



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

MV 'Shark Team' v Tallman (190/2015) [2016] ZASCA 46 (31 March 2016)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld the appeal by MV 'Shark Team', Mr Grant Tuckett and White Shark Projects CC (the appellants) against a judgment of the Western Cape Division of the High Court, Cape Town, and accordingly dismissed the claim of Ms Sarah Tallman (the respondent), who had sought to hold them liable in delict for damages arising out of the death of her husband, Mr Christopher Tallman, who had drowned at sea while on a shark cage diving expedition operated by the appellants.

In April 2008, the MV 'Shark Team', a ski-boat carrying tourists on a shark cage diving trip, capsized at sea after being hit by a large wave. As a result, three passengers drowned, including Mr Tallman. This is the first and only incident of its kind in the history of the industry in the area. Ms Tallman sought to hold the appellants liable for inter alia loss of support arising from the death of her husband, on the basis that his death had been caused by the negligence of the skipper of *Shark Team*, Mr Tuckett.

The issue before the SCA was whether the death of Mr Tallman was caused by the negligence of Mr Tuckett, and whether the appellants should accordingly be held liable for the damages suffered by Ms Tallman.

The factual points in dispute included the conditions at sea on the day in question, whether Mr Tuckett had acted with sufficient care in going shark cage diving given those conditions, whether he had taken adequate care to find a safe place to anchor while conducting the diving, whether the

conditions deteriorated during the course of the trip, and whether he accordingly should have halted the trip earlier (ie before the capsizing occurred).

The trial in the court a quo had lasted 52 days, and both appellants and respondents had called numerous witnesses and led extensive expert evidence.

After a comprehensive review of this evidence, the SCA concluded that on the day in question, Mr Tuckett had not acted negligently in choosing the anchoring spot he did, and there were no warning signs which would have alerted a reasonable skipper in his position to leave in time to avoid the wave in question. The capsizing was caused by a wave that was abnormally large for the area, far larger than the average swell for the day, and which was the product of a rare cross-sea. This phenomenon occurred less than two per cent of the time, and was where a strong south-easterly wind produced swells which combined at irregular intervals with the ordinary south-westerly sea swells, with the result that certain waves were much larger than would otherwise be expected. As there was only one witness aware of this phenomenon, who was a highly qualified expert on oceanography, the SCA held that Mr Tuckett could not have been expected to know of it and taken it into account.

On the facts then, the SCA held that the respondent had failed to prove that the death of Mr Tallman was caused by the negligence of Mr Tuckett, and accordingly upheld the appeal.

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