

CANADA / JUDGMENT

Gagné v. St-Régis Paper Co. (Canada) Ltd.

[1973] SCR 814

COURT

Supreme Court of Canada

DECIDED

31 January 1973

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Collection

Supreme Court Judgments

Date

1973-01-31

Report

[1973] SCR 814

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Martland, Ronald; Hall, Emmett Matthew; Pigeon, Louis-Philippe

On appeal from

Quebec

Subjects

Torts

Decision Content

Supreme Court of Canada

Gagné v. St-Régis Paper Co. (Canada) Ltd., [1973] S.C.R. 814

Date: 1973-01-31

Réjean Gagné (Plaintiff) Appellant;

and

St-Régis Paper Co. (Canada) Ltd. and Guy St-Denis (Defendants) Respondents.

1972: November 3; 1973: January 31.

Present: Fauteux C.J. and Abbott, Martland, Hall and Pigeon JJ.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Negligence—Child injured—Electric meat grinder—Father's failure to supervise his child—Common repute—Duty of the manager—Civil Code, art. 1053.

The appellant, a restaurant operator, went to the establishment of the respondents company with his three year old son whom he left outside in his car. He obtained permission from the manager to use an electric meat grinder fixed on a table which was 30 inches high, with a surface measuring 47 x 36 inches flat against the wall. At some point he realized that the child had stuck his right hand into the mouth of the machine. The child's arm had been horribly mangled and had to be amputated. The respondent St-Denis had let the child come in, as he was crying outside, and had gone out after seeing the child on the table beside his father. In the Superior Court the respondents were condemned jointly and severally to pay the appellant, in his capacity of tutor to his son, for damages suffered by the latter. The Court of Appeal, stating that it was highly unlikely that anyone could approach the table and place the child on it without his father being aware of the fact, in view of the small surface of this table, reversed the judgment of the trial judge. Hence the appeal to this Court.

Held: The appeal should be dismissed.

With regard to "common repute" relied on by the trial judges requiring a protective grill over meat grinders this is not a generally known and unquestionably true fact, and cannot be considered unless established by evidence.

With regard to the principle referred to by the appellant, this principle is well established. The father's failure to supervise his child cannot be pleaded as excluding liability towards the victim suing by his tutor but the fact that the child was under the immediate supervision of its father at the time of the accident and that it was impossible for the father not to notice the presence of his child on the small table should be taken into consideration in deciding whether a fault has been committed.

In these circumstances, the manager of the respondent's company was not guilty of negligence amounting to fault within the meaning of art. 1053 of the Civil Code by not telling the father to remove his son from the danger, as his position as manager gave him the right to do.

Finally, the fact that the respondent St-Denis let in the child cannot be considered a cause of the injury since the accident occurred after the father had acquiesced in this action by not preventing his child from joining him.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side^[1], Province of Quebec, reversing a judgment of the Superior Court. Appeal dismissed.

F. Francoeur and J. Parent, for the plaintiff, appellant.

P. Morin and L. Rémillard, for the defendants, respondents.

The judgment of the Court was delivered by

PIGEON J.—This appeal is against a decision of the Court of Appeal of Quebec, which reversed a judgment of the Superior Court condemning respondents jointly and severally to pay the plaintiff-appellant, Réjean Gagné, in his capacity as tutor to his son Michel, the sum of \$90,200 for damages suffered by his pupil in an accident.

The Chief Justice of the Province of Quebec stated the essential facts of the case as follows.

[TRANSLATION] On September 30, 1966, Réjean Gagné, a restaurant operator at Godbout, went to the St. Regis business establishment in that municipality. His son Michel, three years old, accompanied him, but he left him outside in the car. He obtained permission from the manager to use an electric meat grinder owned by St. Regis. At some point he realized that the child had stuck his right hand into the mouth of the machine. He shut off the machine, but the child's arm had been horribly mangled and had to be amputated. The trial judge, for his part, summarized the evidence as follows.

[TRANSLATION] At the trial defendant St-Denis admitted that he had let the child come in, as he said he was crying outside. He gave him a piece of bologna sausage to quiet him, and when he left the room where the meat grinder was he saw the child on the table beside his father. He returned to the general store, located on the other side of the road, some two or three hundred feet (200 or 300') from the shop. The accident apparently occurred only about fifteen minutes later.

Defendant's butcher was in a cold room at the time of the accident, but stated that a few minutes earlier he had come out to look for a plate and seen the child standing on the table, near his father. Plaintiff cannot explain how his son, who was then three years old, came to be on this table, which is 30" high, with a surface measuring 47" by 36". He remains convinced that St-Denis put him there, but the latter denies this.

If the version of defendant's manager and butcher is accurate, how was it that, knowing all the dangers inherent in such equipment, they did not warn plaintiff, or take it on themselves to move the child when they saw him on the table?

The trial judge's findings on liability were reversed for the following reasons stated by the Chief Justice.

[TRANSLATION] It appears from reading the judgment that the trial judge believed Gagné when he said he was unaware before the accident of the presence of his son on the table holding the meat grinder. If that is so, I must say, with respect, that it is an obvious error which the Court has to correct.

As we have seen, the table was three feet wide and just under four feet long. It was therefore not a large surface. It was two and a half feet high. Gagné was standing facing the table. It is absolutely impossible for his son to have been on this small table for any appreciable length of time, i.e. for more than a few seconds, without the father seeing him. Now, if we look at photograph D-1, we can see that this table was against a wall on one side, and that on the other side it was a few inches from another slightly lower table. Remembering that Gagné was facing the wall, the table could only be approached from one side, Gagné's left side. It is thus highly unlikely that anyone could approach the table and place the child on it without Gagné being aware of the fact, particularly as at the time of the accident he was taking up meat "which was on the ground, on my left". With all due respect to the contrary view, therefore, I find that Gagné knew before the accident that his child was on the table. This moreover is the only explanation for the statement he made after the accident, that it was his fault and he would be doing nothing for this reason. It is worth noting that Gagné does not deny this admission of responsibility, attributed to him by two witnesses.

If we assume that Gagné knew of the presence of his son on the table, the case takes on quite a different aspect. Even supposing that "common repute" requires a "protective grill" over the equipment, and I see no evidence of this on the record, the absence of such a grill was not the cause of the accident. Gagné admits that he knew how to operate the machine, and St. Regis could have had no idea that anyone would leave a three year old child near it while it was in use, without the child being closely watched.

The same applies to the two St. Regis employees who saw the child on the table near his father. They had no authority over the child or his father, and it was quite logical for them to think that the father would not lose sight of his child for an instant.

This reasoning is unimpeachable.

In the first place, with regard to "common repute", I feel that in the circumstances the trial judge erred in relying on this. A fact which is not generally known by all persons, such as the existence or non-existence of a protective grill over meat grinders used in butchers' shops, must be established by evidence. Here we are certainly not dealing with a generally known and unquestionably true fact. Quite the contrary.

Appellant drew the Court's attention to the principle that a third party may not plead, as excluding his liability towards a child, a fault committed by the father who is suing in his capacity as tutor. This principle is well established, as the Court of Appeal held in *Laprade v. Roussin*[2], and as the Cour de Cassation did hold in a decision of October 10, 1963[3], stating [TRANSLATION] "the father's failure to supervise would not warrant the judge reducing the damages awarded the victim". This certainly does not mean, however, that the fact that a child was under the immediate supervision of its father at the time of the accident should not be taken into consideration in deciding whether a third party was guilty of negligence. In the case at bar, the child could not have had access to the meat grinder if he had not been on the table where the machine was located. As the Court of Appeal pointed out, it was impossible for the father using

this machine not to notice the presence of his child on the small table, and the evidence indicates that he remained there a considerable time before the accident occurred.

In these circumstances, did St-Denis, St. Regis's manager, have a duty toward the child to tell his father to remove him from this danger? As the danger was one which must have been known to the father, it seems to me St-Denis had no such obligation. His position as manager gave him the right to do so, but I do not think the Court of Appeal erred in holding that in failing to do so he was not guilty of negligence amounting to fault within the meaning of art. 1053 C.C.

Charlesworth, in his book *On Negligence* (p. 355), notes that in England the Court of Appeal held that the owner of a potato-riddling machine was not liable for the injuries suffered by a young child whose mother was in charge of operating this machine. It was held that the employer had not been negligent in assuming that the mother would give her child adequate supervision. In my view, the Court of Appeal of Quebec did not err in adopting the same approach to a similar situation.

It was also contended that St-Denis had brought in the child when he was crying outside, because his father had left him there. In my opinion, this could only be a cause of the injury if the accident had occurred before the father had an opportunity to intervene. Here, far from requiring his child to go back outside, the father in effect acquiesced in St-Denis' action by not preventing his child from joining him in the part of the building where the grinder was located, and in then allowing him to remain on the table beside the machine. In such circumstances I feel the Court of Appeal was justified in concluding that lack of supervision on the part of the father was the sole cause of the unfortunate accident.

For these reasons I conclude that the appeal must be dismissed, with costs if demanded.

Appeal dismissed with costs if demanded.

Solicitors for the plaintiff, appellant: Maltais, Francoeur & Ass., Hauterive.

Solicitors for the defendants, respondents: Taschereau, Drouin & Morin, Québec.

[1] [1970] Que. A.C. 904.

[2] [1958] Que. Q.B. 760.

[3] D. 1964 J. 20.

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