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### DAVID L DONACHIE v THE CHIEF CONSTABLE OF THE GREATER MANCHESTER POLICE (2004)

[2004] EWCA Civ 405

CA (Civ Div) (Auld LJ, Latham LJ, Arden LJ) 7/4/2004

PERSONAL INJURY - NEGLIGENCE - POLICE

CAUSATION : FORESEEABILITY : POLICE OFFICERS : PSYCHIATRIC HARM : PRIMARY VICTIMS : PRE EXISTING CONDITION : BREACH OF STATUTORY DUTY : SAFE SYSTEMS OF WORK : POLICE OFFICER IN FEAR OF ASSAULT : REASONABLY FORESEEABLE : CHAIN OF CAUSATION : TAGGING DEVICES : FAULTY BATTERIES : FEAR OF PHYSICAL INJURY : STRESS : SECONDARY VICTIMS : EVENT : PRE-EXISTING VULNERABILITY : MATERIAL CONTRIBUTION

**Where it was reasonably foreseeable that a police officer could be subjected to personal injury as a result of his employers' breach of duty, he was a primary victim and it was immaterial whether the psychiatric injury he suffered was reasonably foreseeable.**

The claimant (D) appealed against the dismissal of his claims in negligence and breach of statutory duty against the defendant chief constable for damages for personal injuries suffered when serving as a police officer. D had been required in the course of his duty to attach a tagging device to the underside of a suspect's car. Due to faulty batteries D had to make nine trips to the vehicle before the device worked, with the increasing fear that the suspects might discover him and cause him physical injury. There had been a history of this type of difficulty with the tagging devices. The whole operation was particularly stressful and aggravated D's hypertension causing him extreme stress. The trial judge accepted medical evidence that D had developed a clinical psychiatric state, leading to an acute rise in blood pressure, which had caused a stroke. The judge found that the chief constable was negligent in failing to operate a safe system of work and was in breach of statutory duty in failing to provide equipment that was in an efficient state. The judge found that those breaches had caused the stress that led to D's stroke but that, as D had not suffered the feared physical injury and the chief constable had been unaware of D's pre-existing hypertension, his psychiatric injury was not reasonably foreseeable. D appealed and the chief constable cross-appealed on causation. D submitted that the judge had wrongly failed to consider whether he was a primary or secondary victim and should have applied the case of [Page v Smith \(1995\) P & CR 329](#) to conclude that D was a primary victim and therefore it was immaterial that the feared physical injury had not occurred. The chief constable submitted that he was unaware of D's hypertension and therefore there was no reasonable risk of injury of any kind and by cross-appeal challenged the judge's findings on causation.

HELD: (1) D was a primary victim in respect of whom there was a reasonable foreseeability of physical injury and therefore it was not necessary to prove involvement in an "event" in the form of an assault or otherwise. Where the reasonably foreseeable injury was of a physical nature, but the injury caused was in fact psychiatric, it was immaterial whether the psychiatric injury itself was reasonably foreseeable or, as in the instant case, the particular form of physical injury: [Page v Smith \(1995\) P & CR 329](#) applied. The judge had been wrong to approach the question of reasonable foreseeability on the basis that the relevant injury was psychiatric. (2) As D was a primary victim, any pre-existing vulnerability to stress causative of psychiatric injury was irrelevant and the chief constable had to take his victim as he found him. (3) The judge had been correct to apply the "but for" test of causation from *Bonnington Castings Ltd v Wardlaw* [1956] AC 613. There was no basis for interfering with the judge's factual conclusion that the excess culpable exposure by the chief constable of D to extreme stress, in the circumstances that he found proved, "caused or made a material contribution" to his stroke.

Appeal allowed, cross-appeal dismissed.

Counsel:

For the appellant: Mark Turner QC, Marc Willems

For the respondent: Andrew Edis QC, William Waldron

Solicitors:

For the appellant: Betesh Fox & Co

For the respondent: Weightmans

**LTL 15/4/2004 : Times, May 6, 2004**

Judgment: Transcript - 16 pages

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