

CANADA / JUDGMENT

Mack Trucks Manufacturing Co. v. Forget

[1974] SCR 788**COURT**

Supreme Court of Canada

DECIDED

27 August 1973

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Mack Trucks Manufacturing Co. v. Forget Collection Supreme Court Judgments Date 1973-08-27 Report

[1974] SCR 788 Judges Martland, Ronald; Judson, Wilfred; Hall, Emmett Matthew; Spence, Wishart Flett; Pigeon, Louis-Philippe On appeal from Ontario Subjects Labour law Decision Content Supreme Court of Canada Mack Trucks Manufacturing Co. v. Forget, [1974] S.C.R. 788 Date: 1973-08-27 Mack Trucks Manufacturing Co. of Canada Ltd. (Defendant) Appellant; and Rolland Forget, an Infant under the Age of Twenty-one Years, by his Next Friend Lorenzo Forget (Plaintiff) Respondent; and David Armstrong (Defendant). 1972: November 9, 10; 1973: August 27. Present: Martland, Judson, Hall, Spence and Pigeon JJ. ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO. Workmen's compensation—Employee of Schedule 1 employer injured in motor vehicle accident—Defendant and borrower of its truck also Schedule 1 employers—Whether right of Workmen's Compensation Board to sue taken away—Matter for sole determination of Board—The Highway Traffic Act, R.S.O. 1960, c. 172, s. 105(1)—The Workmen's Compensation Act, R.S.O. 1960, c. 437, ss. 9(7), 16, 72(1). The real plaintiff herein was the Workmen's Compensation Board suing in the name of the plaintiff F, a workman injured in a motor car accident in the course of his employment. The issue was the Board's right to sue the defendant M Ltd. (a Schedule 1 employer under the Board's Regulations). At the time of the accident its truck was on loan to another Schedule 1 employer, and its involvement in the litigation arose solely from its ownership of the truck under s. 105(1) of The Highway Traffic Act, R.S.O. 1960, c. 172. The trial judge held that the cause of action otherwise given by The Highway Traffic Act and otherwise maintainable by an injured plaintiff was barred and taken away by the provisions of s.9(7) of The Workmen's Compensation Act, R.S.O. 1960, c. 437. The Court of Appeal held that, under the provisions of ss. 16 and 72(1) of The Workmen's Compensation Act, the existence of the Board's right to sue M Ltd. was a matter for the sole determination of the Board. The question was referred to the Board, which decided that it had such a right. Thereupon, the Court of Appeal reversed the judgment at trial and gave judgment for the agreed assessment of damages. M Ltd. then appealed to this Court. Held: The appeal should be dismissed. The Court of Appeal was right in the course that it followed. *Dominion Canners Ltd. v.*

Costanza, [1923] S.C.R. 46; Alcyon Shipping Co. Ltd. v. O'Krane, [1961] S.C.R. 299; Farrell v. Workmen's Compensation Board, [1962] S.C.R. 48, referred to. APPEAL from a judgment of the Court of Appeal for Ontario^[1], allowing an appeal from a judgment of Lacourcière J. Appeal dismissed. D.W. Goudie, Q.C., for the defendant, appellant. J.J. Carthy, Q.C., for the plaintiff, respondent. The judgment of the Court was delivered by JUDSON J.—The real plaintiff in this action is the Workmen's Compensation Board suing in the name of Rolland Forget, a workman injured in a motor car accident in the course of his employment. The issue is the Board's right to sue Mack Trucks Manufacturing Co. of Canada Ltd. At trial, Lacourcière J. decided that there was no such right and dismissed the action. The Court of Appeal held that the existence of this right was a matter for the sole determination of the Board. The question was referred to the Board, which decided that it had such a right. Thereupon, the Court of Appeal reversed the judgment at trial and gave judgment for the agreed assessment of damages. The position of Mack Trucks in this litigation is a peculiar one. It is an employer under Class 11, Schedule 1, of the Board's Regulations, and it pays one rate in connection with its business of motor truck assembling and another rate in connection with its business of selling and servicing motor trucks. This accident and responsibility for it are not in any way connected with these two activities. At the time of the accident its truck was on loan to another Schedule 1 employer, and its involvement in this litigation arises solely from its ownership of the truck under s. 105(1) of The Highway Traffic Act, R.S.O. 1960, c. 172. There is no question of this ownership and there is equally no question that the borrower of the truck, who is not in this litigation, was a Schedule 1 employer. The issues are therefore clearly defined. The plaintiff relies on the imposition on the owner of a motor vehicle of liability sustained by any person by reason of negligence in the operation of a motor vehicle on a highway. The defence relied upon s. 9(7) of The Workmen's Compensation Act, R.S.O. 1960, c. 437, which reads as follows: 9(7) In any action brought by a workman of an employer in Schedule 1 or dependant of such workman in any case within subsection 1 or maintained by the Board under subsection 3 and one or more of the persons found to be at fault or negligent is the employer of the workman in Schedule 1, or any other employer in Schedule 1, or any workman of any employer in Schedule 1, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of any workman of any employer in Schedule 1, and the portion of the loss or damage so caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of the workman of any employer in Schedule 1, shall be determined although such employer or workman is not a party to the action. The trial judge gave effect to this defence and held that the cause of action otherwise given by The Highway Traffic Act and otherwise maintainable by an injured plaintiff was barred and taken away by the provisions of this subsection. However, there are two other sections of The Workmen's Compensation Act that must be considered in relation to this matter. These are:

16. Any party to an action may apply to the Board for adjudication and determination of the question of the plaintiff's right to compensation under this Part, or as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination is final and conclusive. 72(1) The Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court. There are three decisions of this Court which conclusively hold that it is within the exclusive jurisdiction of the Board to determine whether or not the plaintiff's right of recovery and right of action are taken away by the provisions of the statute. These cases are: *Dominion Cannery Ltd. v. Costanza*[2]; *Alcyon Shipping Co. Ltd. v. O'Krane*[3]; *Farrell v. Workmen's Compensation Board*[4]. The Court of Appeal, therefore, was right on the hearing of the appeal to stay the action pending an application to the Workmen's Compensation Board for its decision. This was done on September 15, 1970. On December 1, 1970, the Board, after hearing both parties, decided that the right to bring the action had not been taken away in this case. On April 19, 1971, the Court of Appeal gave its final decision. It found that the Board had determined the only remaining issue in the action. It reversed the judgment under appeal and directed judgment in favour of the plaintiff for the damages which had been agreed upon. In my opinion, the Court of Appeal was right in following this course. I would affirm its judgment and dismiss this appeal with costs throughout. Appeal dismissed with costs. Solicitors for the defendant, appellant: Thomson, Rogers, Toronto. Solicitors for the plaintiff, respondent: Weir & Foulds, Toronto.

[1] [1971] 1 O.R. 682, 16 D.L.R. (3d) 384.

[2] [1923] S.C.R. 46.

[3] [1961] S.C.R. 299.

[4] [1962] S.C.R. 48.

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