

Narrowing the Scope of Liability – Case Comment on Rankin (Rankin’s Garage & Sales) v JJ, 2018 SCC 19 [Rankin]

Introduction

Negligence is a well-established concept. However, the protean nature of its broader principles can become too abstract to provide certainty in negligence cases. It is always helpful to revisit the latest pronouncement in the jurisprudence on what the broad concepts of “duty of care” and “reasonable foreseeability” mean. Rankin is a recent Supreme Court of Canada decision that illuminates what harms are actually reasonably foreseeable enough to affix a defendant with a duty of care. The decision concerned whether Rankin’s Garage, as a commercial enterprise, owed a duty of care to a person who is injured after stealing a vehicle from the business premises. The Supreme Court of Canada held that it did not.

Factual Background

The facts of the case are simple yet tragic. Two minors walked around Paisley, Ontario, intending to steal valuables from unlocked cars after a night of drinking and smoking marijuana. The minors found their way to Rankin’s unsecured commercial car garage. The boys entered the property and one of them found an unlocked car with the keys still inside it. He instructed the other minor to “get in”. He then drove the car out of the garage and onto the highway where they subsequently crashed. The passenger minor suffered catastrophic brain injury and sued the driver minor, the driver’s mother and Rankin’s Garage for negligence.

Lower Court Decisions

At trial, The Ontario Superior Court of Justice held that Rankin’s Garage owed a duty of care to the passenger plaintiff. The trial judge opined that the risk of harm that attended on the passenger was reasonably foreseeable. She held it was reasonably foreseeable from the vantage point of Mr. Rankin that young inebriated persons could be injured if they stole a vehicle from the property. The Ontario Court of Appeal disagreed with the trial judge’s reasoning that Rankin’s Garage owed an established duty of care. Instead, the appellate court held that Rankin’s Garage was liable and that such a duty was novel.

The Supreme Court of Canada Decision

Rankin’s Garage appealed to the Supreme Court of Canada. Justice Karakatsanis for the majority held that the injuries incurred by the minor plaintiff in this case were not reasonably foreseeable. In her judgment, she re-emphasised the integral role of the concepts of reasonable foreseeability of harm and proximity in limiting the imposition of a novel duty of care. She held that the connection between the physical injury suffered by the passenger plaintiff and Rankin Garage’s impugned act of leaving the vehicle on its unsecured premises unlocked was not reasonably foreseeable.

For the majority, the issue was not whether the risk of theft of an unlocked vehicle is reasonably foreseeable, as it clearly was. Rather, the real inquiry concerned whether the physical injuries incurred by a person who steals an unlocked vehicle and who becomes involved in an accident are reasonably foreseeable from the standpoint of Rankin's Garage based on some circumstance or evidence that would substantiate the risk. Justice Karakatstanis held that imposing a duty of care in this instance would extend tort liability too far. The mere risk of theft does not automatically include the risk of injury from a passenger who becomes involved in the operation of a stolen vehicle.

A risk of injury that is merely possible cannot be confused for a risk that is reasonably foreseeable. There was no evidence in this case that satisfied the majority of the Court that it was reasonably foreseeable that a minor would steal a car and subsequently injure himself in doing so. The majority firmly re-emphasized several important concepts: first, that Courts should never render decisions based on "general notions of responsibility to minors". Secondly, that what constitutes "reasonably foreseeable" harm is an objective test that is not focused on the particular defendant's point of view, but on someone who is in the defendant's position. Further, the reasonably foreseeable inquiry cannot be undertaken with the "aid of 20/20 hindsight".

The majority also dismissed the claim that Rankin's Garage owed a positive duty of care to guard against risk of thefts to minors on the basis that the presence of a minor does not automatically give rise to positive obligations to protect against injury. Justice Brown in dissent disagreed. He found that the injuries incurred by the plaintiff was supported by the evidence as a reasonably foreseeable consequence that flows from leaving vehicles unlocked. Overall, Rankin's Garage was not found liable for the passenger plaintiff's injuries.

Implications

Implicit in the majority reasoning was a concern for circumscribing an otherwise too expansive reach of tort liability. The decision is a useful reminder that policy considerations and concerns for the appropriate limit of duties of care are of great judicial concern. Sympathy for the catastrophic injuries incurred by minor plaintiffs does not take precedence over the need for certainty and predictability in limiting the liability of commercial enterprises.

Risk that is reasonably foreseeable should not be found with the benefit and clarity of after-the-fact knowledge. Instead, the question for what constitutes harm that is reasonably foreseeable is greater than what is merely possible and answerable only by assessing whether an objective person in the shoes of the defendant could reasonably foresee the risk that attends on the plaintiff. Rankin injects some certainty into the negligence case law. Its pronouncement should be received with warm welcome by practitioners and commercial enterprises alike in defending cases against claims of negligence.

Please contact us should you wish to discuss the implications of this decision in more detail.