KEY POINTS

Manufacturers can be held liable for negligence if latent defects in their products cause injury to any consumer.

A manufacturer owes a duty of care towards the consumer. He must exercise reasonable care when he understands that the failure to take reasonable care could cause injury to the consumer.

The mere possibility of tampering does not absolve the manufacturer from his duty to care for a consumer in relation to a latent defect. Even when the product is in transit from the manufacturer to the consumer. The manufacturer must ensure that the product is not tampered with.

FACTS

The appellant, Dr Grant, bought two pairs of woolen underwear and two singlets from the retailer Jonh Martin & Co. No express instruction was given to wash the underwear before use, so the appellant did not wash them before using them.

He developed skin irritation after only 9 hours of first using the underwear. The appellant applied calamine lotion and kept wearing the underwear for the rest of the week. He then wore the second pair the next week while he washed the first. The skin irritation worsened and progressed into a serious case of dermatitis.

The appellant believing that his skin condition is caused by the underwear, sued the retailer, John Martin & Co. and the manufacturer Australian Knitting, claiming that they were negligent in failing to take reasonable care to prepare the garments. It was alleged that the underwear in question had an overabundance of Sulphur compounds.

The issues discussed in this case were, whether the appellant's dermatitis was brought on by the underwear, whether he relied on the salesman's  judgement, giving rise to the statutory warranty that the pants was fit for use, and the extent of the manufacturer's duty of care to the customer.

Australian Knitting Mills and John Martin & Co. filed an appeal in the High Court, arguing that the duty to care articulated in the case of Donoghue v Stevenson, was limited to "the manufacture of an article of food, medicine, or the like”, and not in the case of a garment worn externally.

COMMENTARY

Due to the injury caused to the appellant by the latent defect in the underwear, It was determined by the Courts that the manufacturers were to be held liable for negligence

The court held that the manufacturer owed a duty of care to the consumer because Australian Knitting mills knew that the consumer's health would be jeopardized if the clothing were not prepared with reasonable care. Moreover, the court reiterated that no distinction can be drawn between an article of food or medicine that causes injury to the consumer or an external clothing that does the same, and stated that Donoghue's case still stands in this context.

ORIGINAL ANALYSIS

P contracted a disease due to a woollen jumper that contained excess sulphur and had been negligently manufactured. Privy Council allowed a claim in negligence against the manufacturer, D.

Lord Wright: Tortious liability of the manufacturer is unaffected by contracts or who owns the thing at the time of retailing. However, the Donoghue principles only apply to hidden dangers and NOT where a person knows of the danger, since in the latter the damage "follows from his own conscious volition in choosing to incur the risk or certainty of mischance."

Any comments or edits about this case? Get in touch