

Routledge-Cavendish Mooting Skills Guide

SAMPLE MOOT PROBLEM

Smith and Rose v Tiger Motors plc

The Stoke-On-Trent Motor Show is the largest motor show in the United Kingdom to be held on an annual basis. In 2005, Tiger Motors plc was allocated a stand in the motor show very near to the centre of the exhibition hall. The company placed one of their new models, the XX9, on display on the stand. On the final day of the show, Mick Hugh, the managing director of Tiger Motors plc, started up the XX9 to demonstrate the tone of its engine noise to an interested customer. Unfortunately he failed to notice that the car had been left in gear and the car lurched forward and hit Sarah Smith, aged 6, who was standing with her father Tommy Smith at the front of the XX9. The young girl screamed aloud in agony. Blood from his daughter was splattered on Tommy Smith and a group of eight university students stood nearby. Amidst the screaming from Sarah and the noise from some other bystanders, Tommy fainted.

Sadly, Sarah Smith died from her injuries, and although Tommy Smith did not sustain physical injuries at that time, he has since suffered severe bouts of depression, headaches, general irritability and a loss of interest in cars, all of which, according to medical evidence, have resulted from the loss of his only child Sarah. Five of the eight university students were treated for shock as a result of witnessing the incident, but one of them, Marie Rose, aged 17, has since suffered lack of sleep, inability to concentrate on her studies and depression. Her psychiatric disorder has led to her missing six months of lectures and becoming an alcoholic.

Tommy Smith and Marie Rose claimed damages in negligence for their psychiatric illnesses, and Tommy Smith also claimed damages for the loss of his daughter.

At first instance, Volver J. found that, on evidence, the death of Sarah Smith was as the direct result of negligence on the part of the defendant's employee, for which the defendant was vicariously liable. He awarded damages for Sarah's death.

In respect of the psychiatric illness, Volver J. found that it had in fact been caused by the plaintiffs witnessing the death of Sarah. However, he also found on the evidence that at no time were either Tommy or Marie at any danger of being hit by the XX9 car. In the instant case, he found that as Tommy Smith was divorced from Sarah's mother in 2002 [with whom Sarah had been living up until the time of her death], and the only contacts Tommy had had with his daughter were the once-a-month Sunday afternoon outings they shared [including the fateful visit to the motor show], Tommy Smith's psychiatric illness was outside the scope of the duty of care owed by the defendants. The second plaintiff was not even related to Sarah Smith, and as such she was owed no duty of care by the defendants.

The Court of Appeal (Civil Division) upheld his judgments.
Tommy Smith and Marie Rose now appeal to the House of Lords.