

UK Supreme Court finds unanimously for home care worker from Glasgow in major decision on protecting workers' safety

Kennedy (Appellant) v Cordia (Services) LLP (Respondent) (Scotland)

The Supreme Court of the United Kingdom has today (Wednesday 10th February) handed down a unanimous decision in favour of Tracey Kennedy, a home carer who was injured while working in Glasgow in 2010.

The case centred on whether employees working outside in dangerous wintry conditions should be supplied with footwear to protect them against the risk of injury from slipping on ice.

Today's Judgement upholds a 2013 Court of Session decision in Miss Kennedy's favour which was initially overturned at appeal in 2014. Handing down a 5-0 decision, the Supreme Court found that Lord McEwan was right in his 2013 Court of Session opinion when he stated that the direction of the law was to "level safety upwards".

The bench for the case included two Scottish Justices of the Supreme Court, Lord Reed and Lord Hodge.

Digby Brown Solicitors, Tracey Kennedy's lawyers, have described the case as a landmark judgement which will not only help protect individuals working for the benefit of others in testing conditions across the country, but which further reinforces the need for employers to proactively assess the risks faced by workers when at work, and to introduce reasonable measures to avoid or otherwise reduce that risk.

Tracey Kennedy suffered a serious wrist injury while working for Cordia (Services) LLP as a home carer. She slipped on an icy path into a housing estate in Glasgow during the severe winter of 2010 as she made her way to the home of a terminally ill client to provide essential care services.

Miss Kennedy could not re-arrange the visit, was not provided with any footwear by her employer, nor was she given guidance on what she should wear in wintry conditions to avoid her slipping. The footpath had not been gritted and was described as being like a sheet of glass below a layer of snow. Her employer's own expert described the risk of an employee slipping in these conditions as a "dead cert".

The Supreme Court has found the risk to Tracey Kennedy's safety - slipping while travelling between client houses - was "obvious as a matter of common sense" and was known to her employers, having been previously identified.

The lack of a suitable and sufficient risk assessment and a failure to provide suitable protective footwear to protect her from slipping represented a breach of safety regulations and the common law duty of care owed by Cordia.

Discussing risk assessments, today's decision states that a "reasonably prudent employer will conduct a risk assessment in connection with its operations so that it can take suitable precautions to avoid injury to its employees," and that a requirement on carry out proper risk assessments "...forms the context in which the employer has to take precautions in the exercise of reasonable care for the safety of its employees"

Tracey Kennedy's Solicitor, Iona Brown, Digby Brown Associate, said:

"This is an important judgement which will help protect individuals working for the benefit of others in testing conditions across the country. As the original decision noted, Miss Kennedy was on an errand of mercy, helping a vulnerable elderly member of the community. No-one should be exposed to any unnecessary risk of injury through just doing their job."

Fraser Simpson, Digby Brown Partner, said:

"The Supreme Court has made a welcome and unanimous statement confirming that the direction of the law in recent years is to improve safety and health in the working environment, and accordingly safety should always be levelled upwards.

“Individuals going about their work are entitled to reasonable protection from risks to their safety. Robust risk assessment is now central to consideration of whether an employer has properly fulfilled their duty of care to their employees.

“Digby Brown are committed to applying the law to protect employees, to hold employers to their responsibilities and improve workplace safety standards. We pursued this case, and took it all the way to the Supreme Court because we recognised its importance, both to Tracey Kennedy and thousands of other people at risk of injury when at work.

“On a wider level, this Judgement is a welcome and important counter-weight to recent changes in the law and public policy which have only served to weaken the protections available to workers in the UK. We hope this helps re-focus the debate in this area on improving safety for employees.”

-- ENDS --

Notes to News desks

1. The Supreme Court of the United Kingdom is the Supreme Court in all matters under English and Welsh law, Northern Ireland law and Scottish civil law. It is the court of last resort and the highest appellate court in the United Kingdom,
2. Details of the judgement and associated documents can be found at <https://www.supremecourt.uk/decided-cases/index.html>
3. The original Court of Session decision in Tracey Kennedy against Cordia (Services) LLP is available at <http://www.scotcourts.gov.uk/search-judgments/judgment?id=645486a6-8980-69d2-b500-ff0000d74aa7>

4. Digby Brown have actively opposed recent moves to weaken workplace health and safety protections for employees. This included opposition to the Enterprise and Regulatory Reform Act which came into force in October 2014 and removed employers' civil liability for health and safety regulatory breaches in the workplace, see <http://www.scotsman.com/news/legal-health-and-safety-takes-us-to-victorian-era-1-2808014>

5. An overview on the numbers of accidents at work in the UK and current policy developments in this area is available at <http://www.digbybrown.co.uk/solicitors/article-workplace-accidents-the-real-figures-and-why-they-matter>

6. Digby Brown are Scotland's largest personal injury practice with seven offices across the country – Edinburgh, Glasgow, Dundee, Inverness, Aberdeen, Kirkcaldy and Ayr.

7. Digby Brown are the only firm to be top ranked for personal injury in Scotland by both Chambers and Legal 500, the leading independent guides to the UK Legal professions, The firm won five awards at the 2015 Scott & Co. Legal Awards, including Law Firm of the Year.

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