

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
On APPEAL FROM THE WARWICK COUNTY COURT
(HIS HONOUR JUDGE WOOTTON)**

Royal Courts of Justice.
30th April 1985.

B e f o r e :

**THE MASTER OF THE ROLLS (Sir John Donaldson)
LORD JUSTICE STEPHEN BROWN
and
MR. JUSTICE GLIDEWELL**

JAMES CONDON

**(Plaintiff)
Respondent**

v.

GURDAVER BASI

**(Defendant)
Appellant**

**(Transcript of the Shorthand Notes of the Association of Official
Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New
Square, Lincoln's Inn, London, W.C.2).**

**MR. P. CRAWFORD, Q.C. and MR. J. GIBBONS (instructed by
Messrs. Liggins & Co. of Leamington Spa) appeared on behalf of the
(Plaintiff) Respondent.**

**MR. M. LEE, Q.C. and MR. R. JONES (instructed by Messrs.
Sharpe Pritchard & Co., London agents for Messrs. Westgarths of Coventry)
appeared on behalf of the (Defendant) Appellant.**

HTML VERSION OF JUDGMENT

THE MASTER OF THE ROLLS: This is an appeal from a decision of His Honour Judge Wootton in the Warwick County Court given in March 1984. It arose out of a football match played on a Sunday between Whittle Wanderers and Khalso Football Club. They are both clubs in the Leamington local league. The plaintiff was playing for Whittle Wanderers and the defendant for the Khalso Football Club. Most unfortunately, during the game the defendant tackled the plaintiff in such a manner as to lead to the plaintiff breaking his leg. The county court judge found that he had been negligent, and awarded a sum of £5,000-odd in damages.

It is said that there is no authority as to what is the standard of care which governs the conduct of players in competitive sports generally and, above all, in a competitive sport whose rules and general background contemplate that there will be physical contact between the players, but that appears to be the position. This is somewhat surprising, but appears to be correct. For my part I would completely accept the decision of the High Court of Australia in Rootes v. Shelton [1968] A.L.R. 33. I think it suffices, in order to see the law which has to be applied, to quote briefly from the judgment of Chief Justice Barwick and from the judgment of Mr. Justice Kitto. The learned Chief Justice said at page 34:

"By engaging in a sport or pastime the participants may be held to have accepted risks which are inherent in that sport or pastime: the tribunal of fact can make its own assessment of what the accepted risks are: but this does not eliminate all duty of care of the one participant to the other. Whether or not such a duty arises, and, if it does, its extent must necessarily depend in each case upon its own circumstances. In this connexion, the rules of the sport or game may constitute one of those circumstances: but, in my opinion, they are neither definitive of the existence nor of the extent of the duty; nor does their breach or non-observance necessarily constitute a breach of any duty found to exist."

Mr. Justice Kitto said at page 37:

"... in a case such as the present, it must always be a question of fact, what exoneration from a duty of care otherwise incumbent upon the defendant was implied by the act of the plaintiff joining in the activity. Unless the activity partakes of the nature of a war or of something else in which all is notoriously fair, the conclusion to be reached must necessarily depend, according to the concepts of the common law, upon the reasonableness, in relation to the special circumstances, of the conduct which caused the plaintiff's injury. That does not necessarily mean the compliance of that conduct with the rules, conventions or customs (if there are any) by which the

correctness of conduct for the purpose of the carrying on of the activity as an organized affair is judged; for the tribunal of fact may think that in the situation in which the plaintiff's injury was caused a participant might do what the defendant did and still not be acting unreasonably, even though he infringed the rules of the game'. Non-compliance with such rules, conventions or customs (where they exist) is necessarily one consideration to be attended to upon the question of reasonableness; but it is only one, and it may be of much or little or even no weight in the circumstances."

I have cited from those two judgments because they show two different approaches which, as I see it, produce precisely the same result. One is to take a more generalised duty of care and to modify it on the basis that the participants in the sport or pastime impliedly consent to taking risks which otherwise would be a breach of the duty of care. That seems to be the approach of the Chief Justice. The other is exemplified by the judgment of Mr. Justice Kitto, where he is saying, in effect, that there is a general standard of care, namely the Lord Atkin approach that you are under a duty to take all reasonable care taking account of the circumstances in which you 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.

For my part I would prefer the approach of Mr. Justice Kitto, but I do not think it makes the slightest difference in the end if it is found by the tribunal of fact that the defendant failed to exercise that degree of care which was appropriate in all the circumstances, or that he acted in a way to which the plaintiff cannot be expected to have consented. In either event, there is liability.

Having set out the test - which is the test which I think was applied by the learned county court judge - I ought to turn briefly to the facts, adding before I do so that it was submitted by Mr. Lee on behalf of the appellant that the standard of care was subjective to the defendant and not objective, and if he was a wholly incompetent football player, he could do things without risk of liability which a competent football player could not do. For my part I reject that submission. The standard is objective, but objective in a different set of circumstances. Thus there will of course be a higher degree of care required of a player in a First Division football match than of a player in a Fourth Division football match. But none of these sophistications arise in this case, as is at once apparent when one looks at the facts.

I can most conveniently deal with the matter by quoting from the report of the very experienced Class 1 referee, who officiated on this occasion. He said:

"After 62 minutes of play of the above game, a Whittle Wdrs player received possession of the ball some 15 yards inside Khalsa F.C. half of the field of play. This Whittle player upon realising that he was about to be challenged for the ball by an opponent pushed the ball away. As he did so, the opponent [the defendant] challenged, by sliding in from a distance of about 3 to 4 yards. The slide tackle came late, and was made in a reckless and dangerous manner, by lunging with his boot studs showing about a foot - 18 inches from the ground. The result of this tackle was that the Whittle Wanderers No 10 player [the plaintiff] sustained a broken right leg.

In my opinion, the tackle constituted serious foul play and I sent [the defendant] from the field of play."

Then he said where he was positioned.

He gave evidence before the learned county court judge. He was cross-examined; and, in the event, the learned county court judge wholly accepted his evidence, subject to a modification in that he thought the defendant's foot was probably 9 inches off the ground. The learned judge said that he entirely accepted the "value judgments" of the referee. He said:

"[The tackle] was made in a reckless and dangerous manner not with malicious intent towards the plaintiff but in an 'excitable manner without thought of the consequences. "'

The learned judge's final conclusion is to be found in paragraph 13 of his judgment, where he said:

"It is not for me in this Court to attempt to define exhaustively the duty of care between players in a soccer football game. Nor, in my judgment, is there any need because there was here such an obvious breach of the Defendant's duty of care towards the Plaintiff. He was clearly guilty, as I find the facts, of serious and dangerous foul play which showed a reckless disregard of the Plaintiff's safety and which fell far below the standards which might reasonably be expected in anyone pursuing the game."

For my part I cannot see how that conclusion can be faulted on its facts, and on the law I do not see how it can possibly be said that the defendant was not egligent.

Accordingly I would dismiss the appeal.

LORD JUSTICE STEPHEN BROWN: I agree.

MR. JUSTICE GLIDEWELL: I also agree.

(Order: Appeal dismissed with costs not to be enforced without the leave of the court).