



17 October 2018

PRESS SUMMARY

Warner (Respondent) v Scapa Flow Charters (Appellant) (Scotland) [2018] UKSC 52
On appeal from [2017] CSIH 13

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Sumption, Lord Hodge, Lord Briggs

BACKGROUND TO THE APPEAL

Mr Lex Warner chartered a motor vessel operated by Scapa Flow Charters (“SFC”) for the week of 11 - 18 August 2012. On 14 August 2012, when dressed in diving gear while preparing to dive on a wreck northwest of the Cape Wrath, Mr Warner fell onto the deck of the vessel. He was helped to his feet and went ahead with the dive to a depth of 88 metres. He got into trouble during the dive and, despite the assistance of other divers who brought him back to the surface of the water and onto the motor vessel, he could not be revived and was pronounced dead.

Mr Warner’s widow, Debbie Warner, raised an action against SFC in which she alleged that her husband’s death was the result of SFC’s negligence. She sought damages both as an individual and as a guardian of their young son, who had been born in November 2011. SFC lodged a defence that the action was time-barred under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (“the Athens Convention”), which, in the case of a death occurring during carriage, imposes a time bar of two years from the date on which the passenger would have disembarked. The parties agree that Mr Warner would have disembarked no later than 18 August 2012.

However, the Athens Convention also provides that the law of the court seized of the case – in this case, Scots law – governs “the grounds of suspension and interruption of limitation periods”, but in no case can an action be brought after the expiration of a period of three years from the date on which the passenger would have disembarked: article 16(3). SFC contended that the Scots law of limitation enacted in section 18 of the Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”) does not contain such “grounds of suspension and interruption” as to extend the limitation period. It argued that section 18 of the 1973 Act postpones the start of the limitation period instead of interrupting or suspending it as the Athens Convention envisages.

The Lord Ordinary upheld the time bar defence and dismissed the action. Mrs Warner appealed by reclaiming motion to the Inner House. The Inner House upheld the Lord Ordinary’s opinion in relation to her claim as an individual but reversed his order in relation to her claim on behalf of her son, finding that her claim as guardian of her son was not time barred. SFC appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Hodge gives the sole judgment with which the other Justices agree.

REASONS FOR THE JUDGMENT

In interpreting an international convention, national courts must look at the objective meaning of the words used and the purpose of the convention as a whole [14]. Courts in the UK have adopted an approach to interpretation which respects the international character of such a document: the interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather the language should be construed on broad principles of general acceptance [15]. In carrying out this task, the courts can use as aids to interpretation the *travaux préparatoires*, the case law of foreign courts on the convention and the writing of jurists, but in respect of the Athens Convention, such aids do not provide assistance [17-18]. Therefore, the Supreme Court relies on the broad, generally accepted principles of interpretation [19].

The Court does not accept that the words “suspension and interruption” should have a technical meaning derived from certain civil law systems for the following three reasons [20]. Firstly, it is not appropriate to look to the domestic law of certain civil law systems for a technical meaning of the words in an international convention which was designed to operate in many common law systems as well [21]. Secondly, even within civil law systems and mixed legal systems, there was no uniformity in the use of the expression “suspension” when the Athens Convention was adopted [22]. Thirdly, an interpretation of article 16(3) of the Athens Convention as excluding domestic rules which have the effect of postponing the start of a limitation period would give rise to serious anomalies [28]. The Court therefore holds that the words “the grounds of suspension ... of limitation periods” are sufficiently wide to cover domestic rules which postpone the start of a limitation period as well as those which stop the clock after the limitation period has begun [30].

Second, the Court does not accept that the natural meaning of the words “grounds of suspension and interruption of limitation periods” is limited to grounds which give rise to a break in a period or course of events which is already in train. For instance, the dictionary definition of “suspension” referred to by SFC included “postponement” as one of its meanings, and “suspension” in the context of prescription or limitation has a broader meaning in several legal systems [32]. The Court also holds that it was unnecessary for the grounds of limitation in a domestic limitation regime to be framed to extend beyond their domestic scope so as to cover limitation periods in conventions such as the Athens Convention [33]. Therefore, the existence of a ground in a domestic limitation statute which suspends the limitation periods set out in that statute is sufficient to bring article 16(3) of the Athens Convention into operation and extend the time bar by one year [33].

The Court then considers whether section 18 of the 1973 Act does in fact extend the time bar in respect of Mrs Warner’s claim as guardian. Firstly, the Court observes that the 1973 Act does not postpone the start of the limitation period. Rather, section 18 of the 1973 Act postpones the expiry date of the limitation period: it instructs a court to disregard the time during which the pursuer of the action is under legal disability [37]. In any event, the Court does not accept that postponement of the start of a limitation period falls outside an international understanding of a “suspension” of limitation periods [37]. Secondly, the legal disability recognised by section 18 of the 1973 Act has the effect of suspending the running of time on the limitation period under the Athens Convention [38]. Thirdly, that suspension is subject to the long stop of three years, as set out in article 16(3) of the Athens Convention.

The Court therefore concludes that Mrs Warner’s claim as her son’s guardian is not time barred by the Athens Convention [40]. The Court dismisses the appeal [41].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>