

RECOVERABILITY OF ECONOMIC LOSS IN NEGLIGENCE

Conarken Group Limited and Farrell Transport Limited v Network Rail Infrastructure Limited [2011] EWCA Civ 64

The Court of Appeal has recently considered the question of the recoverability of economic loss in terms of negligence.

Background

Network Rail owns and operates the railway system in the UK. The trains which run on the rails are owned and operated by train operating companies (TOCs).

In 2002, a lorry owned by Conarken damaged a railway bridge and the railway line had to be closed for five days while repairs were carried out. In 2003, a lorry owned by Farrell damaged overhead electric cables which resulted in delays on the East Coast mainline for seven hours.

Network Rail sued the two lorry companies and successfully recovered damages. Amongst other heads of damage it was awarded damages in respect of contractual payments it had to make to the TOCs as a result of the disruption caused to use of the railway line.

The Court of Appeal considered the recoverability of these losses from the lorry companies. Substantial sums of money were at stake. The damage caused by the Farrell lorry cost £5,000 to repair, but damages of £1,000,000 were awarded at first instance in respect of the payments made to the TOCs.

The track access agreements between Network Rail and the TOCs provided for the payments to be made by Network Rail to the TOCs in the event of disruption and set out the bases on which they were calculated. The payments were made on two main bases, namely future loss of revenue resulting in a decline in passenger confidence as a result of the delay and an obligation to make payments under the franchise agreement in respect of poor performance.

The decision

The lorry companies argued that their liability was limited to losses truly consequential on the physical damage and that this did not extend to any contractual loss of Network Rail's to TOCs, which took into account factors such as a loss of future revenue resulting from passengers being put off using the trains. The lorry company did not owe any duty to Network Rail in respect of their financial position under the contracts with the TOCs.

Network Rail submitted that financial loss was foreseeable if the tracks were damaged. The loss was not economic loss by the TOCs but National Rail's losses resulting from its contracts with the TOCs.

The Court of Appeal decided that the losses claimed were a direct consequence of the tort. However, it was necessary to consider whether the losses were reasonably foreseeable.

After looking at the contract the Court of Appeal decided that loss of revenue resulting from damage to revenue earning property such as the railways was reasonably foreseeable.

Commentary

While this case does not make new law, the Court of Appeal Judges carried out exhaustive analyses in their three judgments of the principles which govern the recoverability of loss in a claim for negligence and the reasons which lie behind them. The case is therefore a useful summary of the current legal position on the recoverability of damages in negligence.

Jane Hughes