

Standard of care in sports: rugby player found negligent for 'tackle'

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In February of this year, the English High Court found an amateur rugby player was negligent in causing an injury which left an opposing player paralysed from the waist downwards. The decision is notable for considering the relevant standard of care that a player owes to an opponent on the field of play.

| Background

The claimant was playing in her first competitive game of rugby against the defendant's team, Bracknell, who had recently re-formed having folded some years prior and as such re-joined the league at a 'developmental level'. The game between the sides was described as ill-tempered and it was held by the Court that Bracknell played the match in an *"inappropriately aggressive and intimidating manner"*.

The incident in question occurred at a ruck where, while the claimant was bending to pick up the ball, the defendant came around the side of the ruck and 'tackled' the Claimant by putting *"her whole bodyweight forward and down on the Claimant's back, parcelling up the Claimant by grasping her thighs just above the knees"*. The claimant immediately sustained a T11/12 fracture dislocation with a T10 ASIA B spinal cord injury, leaving her paralysed from the waist downwards and a full-time wheelchair user.

| Expert evidence

Two former professional referees adduced expert evidence, Mr. Edward Morrison (for the Claimant) and Mr. Anthony Spreadbury (for the Defendant), and were directed to consider whether the Defendant was offside, whether the Claimant had possession of the ball and how the Defendant executed the tackle.

In his evidence, Mr Morrison stressed the importance of playing the game in accordance with its

laws, which are designed to protect the safety of the players. It was his view that the defendant made no attempt to play the ball and that her act was inherently dangerous and reckless.

The Court wholly accepted the expert evidence of Mr Morrison and further held that concessions made by Mr Spreadbury were detrimental to the defendant's case, namely that the claimant had not been in possession of the ball and so should not have been tackled at all and that the mechanics of the tackle itself were dangerous and liable to give rise to serious injury whereby such tackle had no place on a rugby field.

The standard of care

The key issue determined by the Court was the standard of care owed by one player to another on the field of play.

The defendant submitted that a general standard of care exists in sporting cases that requires either recklessness or a very high degree of carelessness for the defendant to be found to have breached the duty. This submission was based on the decision in *Blake v Galloway* [2004] 1 WLR 2844, in which two 15-year-old boys were throwing twigs and pieces of bark chipping at each other, leading to the claimant sustaining a serious eye injury. Given the relatively harmless and friendly nature of the 'game', Dyson LJ held that there was a breach of duty *"only where [the Defendant's] conduct amounts to recklessness or a very high degree of carelessness"*.

However, the court preferred the test in *Condon v Basi* [1985] 1 WLR 866. In that case, a player was injured during a football match due to a sliding tackle from behind. It was held that a player is under a duty to take all reasonable care taking account of the circumstances in which they are placed, *"which, in a game of football, are quite different from those which affect you when you are going for a walk in the countryside"*. Similarly, the same standard of care applied to the Defendant in the context of the rugby match.

Significance of the decision

The Court found that the Defendant was negligent for a "reckless and dangerous act" that "fell below an acceptable standard of fair play". In finding that the defendant's act breached the standard of care expected, the Court made a number of notable findings:

- that the defendant was "looking for an opportunity to get her revenge";
- the Bracknell players were "inappropriately aggressive";
- the Defendant executed the "tackle" in a manner which is not recognised in rugby;
- the defendant was characterised as big and heavy and a dominant tackler who was able to use her size and weight to drive other players back;

- the developmental level of the game contrasted with the fact that the defendant had played at a much higher level; and
- the ball was held to have been still in the ruck, therefore the claimant did not have possession of the ball and the defendant's action could not be considered a 'tackle'.

The decision is instructive in confirming that players have a duty to take all reasonable care taking account of the circumstances and that an assessment of that standard of care will be fact specific. That position is acutely demonstrated by some of the factors relied upon by the Court.

In particular, it is unlikely that the fact a player is big and heavy and a dominant tackler or that a team was "inappropriately aggressive" would be taken into account in a game of rugby played by experienced players when those factors are inherent in most rugby matches. It is suggested that the fact that the match was 'developmental' was a notable counterbalance to those considerations.

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