an analysis of the part the obviousness of a risk has to play in determining whether reasonableness requires that the injured party be warned of the risk. It also highlights the differing judicial views about the need to warn in cases where the risk is obvious and/or where risky recreational activities are involved.